Introduction

This report is part of the REGANE study dealing with the impact of regularisation\(^2\) of third country nationals on their labour market trajectories in the European Union (EU). The study aims at implementing a survey among regularised immigrants in selected EU-countries (Germany, France, Italy, the Netherlands, Poland, Spain and Sweden). As a first step the study collects background information on regularisation practices in the countries under study, assesses the feasibility and best possible research design for such a survey and collects information based on semi-structured qualitative interviews.

This report presents the results from the collection of background information and qualitative interviews for Sweden. The first section outlines the general migration situation and migration policy in the country with particular focus on irregular migration. The second section analyses regularisation policies and practices in the country. The third section provides preliminary results of the impact of regularisation on labour market performance based on existing literature and semi-structured interviews conducted in the course of the study. The last section concludes the report.

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\(^2\) Regularisation or legalisation of foreign citizens is defined as any state procedure by which third country nationals who are illegally residing, or who are otherwise in breach of national immigration rules, in their current country of residence are granted a legal status (cf. Baldwin-Edwards & Kraler 2009: 9).
In terms of territorial surface, Sweden can be considered a large country. By the end of the first half of 2013, the Swedish population amounted to 9,596,436 inhabitants. Sweden shows signs of a steadily increasing population, an increase that has been explained as largely due to the immigration to the country. In 2012, approximately 370,000 third country nationals were living in Sweden. This makes Sweden an important but not major destination country with regards to immigration stemming from outside the European Union. The same goes for irregular migration. Compared to the Southern European countries Sweden is not considered to be a major destination country. In Sweden, irregular migration and regularisation are mainly discussed in the context of asylum migration, most notably in terms of people whose asylum applications have been rejected. In 2011, the number of third country nationals found to be illegally present in Sweden was almost 21,000. Although this number only refers to persons without residence status found by the Police, it does indicate the relative quantitative importance of irregular migration in the country. Between 2008 and 2012 almost 60,000 asylum applications were rejected in Sweden. This makes the country one of the top three countries concerning the number of rejections in those years.

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1. General context – migration history and policy

Migration and the formation of the welfare state

Today Sweden is seen as a country of immigration, but it was not until the first half of the twentieth century that Sweden changed from a country of emigration to one of immigration, receiving Swedish returnees from North America along with refugees from its neighbouring countries as well as from Germany and the Baltic countries. Jørgensen and Meret (2010: 123) identify this change as the result of a combined need that was generated by the liberal market economy and the state-run welfare state, i.e. a need for Sweden to recruit foreign labour to sustain its national system. The foreign migrants that were recruited at the time were exposed to strict controls in an effort to protect the Swedish labour market (Borevi 2012: 33). In this period the Swedish welfare state started to take shape. In its formative phase, opposing views of how to shape welfare state policy finally gave way for the so called ‘workline’ approach, interlinking social rights (such as unemployment and health insurance) to individual labour participation. Thus, making income, instead of needs, the principal focus of the social insurance system of the Swedish welfare state (Borevi 2012: 30).

The second post war period was followed by a key moment of immigration to Sweden, in the form of ‘guest worker’ recruitment from the other Nordic countries and from countries such as Hungary, Italy, Yugoslavia, Turkey and Greece. Like in many European countries, labour shortages in an expanding Swedish industry triggered bilateral agreements between governments aimed to satisfy the demand for labour force (especially for low skilled labour force). The labour recruitment was managed by the Swedish government, with trade unions actively participating in the process. The trade unions had their saying in the actual recruitment of migrant workers, and tended to favour the admission of skilled workers. Until 1965, foreign workers were required to join the relevant unions while working in Sweden. The opinion of the unions, although not legally binding, was in practice highly influential in the process of recruitment and worked as an informal veto (OECD 2011: 11). With the arrival of migrants from Yugoslavia, Turkey and Greece in the 1960s, a change in policy was made. The fact that many of the migrants came to Sweden on tourist visas and then sought employment from within the country triggered trade unions to push through a regulation requirement in 1968, according to which employment, housing and work permits were to be arranged before arrival (OECD 2011: 57). In 1965, the Swedish government launched a survey with the purpose to investigate how immigrants could be informed about work and life in Sweden, as well as to see how regulate immigration. In 1969 the Swedish Board of Immigration was established, introducing ‘regulated immigration’ in Sweden. Consequent to this and to increasing unemployment and economic stagnation the number of labour
migrants coming to the country started stagnating and three years later, in 1972, a so called ‘immigration stop’ was made official. This legislation obviously did not stop migration literally but it severely restricted labour immigration, subsequently allowing only migrants from the other Nordic countries to come work in Sweden (Jørgensen & Meret 2010: 123). Borevi (2012: 33) suggests that the control of migration served as an attempt “to ensure that those who received residence permits were integrated into the labour market” and considers these regulations as linked to the workline principle of the Swedish welfare state.

Responses to immigration and changing patterns

In the period between the 1960s and the beginning of the 1970s a new policy field emerged in Sweden, concerned with the integration of immigrants. With this initiative, the state targeted a group that had not previously been considered in such a sense. Previously, immigrants had been seen as temporary residents (as the term ‘guest workers’ suggests). From this new perspective, immigrants were considered as a group with specific needs that were to be met by society, requiring specific policy measures. Apart from facilitating language instruction for immigrants, the policy was supposed to encourage cultural diversity. The new policy targeted a specific group, encouraging them to diverge from the presumed national homogeneity. At first glance, this might appear rather paradoxical in relation to the universalistic characteristics of the welfare state in emphasising cultural similarity, i.e. a common national norm according to which the population is to adapt in the formation of a national demarcated unit that is subsumed to the same general rights and obligations. From another perspective, the development of this policy measure is very much in line with the profiling of Sweden as a ‘pioneer country’ (Borevi 2012: 28, 29). In comparison to many of its European counterparts, Sweden was in fact early in terms of developing policy measures responding to the settlement of immigrant workers. Placed in the context of the restrictions introduced in 1972, this policy response can also explain the conflict that arose as immigration patterns started to change. Following the labour immigration stop came a period of immigration for the purpose of family reunification, which mainly consisted of children and spouses to the settled ‘guest workers’ who had come in the earlier period.

