

# IRREGULAR MIGRATION, ITS MOTIVATIONS AND ITS COROLLARIES

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### Irregular Migration, Its Motivations and Its Corollaries

Irregular migration has become one of the main characteristics of movements of people in the Mediterranean basin, resulting in human tragedies.

It is quite a complex notion whose terminology varies according to country and situation. It is alternatively called “clandestine migration”, “illegal migration” or “undocumented migration”. It could be defined, in general terms, as any unauthorised and unpermitted international migration that does not benefit from a legal status in a transit or host country. From the point of view of destination countries, people who migrate irregularly would be those who try to enter, succeed in entering or live in a country where they are not citizens, violating thereby national immigration regulations (Atak, 2010).

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Irregular migration is increasingly used as a synonym for illegal migration, although all irregular migration is not necessarily illegal, given that certain irregular migrants (notably asylum seekers) are authorised to irregularly move provided they regularise their situation in the asylum country (Elmadmad, 2008).

It is driven by several incentives, results from a large number of situations and poses problems both for migrants living without rights who often turn to smugglers greedy for profit to migrate and for host countries, which see it as a challenge to their sovereignty and a threat to their society and seek to reduce the incentives.

Questions 12 and 13 of the 7th Euromed Survey questionnaire on the management of movements of people and migrations in the Euro-Mediterranean region deal with irregular migration and how it can be limited.

### Reducing Incentives for Irregular Migration: Why and How?

**The methods used by Europe to reduce incentives for migration must be re-examined.**

The current context of migration and the situation of asylum seekers and refugees in the Mediterranean region are unprecedented. Despite important state controls, several movements of people take place irregularly. Some of these migrations turn towards European countries, which seek to reduce them in several ways, notably by adopting restrictive migration policies and establishing partnerships with third countries. However, these methods have had little impact. The Mediterranean is increasingly becoming a “Maritime graveyard” for migrants determined to reach Europe (IOM, 2016).

The reduction of irregular migration and its incentives is becoming imperative to save human lives in the sea, guarantee migrants a dignified life and ensure stability in the region. It needs specific actions and cooperation between all states and peoples concerned. The European

programme on migration includes a strategy to fight against incentives for irregular immigration (Karamanli, 2015). However, this strategy seems to have failed (Siegfried, 2016) and therefore the methods used by Europe to reduce incentives for migration must be re-examined.

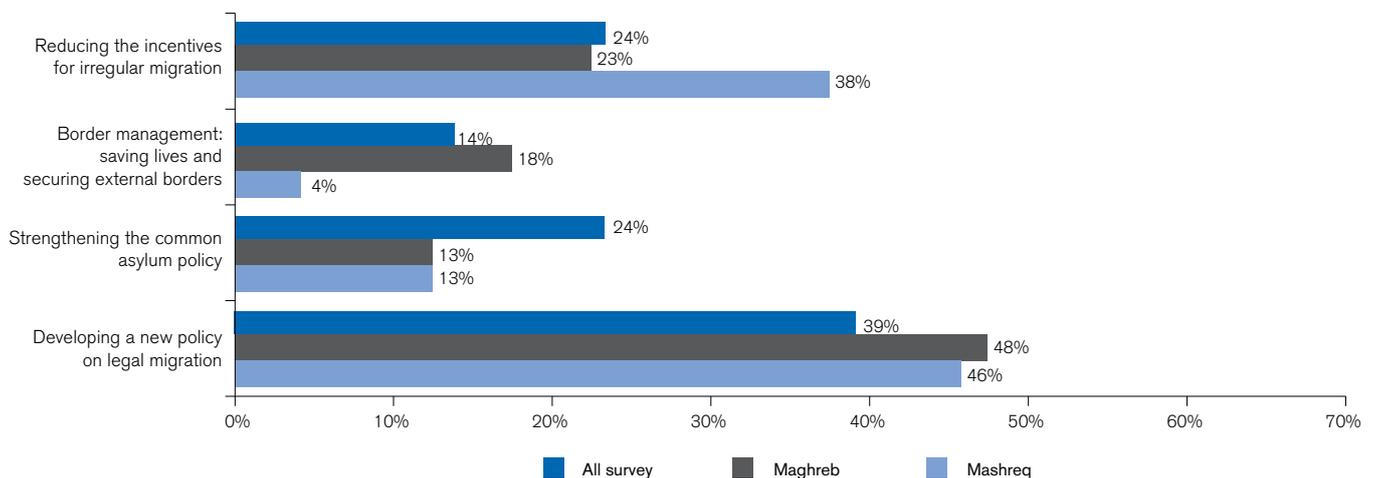
Q12 addresses the importance that should be attached to the four pillars of the European Agenda on Migration (EAM):

1. Reducing the incentives for irregular migration;
2. Ensuring a management of EU borders aimed at saving lives and securing external borders;
3. Strengthening the common asylum policy;
4. Developing a new policy on legal migration.

