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Illegal employment of third-country nationals: 2017-2022 situation analysis

European Migration
Network Study

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Explanatory note

This study was prepared on the basis of national contributions from [21] EMN NCPs (AT, BE, BG, CY, CZ, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, PL, SE, SI, SK) collected via a Common Template developed by the EMN NCPs to ensure, to the extent possible, comparability. Of note, no EMN Observer Countries contributed to the study. The information contained in this study refers to the situation in the abovementioned EMN Member Countries up to December 2022.

National contributions were largely based on desk research of existing legislation and policy documents, reports, academic literature, internet resources, reports and information from national authorities rather than primary research. Statistics were sourced from Eurostat, national authorities and other (national) databases.

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For more information

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LIST OF DEFINITIONS

The study uses the following definitions, which – unless otherwise stated – are based on the EMN Asylum and Migration Glossary.¹

Term	Definition
Illegal employment	Economic activity carried out in violation of provisions set by legislation.
Illegal employment of a legally staying third-country national	Employment of a legally staying third-country national working outside the conditions of their residence permit and/or without a permission to work which is subject to each EU Member State's national law.
Illegal employment of an illegally staying third-country national	Employment of an irregularly staying third-country national.
Irregular stay²	The presence on the territory of an EU Member State of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence in that EU Member State.
Informal economy	All economic activities by workers and economic units that are - in law or in practice - not covered or insufficiently covered by formal arrangements.
Undeclared work	Any paid activities that are lawful as regards their nature, but not declared to public authorities, taking into account differences in the regulatory systems of the Member States. ³
Platform work	Any work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service. ⁴
Social dumping	The practice whereby workers are given pay and/or working and living conditions which are sub-standard compared to those specified by law or collective agreements in the relevant labour market, or otherwise prevalent there.

1 European Migration Network (EMN), 'EMN Glossary', n.d., https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en, last accessed on 31 January 2024.

2 While the term 'illegal employment of an illegally staying third-country national' is directly taken from the Employers Sanctions Directive (2009/52/EC), the European Commission now prefers the term 'irregular stay' as per the Return Directive (2008/115/EC), https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/irregular-stay_en, last accessed on 21 March, 2024.

3 European Commission, 'Undeclared work', n.d., <https://ec.europa.eu/social/main.jsp?catId=1298&langId=en>, last accessed on 25 September 2024.

4 European Commission, Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, COM(2021) 762, Article 2(2), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0762>, last accessed on 6 July 2024.

EXECUTIVE SUMMARY



KEY POINTS TO NOTE

- Preventing and tackling the illegal employment of third-country nationals remains a **high political priority** across European Migration Network (EMN) Member Countries. Most have introduced significant legislative reforms since 2017, primarily focusing on sanctions for employers. In the area of prevention, however, most EMN Member Countries maintain the same or similar measures and incentives for employers as in 2017.
- The illegal employment of third-country nationals continues to **spark national debates** across EMN Member Countries, particularly on its societal impact and the need for protection and regularisation of workers. These discussions have intensified due to the **effects of the COVID-19 pandemic and Russia's war of aggression against Ukraine**, bringing greater focus to issues of equality, workers' rights, and vulnerabilities.
- **Notable developments in labour inspection activities** aim to identify the illegal employment of third-country nationals. Six EMN Member Countries have increased their annual general labour inspections, while others report identifying more infringements and expanding their inspection workforce. Four EMN Member Countries specifically monitor instances of illegal employment of third-country nationals identified during inspections.
- Small to medium-sized enterprises (SMEs) in sectors such as construction, accommodation, food services, manufacturing, agriculture, forestry, and fishing continue to be the most prevalent employers in the illegal employment of third-country nationals. Emerging sectors at risk include beauty and wellness, delivery services, security services, event management, and demolition work.
- EMN Member Countries have **enhanced domestic and international cooperation** to tackle illegal employment of third-country nationals. Since 2017, many countries have introduced or enhanced existing schemes to improve collaboration between various agencies involved in prevention and enforcement efforts. Most EMN Member Countries increasingly engage in cross-border cooperation, using new initiatives (e.g. the European Labour Authority (ELA) and its European Platform tackling undeclared work since 2016) and existing initiatives (e.g. through the International Labour Organization (ILO)).
- **Outcomes for third-country nationals** detected working illegally vary depending on their residence status and whether they have or ever had a work permit. Outcomes range from withdrawal and rejection of renewal of residence permits, return decisions and fines. However, if the individual is found to be a victim of exploitation or trafficking in human beings, most EMN Member States activate specific procedures with different outcomes, such as temporary residence permits.



SCOPE AND AIMS OF THE STUDY

This EMN study documents the illegal employment of third-country nationals in EMN Member Countries between 2017-2022, building on the earlier EMN study until 2017.⁵ It includes an up-to-date analysis of key legislative and policy frameworks and practices to prevent, identify and tackle the illegal employment of third-country nationals, including beneficiaries of temporary protection (BoTP). It also provides examples of challenges and good practices.

The study classifies third-country nationals engaged in illegal employment into three main groups: those legally residing but working undeclared; those legally residing but violating the terms of their residence or work permit; and those irregularly staying and working in the country. It also considers cases of illegal self-employment, notably in platform work, which can fit into any of these categories.

⁵ European Migration Network (EMN), 'Illegal Employment of Third-Country Nationals in the European Union - EMN Synthesis Report', September 2017, https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf, last accessed on 26 September 2024.

CONTEXT

While employment policy remains the responsibility of European Union (EU) Member States, since the early 2000s EU strategic policies and legislative documents have guided efforts to combat the illegal employment of third-country nationals. Notably, the **Employers Sanctions Directive** (2009/52/EC)⁶ prohibits the employment of irregularly staying third-country nationals and sets minimum standards for sanctions and measures against employers who violate this rule, as well as other Directives on legal migration, such as the Seasonal Workers Directive (2014/36/EU), which foresees that Member States shall provide for sanctions against employers who have not

fulfilled their obligations under this Directive, including – in case of serious breach – their exclusion from employing seasonal workers. Other relevant EU policy instruments include the **EU Action Plans against Migrant Smuggling** (both the 2015–2020 and 2021–2025 documents), which outline the Commission’s role in setting targets for annual inspections in the most vulnerable economic sectors, and the **European Platform tackling undeclared work**, established in 2016, which aims to enhance cooperation, share best practices, and establish common principles for inspections across the EU.

