4 Immigration Policies in Belgium and the Netherlands

4.1 Introduction

Immigration policies play a decisive role in the allocation of life chances to irregular migrants (Baganha et al. 2006; Burgers 1998; Engbersen, Van der Leun & De Boom 2007; Menjivar 2006; Samers 2003). As governments create opportunities and impose barriers to irregular migrants, state policies shape their window of opportunity and their room to manoeuvre. In addition, policies may affect the choices that irregular migrants make within this window of opportunity (Cyrus & Vogel 2006; Hollifield 2004). Furthermore, the room to manoeuvre that policies create is not limited to the boundaries of the receiving nation-state: policies are believed to affect even irregular migrants’ transnational interactions (Waldinger & Fitzgerald 2004).

Next to the impact governments can have by formulating laws and policies, the ways in which these are implemented affect the lives of irregular migrants as well (Van der Leun 2003b; 2006). Migrants actively react to the ways they perceive policies to be implemented (Cyrus & Vogel 2006), and it is widely acknowledged that the gaps between policies on irregular migration and their implementation can be large (Van der Leun 2003b). Any study of the lives of irregular migrants should therefore not only look at how policies are formulated, but also at how these are implemented in practice. However, so far ‘there is little insight into the concerted processes that take place within these gaps’ (Van der Leun 2006: 311).

I interviewed informants working in organisations which interact with irregular migrants. Some of these informants have daily contact with irregular migrants, while others are active at the level of policymaking. These organisations are in fields such as health care, education, welfare and integration. By interviewing their staff, I gained insight into the processes that take place within the ‘gaps’ between policies and practices. However, I chose not to devote a separate chapter to describing these, as this goes beyond the scope of this book. This chapter therefore mostly describes how laws are formulated. Implementation practices are discussed here and in the next chapters where relevant, which is in those cases where they affect the incorporation or transnational activities of irregular migrants or their aspirations.
The same applies to the rights irregular migrants can claim in the destination country. According to Hollifield (2004: 901) we have seen a gradual extension of rights granted to non-nationals after World War II, to the point that individuals have acquired a sort of international legal personality. Irregular migrants are not totally excluded, but have some rights that are partly rooted in supranational agreements and international human rights discourses. For example, they have the right to imperative medical care and publicly financed legal assistance, and children have the right to education (Bafekr 1999; Kromhout, Wubs & Beenakkers 2008; Van der Leun 2003b, 2006). Because of their supranational roots these rights are the same in Belgium and the Netherlands, but the way they are implemented in practice differs between the countries. In both countries, irregular migrants can, for example, get access to urgent medical care, but it is organised in different ways. In those cases where they are relevant for the scope of this book, these diverging practices are discussed in the following chapters.

Most of the information from the organisations interviewed applies to the level of implementation. Sometimes, however, it concerned the level of policy formulation. As governments are not always transparent in the information they provide on their policies of immigration control, this sometimes proved very helpful.

4.2 History

Regulation of migration is not a new phenomenon, but something that has taken place for centuries (Van Eijl 2008; Schrover et al. 2008b). For a long time states did not formulate rules on entry, stay and exit of aliens, but local authorities did (Schrover et al. 2008b; Torpey 2000). In the Netherlands, the Aliens Act was passed in 1849 (Van Eijl 2008). State control of people's mobility increased when the government's interest in welfare and labour market regulation rose in the early twentieth century (Schrover et al. 2008b) and as a result of World War I (Moch 2003). But even then, migration was not referred to as 'illegal'. In the Netherlands, Jewish refugees who arrived from 1938 onwards were the first group of aliens to be referred to as 'illegal' in public discourse and government documents (Van Eijl 2008). The first post-World War II immigrants to be labelled illegal were the Chinese (Van Eijl 2012).

The birth of the idea of irregular migrants in Belgium and the Netherlands is generally associated with the emergence of the modern nation-state after World War I (Düvell 2006b; Moch 2003; Torpey 2000). Yet it was not until after World War II that irregular migrant workers lived in Belgium and the
Netherlands in unprecedented numbers (Moch 2003). At this time, irregular migration emerged in all Western economies, because the latter started to recruit guest workers due to labour market shortages (Sassen 1999). Belgium and the Netherlands were among the main receiving countries of immigration in this post-war period (Düvell 2006b; Moch 2003). Workers from Southern Europe as well as from Northern Africa and Turkey could travel freely to these receiving countries and could formalise their stay after they had started to work (Martiniello & Rea 2003; Van Amersfoort 1999). These migrants were considered welcome ‘guests’, as they were needed to alleviate the shortages in the labour market. However, when labour shortages decreased due to the economic downturn in the 1970s, immigration policies became more restrictive, and efforts were increasingly made to prevent immigration (Martiniello 2003). Whereas in the past irregular migrants had been welcomed as ‘spontaneous labour migrants’, from the 1980s onwards these immigration flows were regarded as problematic in Belgium and the Netherlands (Burgers 1999b; Engbersen 1997; Entzinger 2003; Martiniello & Rea 2003).