Towards the end of the 1970s the immigration patterns changed again, with asylum seekers representing the majority of inflows to the country. Although the origins of flows have changed over time, this change has persisted and still today asylum seekers constitute a big part of the total immigration to Sweden. As noted by Borevi (2012) in the earlier period of labour migration, the immigration regulations seem to have functioned well. Immigrants who came to Sweden to work could, according to the workline principle, be incorporated into the Swedish welfare state. However, as the nature of migration changed the principle of work
became problematic. People who came to Sweden to reunite with family members or to seek asylum could not be integrated into a logic according to which welfare benefits and rights were connected to the participation in the labour market.

In present times there is also another type of migration to take into account, namely that of labour migration stemming from the Baltic and other new EU-countries as well as from third countries. The character of this immigration flow differs from previous, covering everything from service providers to skilled and highly specialised labour migrants entering Sweden to work under different schemes. Along with this, there has also been an increase in foreign students coming to Sweden to study in recent times. In the past few years though, the number of international students who come to Sweden for higher education is decreasing. This could be explained as linked to the changes made in 2011, when tuition fees were introduced in the higher education system for people coming from outside the EU/EEA area (EMN 2011a: 14). Also, in contrast to many other countries, international students are not allowed to stay in Sweden to look for employment but must do so before graduation in case they which to remain (EMN 2011a: 17). Students are generally not discussed in relation to irregularity, but as noted by Jørgensen and Meret (2010: 124) the different incentive structures regulating whether foreign students are allowed to stay in a country or not once they have completed their studies “are also believed to create the conditions for regularity and irregularity”.

Labour immigration regulations

The Migration Board always issues general work permits (AT) together with residence permits (UT)\(^6\). The only ones who are not granted work permits are relatives of visiting students – guest students staying in Sweden must demonstrate to be ‘self sufficient’ independently of accompanying relatives. A relative should not be the one covering living expenses of the visiting student by working in Sweden. Work permits are not granted to individuals who have received a residence permit for the purpose of visiting. Normally, residence and work permits (UAT)\(^7\) are given to those who have previously sought asylum and who are granted a temporary residence permit. A permanent residence permit always entails the right to work.\(^8\)

Until 2008, the legal framework regulating labour immigration to Sweden was very restrictive, especially for certain migrant groups, with the informal veto right of trade unions as an influential factor in the process of recruitment. In 2008, the labour migration management

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\(^6\) The abbreviation ‘AT’ stands for ‘arbetstillstånd’. ‘UT’ stands for uppehållstillstånd.

\(^7\) The abbreviations stands for ‘uppehåll- och arbetstillstånd’, meaning residence and work permit.

\(^8\) Information provided by representative from the Migration Board on the 18\(^{th}\) December 2013.
policy went through some serious changes, turning Sweden’s labour migration regime into what appears to be the most liberal one in comparison other countries in the OECD. The changes were driven by concerns about future labour shortages and an ageing population (OECD 2011: 11). Labour migration can be seen as a managed way of dealing with such issues. The reform was framed as a means to facilitate the migration of citizens coming from outside the EU/EEA to Sweden for the purpose of work. According to information provided by the Migration Board, the changes also stem from having recognised that many of those who come to Sweden seeking asylum do this in an attempt to find work. There was thus a need to facilitate work migration for migrants of this kind (Migration Board 2013).9

Labour migration policies, like asylum policies, are fundamental factors that contribute “to the creation of niches of irregular migration” (Jørgensen & Meret 2010: 136). Even when policy reforms aimed to open up for more ways to legally migrate are made, regulated migration works according to a logic that at the same time demarcates access to a country, thus creating, albeit indirect, incentives for irregular migration (Jørgensen & Meret 2010: 141).

Swedish labour immigration legislation is now almost completely demand based, with focus on employers' needs regarding the recruitment of labour force. According to the Swedish Ministry of Justice (2013: 1) the labour market immigration system is now “simple and flexible for both employers10 in Sweden and for people who want to come to Sweden to work”. For most migrants coming from countries outside Europe, work permits are still dependent on the presence of a job offer that meets certain criteria, e.g. in terms of insurance and salary. If a non-EU citizen wishes to migrate to Sweden in order to work, he or she must already be in contact with a potential employer that can offer employment in line with the Swedish collective agreements (or in line with what is considered common practise for the profession in question).11 Thus, work and residence permits have to be arranged before departure.12 Work permits are granted together with a residence permit (UAT13). The Ministry of Justice (2013: 1) frames this requirement as a means to “prevent people from being exploited on the Swedish labour market”.

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9 Phone interview with representative from the Migration Board, conducted on the 30th October 2013.
10 When considering recruiting from abroad, employers must first advertise vacancies through job portals in Sweden and in the EU, but they are not required to proceed with any of the applications they might receive in the advertisement period. There are no skill requirements or limits on how many permits that may be issued in the current legislative framework and recruitment can made for any occupation (OECD 2011: 11, 12).
11 SEK 13,000 per month before taxes (Quirico 2012: 43).
12 These regulations do not apply to the following groups for whom less stringent regulations are applied: EU-citizens; citizens from Australia, Canada, New Zealand and South Korea between the age span 18-30 years; citizens of Switzerland; and people who have resided regularly for a minimum five years in another EU-country (Denmark, Ireland and the UK excluded). Regulations also differ for certain occupational categories, which are subject to special rules both in terms of rights and/or more strict requirements (Migration Board 2013c).
13 The abbreviations stands for 'uppehåll- och arbetstillstånd', meaning residence and work permit.
Critics suggest that apart from facilitating the process of migration, the change has also facilitated the exploitation of non-EU/EEA labour immigrants in Sweden (EMN 2011a: 11). In fact, the hotel and restaurant union has revealed a large number of cases of labour migrants working in restaurants in Stockholm for wages far below those of employment offers provided to the Migration Board. Similar cases are also regularly reported from the construction industry, the cleaning industry, the agriculture and transport sector. For example, a case was revealed where people from Pakistan were required to pay over 100 000 SEK\textsuperscript{14} for work permits to work in one of Sweden’s leading fast food chains (Proposal 2013/14:Sk376).

