



Alternatives to Return: An Ideal-Typical Categorization of State Responses to Non-Repatriated Irregular Migrants

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Abstract

While return occupies a central position in European migration policy discourse, it remains a loudly announced, weakly implemented, and strongly contested aspect of migration governance. The enduring “return gap,” the divergence between policy commitments and actual removals, underscores the limitations of a control-oriented framework. Drawing on a comparative study of 11 EU+ countries, the article develops an ideal-typical categorization of state responses to non-return, here termed “alternatives to return” to denote the full spectrum of formal and informal responses implemented when return does not occur, a governance reality that inevitably follows non-return. Organized across three axes, inclusive/exclusionary, explicit/implicit, and active/passive, these six governance forms reveal the coexistence of coercive and accommodating logics, challenging the assumption that return constitutes the normative endpoint of irregular migration control in Europe.

Keywords Irregular migration · Return · Alternative to return · Immigration policy

Introduction: A Politically Awkward Problem

Irregular migration remains one of the most contested issues in contemporary European politics. Most governments express a muscular political will to enforce return policies, as deportation is framed as a crucial tool for controlling unauthorized migration. The European Commission and national governments consistently stress the need to increase return rates, as exemplified by the New Pact on Migration and Asylum, in which the term “return” appears dozens of times. As Cassarino (2020) has pointed out, what is called “return” means actually repatriation, and especially forced repatriation. Despite the political emphasis on return, repatriation policies

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have systematically failed to achieve the intended results (Finotelli & Ponzo, 2023). Of migrants issued deportation orders, around 25% are actually returned to their country of origin (Eurostat 2024), meaning the vast majority ultimately remain in host countries due to a combination of legal, logistical, and political obstacles. A key structural reason for this gap is the EU's dependence on non-EU countries' cooperation on readmission and return. As Stutz (2024) demonstrates, repatriations are rarely achievable without the active collaboration of origin countries, whose interests frequently diverge from those of the EU. These include the lack of readmission agreements with countries of origin, reluctance from these countries to accept deportees (Gallagher & David, 2014; Paasche et al., 2026), security concerns and human rights risks upon return, the high financial costs of detention and forced removal (Camarota, 2017; Stavila, 2015), and the difficulties in organizing and managing voluntary return programs, often due to scarce resources (Leerkes & Van Houte, 2020). Furthermore, some migrants resist repatriation by avoiding identification or even engaging in acts of self-harm to prevent deportation (Ellerman, 2010). Additionally, the legal human rights framework itself constrains states' capacity to strengthen removal policies, since to increase the effectiveness of deportation, governments would need to lower basic human rights protections (Hollifield et al., 2022). From a policy outcomes perspective, on the other hand, while return policies are intended to deter irregular migration, their actual deterrent effects remain modest (Czaika et al., 2024). These dynamics call for a systematic analysis of what states actually do when return does not occur, a question this article directly addresses.

The emphasis on deportations connects with the harsh stigmatization of irregular immigration, or of what is labeled as such. As Anderson (2017) argues, immigration is often framed as “problematic mobility.” This is particularly true for irregular migration, which has been increasingly linked to security concerns, especially since the 2001 attacks in the USA and subsequent terrorist incidents in Europe. Although the perpetrators of these attacks were rarely irregular migrants, the political discourse has reinforced an association between border security, unauthorized entry, and public safety (Andersson, 2016). Governments have frequently responded to terrorist threats by announcing stricter border controls, as if the threat originated mainly from outside national borders. More recently, hostility has extended to spontaneous arrivals, particularly during the so-called refugee crisis of the mid-2010s (Rea et al., 2019), with EU leadership branding even asylum seekers as “illegal” entrants. In Hungary and Poland, rejecting refugees from the Middle East has taken particularly hardline and symbolic forms, serving as public demonstrations of government opposition to migration (Bocskor, 2018; Kabata & Jacobs, 2023).

The increasing emphasis on border control, reflected in rising Frontex funding and repeated Commission directives (Finotelli & Ponzo, 2023; Léonard, 2010), has not translated into higher removal rates. This creates a structural governance problem: after framing unauthorized migration as a security threat and political problem (Faist, 2002), how do states manage the persistent presence of migrants they have formally committed to removing?

To answer this question, we propose a categorization of state responses¹ to non-returnable migrants, organized along three analytical axes: active vs. passive governance, explicit vs. implicit policy, and inclusive vs. exclusionary orientation. Drawing on comparative study from 11 EU+ countries, we identify six ideal-typical governance forms that reveal how coercive and accommodating logics coexist in practice. Our contribution is threefold. First, we systematize the literature on non-return governance (Hendow et al., 2024; Spencer, 2018); then, we extend the framework of Bauböck and Permoser (2023) beyond inclusive responses to encompass restrictive strategies such as prolonged detention, exclusion from public services, and indirect forms of pressure to induce voluntary departure, and we provide a comparative analytical tool applicable across different national contexts. While migration policy failures have been extensively studied (Czaika & de Haas, 2013; Hollifield et al., 2022), no overarching framework currently categorizes non-return policies into a coherent structure identifying the main analytical dimensions of national strategies. This article aims to fill this gap.