Since the early 1980s, European governments have become steadily more concerned with controlling immigration (Brochmann 1999a). Irregular immigration became a topic on the European Community agenda in 1985 (Düvell 2006b: 26). In the early 1990s the first references were made to policies to ‘combat’ irregular immigration (ibid.: 28). Most Western states have now developed exclusionary policies to avoid irregular migration (Engbersen et al. 2007) and have become increasingly inventive in creating measures to exclude, apprehend and expel irregular migrants as effectively as possible (Engbersen & Broeders 2009; Uehling 2004). Irregular migrants are now at the top of policy agendas (Broeders & Engbersen 2007), but in spite of all the attention, the presence of irregular migrants remains a fact of life. Recent estimates indicate that over 120,000 irregular migrants reside in the Netherlands (Van der Heijden et al. 2006) and over 100,000 in Belgium (Van Meeteren et al. 2007b). Governments have two types of policies at their disposal to control irregular immigration: policies aimed at controlling the external borders and policies aimed at guarding internal boundaries. These two types of control are discussed in the following sections.

4.3 External control policies

Initially, restrictive policies to prevent and control irregular migration were mainly targeted at the external borders. The construction of a ‘fortress
Europe’s expanded during the 1990s: visa requirements became stricter, and physical barriers were erected along the land borders of Europe in order to keep people out (Albrecht 2002). Walls similar to those along the Mexico-USA border (Andreas 2000) can be found in the enclaves of Ceuta and Melilla in Morocco and along the new EU borders in Poland. These walls have been strengthened with guards, watch towers, fences and state-of-the-art technology (Broeders 2009).

In addition to its land borders, Europe has had to control its large maritime borders, which are more difficult to guard because of the expansive area involved (Carling 2007b). Over the last decade and a half, Spain has invested heavily in surveillance of its maritime borders, intercepting along its shores on average 350 African boat migrants every week (Carling 2007a). Border controls, however, have proven only partially effective in controlling irregular immigration (Brochmann 1999b; Cornelius 2005). This is because many irregular migrants enter legally and become irregular migrants only in the destination country: once their visas expire or when they are denied refugee status (Black et al. 2005; Burgers & Engbersen 1999; Van Meeteren et al. 2008). Furthermore, even if migrants are apprehended, they have proven difficult to expel (Van der Leun 2003b). In 2002 and 2003 only about a quarter of the migrants who arrived in Spain – a major destination for irregular migrants from Africa – were expelled. The remainder were released from detention and either stayed in Spain or travelled to other European countries like Belgium and the Netherlands (Carling 2007b). In addition, European borders are simply too extensive to completely turn into steel and concrete, making them difficult to control effectively (Broeders 2009). Moreover, beyond a certain level of control, the costs of avoiding irregular migration exceed the ‘damage’ caused by irregular immigration (Entorf 2002; Hillman & Weiss 1999; Jahn & Straubhaar 1999). Therefore, governments are unlikely to invest in making controls more effective than they currently are.

Human smugglers constantly find new ways to circumvent controls (Heckmann 2004; Pijpers & Van der Velde 2007), for example, by changing operating routes (Okólski 2000). Researchers claim that human smugglers have become increasingly important in facilitating irregular migration (Cornelius 2005; Derluyn & Broekaert 2005; Jandl 2007; Staring 2003). Human smugglers facilitate illegal exit, transit and entry; they provide fraudulent or stolen travel documents; they provide information on border control, immigration control and asylum procedures; and they coach migrants on how to deceive immigration and law enforcement authorities (Schloenhardt 2001). Similarly, smuggled migrants are given detailed instructions by their smugglers on how to use the asylum system as part of their migration
strategy (Bilger, Hofmann & Jandl 2006). Smugglers have proven to be highly flexible. In response to new migration or asylum regulations and to changes in visa regimes, they change their operating routes and transit countries. Furthermore, forgers continuously update their equipment for forging papers and use modern computer technology to improve the quality of falsifications (Jandl 2007). Smugglers’ adaptability makes it difficult for states to control external borders effectively, rendering practices of external control like games of ‘cat and mouse’ (Heckmann 2004).