The results of Q12 show that reducing the incentives for irregular migration is assessed as a second priority, above all by Maghreb and Mashreq respondents (see Graph 1). This result is due to the fact that, for Southern Mediterranean people, to solve the problem of irregular migration it is first necessary to act at the level of source countries by guaranteeing their populations the conditions for a dignified life in which their security is not threatened and there are job opportunities.

The results of Q12 also show that developing a new policy on legal migration is globally assessed as a first priority. However, policy-makers and, to a lesser extent, Mediterranean European countries rank it at a lower level, undoubtedly in relation to the terrorist threat and increased xenophobic reactions within public opinion. In any case, the demographic evolutions on both shores of the Mediterranean have complementarities that call for better framed and less restrictive migration policies.

**Graph 1: Ranking European Agenda on Migration (EAM) proposals according to what should be prioritised.**  
(First European Agenda on Migration proposal to be prioritised in %)



Source: Compiled by the IEMed based on the results of the 7th Euromed Survey/Question 12

However, the EAM, which is the EU action plan to manage migration, deals in practice with irregular migration and its reduction from a security rather than humanitarian perspective to the detriment of legal channels. The scope of the "legal migration channels" proposed in the EAM is very limited, Frontex seems strengthened and the use of relocation quotas for asylum seekers in member states to lighten the burden of EU neighbouring states is inequitable and

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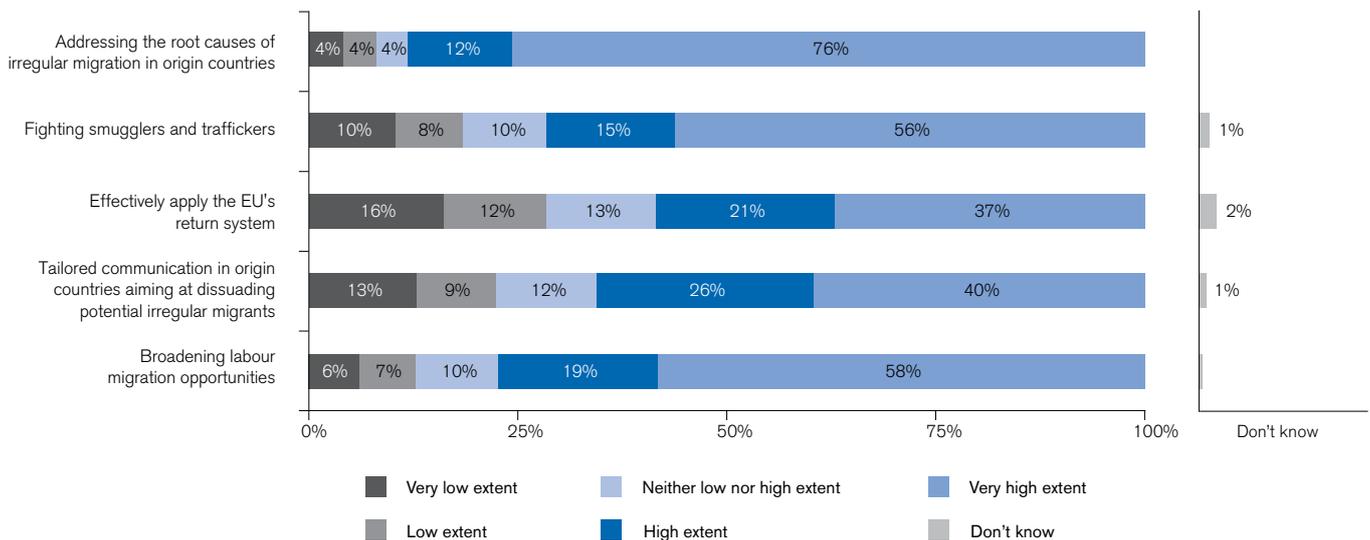
puts emphasis on the internationalisation of European borders (AEDH, 2015). It should be redesigned, in light of the results of the present Survey and give priority to policies that would favour legal migration channels and guarantee the rights of migrants.

### Reducing the Incentives for Irregular Migration: With What Objective and What Consequences?

European policies aimed at reducing irregular migration do not seem to have been successful. The images on television showing boats disembarking migrants on the Greek and Italian coasts or crossing the Balkans are proof that the migrant crisis (and particularly for Syrian refugees) always exists despite the hardening of border controls and the agreements made with third countries and more particularly the relatively controversial agreement concluded with Turkey (Toute l'Europe, 2016). These agreements are often made without transparency and without citizen consultation and focus on the return and readmission of migrants (Romdhani, 2016).