Literature and Conceptual Framework: Managing Non-returnable Immigrants

The recognition of the failure in return policies opens up the question of how to manage the issue. Excluding people without legal status from most public services can lead to greater participation in the informal economy, a rise in homelessness, added strain on emergency services, and challenges to the image and upkeep of cities. (Spencer, 2018). It is also for this reason that in several cases, urban governments on both sides of the Atlantic have developed more inclusive policies than national ones, declaring themselves “sanctuary cities” or “solidarity cities,” and making some public services accessible even to undocumented immigrants (Bauböck & Permoser, 2023; Bauder, 2017; Oomen et al., 2021). This aspect points to another dimension in the management of migration in general and irregularity in particular: the local turn (Zapata-Barrero et al., 2017). People may be abandoned by nationally implemented regulations, yet local policies can include them. Indeed, the fact that irregular migrants may continue to live in the host countries means that they have access to some basic services that are not publicly available to them through other channels. Indeed, public actors at the local and regional level, networks, and their interactions also play an active role in managing this phenomenon. As Bauböck and Permoser (2023) point out, local governments may implement more inclusive approaches to address the humanitarian needs of irregular migrants, including access to healthcare, emergency housing, and education, often through “firewall” policies that separate

¹ We use the broader term “responses” to describe what the categorization includes as not all elements included are formal policies in the legislative sense. Some, such as regularization programs or toleration statutes, are explicit legislative instruments, while others, such as informal tolerance or institutional abandonment, can be defined as implicit policies, including practices or orientations that emerge from the selective application or systematic absence of formal policy. The analytical value of the categorization lies precisely in capturing this full spectrum, from explicit legislation to implicit practice.

local service provision from national immigration enforcement. In line with this, some cities adopt “sanctuary” practices, actively resisting national directives to report or deport irregular migrants.

From the organizational point of view, complexity means weakening of return policies. Thus, in managing this particular flow, tensions and contradictions arise as part of the actions and interactions (Putnam et al., 2016; Bommès & Sciortino 2010), despite the political rhetoric surrounding repatriation as the primary goal. In this context, local authorities with negative attitudes toward immigration may implicitly collaborate with solidarity networks (with which they do not share ideals or methods) because repatriation policies have not been successful, and other alternative policies are not available (Dimitriadis & Ambrosini, 2023).

On the other hand, complicating matters is the fact that not all undocumented immigrants are labeled as threatening and actively prosecuted. The most emblematic case is the tolerance of women, especially when they work to serve local families and care for the elderly and children. Campaigns against irregular migration are selective, targeting some components of the population without residence permits and neglecting other components (Ambrosini & Hajer, 2023).

In other cases, it is instead civil society actors who oppose campaigns against undocumented immigrants, providing them with assistance, helping them survive, protecting them from deportations (Bauböck & Permoser, 2023): so much so that the controversial criminalization of solidarity has become a consequence of political investments in border control and countering undocumented immigration. The Institute of Race Relations of London has documented 27 cases of legal persecution in the EU between September 2015 and 2017, involving 45 people, accused of misbehavior for actions in favor of unwanted immigrants [1].

Against this complex backdrop, there arises the need for policymakers to provide responses to the persistent presence of an immigrant population that remains on the territory, despite not having the legal qualifications to do so, and which it has not been possible to remove: these include declared or undeclared, passive or active, liberal or restrictive, and short-term or long-term solutions for those who cannot be returned easily.

The term “alternatives to return,” as used in this article, denotes the full spectrum of formal and informal governance responses implemented when removal does not occur. It encompasses state practices that emerge (whether by design, by default, or by structural necessity) in the absence of actual return, and we adopt it with awareness of its analytical limitations. Indeed, a substantial body of literature argues that irregular migration is not simply a governance failure but is often strategically tolerated to meet labor market demands, with official enforcement serving primarily as a public-facing signal (Chauvin & Garcés-Masareñas, 2012; De Genova & Peutz, 2010; Boswell, 2007; Bommès & Sciortino, 2011; Echeverría, 2020). From this view, implicit tolerance towards irregular immigrants is conceived as a constitutive element of migration governance itself. We partially endorse this perspective but argue that it does not exhaust the picture: the coexistence of regularization programs alongside restrictive measures suggests that state responses are neither purely instrumental nor wholly incoherent. “Alternatives to return” therefore encompasses a spectrum of responses, from deliberate exclusion designed to induce departure, to

formal and informal toleration, to full regularization, each reflecting distinct governance logics that our categorization aims to capture.

Towards Understanding the Alternatives to Return: The Criteria of a Categorization

Building on the existing literature, we organize state responses to non-return along three analytical axes. These axes reflect a well-established distinction in comparative migration governance scholarship that captures a meaningful dimension of variation across national approaches.

The first axis distinguishes between *active* and *passive* governance. Active responses involve deliberate state intervention, whether to facilitate departure, tolerate presence, or regularize status. Passive responses are characterized by non-intervention: states neither enforce removal nor formally accommodate irregular migrants, leaving them to navigate precarious conditions through informal networks and civil society support. This distinction matters because inaction itself is a governance choice with distinct consequences for migrants' legal position and lived conditions. Passive policies can translate into forms of tolerance that allow unauthorized residents to make a living, usually in the informal economy (Chauvin & Garcés-Mascreñas, 2020), and to address survival needs by relying on ethnic networks and service providers outside public authority control, such as medical clinics run by NGOs (Castañeda, 2013). However, inaction can equally manifest as institutional neglect, for example, through delays in processing asylum applications or the imposition of strict controls on labor market access, housing, and social services, with the aim of making conditions increasingly untenable so as to push migrants to leave voluntarily. The active/passive axis captures the degree of intentionality behind state responses, cutting across both restrictive and inclusive orientations.