Apart from external control policies being ineffective, they have also had unwanted side-effects. Along with the increased controls, fatal accidents have increased and are now the order of the day (Carling 2007b; Spijkerboer 2007). As migrant smugglers try to circumvent the most heavily controlled areas, boats now leave from as far as Senegal, making the trip all the more dangerous. It is estimated that for every hundred interceptions there is one death (Carling 2007b), and the number of deaths is increasing (Spijkerboer 2007). In addition, the line between human smuggling and trafficking has become blurred: human smugglers sometimes use the same ‘safe houses’ to store smuggled irregular migrants and trafficked prostitutes (Leman & Janssens 2007). Furthermore, as the risks involved become higher (Donato, Wagner & Patterson 2008; Eschbach et al. 1999), the financial costs of entry increase as well (Baganha et al. 2006; Cornelius 2005). Long-distance smuggling fees to Belgium now vary between € 3,000 and € 40,000, medium distance between € 1,500 and € 6,000 and short-distance between € 200 and € 5,000 (Kaizen & Nonneman 2007). Dutch findings indicate that smuggling fees have doubled since 2001 and that irregular migrants from Somalia now pay an average amount of $7,000 and migrants from Iraq between $3,000 and $10,000 (Van Liempt 2007). The result of these increased costs is that irregular migrants tend to stay as long as possible once they get in, while migrants from visa-free countries may come repeatedly, but also leave again voluntarily after a short period of time. The further away the country of origin and the tighter the restrictions, the more likely it becomes that initially mobile migrants who otherwise might have come and gone, stay and become irregular migrants (Düvell 2006c).

All in all, external control policies are only partially effective, and they create undesired side effects. When governments started to realise that they could not control their external borders effectively, they increasingly turned to policies of internal control (Brochmann 1999a, Broeders 2009). When irregular migrants cannot be stopped from entering the country, the aim becomes to exclude them from formal institutions and to discourage them in the hope that they might leave voluntarily.
4.4 Internal control policies

Governments that rely on internal control policies acknowledge that not all irregular migrants can be stopped at the external borders and aim to exclude them and discourage them from staying. According to Broeders and Engbersen (2007: 1593), states hope that exclusion and discouragement ‘complicate and frustrate living and working conditions to such a degree that they will turn around and try their luck elsewhere’. A wide array of policy measures has been developed to do so, at the level of the European Union as well as at the level of individual nation-states (Broeders 2009). Examples include exclusion from public services; surveillance by the police; policies of identification, detention and expulsion; and labour market control (Engbersen & Broeders 2009). These different forms of internal control policies are discussed in subsequent subsections.

4.4.1 Exclusion from public services

During the days of labour recruitment migrants could easily open bank accounts, take out medical insurance and enrol in educational programmes. Over the years, governments in both Belgium and the Netherlands have implemented policies to deny irregular migrants access to public institutions. An important centrepiece of such policies in the Netherlands is the Dutch Benefit Entitlement (Residence Status) Act that was enacted in 1998 to exclude irregular migrants from tax-supported public services such as social assistance, public housing, education for adults and nonemergency health care (Broeders & Engbersen 2007). This Act is commonly referred to as the Linking Act, as it was designed to link access to a whole range of public and semi-public provisions to a valid residence status (Engbersen 1999a; Van der Leun 2003b).

Whereas the Linking Act closed access to public services in the Netherlands at once, Belgium restricted access to public provisions bit by bit, using different decrees and policy measures. Irregular migrants were therefore much more excluded in Belgium than in the Netherlands before the Linking Act was introduced. The level of public exclusion has been very high in Belgium in recent decades (Kagné 2000; Suárez-Orozco 1994), yet the representatives of organisations I interviewed indicated that nowadays it is somewhat higher in the Netherlands than in Belgium. In other words, while exclusion in Belgium used to be more stringent than in the Netherlands, the cards have been reversed in recent years.

The Linking Act in the Netherlands and different policy measures in Belgium aim to exclude irregular migrants from all social care except for
that which the government is obliged to provide according to provisions of international human rights treaties that it has signed. NGOs and lawyers constantly battle with nation-states over the implementation of international agreements. This sometimes leads to agreements in which irregular migrants are given access to specific provisions. As a result of such actions, parents without legal residence status can, for example, nowadays get child support for their children.

Likewise, in Belgium asylum seekers who have filed a second appeal in their asylum procedure – and consequently reside illegally, though they are not expelled during their appeal (they are ‘tolerated’)—are granted a limited amount of social care by the Belgian government. In practice this usually means they are allowed to reside in an asylum centre (Berx 2007). In Belgium, in June 2006 more than 12,000 people lived in the federal asylum structures, almost 7,000 of whom were irregular migrants (Van Meeteren et al. 2008). Although local Dutch authorities also sponsor the housing of irregular migrants who are allowed to stay in the country to await the final decision of an appeal (they are also ‘tolerated’), these numbers come nowhere near the Belgian figures. The huge numbers in Belgium are believed to be due to the country’s slow administration of this process. Many irregular migrants file an appeal to buy themselves some extra time, on average three years (Van Meeteren et al. 2008).