NATIONAL LEGAL AND POLICY FRAMEWORK AND PRACTICES

Tackling illegal employment of third-country nationals remains a policy priority among EMN Member Countries.⁷ This involves prioritising key areas such as identifying irregularly staying and unlawfully employed third-country individuals,⁸ setting specific targets for investigating illegal employment,⁹ and creating suitable conditions for legal pathways for these individuals.¹⁰ Another common priority is improving processes for the return of irregularly staying third-country nationals.¹¹

Illegal employment of third-country nationals continues to spark national debates, mainly focusing on its societal impact, protection and regularisation of workers, sectors particularly affected, and the challenges in detecting and resolving cases.¹² The COVID-19 pandemic and Russia’s war of aggression against Ukraine heightened these debates, emphasising concerns about equality, workers’ rights, protections, and vulnerabilities.¹³ For instance, the pandemic underscored the increased vulnerability of platform and gig workers¹⁴ in respect of labour and social law issues,¹⁵ while BoTP faced heightened risks of undeclared work.¹⁶ In many EMN Member Countries, the issue

of addressing the illegal employment of third-country nationals is discussed as part of broader migration policy themes.¹⁷

Most EMN Member Countries implemented¹⁸ legislative, policy or practical changes during the reporting period, with further planned changes¹⁹ beyond the reporting period. Most implemented legislative changes,²⁰ primarily to set out sanctions and fines for employers²¹ and in one case for third-country nationals²², as well as to better implement EU law²³ (e.g. for Belgium this concerned finalising the transposition of the Employers Sanctions Directive (2009/52/EC) while other EMN Member Countries this meant transposing other relevant EU legislation in the field, such as Directive 2018/957/EU on the posting of workers). EMN Member Countries also introduced policy changes²⁴ to address trafficking in human beings for the purpose of labour exploitation²⁵ and enhance investigations into illegal employment.²⁶ Since 2017, practical changes have centred on raising awareness,²⁷ increasing inspections,²⁸ recruiting and training staff,²⁹ and fostering initiatives for internal and cross-border cooperation.³⁰

6 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2009, p. 4, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0052&from=EN>, last accessed on 14 April 2023. Ireland does not participate in this Directive.

7 AT, BE, BG, CY, CZ, EE, EL, FI, FR, HR, HU, IT, LT, LU, NL, PL, SE, SI, SK.

8 AT, CY, FR, IT, SK.

9 BE, CY, EL, FR, SK.

10 FR, IE, LU.

11 BG, HR, SI.

12 AT, BE, BG, CY, CZ, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, SE, SI, SK.

13 AT, ES, IE, LU, SK.

14 An economy in which digital technologies enable teams to be assembled around a given project – and often across borders – while platforms seamlessly connect buyers with sellers (European Political Strategy Centre, ‘The Future of Work: Skills and Resilience for a World of Change’, 10 June 2016, <https://op.europa.eu/en/publication-detail/-/publication/5236ecf2-ac93-11e6-aab7-01aa75ed71a1>, last accessed on 25 September 2024).

15 AT, IE.

16 CZ, ES, LT, SE, SK.

17 CY, CZ, EL, ES, FI, LT, LV, SK.

18 AT, BE, BG, CY, CZ, EE, EL, FI, FR, HR, IE, IT, LT, LU, LV, NL, PL, SE, SK.

19 AT, BE, BG, CY, EE, EL, FI, FR, IE, IT, LT, LU, LV, NL, PL, SE.

20 AT, BE, BG, CY, CZ, EE, EL, FI, FR, IE, IT, LT, LV, NL, PL, SE, SK.

21 AT (minor legal amendments), BG, CY, EE, FR, IT, LV, PL, SE.

22 CZ.

23 BE, BG, EL, FR, IE, IT, SK.

24 BE, CY, EE, FI, FR, IE, IT, NL, SE.

25 FI, FR, IT, NL.

26 BE, CY, FR, LT.

27 BE, BG, CY, EE, FI, IE, NL, LV.

28 BE, CY, CZ, EL, LU (legal changes in 2023 are expected to make the sanctioning of employers more efficient), NL, SE.

29 BE, FI, FR, IE, LU.

30 CY, EE, EL, FI, FR, IE, IT, LT, LU, LV, NL, SI, SK.



PREVENTIVE MEASURES

Most EMN Member Countries³¹ regularly identify and monitor high-risk sectors for illegal employment of third-country nationals. Almost all EMN Member Countries³² have conducted new risk assessments to obtain the latest information on sectors where illegal employment of third-country nationals is prevalent.

These efforts target sectors typically characterised by low-skilled labour-intensive work with a long-standing record of being at risk for undeclared work, such as construction, accommodation and food services, manufacturing, agriculture, forestry, and fishing, as well as emerging areas of concern, such as beauty and wellness,³³ delivery services,³⁴ garage and motor vehicle industry,³⁵ security services,³⁶ event management³⁷ and demolition work.³⁸ Small companies were most prevalent among employers of third-country nationals working illegally, followed by medium-sized companies, particularly in sectors that primarily employ unskilled and low-skilled labour within industries with a long-term history of engaging in undeclared work.

Most EMN Member Countries maintain the same or similar preventive measures and incentives for employers and employees as pre-2017. Preventive measures targeting employers include awareness-raising,³⁹ mandatory obligation to notify authorities when employing third-country nationals,⁴⁰ lists of unreliable employees,⁴¹ or blacklisted employers.⁴² Two EMN Member Countries have introduced campaigns and inspections targeting employers on the employment conditions of persons entitled to temporary protection fleeing Russia's war of aggression against Ukraine.⁴³ Preventive measures targeting employees primarily involve information campaigns,⁴⁴ with seven countries⁴⁵ providing targeted information campaigns for BoTPs and people from Ukraine entitled to temporary protection.

Key challenges in preventive measures include difficulties with monitoring and inspections,⁴⁶ language barriers in communicating rights and obligations,⁴⁷ and administrative obstacles,⁴⁸ including data protection issues.⁴⁹



IDENTIFICATION OF ILLEGAL EMPLOYMENT OF THIRD-COUNTRY NATIONALS

Most EMN Member Countries reported progress in their efforts to reduce illegal employment cases by enhancing their administrative capacities to identify such cases.⁵⁰

All EMN Member Countries carried out on-site inspections to identify illegally employed third-country nationals in 2017-2022, with 16 undertaking coordinated joint inspections between their labour inspectorates and other competent national authorities.⁵¹ Since 2017, the number of annual general labour inspections increased in six EMN Member Countries⁵² and decreased in another seven.⁵³ No clear trend could be identified in the remainder. Four EMN

Member Countries⁵⁴ conducted targeted inspections on the illegal employment of third-country nationals from 2017-2022, with inspections decreasing in two countries⁵⁵ and increasing in two.⁵⁶ In three cases, inspections targeting third-country nationals make up 10% of all annual inspections, on average.⁵⁷

EMN Member Countries have introduced new methods to identify unlawful employment of third-country nationals since 2017, including common databases and information exchange practices,⁵⁸ better use of insights from previous inspections and studies,⁵⁹ and hotlines and online platforms for complaints.⁶⁰

31 Only EL and NL monitor all sectors rather than solely priority sectors. LU also reports that all sectors are monitored, but illegal employment is identified more often in construction and hospitality restaurant and catering (HORECA).