Since 2011, a proof of identity is “required in order to be granted a residence permit when an application is made before travelling to Sweden” (EMN 2011a: 14).\textsuperscript{15} If granted a permit to work, family members may accompany the applicant, and when possible work permits may also be given to them. Foreign citizens who work and reside regularly in Sweden on a long term basis basically enjoy the same rights as Swedish nationals (EMN 2010: 2). However, in order to register in Sweden, a permit with a minimum duration of one year is required. Those who are not registered do not have access to the same social benefits as those who are, and thus need to be covered by other insurances covering costs in case of accidents and disease. It should be noted that when the Swedish Migration Board issues permits they do so on the basis of employment offers. Thus, what should be in line with rules and regulations are the terms of an employment offer, not the actual employment. Employment offers are in no way legally binding. In the current legal framework, the Migration Board has few possibilities when it comes to control whether or not employers live up to these requirements in practice (Migration Board 2013).\textsuperscript{16} In practice, there appears as if there is an imbalanced relationship between the actual requirements that must be fulfilled by migrants and those that in theory should be fulfilled by their employers in the current labour market immigration system. The ‘simplicity’ and ‘flexibility’ seem to mainly concern employers.

Figure 1 shows the importance of all types of residence permits as well as different types of residence permits issued to refugees for the period 1980 to 2011 (there are some missing data for permits for labour market prior to 2000 and some other categories missing data prior to 1987). To look at the more recent years, in the eleven years from 2000 to 2011 some 895,000 residence permits were issued in Sweden, most of them for the purpose of family reunification (altogether almost 327,000 since 2000 or 37 percent of all permits). The second

\textsuperscript{14} Equivalent to about 11182 Euros on November 19, 2013.
\textsuperscript{15} According to a report by EMN (2011a: 14) the introduction of the requirement of proof of identity had a particular impact on Somali citizens since “Sweden does not accept any Somali identity documents issued after 1991 anymore, it has become difficult for a Somali citizen abroad to obtain a residence permit based on family ties”.
\textsuperscript{16} Phone interview with representative from the Migration Board, conducted on the 30\textsuperscript{th} October 2013.
most important type of work permits were issued in the framework of the European Economic Area (EEA) Agreement. Since 2000 more than 183,000 such residence permits were issued, representing 20 percent of all permits issued. Residence permits for the purpose of employment account for 16.3 percent of all permits since 2000, closely followed by residence permits issued to refugees (15.6 percent), showing the importance of asylum migration in Sweden. The importance of family migration should also be acknowledged but since it is out of the scope of the study it will not be discussed here.

31 percent of residence permits issued to refugees were granted for individuals ‘in need of protection’ and almost 30 percent of permits on the basis of humanitarian grounds. Other important reasons for residence permits issued to refugees since 2000 are quota refugees (13.6 percent) and ‘convention refugees’ make up 10 percent. Furthermore, 12.7 percent of all permits issued to refugees since 2000 were issued on the basis of the regularisation programme for failed asylum seekers, as discussed below. In the years 2005 and 2006 over 17,000 persons obtained residence permits based on this special law.

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17 In the current Aliens Act (2005: 716) the notion of granting permits on the basis of ‘humanitarian grounds’ has been taken away and replaced by a new formulation. According to the new act, residence permits may be granted on the grounds of ‘particularly distressing circumstances, which can be considered a more restrictive type of humanitarian grounds.’
Figure 1: Residence permits issued in Sweden 1980 until 2011

**Asylum**

In Sweden, asylum can only be applied for from within the country. It is possible to be granted a residence permit as an asylum seeker on the following four different grounds: 1) Recognition as a refugee according to the UN Convention Relating to the Status of Refugees, Swedish and EU legislation and regulations or 2) on the basis of subsidiary protection. In this case the applicant may receive subsidiary refugee status in accordance with EU acquis. 3) Residence permit on the basis of ‘other protection’ under the Swedish Aliens Act, which may entitle a refugee status that is however only valid in Sweden. 4) Residence permit on the grounds of ‘particularly distressing circumstances’, which could be considered a form of humanitarian protection (Migration Board 2013a).

Asylum seekers who register at the Migration Board are provided with an Asylum Seeker Card (LMA card) which functions as a proof that asylum has been sought and of the right to stay in Sweden while attending a decision. Registered asylum seekers are offered temporary housing and can apply for daily allowances during the period they wait for their decisions. Asylum seekers registered in Sweden are allowed to work if they hold a work permit exemption certificate (AT-UND) exempting them from the obligation to hold a work permit. According to information provided on the official website of the Migration Board, an asylum application is to be considered ‘well founded’ in order to receive such a certificate. The asylum seeker must also collaborate in the clarification of his/her identity (Migration Board 2013b). According to information provided by the Migration Board via telephone, it was possible to receive an AT-UND without having to collaborate in the clarification of one’s identity before the introduction of the proof of identity requirement in 2006. Since asylum seekers obtained the right to work in Sweden on the 1st of July 1992 and up until the change in 2006, it was possible to obtain an AT-UND if the process time of an asylum application was expected to take more than four months, and if asylum claims were considered ‘real’. (‘Real’ signifying that the asylum claim was judged as credible.) Today, more weight is put on the clarification of identity than on the asylum claim being ‘well founded’. The Migration Board estimates that over 90 percent of asylum seekers do not demonstrate identification documents in the first encounter with the Migration Board, but as time passes many manage to obtain some kind of document with which identification is possible, according to information provided by the Migration Board (2013). About 20 percent of asylum seekers obtain an AT-UND (Migration Board 2013).\(^\text{18}\)

