



## Knowledge Sheet

# Regularisation of migrant families with children: EU MS lessons for Kazakhstan



## Background



On 20 June 2022, a knowledge exchange session was organised in the framework of the Kazakhstan II Action, implemented by MIEUX+ in collaboration with the Human Rights Commissioner of Kazakhstan and the NGO Centre for Social and Psychological Rehabilitation and Adaptation for Women and Children "Rodnik". The session aimed to facilitate the exchange between Kazakh partners and officials from administrations of the region and the European Union (EU) and focused on the practices, challenges, risks and other relevant information on the regularisation of migrant families with children.



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## Actors

### Austria, Germany, Spain

University of Vienna

### Ireland, Poland

University of Leicester

### France

Sciences Po Toulouse



## Resource Box

- [Irish Regularisation Scheme 2022, administered by the Irish Department of Justice.](#)
- [Irish Regularisation Scheme 2022, guidance for applicants from Migrant Rights Centre Ireland.](#)
- [Brief Discussion of Poland's 3 Regularisation Programmes \(2003, 2007, 2012\).](#)
- [Brief Discussion of Outcome of Poland's 2012 Regularisation Programme.](#)
- [New regularization scheme in Germany](#)
- [Legal pathways to regularization, ADMIGOV, 2021](#)



# Ireland

## Regularisation of migrant families with children: Irish lessons for Kazakhstan



### Good Practices

#### 1. Applicant-friendly Eligibility Criteria

Ireland's 2022 regularisation scheme makes it easy for irregular migrants to successfully apply for regularisation because it requires applicants to meet only a small number of reasonable criteria. These are residence in Ireland for at least 4 years prior to submitting the application, or 3 years if the applicant has children under 18, and a good character and good conduct requirements. These kinds of eligibility conditions increase the number of eligible applicants and ensure a significant reduction in the size of the irregular migrant population.

#### 2. Successful Applicants' Permission to Stay is Renewable and Reckonable towards Citizenship

Successful applicants to the scheme are granted a residence permission valid for 2 years that may be renewed subject to continuing good character and good conduct. Furthermore, after 5 years of continuous lawful residence, regularised migrants may apply to be naturalised as Irish citizens.

#### 3. Wide Range of Documentation Accepted as Proof of Residence

As part of the application process, applicants are required to submit one document for each year of residence in Ireland as proof of that residence. A very wide range of documents is accepted, including utility bills, certificates relating to a marriage or civil partnership entered into in Ireland, letters from doctors/hospitals in Ireland, COVID-19 vaccination cards issued in Ireland. This contributes to an applicant-friendly application process that reduces obstacles to participation in the scheme.



## Lessons Learnt

### Inclusion of Asylum Seekers in the Regularisation Scheme

Growing awareness in Ireland that asylum seekers often wait too long for their asylum claims to be examined led to their inclusion in Ireland's 2022 regularisation scheme. The scheme is open to asylum seekers who have been waiting at least two years for the outcome of their asylum application. Such asylum seekers may apply for regularisation without having to pay a fee.

### Make Regularised Migrants' Residence Permission Easily Renewable

Successful applicants to Ireland's 2022 regularisation scheme will be granted a two-year residence permission which may be renewed subject to good character and good conduct requirements. This indicates that lessons have been learnt from the 2009 Undocumented Workers Bridging Visa Scheme. This scheme granted successful applicants 4 months' lawful residence during which they could seek employment. Their right to remain in the State was subject to finding employment before the end of the four-month residence period. The easily renewable residence permission granted to successful applicants under the 2022 scheme significantly reduces the risk that successful applicants will subsequently fall back into an irregular migration status.