Restricting legal migration channels can only strengthen and intensify smuggling of migrants and trafficking in human beings and worsen the lack of protection of migrants. The main objective of reducing incentives for irregular migration should involve ensuring the stability of the whole region and be based on respect for international obligations related to human rights, as well as cooperation between all European countries (whether they are Mediterranean or not) and all the remaining world countries (whether they are concerned or not by the effects of migration) and within a spirit of international burden sharing with the common aim of tackling the causes that drive people to move irregularly.

**Graph 2: To what extent do the following elements offer an adequate response to reduce the incentives for irregular migration in the Euro-Mediterranean region?**



Source: Compiled by the IEMed based on the results of the 7th Euromed Survey/Question 13

**It is necessary to focus as a priority on the root causes of irregular migration.**

The results of Q13 show that it is necessary to focus as a priority on the root causes of irregular migration (see Graph 2). This would involve acting effectively in order to solve the movements of populations caused by armed conflicts, socioeconomic turmoil, alarming political situations, climate change and demographic transitions in some Asian and African countries.

However, these results also show the need for broadening labour migration opportunities, which means that the states must, among other things, ratify and apply the international instruments for the protection of the rights of migrants, particularly the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families adopted on 18 December 1990, considered the “Charter of all migrants”.

In accordance with the right to migrate, states have the right to freely regulate border crossing and organise movements of populations in their territories. However, their sovereignty is determined by respect for international commitments and the principles of international law in terms of protection of the rights of migrants (Elmadmad, 2005). International cooperation, aimed at halting the movements of irregular migrants, also has a dimension based both on respect for the human rights of migrants and a repressive component. Nevertheless, the policies on migration flows have experienced an increased shift of protection towards repression. Any examination of the situation of a migrant must take into consideration the causes and reasons for their migration as well as their needs in terms of protection and should not focus only on repression of the irregularity of their migration. Repressive policies also have no efficacy in relation to individuals determined to cross borders at any price.

The low support for effectively applying the EU's return system clearly illustrates that the reduction of incentives for irregular migration should not be unilaterally led by Europe and should not ignore the causes of this migration and the protection of rights that are applicable to migrants depending on their category and age. Minors, women, the elderly, victims of smuggling and trafficking in human beings, as well as asylum seekers and refugees, need a specific legal protection.

Migrants fall into different categories. Forced migration law and more particularly refugee law, as contained in the 1951 International Geneva Convention relating to the Status of the Refugees in particular, recommends not penalising asylum seekers crossing borders without documents, allowing them to submit their asylum request in the country of their choice, ensuring the unity of the members of their family and granting specific protection to vulnerable people: minors, women and the elderly. The same law calls for freely consented repatriation of refugees and contains the international principle of *non-refoulement* of asylum seekers to the country where they fear a threat to life or freedom. However, certain current practices towards refugees and asylum seekers create confusion among the different migrants and the diverse laws applicable to them and do not take into consideration the vulnerability of some of them.

The impediments to the right to seek asylum in the country of their choice and the obligation to submit the asylum application in the destination country have made several asylum seekers restrain from requesting asylum in the first country where they have arrived and live as irregular migrants waiting to be able to apply in the country of their choice. Meanwhile, they live without rights and are often easy prey for traffickers. The national human rights institutions, both governmental and non-governmental, must be responsible for investigating the situation of migrants in terms of human rights and strengthening respect for their rights.

Solutions to the migration problem in Europe are possible, they only need to be organised (De Gruyter, 2016). In order to reduce irregular migration, certain dimensions should be a priority, such as the implementation of legal alternatives to clandestine migration, with a real mobility policy that has become paramount for a Europe lacking a labour force due to its demographic decline. Development should be regarded as a good way of building a prosperous and equitable world. Military action, construction of “border walls” and militarisation of borders should not be the main responses to the human movements in the world and more especially the Mediterranean region.

**The reduction of incentives for irregular migration should not be unilaterally led by Europe and should not ignore the causes of this migration and the protection of rights that are applicable to migrants.**

Now that strict border control by the states is becoming increasingly difficult, would it not be more opportune, in order to reduce unauthorised migration, to facilitate the free circulation of people while informing them about their rights and obligations? Migration has always existed in all human societies and has favoured the economic development, social enrichment and rapprochement of cultures. It could continue to do so today if the states manage to better regulate and protect “the right to migrate” (Pécoud & Guchteneire, 2009).