The second axis distinguishes between *explicit* and *implicit* governance responses. Explicit policies are formally codified and publicly acknowledged, such as regularization programs, toleration statutes (*Duldung*), or controlled compliance mechanisms. Declared policies include the many proclamations announcing an all-out fight against irregular immigration, which are not always followed by coherent and effective actions (Czaika & de Haas, 2013). Governments may also focus enforcement attention on specific segments of unwanted immigration, in the last decade in Europe, particularly maritime arrivals from the Mediterranean or overland via the Balkan route, making the fight against new spontaneous arrivals a functional substitute for addressing established irregular migration. Among explicit policy instruments, we can also include the attempt to return asylum seekers who have crossed internal EU borders to their countries of first entry, invoking the Dublin Convention (Landini & Sciortino, 2023). Implicit measures, by contrast, operate through discretionary enforcement or the deliberate under-resourcing of removal procedures. The most typical example is the tolerance of countries of first entry toward the transit of asylum seekers into the EU, which sometimes translates into a form of silent support. Certain protective measures for vulnerable categories also function as implicit policies for the regularization of irregular migrants, such as the protection

of unaccompanied minors or mothers with young children (Finotelli & Ponzo, 2023). At other times, different instruments, such as the Italian policy for new entry of workers from third countries, are used in practice to regularize migrants already present and informally employed (Colombo, 2012). This axis captures the degree of visibility and formal acknowledgment in state responses, reflecting the often-noted disjuncture between official rhetoric and actual practice.

The third axis distinguishes between *inclusive* and *exclusionary* orientations. Inclusive policies aim, at least in part, to integrate irregular migrants into legal and social structures, providing access to services, employment, or formal residence status. Exclusionary policies aim to maintain or intensify the precarity of irregular migrants' position, whether through direct coercion (detention, surveillance) or indirect deprivation (denial of services, housing exclusion). On the exclusionary side, internal controls, stricter document and identity checks for access to the legal labor market, housing, and social services, have been introduced across various countries (Broeders & Engbersen, 2007), even as they risk colliding with well-established interests in host societies, such as employers of undocumented workers and families relying on them for domestic and care services (Ambrosini & Hajer, 2023). On the inclusive side, explicit regularization policies can be distinguished into *regularization programs* and *regularization mechanisms* (Baldwin-Edwards & Kraler, 2009): the former often involve high numbers of candidates, have a fixed timeframe, and require conditions such as employer mediation; they are more visible and encounter greater political resistance. The latter consist of open, case-by-case procedures referencing motivations such as long residence, vulnerability, and family ties, leaving broad discretion to the authorities and making them politically less cumbersome and easier for governments to keep under the radar (Echeverría, 2020). Between exclusion and full inclusion lies a range of intermediate instruments, including the German *Duldung* policy of provisional acceptance for migrants who cannot be repatriated, with subsequent opportunities to achieve legal status mainly through employment (Schütze, 2023), and the various purposes that regularizations can serve, from addressing non-deportability to meeting labor market needs (Hinterberger, 2023). States rarely pursue purely coercive or purely inclusive strategies; most combine elements of both depending on the population targeted, the political climate, and the economic context. The inclusion/exclusion axis captures the normative orientation of state responses and their consequences for migrants' rights and social membership.

Together, the three axes generate an analytical matrix within which any state response to non-return can be positioned, active and exclusionary (e.g., systematic detention without actual return), passive and inclusive (e.g., toleration through non-enforcement), or any other combination. This multi-dimensional structure distinguishes our categorization from binary accounts of migration governance as simply "restrictive" or "permissive," and from frameworks focusing solely on inclusive alternatives, by incorporating exclusionary and implicit governance logics alongside inclusive ones.

The following section describes how this framework was applied empirically.

The Research Method

This article draws on research conducted within the framework of an EU-funded project carried out in collaboration with various institutional partners. The analysis covers Austria, France, Germany, Greece, Italy, the Netherlands, Poland, Spain, Sweden, Switzerland, and the UK. These countries were selected to ensure variation across key dimensions of European migration governance, including geographic region (Southern, Northern, Central-Eastern Europe), welfare state regime, and patterns of irregular migration and enforcement. In addition, three further countries (Belgium, Ireland, and Portugal) were included in the categorization where relevant policy evidence was available, to test the framework's broader applicability.

The empirical analysis rests on two complementary sources. First, a desk review of national policies, legal frameworks, administrative practices, and grey literature was conducted for each of the 11 focal countries (2015–2024), drawing on government documents, parliamentary records, NGO reports, academic literature, and case law. Second, three online focus groups were conducted between March and May 2024 with one to two CSO representatives per country, selected for their expertise in irregular migration, return policies, and undocumented migrants' rights. The focus groups followed a semi-structured format covering: (1) policy instruments governing non-returnable migrants, (2) the gap between official return policy and actual practice, and (3) the role of civil society in supporting migrants facing non-removal. All participants consented; data were anonymized in accordance with the ethical protocols of the lead research institution.

The analysis proceeded iteratively in two stages. In the first, desk research findings were synthesized into national policy profiles identifying key instruments, their legal basis, and practical implementation. Recurring distinctions - between active and passive responses, between formally acknowledged and implicitly practiced policies, and between inclusive and exclusionary orientations - informed the three analytical axes presented in Sect. [“Towards Understanding the Alternatives to Return: The Criteria of a Categorization.”](#) These axes were inductively derived from the empirical material, though they resonate with distinctions well established in the comparative migration governance literature, which led us to anticipate variation along dimensions of coercion versus accommodation and visibility versus concealment, assumptions the material both confirmed and refined.