While the national governments have developed policies to exclude irregular migrants, local authorities have usually been left to cope with the problem of their continuing presence. In the Netherlands the government formally forbids local authorities from providing aid to irregular migrants. Local organisations are subsidised to take care of homeless people and to provide food to people in need, but they only receive government funding for people who reside legitimately (including those who are ‘tolerated’) (see also Rusinovic et al. 2002). Any aid provided to irregular migrants therefore has to come out of local governments’ own pockets, meaning that it has to be privately financed. Organisations tend to be secretive about the help they provide and to only provide such assistance in locations tucked away outside city centres and out of sight of the general public.

While the situation in the federal state of Belgium is very similar, the Flemish authorities have developed policies to provide local care to irregular migrants. Acknowledging that local authorities have to deal with this group of people who may be in need, policies have been developed to do this and limited funds have been allocated for this purpose (Van Meeteren et al. 2008). While in practice this means that organisations also have to raise private funding, organisations do not have to be secretive about it and can openly aid irregular migrants.
All in all, the strategy of internal control by means of exclusion from public provisions has proven to be of limited effectiveness (see West & Moore 1989). Instead of having a deterrent effect, the restrictions provoke migrants to dive deeper into invisible activities (Van der Leun & Kloosterman 2006). Furthermore, irregular migrants are not only increasingly beyond the grasp of enforcement authorities, but also out of reach of those institutions that safeguard basic social and labour rights (Düvell 2006b: 21). States are therefore increasingly turning to policies of identification as a means of internal control.

4.4.2 Policies of identification

Broeders (2009) documents a paradigm shift by which governments are replacing traditional policies of exclusion with new methods of identification and registration. According to Broeders and Engbersen (2007: 1595), keywords in the internal control of irregular migrants are now ‘surveillance’ and ‘identification’, because in order to effectively expel people it is crucial for states to know their real identity. Northern European Union member states have therefore intensified internal surveillance of irregular migrants in recent years (Broeders & Engbersen 2007).

The main examples of these new European policies revolve around identification by means of biometrics. The fingerprints of migrants who enter the asylum procedure are, for example, registered in Eurodac. This system was originally designed to prevent migrants from applying for asylum in more than one European country, but it is now used to fight irregular migration. In addition to fingerprints of asylum seekers, the fingerprints of migrants who enter on a visa are to be registered in the Visa Information System (VIS) that is currently being implemented by all Schengen and Schengen-associated states. This system makes it possible to identify irregular migrants who overstay their visa. Furthermore, the information stored includes the details of the person who issued the invitation and, hence, can be held accountable for a possible overstay of the visa (Broeders 2007). While my respondents had not yet faced barriers imposed by the VIS, Eurodac was already in operation during my fieldwork.

With these new measures, European states counter irregular migrants and especially aim at identifying those who try to hide their true identity (Engbersen & Broeders 2009). It is no longer sufficient to determine if someone belongs because in order to expel someone, it is necessary to establish his or her identity (Broeders 2009). Migrants in turn are reacting. Recent news reports, for example, indicate that some migrants mutilate
their fingertips so that they cannot be properly identified (Trouw 24 April 2009). As a consequence, policies aimed at irregular migrants and the actions of irregular migrants to circumvent these resemble an arms race in which action provokes reaction (Broeders & Engbersen 2007). It remains to be seen who will be the winners of this ‘tug of war’. According to Hagan, Eschbach and Rodriguez (2008), deportation policy does not end irregular immigration, but it simply raises the human costs for migrants and their families. Broeders and Engbersen (2007) argue that it is likely that irregular migrants will continue to come, but will go further underground, which will make them more dependent on human smugglers and other intermediaries.

The creation of databases in which information is stored on the identity and itinerary of specific groups of immigrants facilitates government strategies of detention and expulsion (Engbersen & Broeders 2009). If an irregular migrant is detained his or her identity can be established more easily, which makes it easier for authorities to expel the migrant in question.

4.4.3 Detention and expulsion

Irregular migrants face different risks of being stopped by the police. For irregular migrants who do not face visa restrictions and can travel with their passports, police controls are often meaningless. Dates of entry are not always stamped in passports, which means that they can easily avoid internal controls by pretending to be tourists (Triandafyllidou & Kosic 2006). For migrants who cannot easily pretend to be tourists, these controls may be frustrating. Some therefore choose to buy false documents. Explicit internal control mechanisms, such as identification cards, make life more difficult for irregular migrants, but they do not prevent them from coming (Brochmann 1999b).