32 HR has not conducted any new risk assessments since 2017.

33 FI.

34 AT, FI.

35 FI.

36 AT.

37 AT.

38 AT.

39 BE, CY, CZ, EE, EL, FI, FR, HU, IE, IT, LT, LU, LV, NL, SK.

40 AT, BG, LT, LU, LV, NL, SK.

41 BG.

42 FR, SK.

43 CZ, LT.

44 AT, BE, BG, CY, CZ, EE, EL, IE, LT, LU, LV, NL, SE, SI, SK.

45 BG, BE, FI, IE, LT, LU, PL.

46 AT, BE, CZ, FI, FR, EL, IE, LT, LV, PL, FI.

47 BE, CY, FI, FR, HR, HU, LU, LV.

48 LV reported administrative obstacles relating to posted workers.

49 BE, LU, SE.

50 BE, BG, CY, CZ, EE, EL, FI, FR, HR, IE, IT, LT, LU, LV, PL, SE, SI.

51 BE, BG, CY, EE, EL, FI, FR, HU, IE, IT, LT, LU, LV, PL, SE, SK.

52 BE, BG, CY, EL, LU, SE.

53 CZ, HR, HU, IT, LT, LV, PL.

54 EE, FI, LV, PL.

55 EE, LV.

56 FI, PL.

57 FI, LV, PL.

58 BE, BG, EE, IE, LU.

59 CY, HU, SI.

60 BE, BG, CY, EL, FI, IE.

Since 2017, EMN Member Countries have developed or improved schemes promoting inter-agency cooperation.⁶¹ While labour inspectorates typically lead the identification of illegally employed third-country nationals through inspections,⁶² they often collaborate with other authorities, such as immigration and asylum services,⁶³ financial and tax authorities,⁶⁴ law enforcement and border control,⁶⁵ social security and insurance agencies,⁶⁶ and occupational safety and health (OSH) authorities.⁶⁷ Most EMN Member Countries also engage in international and EU initiatives to combat illegal employment of third-country nationals,⁶⁸

actively collaborating with the ELA and its platform for tackling undeclared work.⁶⁹

EMN Member Countries face several key challenges in identifying the unlawful employment of third-country nationals: communication and trust due to language barriers⁷⁰ and fear of consequences by the third-country nationals concerned;⁷¹ identity fraud and document falsification risks (also rising on digital platforms);⁷² detecting labour offences in seasonal work sectors;⁷³ and limited resources for monitoring and identifying illegal employment of foreign workers.⁷⁴

SANCTIONS FOR EMPLOYERS

EMN Member Countries have introduced various changes to sanctions for employers, including increased financial penalties,⁷⁵ prison sentences for serious offences,⁷⁶ clarified legal responsibility for labour offences,⁷⁷ and exclusion of offending employers from public procurement.⁷⁸

EMN Member Countries face challenges in sanctioning offending employers, including lack of testimonies from third-country nationals,⁷⁹ difficulties in obtaining sufficient proof of illegal employment for the imposition of sanctions,⁸⁰ cross-border issues with subcontractors and letterbox companies,⁸¹ coordination gaps between authorities,⁸² and inadequate sanctions to deter illegal employment.⁸³

OUTCOMES AND SUPPORT FOR THIRD-COUNTRY NATIONALS

The types of outcomes for employees from third countries engaged in illegal employment vary depending on their resident status and/or employment status:

- For third-country nationals with a residence and work permit, in the majority of EMN Member Countries⁸⁴ the outcomes may include withdrawal, cancellation or revocation of their residence permit and a consequential return decision.
- In the majority of EMN Member Countries, third-country nationals with a residence permit but no work permit face outcomes such as withdrawal or rejection of renewal of residence permit,⁸⁵ issuance of a return decision,⁸⁶ or a fine⁸⁷ for either the employer or the illegal worker.
- In most EMN Member Countries,⁸⁸ a return decision (and in some cases arrest and removal from the national territory) is the most common outcome for

61 BE, BG, EE, FR, IE, IT, LT, LV, NL, SE.

62 BE, BG, CZ, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, NL, PL, SI, SE, SK (in cooperation with foreign police).

63 BE, BG, CY, IE, IT, NL, PL, SE, SK.

64 EE, EL, FI, FR, HU, IE, LU, LV, SE, SI.

65 BG, EE, FI, HR, IE, IT, LU, LV, PL, SE.

66 BE, EL, IE, PL.

67 CZ, FI, HU.

68 AT, BE, BG, CY, CZ, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, PL, SE, SI, SK.

69 The European Platform tackling undeclared work is an ELA permanent working group to enhance cooperation between EU countries and key actors in fighting undeclared work, <https://www.ela.europa.eu/en/undeclared-work>, last accessed on 22 October 2023.

70 BE, BG, CY, FI, LT, LU, LV, SK.

71 AT, FI, LU.

72 AT, BE, BG, FR, FI, HU, SE.

73 BE, BG, FI, IE.

74 CY, IE, NL.

75 BG, CY, EE, FR, IT, LT, LU (reported changes in 2023, i.e. after reporting period), NL, PL, SE, SI.

76 BE, CY, FR, IE, LU (reported changes in 2023, i.e. after reporting period).

77 EE, FI, LT, LV.

78 EE, FR, HU, LT, SI.

79 AT, BE, FI, IE, IT, LT, LU, LV, SE.

80 BE, CZ, FI, IE, LT, LV, SE, SK.

81 **Letterbox companies:** Although the term 'letterbox company' is commonly used across the EU and worldwide, there is no single common and agreed terminology or definition. Letterbox companies are understood as those companies that are incorporated in one Member State but do not perform any activity in that Member State or anywhere else. European Commission: Directorate-General for Justice and Consumers, Morel, S., Mathonet, C., Gounev, P., De Wispelaere, F. et al., 'Letterbox companies – Overview of the phenomenon and existing measures – Executive summary'. 2021, <https://data.europa.eu/doi/10.2838/095339>, last accessed on 22 October 2024. AT, BE, EE, FI, LV, SK.

82 FI, HR, LU, SE.

83 FI, IE, LU, PL.

84 AT, BE, BG, CY, CZ, EE, FI, FR, HR, HU, IE, IT, LU, LV, NL, PL, SE, SI, SK.

85 FR, LU, LV, NL, SE.

86 AT, CZ, EE, SL.

87 EL, FI, SI.

88 AT, BE, CY, FI, FR, HU, IE, IT, LU, LV, NL, SE, SI.

third-country nationals without a residence and/or work permit.

Where a third-country national is identified as a victim of exploitation or trafficking in human beings, most EMN Member Countries⁸⁹ activate specific procedures,⁹⁰ including granting a temporary residence permit and option to initiate or automatically trigger an application for international protection.

In most EMN Member Countries,⁹¹ the procedures for third-country nationals to lodge a complaint against employers are the same, regardless of residence status. Some⁹² offer additional support through associations, trade unions, and workers' representatives. All responding EMN Member Countries allow third-country nationals to choose whether to file a complaint independently or with third-party support.