In the second stage, the focus group material was analyzed thematically using these three axes as an organizing framework. CSO accounts were used to triangulate and critically interrogate the picture emerging from desk research, particularly to surface the gap between formal policy design and actual governance practice, which desk research alone cannot capture. Where CSO narratives diverged from official policy accounts, these divergences were treated as analytically significant in their own right, as evidence of the implicit and informal dimensions of governance that the categorization is designed to capture. The six ideal types presented in Sect. [“Conclusion”](#) emerged from this integrated and iterative

analysis and are best understood as ideal types in the Weberian sense, that is, heuristic tools for identifying and comparing recurring logics across diverse national approaches to non-return (Tables 1 and 2).

Below is a detailed analysis of each ideal type.

Return-Driven Deterrent Measures

Measures under this category seek to dissuade irregular migration through punitive measures such as long-term detention or restricted access to public resources. In Poland, migrants without valid documentation face rigorous Border Guard and police controls making stable livelihoods difficult, with detention applied extensively even when returns cannot be implemented. In the UK, migrants on immigration bail are subject to 24/7 GPS tracking, continuous surveillance serving a clear deterrent function. The normative cornerstone is the Immigration Act 2016, underpinning the Compliant Environment (CE), officially described as “a really hostile environment for illegal immigrants” (Jolly, 2018), which regulates access to work, benefits, and services through employer sanctions, mandatory refusal of services to irregular migrants, and criminalization of driving without valid status, with voluntary departure as the primary aim. One civil society representative in the UK described how the “hostile environment” policy effectively turns public services into instruments of immigration enforcement:

“It essentially turns all public services into border control... people are asked to prove their immigration status before being able to access services.” Additionally, new technologies like GPS tracking are being piloted for those released on immigration bail: “The Home Office started a pilot of ankle tagging and GPS tracking... which has been found not quite unlawful, but unnecessarily intrusive.” These developments reflect a shift from return enforcement to broader forms of deterrent-based governance, where the aim is not necessarily deportation but control, exclusion, and symbolic enforcement.

France illustrates a further variant through extending legal precarity. The 2023 immigration reform extended expulsion decisions from 1 to 3 years, requiring individuals to avoid detection longer before orders lapse. As a French CSO noted: “Everything has been made to make their life more difficult. People will have to hide and will not be able to get any right” (FG1). Yet only around 26% of migrants detained in France in 2022 were ultimately returned; the legal machinery of expulsion expanding less as a removal instrument than as a tool of prolonged exclusion that, for those who cannot be returned at all, shades into institutional abandonment. In the UK, the Illegal Migration Act 2023 criminalized irregular entry, rendered asylum claims inadmissible for unauthorized arrivals, and introduced indefinite detention, including for children and pregnant women, creating a category of people who are neither removable nor regularizable.

Under this category, we also place systematic detention, particularly when it does not result in actual return. In such cases, detention functions less as a step toward removal than as a response to non-return in its own right. This practice has

Table 1 Ideal-typical categorization of state responses to non-return

Ideal-typical categorization of state responses to non-return			
Forms of response	Active vs. passive	Implicit vs. explicit	Inclusive vs. exclusive
Return-driven deterrent measures	Active in enforcing exclusion and detention for non-compliance	Implicit, with deterrence often applied without formalized incentives or options for regularization	Exclusionary by actively restricting access to services, rights, and social membership
Institutional abandonment	Passive, with minimal state intervention or support	Implicit, with lack of formal provisions and reliance on informal practices that deprive irregular migrants of legal and social support	Exclusionary by denying access to welfare, housing, and legal protection
Controlled compliance measures	Active in encouraging voluntary return or specific compliance (e.g., compliance for service access)	Explicit, with conditions that may vary or lack clear legislative grounding, creating uncertainty around policy applications	Exclusionary by conditioning access to basic services on return cooperation
Tolerance-based acceptance (formal tolerance)	Passive, with tolerance for migrants remaining irregularly	Explicit in stating these allowances and outlining the minimum support provided, often only provisional	Hybrid, acknowledging presence without conferring full social membership
Informal tolerance	Passive, often with a lack of active enforcement of return policies through a “not-doing” approach	Implicit, as support is often provided through non-governmental organizations, local-level policies or volunteers/activists rather than national frameworks	Partially inclusive through civil society-mediated access to basic services and survival support
Regularization routes 1. Programs (ad hoc) 2. Mechanisms (permanent)	Active in offering legal pathways to stay	Explicit in detailing requirements and pathways to regularization, often aimed at labor market integration, or human rights’ enforcement; in some cases semi-explicit in target groups	Inclusive by conferring legal status and full or partial access to social rights and membership

Table 2 Matrix of response inclusivity: passive/active and implicit/explicit dimensions

Inclusivity level	Active/explicit	Active/implicit	Passive/explicit	Passive/implicit
High inclusivity	Regularization pathways			
Moderate inclusivity			Tolerance-based acceptance	Informal tolerance
Low inclusivity	Controlled compliance programs			Institutional abandonment
Very low inclusivity		Return-driven deterrent measures		

significant implications for fundamental rights, and its use should be understood not only in legal terms but as a mechanism of symbolic and administrative exclusion.

In Greece, detention has become systematic and legally entrenched since the International Protection Law of 2020 and its subsequent amendments (Law 4939/2022; Law 3907/2011).² Field observations indicate it is often applied arbitrarily in both justification and duration, with excessive use of public order grounds leading to prolonged detention of asylum seekers.³ The Greek Ombudsman Report on the Return of Third Country Nationals (2022) highlights the resulting legitimacy concerns: while detention numbers increase, returns decrease. In 2022, forced returns fell 15% compared to 2021, with over 3500 foreigners held in administrative detention awaiting return, of whom 2763, mostly Albanian nationals, were ultimately forcibly returned.