Under Belgian law, illegal entry or stay is considered an offence punishable by a fine and/or detention of up to three months (Van Meeteren et al. 2008). In the Netherlands, it is not yet punishable (Broeders 2009) but plans are being made to treat illegal stay as an offence in the near future. Even though the legal grounds are currently different, in both countries irregular migrants are incarcerated in special detention centres in order to be expelled. Broeders and Engbersen (2007:1,602) signal a general trend throughout Europe towards increased detention of irregular immigrants. Most irregular migrants who are held in detention centres have not committed any crime; their only offence is being in a country without the necessary documents (Broeders & Engbersen 2007). Detention of irregular migrants is therefore different from criminal incarceration: it is detention
without court trial, referred to as ‘administrative detention’ (Schinkel 2009). Furthermore, irregular migrants are not held in regular prisons, but in specially-erected detention centres or expulsion centres. Whereas irregular migrants can be detained for a maximum period of five months in Belgium, there was no such limit in the Netherlands at the time I conducted my fieldwork (Schinkel 2009). Although the goal of imprisonment is expulsion, in the Netherlands, fewer than half of the detained irregular migrants were being effectively expelled from the country (Van Kalmthout 2005 cited in Broeders & Engbersen 2007: 1,602). In the Netherlands, the detention capacity increased from fewer than 1,000 places to 3,100 in 2007 (Van Kalmthout 2007). In Belgium, around 7,000 irregular migrants are detained each year, but due to faster processing the average ‘stock’ of irregular migrants in detention is around 500 individuals. The Belgian authorities are more successful at expulsion; some 70 per cent of detainees are expelled each year.²

Governments hold irregular migrants in detention centres in the hope that they will reveal their identity or at least be cooperative in establishing it. According to Broeders and Engbersen (2007: 1,596) irregular migrants can be expelled only ‘when identity, nationality, and (preferably) migration history can be established’. These authors discern two categories of detainees who raise problems for expulsion policies. The first are migrants who refuse to cooperate and frustrate the progress of procedures, for example, by stating a false name or by supplying an incorrect country of origin. The second group consists of migrants who cooperate in acquiring the relevant travel documents, but who cannot return because the authorities in their countries of origin refuse to accept them or because of specific political problems there (Broeders & Engbersen 2007: 1,602).

Broeders and Engbersen (2007: 1,606) argue that in the past, irregular migrants’ main strategy to avoid expulsion was telling a lie about their identity. This proved to be a very effective weapon of resistance: they had to keep up this lie for a while until they were released. However, this ‘weapon of the weak’ is now targeted by new policies of surveillance and identification. It remains to be seen to what extent the efforts of irregular migrants to hide their identity will continue to be effective in the future.

4.4.4 Labour market control

As many irregular migrants engage in informal labour, controlling the labour market is an important tool for controlling irregular migration:

[E]fficiency of immigration policy is more a question of the ability to supervise the labour market than of policing the national borders: it revolves on the state’s ability to prevent employers from hiring undocumented workers and its ability to maintain generally high standards of employment conditions (Brochmann 1999b: 323).

In neither Belgium nor in the Netherlands are irregular migrants allowed to work. If they are caught doing informal labour, the authorities try to deport them (Broeders 2009; Leerkes et al. 2004; Van Meeteren et al. 2008). Although Belgium and the Netherlands take the same stance towards informal work, there are important reasons to believe that nowadays, it is easier for irregular migrants to find a job in Belgium than it is in the Netherlands, whereas in the past it was the other way around.

In the Netherlands irregular migrants used to be able to work formally by obtaining a ‘social-fiscal number’ (sofi-number) (Engbersen 1999c). In 1991, the government made sure that irregular migrants could no longer acquire these. Since then the Netherlands has severely tightened the net around the labour market and considerably increased its controls (Kromhout et al. 2008). In 1994, identification became compulsory at the workplace, and in 1998 the Linking Act was enacted which made sure that migrants who had acquired a legal social-fiscal number before 1991 could no longer work using this number. In 2000 employers became required to keep a copy of their employees’ identification document on file (Broeders 2009). Furthermore, controls on irregular labour were intensified (Kromhout et al. 2008). It is a criminal offence for employers not to cooperate in establishing the identity of their employees (Broeders 2009). Since 2005, an employer may be fined € 8,000 per illegally employed worker and € 12,000 for a repeated offence (Broeders 2009), while in cases dating from just a few years earlier employers paid around € 1,000 (Benseddik & Bijl 2004).

Unlike in the Netherlands, the possibility of irregular migrants obtaining work permits had ended long before 1991 in Belgium. Very few irregular migrants have therefore managed to find entry to the formal labour market there (Adam et al. 2002; Van Meeteren et al. 2007b; Van Nieuwenhuyze 2009). Like the Dutch government, the Belgian authorities have increased their control of informal labour over recent years. Since 1999, employers
who hire irregular migrants have been liable for punishment (Van Meeteren et al. 2008).