In 2013, 8,046 asylum seekers were issued with AT-UND certificates. An increase is observable since the year 2009, when some 2,829 were issued. In 2007 and 2008 numbers

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\(^{18}\) Phone interview with expert/representative from the Migration Board, conducted on the 30\(^{th}\) October 2013.
are significantly higher than in the other years for which data is available. In 2007, 13,018 AU-UNDS were issued. Certificates issued in 2008 add up to some 16,778, which is about twice as many as for 2013. Totally, from 2007 to 2013 some 57,030 AT-UND certificates have been issued.\(^{19}\)

Asylum seekers’ incomes are to be taxed in order to access labour related social benefits and employers of asylum seekers are obliged to report the period of employment to the Migration Board. Since to the labour migration management policy reform in 2008, rejected asylum seekers who have obtained an AT-UND certificate during the period as asylum seekers may apply for a work permit if the application for asylum is rejected within two weeks after a decision of expulsion has gone into force. A work permit may be granted provided that: the applicant posses a valid passport; holds employment and has been employed by the same employer the last six months with an offer of prolongation for at least another year. Thus, the 2008 reform has opened up for the possibility of status change (OECD 2011: 11, Quirico 2012: 43). However, the current system is highly bureaucratic and not many asylum seekers change status to labour migrants. This might also be because information is not made available (Quirico 2012: 43, 44). According to the OECD, status-change channels for both asylum seekers and international students are restrictive in the Swedish context (OECD 2011: 14). There is no data available on how many rejected asylum seekers that apply for a work permit (Migration Board 2013).\(^{20}\)

In the years 2005 to 2011, over 245,000 asylum applications were lodged in Sweden. 33 percent concern repeated or reopened asylum procedures. By far the most important country of origin is Iraq. Citizens of Iraq represent 21 percent of all applications during this period of time.

\(^{19}\) Data provided by the Migration Board. The data available covers the period 2007-2013. At the time of writing, data is available until the 29\(^{th}\) October for the year 2013.

\(^{20}\) Information provided by the Migration Board on the 12\(^{th}\) of November 2013.
Figure 2: Asylum Applications lodged in Sweden 2005 to 2011 (including first instance and repeated or reopened applications)

Source: Own presentation based on UNHCR Statistical Online Population Database, United Nations High Commissioner for Refugees (UNHCR), Data extracted: 15/05/2013.

Since a failed asylum application usually is accompanied by an expulsion order, third country nationals who cannot fulfil the prerequisites to obtain a work permit are obliged to leave Sweden.

Figure 3 shows the rates of negative decisions among the total number of decisions on asylum applications in Sweden for all groups of citizenship with at least 1,000 decisions in
the period from 2008 to 2011. It shows that for most groups more than three quarters of decisions on asylum applications are negative (i.e. rejections).

Figure 3: Rates of negative decisions on asylum applications 2008 to 2012 (excluding all groups with less than 1,000 decisions)

![Figure 3: Rates of negative decisions on asylum applications 2008 to 2012](image)

Source: Own presentation based on data from Eurostat database, table migr_asydec, accessed in June 2013.

*Irregular migration*

In comparison to countries in the south of Europe and because of its geographical position and restrictive labour market, Sweden is not seen as a major destination country for undocumented migration (Khosravi 2010: 95). However, Sweden is by no means untouched by this phenomenon. At a political level however, there is still a tendency to frame the phenomenon in terms of ‘criminality’ and ‘illegality’ (Jørgensen & Meret 2010: 145).

According to the Swedish Aliens Act (2005: 716) it is a crime to reside in Sweden without the necessary permits. Individuals who have been issued with orders of ‘deportation’ (*utvisning*) or ‘refusal of entry’ (*avvisning*) (Aliens Act 2005: chap. 8) are by law obliged to leave the country. In cases where migrants are deemed as unwilling to collaborate, they can be taken into custody and the responsibility for implementing the deportation is handed over to the police (Migration Board 2013e). Several sections of the legislative framework contain
sanctions against people who stay in the country without the necessary permits, ranging from fines to imprisonment. The same goes for actors who facilitate people to enter or stay in Sweden in such a way. The Swedish Government prioritises the process of return, which is implemented in various ways (EMN 2011b: 3). Emphasis is put on the principle of voluntary return in the Swedish context, although ‘voluntary’ should be understood in a critical light. The process of return works in such a way that it is possible for migrants with rejected applications to ‘disappear’ (that is, go underground) once they have received a decision of return (Jørgensen & Meret 2010: 132, 133).

Third country nationals who have received a return decision are not defined as a specific group with rights in Swedish legislation, although, since many of them are former asylum seekers their practical rights are similar to those enjoyed by asylum seekers. In terms of rights, Heegaard Bausager et al (2013) distinguish between two groups of third country nationals ordered to return: those pending return, who have agreed to do so in cooperation with the authorities and those who do not cooperate with the authorities in the process of return. The difference between these categories is that the former is handled by the Swedish Migration Board while the latter is handled by the police. Unlike those in the second, people in the first category enjoy the right to work in Sweden. People in the second group do not and also have their daily allowances reduced. Labour migrants without work permits who have received a refusal of entry, people who overstay their visas, and migrants charged with crimes who have received an expulsion order can be included in this group (Heegaard Bausager et al. 2013: 329). Obviously, there are also potential cases of migrants who stay in Sweden without ever having entered into contact with Swedish authorities. Until recently, the right to healthcare varied notably between these categories and people with an expulsion order did not have the same access to healthcare as other third country nationals pending return or removal.