Institutional Abandonment

This category captures structured neglect: the state's deliberate withdrawal from formal engagement, leaving migrants to navigate precarious conditions through informal networks and civil society. Unlike informal tolerance, institutional abandonment involves no implicit state acknowledgment or enabling role, civil society operates against state indifference or active hostility rather than with its tacit backing. In these grey zones, migrants lack sufficient income, receive inadequate social network support, and cannot or do not want to return (Leerkes, 2016).

Poland, as many other EU countries, offers one of the clearest illustrations. Irregular migrants have no access to social services; healthcare is available only in life-threatening cases, at the migrant's or a civil society actor's expense. Legal work, public health insurance, and social assistance are all unavailable. People remain irregularly for long periods until a serious health or safety issue forces them into visibility. As a Polish civil society representative described:

² Mobile Info Team (2022). *Prison for Papers: Detention in Greece*. Mobile Info Team. Retrieved from <https://www.mobileinfoteam.org/detention>

³ Mobile Info Team (2022), *op. cit.*

The main idea is to exclude the people or to ignore them, as long as the person is not well. While they do not introduce any kind of support, those people are treated, I would say, as invisible. (Polish CSO, FG3)

Sweden illustrates how institutional abandonment can result from a deliberate and rapid policy reversal. Having previously operated one of Europe's most open asylum systems, Sweden shifted sharply after 2015: the Temporary Law replaced permanent residence permits with temporary ones; accommodation assistance for adults who did not depart within the voluntary return period was suspended in 2016; and the Tidö agreement proposed mandatory reporting obligations for municipalities and schools in contact with undocumented migrants, a measure that, if enacted, would directly threaten the school attendance of children without proper documents. As a Swedish civil society organization described:

The situation in Sweden has changed drastically over the last few years. There has been a drastic change in public opinion, and the narratives about migration are now very negative. We can call it a criminalisation of migration. (Swedish CSO, FG3)

In this context, those who cannot be returned survive through churches, civil society organizations, and individual citizens acting against, rather than with the implicit backing of, the state, which is precisely what distinguishes this case from informal tolerance.

France presents a further variant in which institutional abandonment coexists with active state hostility. In the Calais area, heavy-handed police operations routinely dismantle makeshift migrant settlements, and local bans are imposed on NGO distribution of food and essential services. Unlike informal tolerance, where the state looks away while civil society fills the gap, here, the state actively disrupts the very support infrastructure that migrants depend on, while remaining unable to actually remove them.

In Austria, a similar logic of exclusion operates through the Fundamental Act on Social Assistance (2019), which specifies that irregular migrants subject to a return order are not eligible for basic support. As deportation is frequently suspended, due to failure to obtain travel documents or pending toleration applications, the act has been criticized for depriving both deportable and non-deportable migrants of vital safety nets, including medical treatment.

Across these cases, institutional abandonment reveals consistent logic. The state excludes irregular migrants from formal systems while tacitly relying on their survival through informal labor markets and civil society support, without acknowledging or enabling it, pushing people underground and leaving the state formally uninvolved in both their presence and their welfare.

Controlled Compliance Measures

Controlled compliance measures (CCMs) leverage access to services and rights to enforce return compliance. The governing logic is conditioned on the presence of migrants through structured, return-oriented conditions imposed on them, with outright deportation held in reserve, granting access to housing or certain services only if migrants agree to repatriate. CCMs maintain shelter and counselling as leverage

to keep migrants within reach of removal procedures. CSO representatives across national contexts, as described in the focus groups, explained how this conditioning operates in practice and produces its own forms of precarity.

The Netherlands offers the most codified example. Under the *Koppelingswet* (1998), access to welfare rights is tied directly to legal status, and shelter for migrants without children is available only if they actively cooperate with the Repatriation and Departure Service, linking social benefits to compliance in what has been termed “soft deportations” (Leerkes et al., 2017; Cleton & Chauvin, 2020). CSOs were critical of this conditionality, arguing that it conflates welfare provision with migration enforcement. As a Dutch CSO described:

We want pathways out of irregularity, also more easily on humanitarian reasons like interest of the child, people who stay for a long time, people who can get the work permit or partner permit or whatever without being forced to return in order to apply. And of course basic rights like shelter and healthcare. Shelter and food is not available for people without a residence permit, and protection against exploitation at the workplace is not really accessible. (Dutch CSO, FG3)

In their view, conditioning basic rights on return cooperation conflates welfare provision with migration enforcement in ways that leave many people unreachable by either.

It is worth noting that for those who cannot cooperate with return procedures, because their country of origin does not cooperate with Dutch authorities, the conditionality of the *Koppelingswet* produces effects that shade into institutional abandonment. For families from countries that do not cooperate with return, this produces a permanent limbo with no prospect of regularization, as a Dutch civil society organization explained:

Iraq is a good example of such countries. So, these families remain there in limbo. They have no chance of regularisation, but they are not deported either, so they stay there. With all the restrictions, of course. (Dutch CSO, FG3)

Crucially, the risk of deportability never fully disappears, since cooperation between states is constantly evolving, meaning that families who have lived for years in these conditions can suddenly face removal if their country of origin resumes cooperation with Dutch authorities.

In Austria, where voluntary return is the preferred outcome, assistance and toleration status depend on demonstrable engagement with return processes, such as contacting consulates or obtaining travel documents. Non-compliance can lead to the withdrawal of toleration and loss of basic support, leaving individuals in a precarious “limbo” without access to integration measures.