Key challenges in providing support for third-country nationals involved in illegal employment include: lack of language proficiency⁹³ or knowledge of rights,⁹⁴ fear of

consequences,⁹⁵ difficulty locating employer,⁹⁶ preference for ongoing income over back payment of due wages,⁹⁷ lack of trust in authorities,⁹⁸ lengthy investigations and judicial proceedings,⁹⁹ limited available evidence to lodge a complaint,¹⁰⁰ and lack of lawyers/specialised personnel working pro bono.¹⁰¹

All responding EMN Member Countries use multilingual information campaigns, hotlines and helpdesks to inform third-country nationals of their employment rights, regardless of their employment or resident status. Detailed information on the rightful labour conditions and standards are provided during labour inspections in all EMN Member Countries. Some¹⁰² collaborate with third parties (e.g. non-governmental organisations (NGOs), trade unions) to share tailored information on employment, while others¹⁰³ pay special attention to disseminating employment rights information to BoTPs displaced by Russia's war of aggression against Ukraine. Nevertheless, reaching illegally employed third-country workers, especially those irregularly staying, remains a challenge.¹⁰⁴

89 AT, BE, BG, CY, FI, FR, HU, HR, IE, IT, LU, LV, NL, SE, SK.

90 See European Migration Network (EMN), 'Third-country national victims of trafficking in human beings: detection, identification and protection', 2022, https://home-affairs.ec.europa.eu/whats-new/publications/emn-study-third-country-national-victims-trafficking-human-beings-detection-identification-and_en, last accessed on 22 October 2024.

91 All except IE, SE.

92 BE, FI, LU, SE.

93 BE, FR, IE, LU, LV, SK.

94 BE, FI, IE, LU, LV.

95 AT, BE, FI, FR, IT, LU, LV.

96 AT, IE, LV, PL.

97 AT, LU, LV.

98 BE, LU.

99 BE.

100 BE.

101 BE.

102 AT, FI, FR, IE, LU.

103 BG, FI, LT, LU, LV, PL.

104 FI, IE, LU.

1. BACKGROUND AND RATIONALE FOR THE STUDY

1.1. INTRODUCTION

Preventing illegal employment is a policy objective and priority for the EU and its Member States, as the possibility of working in the EU without the required legal status is considered one of the key drivers of irregular migration into the Union.¹⁰⁵ For the purposes of this study, in the EU context, illegal employment¹⁰⁶ covers both the illegal employment of third-country nationals irregularly staying on the territory of an EU Member State and legally staying third-country nationals who are working undeclared or outside the conditions of their residence permit and/or work permit.

The European Commission's 2007 Communication 'Stepping up the fight against undeclared work', which preceded the Employer Sanctions Directive 2009/52, states that any form of illegal employment of nationals or third-country nationals in the EU Member States decreases tax revenue, undermines the financing of social security systems, and distorts fair competition between firms.¹⁰⁷ In addition to the negative economic impact, employers who engage in illegal employment practices often disregard minimum standards of working conditions, employment and safety regulations and their rights. Such illegal employment is associated with precarious conditions and a greater likelihood of worker exploitation.

Illegal employment is a complex phenomenon affecting several domains, including migration, employment, social policies, fiscal policy, and respect for individuals' rights. While the scale and occurrence of illegal employment

differs between private households, small, medium and large companies, and across economic sectors, it provides scope for employers willing to cut labour costs and circumvent rules to take advantage of workers ready to undertake low-skilled, low-paid jobs in labour-intensive sectors and in difficult and often precarious conditions.¹⁰⁸ Accordingly, the successful prevention of illegal employment of third-country nationals is at the intersection of employment, migration, and human rights.

In accordance with the Treaty on the Functioning of the European Union (TFEU)¹⁰⁹ Member States are primarily responsible for employment policy, while migration policy initiatives, including the prevention of irregular migration, is a competence shared between the EU and its Member States. In 2009, in an effort to tackle illegal employment and to increase coordination between Member States, the Employers Sanctions Directive (2009/52/EC) was agreed, based on a proposal by the European Commission.¹¹⁰ The Directive was designed to provide Member States with rules to step up action against the illegal employment of irregularly staying third-country nationals. The measures cover the prevention, detection and sanctioning of illegal employment, and seek both to deter employers from engaging in illegal employment and to protect irregularly staying third-country nationals against exploitative employers.

The need for joint action against illegal employment is reiterated in the 2015 European Agenda on Migration¹¹¹

105 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU action plan against migrant smuggling (2021-2025), 2021, p. 20, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0591>, last accessed on 14 April 2023.

106 European Migration Network (EMN), 'EMN Glossary, Version 9', n.d., https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/illegal-employment_en, last accessed on 8 March 2023.

107 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Stepping up the fight against undeclared work, 2007, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0628&from=EN>, last accessed on 8 March 2023. Ireland does not participate in this Directive.

108 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2021, p. 20, https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592_en_0.pdf, last accessed on 14 April 2023.

109 Treaty on the Functioning of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>, last accessed on 8 March 2023.

110 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2009, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0052>, last accessed on 8 March 2023. Ireland does not participate in this Directive.

111 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, a European Agenda on Migration, A European Agenda on Migration, 2015, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0240&from=EN>, last accessed on 8 March 2023.

and the 2020 European Commission's Pact on Migration and Asylum.¹¹² Both policy documents, together with the European Commission's 2021 Communication on the implementation of the Employers Sanctions Directive,¹¹³ emphasise the need to strengthen the effectiveness of the Directive and evaluate the need for future action. A 2017 EMN study concluded that the fight against the illegal employment of third-country nationals should include protective measures and risk assessments to improve the identification of illegal work.¹¹⁴ These suggest the need for a study providing systematic up-to-date analysis of measures, obstacles, as well as good practices to tackle the illegal employment of third-country nationals in EMN Member States.

The identification of illegal employment is concerning in the context of Russia's war of aggression against Ukraine. According to Eurostat data, slightly more than 4.1 million non-EU citizens who fled Ukraine on or after 24 February 2022 had temporary protection status in EU countries on 31 July 2024.¹¹⁵ Although BoTPs are granted access to the EU labour market, there is a risk that those displaced people will end up working undeclared or otherwise exploited. The European Commission's 2022 Communication on Guidance for access to the labour market, vocational education and training and adult learning of people fleeing Russia's war of aggression against Ukraine emphasises the need to ensure that BoTPs are not exploited and do not work in undeclared activities.¹¹⁶ It is important to collect information from EMN Member Countries on any such consequences for BoTP who fled Ukraine.