In a report launched by the Swedish National Board of Health and Welfare from 2010, Envall et al state that migrants who reside in Sweden without the necessary permits have limited possibilities to access healthcare and there are indications suggesting that the health situation of this group is bad. The authors also suggest that due to the nature of their status there is limited contact between the social services and this group. These migrants are directed to the informal labour market to support themselves and only have sporadic or no employment. They also tend to live in crowded and precarious housing arrangements. It is illegal to work without a work permit in Sweden. Also, it is punishable to employ someone who does not have a work permit. In theory, migrants who stay in Sweden without residence permits have access to social aid and are covered by the Social Welfare Act in the same
manner as others (2010:270)\textsuperscript{21}. Even though it is punishable to employ migrants who lack work and residence permits in Sweden, and for these individuals to hold employment, labour market regulations apply in cases where such migrants are employed. This also means that they also hold rights as workers. However, research shows that undocumented migrants are often not able to access their rights in Sweden (Khosravi 2010: 96).

In June 2012, the Swedish Government agreed to grant “healthcare to certain aliens who reside in Sweden without necessary permits” (Swedish Code of Statutes 2013:407) and that these were to be given the same access to healthcare as asylum seekers. The law entered into force on the 1\textsuperscript{st} of July 2013. While previously this group was only entitled with the right to emergency healthcare against payment, they now have access to more extensive healthcare rights equal to those of asylum seekers.\textsuperscript{22} These changes are an improvement but do not entitle either asylum seekers or undocumented migrants to full healthcare access.

In addition, results from a study recently published by Médecins du Monde Sweden (2013: 1, 12) indicate that the new law that grants undocumented migrants extended rights to healthcare is not being properly applied in practice. A quarter\textsuperscript{23} of the patient cases followed up in the report has at some point been denied health coverage in the public sector. In almost all cases the reason for refusal was that health professionals were not aware of the new law.

There have also been other policy developments targeting migrants who reside without residence permits in Sweden. A law protecting the right to salary and other remuneration for work performed by foreigners who do not have the right to reside in Sweden entered into force in August 2013 (Swedish Code of Statues 2013:644). To facilitate the process of accessing compensation, migrants in question are to be given a temporary residence permit (SfU8). This law is part of Sweden’s response to Directive 2009/52/EC, which was adopted by the European Council on the 18\textsuperscript{th} of June 2009, requesting member states to implement legal measures providing for minimum standards on sanctions and measures against

\textsuperscript{21} To be entitled financial assistance according to the Social Welfare Act (4 chapter 1 § SoL) it is a precondition that individuals cannot meet their own needs. There have been cases where migrants with return decisions have not been granted financial aid with the argument that their needs could be met if they return to their countries of origin (Swedish National Board of Health and Welfare 2010).

\textsuperscript{22} The law covers: health and dental care which cannot be postponed (anstå – this is not a medical term but a juridical one); maternity care; abortion related care; and contraceptive advice to adults. Full health and dental care access is given to children under the age of 18. It also leaves space for regional governments to regulate access equal to residents (FRA Annual Report Fundamental Rights: challenges and achievements in 2012 2013:48). The Swedish National Board of Health and Welfare has been asked to suggest how the concept of “care that cannot be postponed” can be applied in the assessments of care to migrants in an irregular situation. The work will be done in collaboration with local authorities and regions (SKL) and representatives of the health professions (The Swedish National Board of Health and Welfare 2013).

\textsuperscript{23} 13 of 52 undocumented patients who have sought healthcare after having been in contact with Médecins du Monde’s clinic in (Sweden) for undocumented have been denied health coverage in the public sector at some point (2013: 1, 12).
employers of irregular third country nationals into national legislations. The implementation of the directive has however been criticised for being insufficient (Proposal 2013/14:Sk376).

Recently, another initiative targeting migrants with decisions of expulsion was launched in Sweden, namely the project ‘Reva’. (‘Reva’ stands for legally secure and efficient enforcement work, i.e. rättssäkert och effektivt verkställighetsarbete). Commissioned by the government in 2009, the project involves the Swedish Migration Board, the police and the Swedish Prison and Prohibition Service. The aim of the project is to streamline the process of making people with decisions of expulsion (who do not leave on their own) leave the country, i.e. to ensure that more people who stay in Sweden without the necessary permits are deported (Migration Board 2013d). Efforts aimed to streamline deportation strategies along with attempts to safeguard humanitarian interventions place Sweden, like many other countries, in a conflicting position since such initiatives are in clear conflict with one another (Jørgensen & Meret 2010).
2. Regularisation policies – basic framework and recent developments

2.1. Regularisation programmes

Over the past two decades there have been several government decisions affecting who and how many that have been allowed to stay in Sweden, making the regularisation of certain migrant groups possible. In most cases these decisions have targeted families with children and individuals in need of protection. In 1994, the government decides that all children and families who had sought asylum in Sweden before the 1st January 1993 were to be allowed to remain in the country. The government's decision was praxis-forming and formed the basis for the assessment of ‘new applications’ from families with children with deportation orders, still present in the country, resulting in the regularisation of around 20,000 people (Migration Board 2010).

In the new millennium, one regularisation programme has been conducted in Sweden, which took place between November 2005 and March 2006. The program was realised through a temporary amendment in the same period. The purpose was to bring about a re-examination of the cases for certain groups with res judicata decisions of deportation or removal. The programme ended as the new Aliens Act entered into force on the 31st of March 2006. The temporary law came about as the result of a number of interacting factors. Cases of sick children of undocumented families had come up in the media, where the severe psychological problems were caused by their irregular status (this became known as the phenomenon of the ‘apathetic children’, i.e. children suffering from depressive devitalisation). Particularly, the church of Sweden as well as NGOs took up this problem and openly demanded regularisations of undocumented migrants in Sweden. In 2005, a demand for a revision of the asylum procedures was raised by five political parties (a new Aliens Act was to enter into force the upcoming year). Together the Centre Party, the Christian Democrats, the Green Party, the Left Party and the liberal People’s Party proposed a reform of the asylum procedure and demanded that all registered asylum seekers who had been in the country for a certain period of time were to be granted asylum and that a new chance to apply for residence permits was to be given to asylum seekers who had gone missing after a negative decision (EMN 2006:9, 10). The five-party proposal for a general amnesty was rejected, but the Left Party and the Green Party had then already handed in a proposal for a temporary law, which they had pushed for as negotiations over the state budget took place. At the time, the Social Democratic Government was dependent on the support of the Left