Tolerance-Based Acceptance (Formal Tolerance)

Tolerance-based acceptance lies between institutional abandonment and full regularization. In this grey area, individuals are formally acknowledged through fragile toleration instruments that offer neither full protection from deportation nor full access to services, a middle ground that stops short of regularization while providing some degree of explicit state acknowledgment of presence.

What distinguishes this category from controlled compliance is that the primary state act is recognition, however minimal, of non-deportability as a fact, without conditioning services on return behavior. The result is a legally ambiguous but analytically distinct space in which the state neither removes nor formally integrates but issues documentation or provision that acknowledges presence.

The Netherlands illustrates this logic through the Landelijke Vreemdelingen Voorziening (LVV), a nationally funded program piloted across five municipalities (2019–2022), which provided shelter, food, and counseling regardless of return decision, aiming at durable solutions, return, relocation, or regularization. Unlike the Koppelingswet, the LVV acknowledged non-returnable migrants as a fact requiring a managed response rather than mere pressure, extending the logic of the earlier NGO-run Bed, Bad en Brood (bed, bath, and bread) initiatives. Both represent state recognition that a population exists that cannot simply be returned or abandoned.

In Austria, long-term non-removability can lead to the issuance of a toleration card (Duldungskarte), issued when deportation is blocked by lack of travel documentation, risk to life upon return, or an uncooperative sending state. It confers no right to residence, leaves the return order in force, is valid for 1 year, and is renewable only if obstacles persist, provided the migrant demonstrates all steps to obtain travel documents have been taken. Only around 200 to 300 cards are issued annually, reflecting the Federal Office's highly restrictive and discretionary approach. An Austrian CSO described how this status fits within the broader landscape of irregular migration:

There is 3 different types of illegalized migrants. There's the ones who never tried to apply for a legal status, the ones who tried and failed. And the ones where there is no real legal title, like Duldung. Some kind of irregular situation where you cannot deport these people because nobody knows where to. Those people get some sort of a document which allows them to get official money, for health-care, for somewhere to live, and also a small pocket money. [...] So that is actually good if you can get somehow into this Duldung status. (Austrian CSO, FG2)

The Duldung system in Germany operates along similar lines. Under the country's targeted return enforcement regime, some migrants are deported while others are officially tolerated (Leerkes & Van Houte, 2020). This status is granted to individuals whose asylum claims have been denied but who cannot be deported for various reasons. It is not a valid residence permit and does not offer protection from deportation. Around 248,000 people were living under Duldung status in Germany at the end of 2022, making it one of the largest formal tolerance populations in Europe (Korvensyrjä, 2024).

Within this framework, some instruments open pathways toward greater stability. The Chancenaufenthaltsrecht grants an 18-month temporary residence permit to migrants who have held Duldung status for more than 5 years, allowing them to work and potentially transition to permanent residency. The Beschäftigungsduldung offers a 30-month permit to tolerated migrants in continuous employment. While these provisions benefit some, many others remain at the bottom of the civic hierarchy with precarious legal status (Jonitz & Leerkes, 2022).

What these cases reveal is a tension at the heart of formal tolerance governance. The intention to exclude coexists with tacit acknowledgment that many migrants are economically essential, driving the gradual normalization of their presence. Governance responses that threaten expulsion keep people in precarious status for years while simultaneously, partly due to enforcement difficulties, partly due to labor market needs, producing regularization for those employed or with family ties. Despite restrictive rhetoric, the German Duldung system effectively functions as a *de facto* pathway to regularization, illustrating the continuum between exclusion and inclusion.

Informal Tolerance

Not all irregular migrants are treated equally by enforcement authorities. States routinely exercise discretion in deciding whom to pursue and whom to ignore, and this discretion follows a recognizable logic of meritability. Certain migrants are implicitly tolerated because of their perceived social or economic usefulness to the receiving society.

Italy offers the paradigmatic case. Described as a “thin enforcement regime” with limited capacity to return migrants (Leerkes & Van Houte, 2020), it has long tolerated irregular labor in domestic care, housekeeping, and agriculture through systematic under-resourcing of workplace inspections in precisely these sectors, an implicit complicity in which the state tolerates irregular presence because it serves structural economic needs where enforcement would be economically disruptive. The selectivity is also gendered, as women in the care sector are structurally less visible to enforcement, employed within private households rather than publicly accessible workplaces, and protected by the interests of the families who employ them.

Switzerland illustrates a second variant, in which informal tolerance sustained over time through civil society advocacy eventually becomes a precondition for formal inclusion. Even where access to some services is formally possible, fear of being reported to the authorities prevents irregular migrants from approaching public institutions. As a CSO representative working with undocumented migrants in Geneva, described:

There is a problem of trust towards institutions. Irregular migrants appear to be reported to the authorities, so this creates a lack of trust in public institutions, and we, as an NGO, take care of many issues. (Swiss CSO, FG2)

Yet in Geneva, this dynamic eventually led to the formalization of a regularization scheme (Operation Papyrus, 2017–2018) that regularized the status of over 2800 people. The scheme was built on more than a decade of sustained civil society advocacy and was implemented in partnership with NGOs that had been informally managing the population’s needs in the interim. Informal tolerance, in this case, was not merely a substitute for state action but a precursor to, and eventually a condition of possibility of, formal inclusion.