Although it used to be easier for irregular migrants to find employment in the Netherlands, as there were legal options there, Belgium seems to be more attractive nowadays. The relative size of its shadow economy is much larger than in the Netherlands (Schneider & Klinglmair 2004). Belgium is consequently likely to attract more irregular migrants in search of work (see Baldwin-Edwards 1999; Kosic & Triandafyllidou 2004; Reyneri 1999; Ribas-Mateos 2004; Ruspuni 2000; Samers 2005; Williams & Windebank 1995). This is probably related to the degree of control that the governments exercise. Although the number of checks reported by the Belgian social inspection has only moderately increased, the number of checks involving the police has increased significantly (Adriaenssens et al. 2009). Nevertheless, even with the increase reported, the level of control in Belgium comes nowhere near that exercised in the Netherlands.

4.5 Legalisation

As irregular migrants may be detained by the police and sent to a detention centre to be expelled, many irregular migrants try to legalise their status. For those not seriously ill or formally unable to return to their country of origin, there are basically two ways in which irregular migrants can do this: by marrying a Belgian or Dutch national or someone holding permanent residence rights or by applying for regularisation.

Marriage seems to be the dominant strategy in both Belgium (Van Nieuwenhuyze 2009) and the Netherlands (Engbersen 1999b; Staring 1998). In many cases, this concerns a marriage between an irregular migrant and a regular migrant. In other cases, an irregular migrant marries a Dutch or Belgian native. The chances of an irregular migrant marrying a native are different for men and women of different countries of origin. Whereas Dutch native women who marry a foreign spouse tend to find partners from Africa, Dutch native men largely marry women from Eastern Europe, South-East Asia or Latin America (Leerkes & Kulu-Glasgow 2010). Sometimes marriages stem from love relationships, but bogus marriages are not uncommon (Mazzucato 2005; Staring 1998). Governments both in Belgium and in the Netherlands have developed policies to discourage irregular migrants from entering bogus marriages (Broeders 2009; Van Meeteren et al. 2007b). They refuse to recognise marriages if they suspect them to be fake (Van Liempt 2007; Van Meeteren 2007b). Moreover, a couple has to remain married for
In the Netherlands, the partner may receive a temporary permit to stay independent of his or her partner only after three years of marriage (Van der Leun 2003b), in Belgium this is two years.

Although both countries have stepped up their measures against bogus marriages, it is very difficult to determine the effects, partly because implementation of these policies differs even from city to city. Martijn, a social worker in Antwerp, explains:

> It is always Antwerp where most problems arise ... In Antwerp you become a suspect of a bogus marriage very quickly. Sometimes an investigation into a bogus marriage is started before an official application for marriage has been filed. That is actually unlawful but it happens nevertheless. And future partners are asked very intimate questions. Sometimes ... I have the impression that the court in Antwerp is always more compliant [with the immigration services] than courts in other cities ... Therefore we advise people to move to another city or town, to marry there and then come back.

In addition to getting married, irregular migrants can apply for regularisation. They can file for regularisation based on 'exceptional circumstances'. The chances of regularisation for the average irregular migrant are slim: only about 300 persons per year are granted regularisation based on exceptional circumstances (Van Meeteren et al. 2008). Although the exact numbers are not identifiable in public records, news reports estimate similar numbers in the Netherlands. Both in the Netherlands and in Belgium, criteria for these circumstances are not specified.

In Belgium, most irregular migrants applying for regularisation claim they should be legalised because they are ‘integrated’. This is also what is advocated by the irregular migrants engaged in political action (see McNevin 2006). Efforts made to learn the native language, letters from natives they know well, children in school and a long length of stay are some of the exceptional circumstances migrants try to invoke to become

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3 Telephone consultation with Dutch immigration authorities on 26 November 2009.
5 All interviewed respondents who work for organisations have been provided fictitious names in order to guard their anonymity. I use different names in order to demonstrate that I quote different people.
regularised. Most lawyers and people who work for organisations giving legal advice recommend that irregular migrants claim integration as grounds for regularisation. Petra, who works for a welfare organisation in Antwerp, explains how this procedure works in practice:

[Y]ou have to prove exceptional circumstances ... So many people who have applied for asylum or who have lived here for a while believe this is in itself enough to qualify as an exceptional circumstance ... There are a number of criteria that can be invoked but these are not set by law ... if you can prove that you have been here for five years and you can prove that you are integrated and that you have built your future here, that you have many social ties here, through school, neighbours, then you can apply on those grounds.

Although criteria are not specified by law, the people I interviewed in organisations that interact with irregular migrants kept insisting that integration is a valid criterion. This is the advice organisations and lawyers usually provide to irregular migrants: that they have to work on their integration in order to be eligible for application. As ‘integration’ is a vague criterion that can be interpreted in different ways, these applications are, in practice, trial-and-error exercises. Many irregular migrants try, and some try more than once (Verstrepen 2007). The same woman explains:

There is a lot of uncertainty and no clear policy, so you have people who are in the same circumstances who get a positive decision and others arbitrarily get a negative one. And this fosters hope, because maybe I am the exception who will get it. You never know ... so the indistinctness of the criteria fosters hope for a lot of people but it makes them live in miserable circumstances.