24 Material written in May 2010, provided to the author by the Migration Board in October 2013.
Party and the Green Party to get budget proposals through. Thus, the temporary law was agreed upon as budget negotiations came to a conclusion.25

An important institutional change also took place in this period. On the same day as the new Aliens Act entered into force, a new court of appeal and a process order dealing with migration matters were introduced. The reform transferred the asylum process from the hands of administrative agencies into the hands of administrative courts. Meanwhile, some changes in the substantive provisions of the immigration law were also made. There were several reasons for these changes; such as a need to adapt to international practices and harmonise with EU law - not least in terms of protection; to make a clearer demarcation between grounds for protection and humanitarian grounds; and to make the assessment in the asylum process better, faster and more legally secure. Furthermore, this was also an attempt to move away from what was considered an easily exploitable system, in which it was possible to hand in new residence permits applications after having received a final decision on the basis of asylum if new circumstances had arisen or by invoking humanitarian grounds, a procedure which could be done an unlimited number of times. This possibility was considered to be exploited to an extent that had not been anticipated and as causing unacceptable administrative backlogs (Swedish Red Cross 2008:13).

Through the temporary regularisation programme, people with return decisions were given the possibility to have their cases reassessed. A total of 31,120 applications for residence permits were processed. Out of those, 17,406 applicants were granted residence permits and were thus able to regularise their stay in the country. The main groups to benefit from the Act were families with small children and migrants who were subject to removal and for whom there were impediments of enforcement. Factors such as length of stay in Sweden, situation in country of origin, links to Sweden, as well as the social and health situation (especially of children) were considered. Criminal records were also considered as an important factor (Baldwin-Edwards & Kraler 2009:460). According to the Ministry of Justice there are no plans to carry out another regularisation programme in Sweden.26

Out of the 17,406 residence permit granted in the programme, 74 percent (12,858) were permanent residence permits. The remaining 26 percent of positive decisions were temporary residence permits. The most important group of applicants in the Swedish regularisation programme were citizens of Iraq at 5,600 applications (18 percent), out of which 3,922 led to granting a permanent residence permit and 1,408 temporary residence permits. Only 170 applications were rejected and the remaining 100 applications were

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25 Information provided by Michael Williams, FARR and the Church of Sweden.
26 Interview with expert from the Ministry of Justice Sweden.
withdrawn or otherwise closed. Other important groups of citizenship were Serbs (6.5 percent) and Somalis (5.5 percent). Applications lodged by citizens of Somalia, Iraq and Afghanistan show by far the highest rates of positive decisions at over 90 percent (data provided by the Migration Board, see Figure 4 and 5).

Figure 4: Applications and decisions on applications Swedish regularisation programme 2005/2006 by main groups of citizenship

Source: Migration Board, data provided upon request via email in May 2013.
Figure 5: Rates of positive decisions on applications in Swedish regularisation programme 2005/2006

Source: Migration Board, data provided upon request via email in May 2013.

Figure 6 shows the rates of positive decisions in the 2005/2006 programme by municipalities. It shows that there were strong regional variations. This could but does not necessarily indicate different practices, and might also be influenced by different cases. For instance among all applications in Gothenburg (Göteborg) there were some 45 percent citizens of Afghanistan, Iraq and Somalia, while those groups presented 32 percent in Stockholm (44 percent in Malmö).
Figure 6: Rates of positive decisions on applications for residence permits in Swedish programme 2005/2006 by main municipalities (only municipalities with more than 100 applications are shown)

Source: Migration Board, data provided upon request via email in May 2013.

2.2. Regularisation mechanisms

In the current Aliens Act (2005: 716) there is no opening for regularisation as it occurred in the 2005/06 regularisation programme (Jørgensen & Meret 2010: 143). Also, the notion of granting permits on the basis of ‘humanitarian grounds’ has been taken away and replaced by a new formulation, thus differing from the former version. According to the new Act, residence permits may be granted on the grounds of ‘particularly distressing circumstances’ (5 chap. 6 § and 5 chap. 9 § of the Aliens Act 2005: 716). This signifies that it is possible to assess the situation of individuals who do not fulfil any of the main prerequisites to obtain asylum. In the assessment, the overall situation of an individual should be considered, focusing particularly on the adjustment to Sweden, the situation in the country of origin along with the health situation of the applicant. Hence, this could be seen as a sort of case-by-case regularisation mechanism, i.e. a continuous procedure that is part of the regular migration policy framework (Kraler 2009: 15).

27 Kap 4 § och Kap. 5 b § in the former Aliens Act 1989: 529.
Under the previous legal framework it was possible to obtain refugee status on three different bases: ‘convention’; ‘de facto’; and for ‘humanitarian reasons’. According to the Migration Board (2013)28 ‘humanitarian reasons’ was used more generously and in comparison to ‘particularly distressing circumstances’ the grounds to obtain asylum were weaker. It was thus easier to obtain asylum on the basis of humanitarian grounds. In the preparatory works of the new regulations it was emphasised that the use of the word ‘particularly’ indicates that the provision should have the character of an exemption regulation (Stern 2008: 123). According to Stern (2008: 123, 124) the view of the duration of stay seems to have been somewhat tightened in the application of the new law, in that it is now only legal stay29 that counts, and that the importance of the length of stay for adult applicants is almost negligible. Even the basic rule of former praxis was to not count illegal stay, however, a number of exceptions to this rule were made, e.g. with regards to families with children, people with poor health, family ties in Sweden or in cases where no major efforts had been made by the authorities to implement the decision. A change that can be perceived as more stringent concerning such grounds that were formerly called ‘political-humanitarian reasons’, as they are now judged according to protection grounds. Previous praxis still applies in cases when considering granting residence permits in relations to the following factors: the access to adequate healthcare in the country of origin and in Sweden; the significance of economical aspects of granting residence permits to individuals in need of care; the risk of suicide; and in the assessment of cases concerning children.