1.2. EU LEGAL AND POLICY CONTEXT

Although the implementation of employment policy is in the purview of the Member States, EU institutions formulate strategic policy documents to guide their actions. Adopted in 2003, the Council resolution on transforming undeclared work into regular employment stressed the need to strengthen the prevention of illegal employment, improve the capacity of national authorities responsible for preventing illegal employment practices, and increase cooperation between social partners.¹¹⁷ In 2006, the European Commission's Green Paper on modernising labour law to meet the challenges of the 21st century identified undeclared work as a key challenge, understood as an infringement of well-functioning and adaptable labour markets that distorted economic competition.¹¹⁸ A year later, the European Commission's Communication on stepping up the fight against undeclared work urged Member States to take a more systematic approach to illegal employment and adopt better evidence-based mechanisms.¹¹⁹ In 2009, the EU adopted the Employers Sanctions Directive (2009/52/EC), which prohibits and sanctions the employment of irregularly

staying third-country nationals.¹²⁰ This is complemented by Directives on legal migration, such as the Seasonal Workers Directive (2014/36/EU) which foresees that Member States shall provide for sanctions against employers who have not fulfilled their obligations under this Directive, including the exclusion of employers who are in serious breach of their obligations under this Directive from employing seasonal workers. Those sanctions shall be effective, proportionate and dissuasive (Article 17).

The EU Action Plan against Migrant Smuggling 2015-2020 states that, together with Member States, the European Commission should identify targets for the number of inspections to be carried out every year in economic sectors most exposed to the illegal employment of irregular migrants, such as construction, agriculture and horticulture, housework/cleaning, and catering and hospitality services.¹²¹ In 2016, the EU introduced the European Platform tackling undeclared work to improve cooperation, share best practices, and identify common principles for inspections between labour inspectorates

112 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020, https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF, last accessed on 8 March 2023.

113 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2021, https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592_en_0.pdf, last accessed on 8 March 2023.

114 EMN study on the Illegal Employment of Third-Country Nationals in the EU (2017), p. 45, https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf, last accessed on 8 March 2023.

115 Eurostat, 'Temporary protection for persons fleeing Ukraine - monthly statistics', 2023, https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Temporary_protection_for_persons_fleeing_Ukraine_-_monthly_statistics#Who_are_the_people_fleeing_Ukraine_and_receiving_temporary_protection.3f, last accessed on 31 January 2024.

116 Communication from the Commission on Guidance for access to the labour market, vocational education and training and adult learning of people fleeing Russia's war of aggression against Ukraine 2022/C 233/01, 2022, p. 3, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0616\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0616(01)), last accessed on 25 May 2023.

117 Council resolution on transforming undeclared work into regular employment, 2003, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003G1029\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003G1029(01)&from=EN), last accessed on 13 April 2023.

118 European Commission, 'Green Paper: Modernising labour law to meet the challenges of the 21st century', 2003, pp. 14-15, [https://www.europarl.europa.eu/meetdocs/2004_2009/documents/com_com\(2006\)0708_/com_com\(2006\)0708_en.pdf](https://www.europarl.europa.eu/meetdocs/2004_2009/documents/com_com(2006)0708_/com_com(2006)0708_en.pdf), last accessed on 13 April 2023.

119 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Stepping up the fight against undeclared work, 2007, p. 10, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0628&from=EN>, last accessed on 13 April 2023.

120 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2009, p. 4, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0052&from=EN>, last accessed on 14 April 2023. Ireland does not participate in this Directive.

121 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Action Plan against migrant smuggling (2015-2020), 2015, p. 8, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0285&from=en>, last accessed on 14 April 2023.

and other enforcement authorities at Union level.¹²² While the Council Decision establishing the Platform does not differentiate between the nationalities of illegally employed workers, it recognises that the precarious status of some groups, such as third-country nationals, places them in a particularly vulnerable position.¹²³

Preventing exploitation and ensuring the protection of migrants is reiterated in the renewed EU Action Plan Against Migrant Smuggling 2021-2025,¹²⁴ which highlights that effective implementation of the Employers Sanctions Directive (2009/52/EC) is needed to deter irregular migration

and protect the rights of irregular migrant workers. The 2021 Communication on the application of the Employers Sanctions Directive, which was presented together with this renewed EU Action Plan, sets out the sanctioning of employers who hire irregular migrants with no right to stay. Other measures to achieve the goals of the Plan include effective mechanisms for recovering unpaid wages, lodging complaints and reporting labour exploitation, as well as effective inspections in the economic sectors most at risk of illegal employment.¹²⁵

1.3. STUDY AIMS AND SCOPE

This EMN study provides an overview of the illegal employment situation in the EU between 2017 and 2022. It aims to equip national and EU policymakers with a better understanding of the approaches adopted by EMN Member Countries in respect of illegal employment of third-country nationals. It also provides insights into the illegal employment of third-country nationals in the EU and affected sectors. Finally, it outlines challenges and good practices in preventing illegal employment between 2017 and 2022. The study aims to:

- Provide an overview of the situation of illegal employment of third-country nationals in EMN Member Countries, updating the 2017 EMN study on the illegal employment of third-country nationals in the EU;
- Gather insights into new developments in institutional and legislative frameworks to fight the illegal employment of third-country nationals in EMN Member Countries and possible areas of concern;
- Identify new measures used by EMN Member Countries to detect cases of illegal employment of third-country nationals and protect the rights of illegally employed third-country nationals;
- Share challenges and recent good practices on the prevention of illegal employment of third-country nationals.

The scope of this EMN study is the illegal employment of third-country nationals who are either legally or irregularly staying in the territory of an EMN Member Country. It examines three key categories:

- A third-country national legally staying in the country but illegally employed.
- A third-country national legally staying in the country but working outside the conditions of their residence/work permit.

- A third-country national irregularly staying in the country and working (which is automatically illegal employment in accordance with the Employers Sanctions Directive (2009/52/EC)).

The possibility for employers to take advantage of workers or to exploit them applies to all three categories. Nevertheless, the level of vulnerability of third-country nationals varies depending on their specific rights and conditions to reside and work.

The study also accounts for cases of illegal self-employment, specifically platform work, undertaken by third-country nationals, which can fall under all three categories. BoTPs are included in the scope of the study and can fall under the first or the second category. Applicants for international protection are excluded from the scope of the study, due to the diverging regulatory frameworks within which they access Member States' labour markets (see dedicated EMN study in 2022¹²⁶).

The study first examines the different stages of tackling illegal employment of third-country nationals, starting with preventive measures (section 3), including monitoring and risk assessments. It then looks at identification of illegal employment of third-country nationals and cooperation (section 4), sanctions for employers illegally hiring and exploiting third-country nationals (section 5), and outcomes for third-country nationals found to be working illegally in respect of their legal status, return decisions and protective measures (section 6).

122 Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work, 2016, p. 1, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0344&from=EN>, last accessed on 14 April 2023.

123 Ibid., p. 2.

124 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU action plan against migrant smuggling (2021-2025), 2021, https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-591_en_0.pdf, last accessed on 14 April 2023.

125 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2021, https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592_en_0.pdf, last accessed on 8 March 2023.

126 European Migration Network (EMN), 'Illegal employment of third-country nationals in the European Union - EMN Synthesis Report', September 2017, https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf, last accessed on 26 September 2024.