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## Bibliography

**ASSOCIATION EUROPÉENNE POUR LA DÉFENSE DES DROITS DE L'HOMME (AEDH)** (2015, March 18). *L'agenda européen en matière de migration ou le syndrome NIMBY - Migrants et réfugiés*, analysis note, Brussels. Retrieved from <http://www.aedh.eu/plugins/fckeditor/userfiles/file/Note%20AEDH%20-%20Agenda%20Com%20B0%20europ%20C3%A9enne%20%20migration%20d%C3%A9f-3.pdf>.

**ATAK, I.** (2010). *Document de réflexion sur la migration irrégulière*. Prepared for the Secteur Vivre ensemble Centre justice et foi. Retrieved from [http://oppenheimer.mcgill.ca/IMG/pdf/Document-de-reflexion-sur-la\\_migration-irreguliere\\_CJF.pdf](http://oppenheimer.mcgill.ca/IMG/pdf/Document-de-reflexion-sur-la_migration-irreguliere_CJF.pdf).

**DE GRUYTER, C.** (2016, September 14). *Mettre fin aux migrations est possible, les gérer serait plus intelligent*. European Council on Foreign Relations (ECFR). Retrieved from [http://www.ecfr.eu/paris/post/mettre\\_fin\\_aux\\_migrations\\_est\\_impossible\\_les\\_gerer\\_serait\\_plus\\_intelligent](http://www.ecfr.eu/paris/post/mettre_fin_aux_migrations_est_impossible_les_gerer_serait_plus_intelligent).

**ELMADMAD, K.** (2005). *Les migrants et leurs droits au Maghreb*. Casablanca: Croisée des Chemins. Published in collaboration with UNESCO. Available at <http://portal.unesco.org/shs/en/files/6407/11400026311LIVRE.pdf/LIVRE.pdf>.

**ELMADMAD, K.** (2008). Migration irrégulière et migration illégale : l'exemple des migrants subsahariens au Maroc. *CARIM. Notes d'analyses et de synthèse, Série sur la migration irrégulière*, Florence. Retrieved from [http://cadmus.eui.eu/bitstream/handle/1814/10093/CARIM\\_AS&N\\_2008\\_49.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/10093/CARIM_AS&N_2008_49.pdf?sequence=1).

**EUROPEAN COMMISSION** (2015, May 13). Press release, Mieux gérer les migrations dans tous leurs aspects: un agenda européen en matière de migration, Brussels. Retrieved from [http://europa.eu/rapid/press-release\\_IP-15-4956\\_fr.htm](http://europa.eu/rapid/press-release_IP-15-4956_fr.htm).

**IOM** (2016). Mediterranean Migrant Arrivals Reach 354,993; Deaths at Sea: 4,742, Geneva. Retrieved from <https://www.iom.int/fr/news/arrivees-de-migrants-en-europe-par-la-meditteranee-354-993-deces-en-mer-4-742>.

**KARAMANLI, M.** (2015, June 3). *Communication sur le programme européen en matière de migration*, Assemblée Nationale, XIV<sup>ème</sup> législature, Commission des affaires européennes, Paris. Retrieved from [http://www.assemblee-nationale.fr/14/europe/communications/Comm\\_migration.pdf](http://www.assemblee-nationale.fr/14/europe/communications/Comm_migration.pdf).

**PÉCOUD, A., & DE GUCHTENEIRE, P.** (2009). *Migrations sans frontières : Essais sur la libre circulation des personnes*. Paris: Editions de l'UNESCO. Available at <http://unesdoc.unesco.org/images/0018/001818/181894f.pdf>

**ROMDHANI, M.** (2016, July 21). Les hautes clôtures ne font pas les bons voisins. *Revue électronique Nawaat*, translated from Arabic by Boussetta B.A. Retrieved from <http://nawaat.org/portail/2016/07/21/les-hautes-clotures-ne-font-pas-les-bons-voisins/>.

**SIEGFRIED, K.** (2016, September 16). *L'échec de la politique de migration européenne. Analyses*. Oxford: IRIN (Integrated Regional Information). Retrieved from <https://www.irinnews.org/fr/analyses/2016/09/16/l%E2%80%99%C3%A9chec-de-la-politique-de-migration-europ%C3%A9enne>.

**TOUTE L'EUROPE** (2016, May 30). Immigration et asile : Crise des migrants : des centaines de morts en Méditerranée alors que la Turquie tient tête à l'UE. *Revue électronique Toute l'Europe*. Retrieved from <http://www.touteurope.eu/actualite/revue-de-presse-crise-des-migrants-des-centaines-de-morts-en-meditteranee-alors-que-la-turquie-t.html>.