According to the Migration Board (2013)30, the Migration Court of Appeal is very strict in its assessments with regard to ‘particularly distressing circumstances’ for adults (with regards to unaccompanied migrants less so). In practice, health is the only factor that is taken into account, and to obtain asylum on this basis the health situation must be rather severe.

In the years 1998 until 2012 51,004 residence permits were issued based on ‘humanitarian reasons’. Most permits were issued in the years 2000 to 2002. Another peak was the time period of the years 2006 and 2007, however, with fewer people from former Yugoslavia. The most important country of citizenship of beneficiaries of residence permits on humanitarian grounds is Iraq. In the years from 1998 to 2012 a total of 15,476 permits were issued to citizens of Iraq. Other important groups are citizens of (former) Federal Republic of Yugoslavia at 9,979), citizens of Somalia at 3,811, Bosnia and Herzegovina (3,338), Afghanistan (2,996) and stateless persons (2,380). Issuance of residence permits to Iraqis

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28 Phone interview with expert/representative from the Migration Board, conducted on the 30th October 2013.
29 This is also the case with regards to long term residency. Legal stay is among the perquisites to be granted the status of long term resident in Sweden. In the calculation of the duration of stay the time the applicant has held a residency permit aimed at settlement is to be considered (Aliens Act 2005:7165 a chap. 1 §).
30 Phone interview with expert/representative from the Migration Board, conducted on the 30th October 2013.
mainly took place in the years 2000 to 2002 and again in 2006 and 2007. Citizens of Afghanistan became more important in the most recent years.

Figure 7: Residence permits issued based on ‘humanitarian reasons’ from 1998 to 2012 by main groups of citizenship

Source: Migration Board, data provided upon request via email in May 2013.

Although the possibility to change track from rejected asylum seeker to labour migrant, as introduced in the reform of 2008, is a continuous procedure which allows for a status change it is not considered to be a regularisation mechanism. This is due to the fact that what it enables is the possibility to change track from one type of (provisional) legal status to another and not from irregular residence status to regular. Rather, it could be considered a type of normalisation, i.e. “any state procedure by which third country-nationals who are legally residing but who are in a restricted or transitional status are granted a superior legal status” (Baldwin-Edwards & Kraler 2009: 124).
3. Impact of regularisations on labour market outcomes of regularised immigrants

3.1. Review of existing studies

There exist no studies dealing with the labour market situation of regularised migrants in the Swedish context. For obvious reasons, there are no statistics available on the labour market situation of migrants in irregular situations. A study by Khosravi (2010) provides insight into the uncertainty of life and labour in irregularity. His study is based on ethnographic fieldwork (interviews and participant observation) with some 50 migrants who reside in Sweden without permits (33 of which he followed more intensely). The study highlights that people in irregularity had several jobs at the same time in order to make ends meet. Personal networks and ethnic communities appear to be an important factor for finding employment. The study indicates that migrants without permits tend to work long hours and for low wages, the average of the wages of 18 of 33 informants being EUR 3.5 per hour. Dismissal without notice appears to be a common feature in these kinds of labour arrangements and opportunities to work tend to be of short duration.

A few studies investigating the impact of citizenship acquisition on labour market status have been conducted in Sweden, yielding ambiguous results, but showing that naturalised immigrants usually fare better on the labour market than foreign citizens. It is not clear to what extent this is related to the selection effect of naturalisation or to the positive consequences of naturalisation.\(^\text{31}\)

In one study Bevelander and Pendakur (2009b) explore the role that admission status and time in a country plays for the employment integration of four immigrant groups in Sweden, by using logistic regression. Their study indicates that the chances to obtain employment improve over time. In terms obtaining employment, the variable of ‘time in the asylum seeking process’ as well as the process of selection (self-selection and selection through policy mechanisms) are influential factors.

\(^{31}\) See for example: Bevelander and Pendakur 2009a; Engdahl 2011; Kogan 2003; and Scott 2008.
3.2. Results from the feasibility study

In this section, a short summary of the information generated through the semi-structured qualitative interviews conducted in Sweden for the purpose of this study will be presented. The interviews were carried out by two researchers in 2013, following the guidelines developed in the framework of the REGANE study. To find regularised migrants proved to be a challenge in the Swedish context. The challenges arose from the fact that a lot of time has passed since the last regularisation programme in 2005/06. Since actors and organisations dealing with migrants in an irregular situation (a channel used by our country experts) tend to lose track of these once they have regularised it was difficult to come into contact with this group. Thus, the interviews provide insight to potential barriers and challenges that may arise in a future study. Out of the five interviews conducted, two are with migrants who have regularised their stay through the last regularisation programme in 2005/06. One is with an Iranian woman of 43 years who, together with her husband and two children, regularised in 2006. The other one is also with an Iranian woman, 47 years, who obtained a residence permit through the programme in 2006 together with her child. The remaining three interviews are with migrants who are currently living in irregularity. Two of these (one women with a child and one man, both of unknown age) come from Iran, and one, a 25-year-old woman with a child, comes from Albania.

The 25-year-old woman from Albania came to Sweden in 2011 together with her child, after having left Albania under threat of being killed for having dishonoured her family by having a child out of wedlock, a threat posed by her extended family. Sweden’s reputation of processing asylum applications in a fair manner and of being a child-friendly country brought her to Sweden, where she sought asylum. The application was rejected and she was issued with a removal order since she did not comply with regular procedures of organising her return. She is currently living in irregularity together with her child. In Albania, she worked as a manager of a small firm whilst pursuing a part-time University education. During her time in Sweden she has only managed to pursue some remunerated activities, such as cleaning and gardening work found through a small network of friends and neighbours. She has never formally worked. Currently, her strategies are limited to re-submitting an application for asylum with additional evidence in 5 years’ time, or obtaining a visa through a ‘sambo’ arrangement (similar to a spouse visa for cohabiting couples). The latter option would imply returning to Albania and hide until the visa application is accepted. Although it is difficult for her to find work in Sweden due to her status and that she is still unclear about the avenues
she could pursue which would allow her to offer a decent life to her child, her wish is to settle down in Sweden.