1.4. KEY QUESTIONS

The study asks several research questions:

1. What new national legal and policy changes on illegal employment of third-country nationals have been introduced in EMN Member Countries since 2017?
2. What new preventive measures and incentives are in place in the EMN Member Countries to mitigate the illegal employment of third-country nationals since 2017?
3. Have EMN Member Countries introduced any new initiatives to identify the illegal employment of third-country nationals since 2017?
4. What new sanctions for employers are in place in the EMN Member Countries since 2017, and what factors affect their implementation?
5. What possible outcomes have been introduced by EMN Member Countries for identified illegally employed third-country nationals since 2017?

2. CHANGES TO NATIONAL LEGAL AND POLICY FRAMEWORKS



2.1. ADDRESSING ILLEGAL EMPLOYMENT AS A NATIONAL PRIORITY

Preventing and tackling illegal employment of third-country nationals is an important long-term shared policy priority across the majority of EMN Member Countries.¹²⁷ 12 EMN Member Countries¹²⁸

integrate prevention of illegal employment into broader national plans targeting issues such as undeclared work, trafficking in human beings, and labour exploitation. Finland considers illegal employment a multifaceted issue with a broader societal impact, as it contributes to market disruption, tax revenue losses, and social insurance issues. Hungary's wider policy priority is to protect the labour market, with reducing illegal employment understood to contribute to a less problematic labour market.

To address illegal employment, five EMN Member Countries focus on identifying irregularly staying and unlawfully employed individuals,¹²⁹ another five set specific targets for investigating illegal employment, especially of third-country nationals,¹³⁰ and two created suitable conditions for legal pathways for third-country nationals.¹³¹ Three EMN Member Countries also seek to enhance processes for the return of irregularly staying third-country nationals.¹³²

In Ireland and Latvia, addressing illegal employment is not a national priority per se, but it is considered within a

broader context. While addressing illegal employment is not a standalone national priority, Ireland nevertheless focuses on regularising long-term undocumented migrants. The Programme for Government since 2020 prioritises new pathways for long-term undocumented people and their dependants. The Economic Migration Policy Unit acknowledges the importance of identifying and mitigating informal work for the effective functioning of the economy. In Latvia, the prevention of illegal employment of third-country nationals is not a national priority per se, with a wider focus on preventing irregular migration of third-country nationals and combating undeclared work.

Between 2017 and 2022, 12 EMN Member Countries introduced changes to more effectively address illegal employment of third-country nationals.¹³³ Ten EMN Member Countries¹³⁴ introduced legislative or policy changes or adopted action plans to combat illegal employment more effectively (see section 2.3). Six EMN Member Countries¹³⁵ have established interministerial authorities or working groups, highlighting the importance of collaborative efforts. In Sweden, the creation of a Delegation against work-related crime, as well as regional centres, reflects a society-wide approach to addressing illegal employment.



2.2. NATIONAL DEBATES ON ILLEGAL EMPLOYMENT

Since 2017, **illegal employment of third-country nationals has been the subject of national debates in nearly all reporting EMN Member Countries**, covering aspects such as societal impact, protection and regularisation of workers, sectors particularly affected, and the challenges of detecting and addressing cases.¹³⁶

The adoption of legislative acts or amendments to address illegal employment of third-country

nationals was a key debate in seven EMN Member Countries.¹³⁷ Bulgaria sought to address labour shortages through legislative amendments and advocacy by employers' organisations. Trade unions underlined the principal of equal treatment for third-country workers. During the pandemic, Italy adopted regularisation measures to counter illegal employment, address labour shortages, and prevent the spread of COVID-19.

127 AT, BE, BG, CY, CZ, EE, EL, FI, FR, HR, HU, IT, LT, LU, NL, PL, SE, SI, SK.

128 BE, BG, EL, FI, FR, HR, IT, LU, NL, SE, SI, SK.

129 AT, CY, FR, IT, SK.

130 BE, CY, EL, FR, SK.

131 FR, IE.

132 BG, HR, SI.

133 BE, CY, ES, FI, FR, IT, LT, NL, PL, SK, CZ, SE.

134 BE, CY, ES, FI, FR, IT, LT, NL, PL, SK.

135 CZ, ES, IT, LT, NL, SE.

136 AT, BE, BG, CY, CZ, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, SE, SI, SK.

137 BG, CY, EL, HR, HU, IT, LV, NL.

In eight EMN Member Countries, the issue of addressing the illegal employment of third-country nationals is discussed as part of **broader migration policy themes**.¹³⁸ For example, the Czech Republic discussed challenges linked to the arrival and integration delays of high numbers of BoTP. Estonia's debates ranged from immigration quotas to the impact of Russia's war of aggression against Ukraine on labour migration.

In six EMN Member Countries debates focused on **worker protection and social security, and the regularisation of undocumented third-country nationals**.¹³⁹ In Belgium, a protective social security system is sometimes conducive to the practice of social dumping. Employers often resort to the illegal posting of third-country nationals to circumvent high labour costs and social security contributions associated with the Belgian social security system. Finland's 2023 parliamentary elections prompted public debate on the importance of labour migration for the economy, leading to government measures to prevent labour exploitation and tackle the informal economy, including illegal employment. NGOs in Luxembourg advocated for regularisation campaigns, emphasising the vulnerability of undocumented third-country nationals. Ireland introduced a regularisation scheme in 2022, following a commitment from government and a public consultation in 2021. This one-off regularisation scheme was open to people who had been undocumented in the State continuously for four years, or three years if they had minor children. As of 3 July 2023, 4 617 of 6 548 applications were granted (70.5%). This led to positive changes, with regularised individuals having the potential to secure better jobs, improved pay and conditions.

In five EMN Member Countries debates also focused on the **social impact of illegal employment**, particularly in the context of the **COVID-19 pandemic** and geopolitical events including **Russia's war of aggression against Ukraine**, underscored issues of equality, worker rights, and vulnerability.¹⁴⁰ Debates during the pandemic highlighted concerns about unlawful employment of essential workers in critical sectors, including logistics,

manufacturing, seasonal and harvesting work, delivery work, and the cleaning sector (see Box 1). Debates also focused on **platform and gig workers**¹⁴¹ during the pandemic, particularly labour and social law issues.¹⁴² Media in Ireland reported on challenges faced by third-country nationals working in food delivery,¹⁴³ with some debate on bogus self-employment with consequences for the state such as lost revenue, and for the individual such as limited rights.¹⁴⁴

Five EMN Member Countries noted that **debates around illegal employment have intensified with the arrival of BoTPs from Ukraine** and their perceived vulnerability to illegal employment.¹⁴⁵ In Sweden, a recurring line of argument is that BoTPs are at particular risk of ending up in illegal employment due to the lack of support measures, challenges in accessing the labour market, and the low daily allowance they receive.¹⁴⁶ Similarly, concerns in Estonia and Lithuania mainly relate to their vulnerable employment position and the increased risk of being mistreated (lower wages, longer working hours, etc.).