### Avoiding Overly-restrictive Eligibility Criteria

Previous attempts at regularisation in Ireland have been undermined by the inclusion of highly restrictive eligibility criteria that significantly reduces the number of irregular migrants who may apply for regularisation. For example, the Reactivation Employment Permit Scheme facilitates regularisation of irregular migrant workers who had previously been regular resident in Ireland. The requirement of prior regular residence significantly narrows the pool of potential beneficiaries. The 2022 regularisation avoids this kind of restrictive approach by imposing a limited number of reasonable conditions for successful application to the scheme. The 2022 regularisation scheme avoids requiring applicants to have previously been working regularly in Ireland, or to have a guarantee of future employment.



# Poland

## Regularisation of migrant families with children: Polish lessons for Kazakhstan



### Good Practices

#### 1. Applicant-friendly Eligibility Criteria

Poland's 2012 regularisation scheme was open from 1 January - 2 July 2012. Applicants had to demonstrate just over 4 years of continuous irregular residence in Poland and would be refused only if they were found to be a threat to public order or national security, or to have submitted false information as part of their applications. This resulted in nearly 10,000 applications being submitted to the 2012 regularisation scheme, a significant improvement on the 3500 applications submitted during Poland's 2003 regularisation scheme which had used far more restrictive eligibility criteria.

#### 2. Sufficient Window of Time for Submission of Applications

Poland's 2012 regularisation scheme was open for applications for just over 6 months, from 1 January - 2 July 2012. This period of time facilitated submission of a substantial number of applications. The value of a longer period for submission of applications is illustrated by the low number of applications submitted during the 4 months provided for in the 2003 regularisation scheme.

#### 3. Consultation and Cooperation with NGOs

The success of Poland's 2012 regularisation scheme, when compared to its 2003 and 2007 attempts at regularisation, is due in part to the involvement of civil society organisations. They help to ensure that information about the regularisation scheme reaches prospective applicants in a timely manner and they are able to assist irregular migrants with the application process.



## Lessons Learnt

### **Avoid Overly Restrictive Eligibility Criteria**

Poland's 2003 regularisation scheme received relatively low numbers of applications. This was due in part to the highly restrictive eligibility criteria which required applicants to provide proof of almost 7 years' continuous residence in Poland; sufficient resources to support themselves without recourse to social welfare; a guarantee of employment in Poland. These eligibility conditions were one of the reasons so few applications were submitted in 2003. Poland learned the lessons provided by the lessons of the 2003 scheme by including fewer and more easily-satisfied eligibility criteria for its 2012 regularisation scheme. Applicants to the 2012 scheme were only required to show just over 4 years' continuous irregular presence in Poland and were refused regularisation only if they were found to pose a threat to public order or national security, or to have submitted false information as part of their applications. This resulted in nearly 10,000 applications for regularisation being submitted in 2012, a significant improvement on the 3500 applications submitted in 2003.

### **Avoid Overly Short Periods for Submission of Applications**

One of the factors that contributed to the submission of a low number of applications to Poland's 2003 regularisation scheme was the short four-month window for submission. Poland learned from this lesson by opening its 2012 regularisation scheme for submission of applications for 6 months.

### **Ensure Sufficient Publicity for Regularisation Schemes in Relevant Languages in Cooperation with Civil Society**

Another factor that contributed to the low number of applications submitted during Poland's 2003 regularisation scheme was insufficient communication about the scheme to the target group. A better effort was made to effectively promote the 2012 regularisation campaign to irregular migrants, including through provision of information in different languages and through cooperation with civil society organisations working with migrants.



# France

## Regularisation of migrant families with children: French lessons for Kazakhstan



### Good Practices

#### 1. More permissive standards for migrant families with children compared to previous regularisation schemes.

The 2006 (Sarkozy circular) and 2012 (Valls circular) schemes focused on families with children, which became a primary criterion for regularization. However, both schemes also established alternative standards for regularisation.

The minimum residence requirement in the host country is now reduced to 2 years (at least one parent) in this scheme. At least one of the children must be enrolled in school (even in elementary school from the age of 3), and the period of schooling must be effective at least during that (or one) educational year. Moreover, young adults who are already 18 years old are also eligible for this scheme if they demonstrate they have been in France for at least 2 years.