The Iranian women of 47 years arrived in Sweden in 2004. She came to stay closer to her child who was already in Sweden with the child’s father. The father, her husband, had left her to marry another woman who was living in Sweden after thirteen years of what she describes as an abusive marriage. Against her will and despite the fact that she tried to gain custody he took the child with him as he went to Sweden with the support of Iranian law (who considers the father the sole custodian of a minor). In Sweden, she applied for asylum twice but the applications were rejected. During the time she spent in the accommodation centre for asylum seekers, she developed a skin condition. Since she felt that she did not receive adequate care there she looked for an alternative living situation for herself and her son, which she found through friends. During the period they lived in irregularity she was at risk of sexual assault, but because of her status she avoided to contact the authorities. She was also diagnosed with post traumatic stress disorder in this period. Whilst in irregularity, she took on different jobs such as reselling tickets for events, working for a removal company and as a housekeeper. For the latter she received twenty Euros for eight hours of work. Her diagnosed condition, for which she still receives treatment, made it difficult to work. In 2006, due to the newly passed amnesty legislation, her son was granted Swedish citizenship, which entitled her to a residency permit. She plans to stay in Sweden together with her son.

The 43-year-old Iranian woman came to Sweden together with her husband and two children in 2003 as the result of a threat posed to her husband. After the rejection of their asylum application, the family lived in an irregular situation for three years. During this time, the woman undertook a number of jobs to support her family. She worked in a factory packing spices, as a waitress and as a housekeeper. She also sold sandwiches from a street stall. She received little money for all the jobs she had. For the work she did in the factory and as a housekeeper she never earned more than twenty Euros per each eight hour shift. The stress caused by living in irregularity resulted in depression and illness. Also her children suffered from depression. The family regularised through the programme in 2006. Since then, the situation has drastically improved, also in terms of work. She currently holds a part-time employment in a restaurant (30 hours/week) and has future plans to start her own activity in Sweden.

The man from Iran arrived in Sweden in 2003, where his sister and her husband were already living without permits. He left Iran to escape from the authoritarian regime as well as from the pressure posed by his religious family. He applied for asylum but his application was
rejected. He stayed in different accommodation centres for asylum seekers, but left to search for work. He found informal work in a restaurant and was paid some five Euros per hour. Despite his irregular status, he acquired a driving license and started to operate his own transport company. Due to his status he could not obtain support from a bank and he found it difficult to develop his business. He felt compelled to employ a person with legal residence status to function as an intermediary between himself and customers. In the meantime he was under pressure since he was at risk of being deported to Iran by the Swedish Migration Board. In 2009, he went to Norway to search for work but returned to Sweden as he did not manage to find anything. While in Sweden, he has started a blog that has been blacklisted by the Iranian authorities since it deals with, amongst other subjects, the political situation in Iran. Although initially the motives for creating the blog were not political, his wish is to use it as a means to strengthen his asylum application. He is currently in Sweden, looking for employment.

The third woman from Iran came to Sweden in 2009 together with her husband and one of her two children to stay with her brother. Whilst in Sweden, the family received word that their home had been searched by government agents who confiscated many of their personal possessions and that the security forces were looking for her husband. In Iran her husband was active in the Pan-Turk movement. She herself was not involved in the movement but they decided to both apply for asylum in Sweden. The family lived together in an apartment provided by the Migration Board for a year but the living situation caused stress on the marriage and her husband’s treatment of her deteriorated. At one point, the husband was arrested by the police for having beaten her. The husband filed for divorce and was deported in 2011. She has applied for residency three times, but has not yet received a permit. She is currently working as a housekeeper and lives together with her younger son. She feels that life in irregularity is immobilising and that her situation causes depression.

All of the interviewees have at some point applied for asylum in Sweden and have thus held a legal status. The ways in which they entered Sweden vary - some of them held tourist visas while others entered without permits. This highlights the fact that migrants in Sweden move in and out of regularity, pointing to the complex nature of migrants’ status and the dynamicity of movement. All five migrants have experience from working while residing irregularly in Sweden. The interviews shed light on the relationship between (the lack of) legal status and employment, revealing the precariousness of life in irregularity, and show the important role permits play with regards to the possibility of accessing secure employment.
4. Conclusion

With regards to migration from outside the EU, Sweden is an important but not major destination country. In Sweden, irregular migration is mainly discussed in the context of asylum, especially with regards to people whose asylum applications have been rejected.

The fact that asylum seekers can work while their applications are being processed is a distinguishable feature of the country. Even more so since the change in 2008 that made it possible for individuals who have worked during their time as asylum seekers and whose asylum applications have been rejected to apply for a work permit. Thus, allowing for a status change. Although, it should be noted that the possibility of requesting a certificate to be exempted from the requirement to hold a work permit (AT-UND) is not the same as having the right to work as an asylum seeker. Also, many asylum seekers cannot receive an AT-UND certificate, due to the lack of identification documents. So far, it is difficult to say to what extent the opportunity of changing status is being applied. Nevertheless, the change of 2008 is important as it creates a formal bridge between two admission channels, i.e. asylum migration and labour migration.

Irregular status appears to be particularly problematic in Sweden since it involves complete exclusion from the formal labour market. Policy developments targeting the rights of migrants who reside in Sweden without the necessary permits point to the fact that there is a tendency to recognise the existence as well as the needs of this migrant group in the Swedish context. The implementation of these policies appears somewhat inconsistent. It seems that irregularity makes it difficult to access rights which are available on paper.

In terms of regularisation mechanisms, it appears as if the prevailing grounds for receiving a residence permit in the current legal framework are health issues of severe nature. At present time, it is impossible to say to what extent regularisation improves the labour market situation of migrants in Sweden. Further studies are needed to be able to do so.
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32 Not responsible for the content of the report.