Box 1: Debates in Austria on essential workers, including third-country nationals

Infection clusters in two mail distribution centres belonging to *Post Aktiengesellschaft* (AG) in spring 2020 brought to light the precarious employment conditions of migrant temporary workers, including increased overtime, poor hygiene standards, racism, and threats of dismissal for taking sick leave. Irregularities in the production of masks at Hygiene Austria (2021) led to further investigations, with allegations of unlawful employment and violations of labour and social law, primarily for refugee workers. In both cases it was found that employers had passed some of the responsibility for unlawful working conditions to subcontractors or temporary employment agencies.¹⁴⁷ Serious cases of **labour exploitation and deprivation of rights** among foreign seasonal and harvest workers also became public, particularly in relation to

138 CY, CZ, EL, ES, FI, LT, LV, SK.

139 BE, FI, FR, IE, IT, LU.

140 AT, ES, IE, LU, SK.

141 An economy in which digital technologies enable teams to be assembled around a given project – and often across borders – while platforms seamlessly connect buyers with sellers (European Political Strategy Centre, 'The future of work: Skills and resilience for a world of change', 10 June 2016, <https://op.europa.eu/en/publication-detail/-/publication/5236ecf2-ac93-11e6-aab7-01aa75ed71a1>, last accessed on 25 September 2024.

142 AT, IE.

143 RTÉ News, 'Deliveroo riders in Dublin protest over pay and conditions', <https://www.rte.ie/news/dublin/2021/0221/1198450-deliveroo/>, last accessed on 26 September 2024; The Irish Times, 'The owner just disappeared without paying me my earnings': Unregulated delivery riders face exploitation', <https://www.irishtimes.com/ireland/social-affairs/2023/09/17/the-owner-just-disappeared-without-paying-me-my-earnings-unregulated-delivery-riders-face-exploitation/>, last accessed on 26 September 2024.

144 Houses of the Oireachtas, 'Dáil Éireann Debate - Industrial Action by Nurses and Midwives', 27 March 2019, <https://www.oireachtas.ie/en/debates/debate/dail/2019-03-27/20/>, last accessed on 26 September 2024.

145 CZ, ES, LT, SE, SK.

146 Dagens Nyheter, 'Ukrainare jagar lagligt arbete – erbjuds svartjobb', 2022, <https://www.dn.se/nyheter/ukrainare-jagar-lagligt-arbete-erbjuds-svartjobb/>, last accessed on 26 September 2024; Dagens Arena, 'Vårt mottagande av ukrainska flyktingar förtjänar kritik', 2023, <https://www.dagensarena.se/opinion/vart-mottagande-av-ukrainska-flyktingar-kritik/>, last accessed on 26 September 2024.

147 Birke, P. and Neuhauser, J., 'Migration und Prekarität in der Pandemie: Empirische Studien aus Deutschland und Österreich' (2023), *Arbeit*, 321 (3), p. 26, <https://www.degruyter.com/document/doi/10.1515/arbeit-2023-0002/html>, last accessed on 22 October 2024; Neuhauser, J., El-Roumy, M. and Wexenberger, Y., 'Als ich diese Halle betreten habe, war ich wieder im Irak. Migrantische Systemerhalter_innen bei Hygiene Austria und der Post AG' (2021), Chamber of Labour, Vienna, https://wien.arbeiterkammer.at/interessenvertretung/arbeitsmarkt/Studie_AK_Neuhauser_El-Roumy_Wexenberger_final.pdf, last accessed on 22 October 2024; Parliament of Austria, 'Anfrage der Abgeordneten Markus Koza und Meri Disoski, Freundinnen und Freunde, an den Bundesminister für Soziales, Gesundheit, Pflege und Konsumentenschutz betreffend Verdacht auf Schwarzarbeit und Sozialbetrug bei Hygiene Austria LP zu 5772/J XXVII' (2021), GP, https://www.parlament.gv.at/dokument/XXVII/J/5772/fname_932242.pdf, last accessed on 22 October 2024.

accommodation and a lack of hygiene standards.¹⁴⁸ Similarly, it emerged that third-country nationals were subject to unlawful working conditions while making Amazon deliveries or working in the cleaning industry during the COVID-19 pandemic.¹⁴⁹

In four EMN Member Countries debates considered the **challenges faced by authorities** in addressing abuses.¹⁵⁰ In Slovenia, a prominent case on labour violations for foreign workers was addressed by the Committee of the National Assembly of the Republic of Slovenia on Labour, Family, Social Affairs and Persons with Disabilities, prompting debates on coordinated action on inspections and cooperation between domestic and international authorities. Media debates in Sweden focused on specific sectors such as construction, hospitality or berry picking and authorities' efforts to combat work-related crime. Targeted workplace inspections in the construction sector

received particular attention. In the Netherlands, public debates on illegal employment and unfair labour conditions focused on abuses by temporary work agencies, violations of the Foreign Nationals Employment Act, and issues in specific sectors such as delivery services.

Economic sectors and activities most often mentioned in debates¹⁵¹ included construction,¹⁵² hospitality,¹⁵³ delivery services,¹⁵⁴ fisheries,¹⁵⁵ beauty salons,¹⁵⁶ agriculture/harvesting,¹⁵⁷ and domestic and/or cleaning services.¹⁵⁸ Debates typically referred to labour-intensive and low-skilled activities. In France, major sporting events such as the Rugby World Cup in 2023 and Paris Olympic Games in 2024 prompted intensified attention to labour conditions in construction sites. Inspection bodies focused on identifying illegal workers, especially in complex subcontracting situations.



2.3. RECENT OR PLANNED CHANGES IN LAW, POLICY AND PRACTICE

The prevention and fight against illegal employment remain a priority for EMN Member Countries, with the vast majority **implementing**¹⁵⁹ legislative, policy or practical changes since 2017 and **planned changes**¹⁶⁰ since 2022.

The large majority of EMN Member Countries implemented **legislative changes** during the reporting period.¹⁶¹ Seventeen EMN Member Countries¹⁶² implemented **practical changes** and almost half implemented **policy changes**.¹⁶³

In addition, the majority of EMN Member Countries plan to adopt new **legislative**¹⁶⁴ and **policy**¹⁶⁵ measures, with some also planning **practical changes**¹⁶⁶ to tackle the illegal employment of third-country nationals. These aim to

enhance detection and prevention of illegal employment, particularly in specific sectors.

Ireland implemented **overarching changes** that indirectly impact illegal employment, such as regularisation schemes to address the situation of undocumented third-country nationals.

Legislative changes

Legislative changes implemented between 2017 and 2022

Ten EMN Member Countries¹⁶⁷ reported legal amendments on **sanctions and fines**, usually increased penalties and fines for employers¹⁶⁸ and one EMN Member

148 Ebner, P., 'Austria - Annual Policy Report 2020', 2021, <https://www.emn.at/wp-content/uploads/2020/12/emn-annual-policy-report-austria-2020.pdf>, last accessed on 22 October 2024; Vienna Institute for Interantional Dialogue and Cooperation (VIDC) and International Organization for Migration (IOM) Austria, 'Arbeitsbedingungen in der Ernte – Zunahme von Ausbeutung und Menschenhandel im Zeichen von Corona?', 2020, <https://www.vidc.org/detail/arbeitsbedingungen-in-der-ernte-zunahme-von-ausbeutung-und-menschenhandel-im-zeichen-von-corona/>, last accessed on 22 October 2024. Media reports referred to affected migrants from EU Member States and third countries, especially from Southeastern Europe.