#### 2. Putting humanitarianism and the best interests of the child first.

The prefect, and local authorities, must act on the basis of humanitarianism and in the best interests of children. In particular, the 2012 (Valls) circular also stressed on “exceptional” reasons and humanitarian considerations, such as health.

Therefore, the scheme allows also parents of separated families to apply to this scheme. The concept of the couple is broadened on the basis of the European convention.

#### 3. Avoid a very rigid document approval scheme

Requiring too many personal documents and details from irregularly staying migrants puts a pressure on them and complicates the regularization process. A regular set of documents should include documents that certify personal details of an applicant and proof of residence as well as interest to integrate in the host country.



## Lessons Learnt

### Broad definition of regularisation

Although in France regularisation was considered as exceptional measure, the circulars continued to be practically in force, allowing for other categories of irregularly staying migrants to go through regularization process.

### The involvement of schools

The involvement of schools beyond NGOs and government stakeholders, in these processes strengthened the role of parent associations and schools. School is seen as an instrument for the official inclusion of children, as well as migrants, in the host societies.

### Public opinion also plays an important role

Both circulars were put forward by the Ministry of Interior and the public opinion towards these circulars was positive.



# Austria, Germany and Spain

## Regularisation of migrant families with children: Austrian lessons for Kazakhstan



## Good Practices and Lessons learnt

### 1. Austrian Good practice

In Austria there are quantitatively fewer regularisation opportunities compared to most EU Member States. The most effective regularisation regulation is the 'residence permit for reasons of Article 8 ECHR (European Convention on Human Rights)', whereby respect for private and family life is relevant and migrant families with children can be considered for regularization in Austria.

### 2. Spanish good practice

Spanish law features a wealth of regularisation practices. Two points are particularly noteworthy here. On the one hand, social roots, which – quantitatively speaking – is by far the most important regularization practice. From the perspective of the individual, the requirements for granting a residence permit offer a pragmatic and effective way out of irregularity. On the other hand, Spanish law provides for regularisation for victims of human trafficking and for women who have been victims of gender-based violence. The first implements the Human Trafficking Directive in an exemplary manner and the second offers an effective system of protection for the problem of violence against foreign women. The temporary residence permits and work permits, which are very similarly structured, have a particularly sophisticated procedure that is very much framed around the needs of the victims. This procedure is divided into several 'phases', which enable the identification of the victims and to grant a 'provisional residence permit and work permit', as well as providing for an exemption from administrative penalties under certain circumstances.

### 3. German good practice

German law is just as differentiated as Spanish law and features numerous regularisations. Special mention is due here to the 'residence permit in the case of permanent integration' and the 'residence permit for well-integrated juveniles and young adults', both of which can be derived from Article 8 ECHR and can be granted to 'tolerated persons' or persons who can be easily integrated into German society, irrespective of age and a cut-off date. The 'residence permit for persons who are enforceably required to leave the country, but whose departure is legally or factually impossible' is quantitatively the most important regularisation in German law. The main case of application here is again the implementation of Article 8 ECHR.



# Lessons Learnt

## 1. Comparative Analysis

Each of the three Member States features a differentiated system of regularisations. On the one hand, Where the purposes are concerned, it is clear that the Member States grant irregularly staying migrants a right to stay based on higher ranking laws. However, it is necessary to distinguish between the rights to stay that are mandatory to meet these obligations and those rights that go beyond the international and European obligations. In turn, the certain regularisations refer to different domestic contexts and the rights to stay are then granted on such basis. The categorisation forms a stable foundation for the Regularisation Directive, since both the international and European influences and the reference to contextual circumstances in the Member States have been shown.

## 2. Concept of 'Qualified tolerated foreigners' in Germany

The residence permit for the purpose of employment for 'qualified tolerated foreigners' is a peculiar feature of German residency law, enacted due to the shortage of skilled workers. Interestingly, its role in practice has been limited, however, showing an increase in importance and opportunity for regularisation of migrant families with children.

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