Across these cases, informal tolerance reveals a consistent governance logic. The commitment of CSOs and solidarity networks is an important component of survival and assistance during the waiting period for regularization (Atac et al., 2020; García Agustín & Jørgensen, 2021). The various forms of solidarity provided by religious institutions, social movements, humanitarian and pro-migration actors, and other

components of civil society constitute the informal infrastructure that enables irregular migrants to avoid the worst consequences of exclusionary governance responses (Ambrosini, 2022). In some southern European contexts, assistance in transiting onward to other European countries, as well as practices of avoiding identification through fingerprints (Artero, 2019), represent further dimensions of this informal tolerance, passive and implicit practices that allow states to manage migratory pressure without formal acknowledgment (Queirolo Palmas & Rahola, 2022). What the country evidence adds to this general picture is the specific mechanism by which informal tolerance is sustained: the state looks away, local actors fill the gap, and the human costs of non-deportability are borne by civil society rather than absorbed by public institutions. This arrangement is functionally convenient for the state and structurally precarious for the migrants it governs.

Regularization Pathways

Explicit Pathways

Regularization mechanisms aim to grant legal status to irregular migrants, facilitating their inclusion in a country's social and legal structures (Kraler, 2019). Although the regularization pathways presented in the table are categorized as among the most inclusive, this does not imply uniformity across different forms of regularization. The inclusivity of these mechanisms varies significantly depending on factors such as eligibility criteria, the specific groups targeted, and the political and economic context in which they are implemented. Permanent mechanisms targeting migrants in precarious situations, such as pregnant women, minors, individuals with serious health conditions, or victims of trafficking, are typically more inclusive, reflecting a humanitarian approach to migration management (Baldwin-Edwards & Kraler, 2009).

Among these, status change pathways, instruments that allow rejected asylum seekers or tolerated migrants to apply for temporary work permits if they meet certain employment conditions, have been mainly implemented in Sweden and Germany. However, while these instruments may offer broader inclusion, they can also be restrictive in terms of eligibility criteria and application windows. In the case of *Beschäftigungsduldung* (employment toleration), some German NGOs argue that the eligibility threshold excludes many individuals and fails to comprehensively address long-term irregularity.

Southern European countries have often opted for periodic regularization programs involving large numbers of applicants. In recent decades, Italy, Portugal, Spain, and Greece have implemented mechanisms prioritizing migrants to fill labor shortages in key sectors such as care, agriculture, and construction. In this employment-driven approach, participation in the labor market has been positioned as a prerequisite for integration and regularization, and as a means to strengthen selective migration governance through the demonstration of economic merit (Chauvin et al., 2013).

The most recent large-scale illustration of this pattern is Greece's 2023 regularization scheme, which granted a 3-year residence and work permit to migrants

demonstrating at least 3 years of irregular employment, explicitly framed as a response to severe labor shortages. As a Greek civil society organization described: “You cannot imagine that at some point our employability department had employers begging for workers, and we couldn’t provide people to work legally in any field. And the government apparently heard those claims” (Greek CSO, FG1). The scheme illustrates the recurring Southern European pattern of restrictive rhetoric coexisting with pragmatic regularization driven by economic necessity.

The Spanish case has its own characteristics among Southern countries. It represents a shift from ad hoc, employment-based regularization toward permanent regularization on different grounds. A key example is the *arraigo* procedure (regularization under exceptional circumstances), which grants regularized status to migrants who can demonstrate strong ties to the country, often in response to labor market needs (Echeverría, 2020). While the *arraigo* process allows for greater inclusion of migrants contributing to the economy, its requirements also limit its scope, as applicants must demonstrate stable employment or significant family connections (Finotelli & Ponzo, 2023).

Portuguese immigration governance similarly relied on regularization mechanisms, particularly the Manifestation of Interest, aimed mainly at overstayers, until June 2024, reflecting the strong interdependence between irregular immigration and labor shortages in specific sectors (Carvalho, 2017).

In some cases, regularization has been tied solely to length of residence regardless of employment status. Poland’s three regularization programs (2003, 2007, 2012) addressed long-term irregular residence without integration or employment conditions (Kraler, 2018). Belgium’s 9bis/9ter procedures combine employment history, family ties, and community involvement, offering significant discretion to authorities, and, like other discreet mechanisms, tend to achieve greater inclusivity without generating significant political debate (Baldwin-Edwards & Kraler, 2009). The UK’s 20-year pathway illustrates how extended the wait for regular status can be.

The inclusivity of regularization mechanisms is therefore not uniform. It depends on the target group, the political climate, and the type of instrument used.

De Facto Pathways

In certain cases, instruments complementary to regularization semi-explicitly facilitate employment-based de facto regularization without formal legal acknowledgment. Greece’s quota system, through which governments allocate migration quotas to address workforce needs in sectors such as seasonal agriculture, is formally intended to regulate new entries but frequently used in practice to regularize migrants already in the country, a gap exploited by intermediaries who, as De Blasis and Bonizzoni (2024) contend, create a migration industry perpetuating irregularity through deceptive practices such as selling fake work contracts.

In Portugal, the Manifestation of Interest mechanism, active until mid-2024, has been replaced by a system of employer-initiated entry contracts, formally ending a posteriori regularization, but likely replicating it in practice, as employers may use the new instrument to regularize workers already in the country, much as quota systems do elsewhere in Southern Europe.