Another reason why some 15,000 irregular migrants apply for regularisation in Belgium each year is that the police tend to tolerate the presence of irregular migrants with pending regularisation applications (Van Meeteren et al. 2008). In the Netherlands, the same practice was common, but the number of applications has decreased because of recent policy changes, as Joke, who works for an organisation in the Netherlands, explains:

[It] is more or less the same as you have in Belgium ... Like in Belgium the benefit is you cannot be expelled ... These types of applications are frequent in the Netherlands ... Very few get a positive decision.
though. But the care facilities are all full with this group of people; it is standard procedure for people to make this kind of application ...

[T]he applications used to be done with the municipalities, until last year, and then last year it was changed to the Immigration Services Offices ... [T]he Immigration Services can refuse applications straight away and they can detain directly ... so they have created a deterrent and built a system around it to prevent people from making too many applications. It used to be a nice escape, people just asked for a residence permit based on whatever, and then they would be in the procedure for one and a half years, during which you do not have rights to anything, but hey, you cannot be expelled either. That was a big advantage.

The number of applications was much reduced in the Netherlands by the rule referred to above, whereby irregular migrants filing an application without merit are immediately detained. This discourages migrants from making false applications. These practices might deter them from trying at all.

As the possibilities for individual regularisation are limited and uncertain, irregular migrants’ best chances of legalisation are general campaigns for regularisation. Collective regularisations have been carried out all over Europe: in Italy (Mingione & Quassoli 2000: 50-51), Spain (Arango 2000; Hartman 2008), Portugal (Baganha 2000) and Greece (Fakiolas 2000, 2003; Glytsos 2005; Lazaridis & Poyago-Theotoky 1999). Belgium is currently undergoing its third campaign,7 and the Netherlands has had its share of amnesties as well (Benseddik & Bijl 2004; Van Eijl 2012).

Belgium had its first general regularisation in 1974 and its second in 2000 (Martiniello 2003). During the campaign of 2000, over 30,000 applications were filed, representing roughly 50,000 people (Bernard 2000) of many nationalities, among which Congolese and Moroccans were the largest groups (Martiniello 2003). Applicants were required to fulfil one of the following four conditions:

- having been engaged in the asylum procedure for an abnormally long period without having been informed of a decision (4 years in general, 3 years for families with minor children); not having the objective possibility of returning to one’s country due to, for example, a war; suffering a serious illness; or having lived at least six years in the country

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7 See, for example, www.vreemdelingenrecht.be. Information retrieved on 3 December 2009.
without having received any official notification to leave the country during the last five years. This last category of potential applicants is supposed to be integrated in Belgium (ibid.: 229-230).

As mentioned earlier, when I was doing my fieldwork in Belgium in 2006, irregular migrants all over Belgium were occupying churches, some were demonstrating in the streets and some were engaged in hunger strikes. These actions had begun in response to events in 2005, when a group of 130 irregular migrants occupied a church in Elsene, a district of Brussels. After a prolonged hunger strike, the Minister of Internal Affairs Patrick Dewael conceded to their demand for residency, fuelling actions all over the country. These were organised by a collective of irregular migrants, the UDEP (Union pour la Défense des Sans-Papiers). With the support of several NGOs and semi-governmental organisations, the ‘pro-regularisation movement’ (Laubenthal 2007) managed to influence government debate on asylum procedure reform. Furthermore, it managed to get the government to formalise some of the criteria for individual regularisation that had been used informally since the previous collective regularisation. For example, the criterion used during the campaign in 2000, stipulating that migrants who had been enrolled in the asylum procedure for an unusually long period of time would be granted regularisation, now became formal policy.

In addition to the changes in asylum procedure and the formulation of criteria for regularisation, the Belgian authorities decided to issue another general amnesty long after my fieldwork had finished. Starting in September 2009, irregular migrants could apply for regularisation based on a set of special criteria that were valid for a period of three months. During this period, irregular migrants could claim ‘durable local embeddedness’. In practice, this meant that persons who had been in Belgium for five years and who had filed for regularisation before 2009 could apply. Furthermore, persons who were in Belgium before March 2007 and could supply a future work contract for a year met the criteria. It was only possible to claim ‘durable local embeddedness’ during these three months. About 30,000 people applied, of which only about 10,000 cases were new applications. The others were individual requests for regularisation that had been shifted to the general regularisation campaign. Many of my respondents have now been legalised as a result of this general amnesty.

