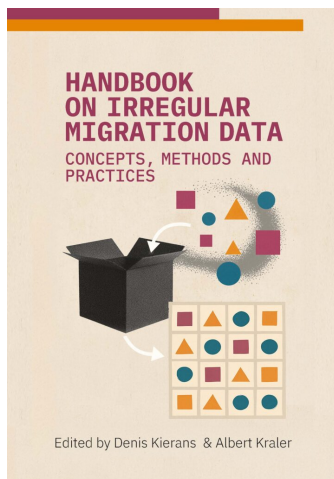




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Box 11.1: GDPR and the limits of data access

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There are five challenges that limit the effective use of irregular migration data.

Challenge 1: Gaps in data availability

Selective and incomplete data are one of the main challenges for stakeholders seeking to use information on irregular migration. While data are predominantly available on rejected asylum claims and irregular border crossings, it lacks on other routes into irregularity (e.g., visa overstaying and being born into irregularity), secondary movements, sociodemographic characteristics, and longitudinal trends.

This is caused by:

1. A mismatch in priorities between those who collect data and those who use it. Most data on irregular migration are gathered as a byproduct of operational activities (e.g., border controls), and not to improve the broader evidence-base.
2. Practical obstacles, including irregular migrants underreporting crimes and abuse due to fear of deportation, and service providers or NGOs not registering migration status to prevent data-abuse and a chilling effect on migrants with irregular status seeking support.

Challenge 2: Data quality – ambiguous definitions and limited transparency

Even when data exists, its use is often hampered by unclear definitions and limited documentation, making it difficult to interpret or compare effectively.

- **Inconsistent definitions:** There is no universally accepted definition of irregular migration, and related terms like “undocumented” or “overstayer” are used inconsistently across contexts, reducing comparability and clarity.
- **Lack of transparency:** Critical details about how data is collected, what it measures, or how it should be interpreted are often missing or buried in annexes, preventing data users to assess quality or limitations. Inconsistent methods, outdated figures, and missing contextual details can further reduce the significance of existing datasets.

Challenge 3: Lack of data literacy

Even when data is available, it is not always used effectively. Limited data literacy among policymakers and a lack of shared language with data producers can lead to misinterpretation or mistrust. As a result, relevant data may be ignored or dismissed, reducing its potential to inform sound decision-making.

Challenge 4: Limited access – legal, technical and institutional barriers

Access to irregular migration data is often hindered by unclear legal regulations, leading some stakeholders to over- and misinterpret the guidelines set out in frameworks such as the EU General Data Protection Regulation (GDPR).

Box 11.1: GDPR and the limits of data access

Adèle Appriou, Jasmijn Slootjes and Ravenna Sohst

Legal uncertainty surrounding the GDPR – the main legal framework governing the collection, use, and protection of personal data in the EU – often creates barriers to the sharing and use of irregular migration data. While the GDPR is essential for safeguarding individuals’ rights, it is not always clear how its provisions apply in specific contexts. In the absence of legal clarity, many authorities and organisations adopt a precautionary approach, limiting or avoiding data sharing altogether to reduce the perceived risk of noncompliance.

At the same time, insufficient adherence to data protection principles can result in rights violations. For instance, research by the EU Agency for Fundamental Rights has found that personal data collected during labour inspections are frequently shared with immigration enforcement authorities, despite GDPR requirements that such data should be used transparently and only for clearly defined purposes. This contravenes the principle of purpose limitation, which

prohibits the use of personal data for objectives beyond those originally specified. When these boundaries are not respected, it can erode trust, deter migrants from seeking protection or services, and ultimately undermine the effectiveness of policies intended to protect vulnerable individuals.

The example of the GDPR underscores the need for clear, practical guidance on lawful data sharing, robust privacy protections, and frameworks that both facilitate responsible data use and uphold fundamental rights.

Technical barriers, such as limited interoperability between databases, and practical constraints including limited resources, staffing, and weak institutional ties between users and producers can further complicate access. In many cases, data sharing is ad-hoc and driven more by trusted relationships and political will than by established protocols or transparent collaboration.

Challenge 5: Data non-use and underuse

Even if accessible, data isn't always used to inform policymaking due to:

- **Limited awareness:** Data users, especially at local levels, may be unaware of existing data sources.
- **Perceived irrelevance:** Data may be seen as too outdated, too aggregated, and overall, not optimised for the specific needs of potential users.

- **Lack of trust:** Concerns about reliability, political influence, selective reporting, and opaque methodologies can fuel mistrust and lead to the dismissal of available data.
- **Concerns about impact and control:** Data producers may limit dissemination out of concern that information could be misused, misinterpreted, or worsen migrants' vulnerability, especially in sensitive political contexts. Without clear safeguards or control over secondary use, valuable data may remain unpublished or overlooked.

These five challenges, ranging from availability and access to trust and interpretation, can create significant barriers to the meaningful use of irregular migration data. Addressing them is essential for promoting evidence-informed policies that are more inclusive, effective, and transparent.