Conclusion

The treatment of settled irregular immigration is a thorny issue for democratic governments. In the political debate, it has risen to a high level of priority, due to security anxieties and the push of nativist political actors (Dennison & Geddes, 2019; Kabata & Jacobs, 2023; Mudde, 2013). But after emphasizing its seriousness and promising to fight irregular sojourn with determination, governments must face a serious gap between the declared policies and the results achieved (Czaika & de Haas, 2013). Repatriations, forced or incentivized, concern only a modest share of the potential target. The others remain on the territory. In other words, governments find themselves having to manage the issue of closure policy. The new EU Pact on Immigration and Asylum (April 2024) clearly admits this, emphasizing the need for more effective measures to increase repatriations and proposing highly controversial solutions (Ambrosini, 2025). The new Returns Regulation, recently approved by the EU Parliament (March 2026), strengthens this orientation. But it is not granted that it will achieve the expected results. A stream of literature has emphasized gaps, contradictions, and areas of incertitude in the legal treatment of irregular immigrants (Bommes & Sciortino, 2011; Czaika & de Haas, 2013) and especially in the implementation of forced repatriations (Boswell, 2008; Ellerman, 2010), together with the fact that repatriations require cooperation with governments of sending countries (Cassarino, 2025; Stutz, 2024). It is a matter of contention if the new rules will be able to overcome these obstacles. Complicating the puzzle is the fact that various internal interests and actors protect, help, or in any case favor irregular residents in various ways (Triandafyllidou & Bartolini, 2020): employers, starting with families, networks of compatriots, solidarity actors from civil society, sometimes local governments, and up to ordinary citizens. The latter, often hostile towards irregular immigration in abstract and general terms, sometimes take a different attitude towards cases known to them personally (Ambrosini, 2017).

This article makes three contributions. It provides a common analytical vocabulary for cross-national comparison of non-return governance, a field that has been examined largely through single-country or single-instrument studies. It extends Bauböck and Permoser's (2023) framework beyond inclusive responses by incorporating restrictive and implicit governance logics, institutional abandonment, return-driven deterrence, and controlled compliance, which are equally central to how states manage non-deportability. And it advances the theoretical debate on control and tolerance by giving empirical structure to the argument that irregular migration is not simply a policy failure but a structurally managed condition, one whose complexity resists purely functionalist readings, as the coexistence of regularization pathways and punitive deterrence within the same national systems makes clear.

The categorization also opens new questions. For researchers, the pressing ones concern how these governance logics play out within specific national contexts and for particular migrant populations, by gender, nationality, and labor market position, and how they shift over time in response to political change. For policymakers, the question would be: what are the concrete implications for the cities where non-returnable migrants settle, for public services stretched by informal demand,

and for enforcement authorities caught between political mandates, public opinion's concerns, and practical constraints? And for both, perhaps the most consequential question remains unanswered: what happens when governments repeatedly promise expulsions they cannot deliver, and what cumulative costs, political and human, does that gap produce? Those costs are already visible in migrants' lives. Across all six types, precarity takes different forms, such as exclusion from services and legal protection, dependency, legal limbo, reliance on civil society, and administrative complexity, but it is never absent, and it is never distributed equally: gender, nationality, and labor market position consistently determine who bears the heaviest burden.

Currently, the fight against the spontaneous entry of asylum seekers, especially through agreements with various governments of transit countries, seems to offer this opportunity: European governments are slowing down new spontaneous arrivals and claiming to have successfully fought irregular immigration. On the other hand, labor market needs are pushing several governments to adopt open or discrete regularization measures, even for rejected asylum seekers. The recent amnesty in Spain (April 2026) is a straightforward example. The market seems to diverge from politics, or at least to force it to take its needs into account (Hollifield et al., 2022). The search for alternatives to repatriation could, in the future, involve more explicitly the interests of the receiving society in adopting more inclusive policies.

The categorization also has some limitations. It is derived from 11 (extended to 14) European countries sharing broadly comparable legal frameworks and welfare state structures, which limits its direct applicability to radically different political or regional contexts. Ideal types are inherently abstractions as no single country neatly corresponds to a single type, and most national systems combine elements of multiple types simultaneously. The focus group data, while providing valuable qualitative depth on CSO perspectives, is limited in scale; the patterns identified capture policy logics rather than measuring their prevalence or impact. Future research could usefully complement this framework with large-N comparative analysis, process-tracing of specific policy trajectories, or a longitudinal study of how governance logics shift in response to political change. Whether the structural pressure of labor demand will generate more systematically inclusive governance frameworks or continue to operate through the implicit and informal channels documented here remains an open question with significant normative stakes. Addressing the selectivity of current arrangements, and moving towards governance that is more transparent, more rights-consistent, and more responsive to the realities of non-deportability, represents both an analytical challenge for migration scholars and a practical imperative for those working at the frontline of European migration governance. The new needs of the workforce, which are no longer met by internal mobility from Eastern to Western EU countries, require not only new rules for the entry of immigrant workers but also a new vision of immigration and its inclusion in receiving societies. A pathological image of immigration, as reflected in recent developments in EU policies, is at odds with the interests of European societies. Furthermore, the concerning spectacle of the harsh campaign against irregular immigrants launched by President Trump in the USA highlights the effects of policies that emphasize border enforcement and the legal status of residents as absolute priorities. A different consideration

of irregularly settled immigrants should be a vital component of a more respectful, mutually beneficial, and more realistic vision of international immigration.

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Data Availability This study draws on two types of research data: (1) secondary data gathered through a systematic desk review of official documents, policy reports, NGO publications, academic literature, and case law across 11 European countries (2015–2024); and (2) primary qualitative data generated through three semi-structured online focus groups conducted with civil society organization representatives between March and May 2024. All primary data were anonymized and handled in accordance with the ethical protocols of the lead research institution.

Declarations

Ethics Approval Ethical approval for this study was obtained from the Erasmus School of Social and Behavioural Sciences on September 26, 2023 (Reference No: ETH2324-0063).

Competing interests The authors declare no competing interests.

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