In the Netherlands, the last general regularisation schemes date back to 1975 and 1979 (Van Groenendael 1986). After that there were no more general amnesties; neither were there any special regularisation schemes close to the size of those in Belgium (Van Eijl 2012). Throughout the 1990s, there was a series of amnesties for irregular migrants who had worked legally in the formal labour market (Van der Leun 2003b; Van Eijl 2012). In 1991 an informal arrangement came into existence known as the ‘six-year arrangement’. Roughly speaking, this meant that irregular migrants who could prove they had worked legally over the past six years were legalised. In 1999 a series of hunger strikes led to the formulation of a similar, yet more formal arrangement. In the 1990s, 3,000 people were legalised, while over 5,000 persons were rejected under these arrangements (Benseddik & Bijl 2004).

In 2007, the Dutch government announced another limited amnesty, this time targeting former asylum seekers. Migrants who had applied for asylum prior to April 2001 and could prove they had stayed in the Netherlands even though their asylum was rejected, or who had not yet been rejected, could apply. In June 2009, 27,700 persons were legalised.\(^9\) This amnesty coincided with my fieldwork in the Netherlands. I interviewed migrants who had not applied and were sure they would not do so in the future because they did not meet the criteria, for example, because they had never applied for asylum. I also interviewed irregular migrants who had applied, but were still waiting for the final decision at the time of the interview.

With each application for regularisation, be it a general amnesty or an individual application, there are so-called ‘contra-indications’ that stipulate cases in which irregular migrants should be rejected even if they meet the criteria. These relate to migrants who have been involved in crime and sentenced to jail time. Furthermore, migrants who have been caught using false identity papers or providing a false name are denied regularisation. In addition, irregular migrants are rejected if they have left the country, even for a short period, for example, to visit family in Germany. Similar contra-indications apply in Belgium and the Netherlands. These provide irregular migrants with a strong incentive to abide by the law and to remain within the boundaries of the country if they ever want to have a chance of regularisation.

In both Belgium and the Netherlands, it is very difficult to become legalised under the individual regularisation procedure. General amnesties

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Irregular Migrants in Belgium and the Netherlands therefore seem to provide the best chances of regularisation. Both countries have offered such possibilities to asylum seekers as well as to economic migrants. However, there is little hope for future irregular migrants to achieve legalisation through these means, as Europe is in the process of formulating laws against national regularisation campaigns (Broeders 2009). Perhaps the best bet, therefore, continues to be to marriage.

4.6 Research context: Belgium and the Netherlands

It has become clear that Belgium and the Netherlands are suitable countries for my research objectives. Both countries experienced labour migration after World War II, had large numbers of asylum seekers in the 1990s, and had substantial migration resulting from former colonial ties during different periods. These are also countries where diversity is expected to be present. Moreover, owing to their geographical location, these countries do not experience large shares of migration stemming from neighbouring countries.

Belgium and the Netherlands have both witnessed shifts in policies that are common to the European context. Whereas policies to combat irregular migration were, in the past, focused on guarding the external boundaries of the nation-state, they have increasingly turned inwards. Measures of internal control are changing as well. A paradigm shift is taking place in which policies of internal control aimed at exclusion are being replaced by policies targeting the identification and expulsion of irregular migrants.

While Belgium and the Netherlands have stepped up their efforts to exclude, identify and expel irregular migrants, they have also had to ensure basic migrants' rights, rooted in supra-national agreements. Furthermore, over the years both states have provided several ways for irregular migrants to legalise their status. It therefore appears that policies in Belgium and the Netherlands both exclude and include irregular migrants, thereby creating both opportunities and constraints. The room for irregular migrants to manoeuvre created by these policies seems to be in constant flux as a result of the many changes in policies and their implementation, partly in response to irregular migrants' actions to circumvent policies, and also because lawyers and human rights activists continuously battle with governments to create space.

This constantly changing environment in which my respondents found themselves made it difficult for me to determine if specific policy measures had certain effects, which is why I did not aim to do so. I already discussed
the main reasons for my reluctance to engage in comparative efforts (chapter 2). In addition, a gap appears to exist between formal policies and their practical implementation. One would therefore have to study not only formal policies, but also analyse how these are implemented (see Van der Leun 2003b). This is a complicated task given that implementation practices differ at the local level as well. Therefore many more than just two relevant policy implementation contexts can be discerned. Examining the effects of policy practices within all of these local contexts is a task that would require much more than analysis of the interviews I conducted with organisations.

Furthermore, even though the lives of my respondents are situated in different policy contexts, these contexts do not mechanically constrain or enforce their actions. Rather, irregular migrants react to opportunities and constraints in different ways. This chapter sketched the context in which my respondents’ aspirations took shape. The following chapters analyse the interaction between irregular migrants and the context in which they live insofar as the context affects respondents’ aspirations or their incorporation and transnational activities.