149 Kohlenberger, J., et al., 'Systemrelevant, aber unsichtbar: Arbeitsbedingungen migrantischer und geflüchteter Amazon Zusteller*innen während der COVID-19-Pandemie' (2021), *Materialien zu Wirtschaft und Gesellschaft*, No. 228, Kammer für Arbeiter und Angestellte Wien, Vienna; <https://emedien.arbeiterkammer.at/viewer/image/AC16357638/2/#topDocAnchor>, last accessed on 22 October 2024; Stadler, B. (2020). 'Da müssen wir wirklich etwas ändern.' Problemlagen, Arbeitsrechtsberatung und Rechtsschutz in der Reinigungsbranche', FORBA Forschungsbericht. Forschungs- und Beratungsstelle Arbeitswelt, Vienna, 2020, <https://www.forba.at/wp-content/uploads/2021/06/Bericht-Reinigung-FORBA-Bettina-Stalder-2020.pdf>, last accessed on 22 October 2024.

150 LV, NL, SE, SI.

151 AT, BE, CY, FR, IE, IT, LV, NL, SE, SK.

152 BE, FI, FR, LU, LV, SE.

153 CY, IE, LU, NL, SE.

154 AT, CY, FR, LV, NL.

155 IE, SE.

156 SE.

157 AT, FI (berry picking), FR, IT, LV.

158 AT, BE, CY, FI, FR, IE, IT, NL, SE.

159 AT, BE, BG, CY, CZ, EE, EL, FI, FR, HR, IE, IT, LT, LU, LV, NL, PL, SE, SK.

160 AT, BE, BG, CY, EE, EL, FI, FR, IE, IT, LT, LU, LV, NL, PL, SE.

161 AT, BE, BG, CY, CZ, EE, EL, FI, FR, IE, IT, LT, LV, NL, PL, SE, SK.

162 BE, BG, CY, CZ, EE, EL, FI, FR, HR, IE, IT, LT, LU, LV, NL, SE, SI.

163 BE, CY, EE, FI, FR, IE, IT, LT, NL, SK.

164 BE, BG, CY, EE, FI, FR, IE, LT, LU, LV, NL, PL.

165 BE, CY, EE, FI, FR, IE, IT, LV, NL, SE.

166 AT, BG, CY, EE, EL, FR, IE, SE.

167 AT (minor legal amendments), BG, CZ, CY, EE, FR, IT, LV, PL, SE.

168 CZ, CY, EE, FR, IT, PL.

Country increased penalties for illegally employed third-country nationals.¹⁶⁹ In Cyprus, the criminal penalty for employers has been increased to a maximum of five years in prison and/or a € 20 000 fine since 2021 (previously three years and € 8 500). A legislative amendment proposes transferring the responsibility for sanctioning employers from the Civil Registry and Migration Department of the Ministry of the Interior to the Labour Inspectorate of the Ministry of Labour and Social Insurance. In Estonia, significant amendments to the Aliens Act in 2022 included restricting short-term employment to full-time roles and enforcing payment of the Estonian average salary. Provisions now ensure remuneration compliance and allow retroactive penalties for non-compliance. Measures were also tailored to support BoTPs displaced from Russia's war of aggression against Ukraine. In addition, two EMN Member Countries¹⁷⁰ introduced legislation imposing more information obligations on employers, with a specific clause for Ukrainian citizens in Poland.

Seven EMN Member Countries reported legislative changes **to implement EU law**.¹⁷¹ For Belgium, this involved finalising the transposition of the Employers Sanctions Directive (2009/52/EC) into national legislation, because issues with the transposition of one of its articles (Art 13(4)) caused delays that exceeded the transposition deadline. Bulgaria reported major legislative changes and a stronger alignment of national legislation with EU law on legal migration overall. A novel legal framework was instituted, streamlining the entire process of issuing residence and single work permits, from initiation to conclusion, under the purview of a single competent authority, in compliance with EU law. In France, the provisions of the Posting of Workers Directive (2018/957/EU), revising the original 1996 Posting of Workers Directive, came into force on 30 July 2020. These provisions strengthen posted workers' rights and ensure greater transparency on the national provisions applicable to postings. France also transposed Article 1 of the Road Transport Posting of Workers Directive (2020/1057/EU).

Four EMN Member Countries also reported other legislative changes focused on **preventing exploitation** of foreign workers¹⁷² and **trafficking in human beings**.¹⁷³ In Poland, legislation emphasises working time and fair remuneration to enhance protection against exploitation and trafficking in human beings. Amended legislation initiated by the State Labour Inspectorate (PIP) aims to safeguard Ukrainian citizens' rights and enable effective inspection measures by labour inspectors.

In a few EMN Member Countries legislative changes related to **specific sectors**.¹⁷⁴ In Finland, the Act on the Legal Status of Foreigners Picking Natural Products entered into force in June 2021. For the first time, OSH authorities

have the right to supervise some aspects of the work of persons without employment contracts picking wild berries on the basis of 'everyman's right'.¹⁷⁵ In France, legislative changes were introduced in 2018 on fraud related to the posting of workers, with further regulatory developments for the air transport sector introduced via a 2021 decree. In Lithuania, legislative amendments entered into force in April 2022, formally introducing a transparent workers' identification code for persons working on construction sites. Inspection of illegal employment on construction sites has since become considerably more effective and efficient.

Legislative changes implemented after 2022 and upcoming legislative changes

The majority of EMN Member Countries¹⁷⁶ reported **planned legal amendments** to sanctions of employers or protection of third-country nationals. For example, Belgium is planning to revise the Social Criminal Code, including introducing a more coherent system of sanctions. Luxembourg implemented legislative changes in 2023, notably sanctions for employers (see section 5).

Policy changes

Policy changes implemented between 2017 and 2022

Ten EMN Member Countries¹⁷⁷ reported a range of policy changes since 2017 to combat the illegal employment of third-country nationals.

In EMN Member Countries reporting changes to **policies to enhance investigations into illegal employment**,¹⁷⁸ including inspections, to strengthen collaboration between authorities to combat illegal employment¹⁷⁹ and raise awareness of labour laws.¹⁸⁰ In Sweden, collaborative efforts involved multiple agencies, such as the Work Environment Authority and the Police Authority, working to counter fraud, rule violations, and crime in working life. Inter-agency controls, joint regional centres, and information campaigns targeted detection, prevention, and awareness of work-related crime, particularly in cases involving foreign labour.

In most of the EMN Member Countries reporting policy developments, these also related to **sanctions** for employers¹⁸¹ and strengthening **measures against trafficking in human beings** for the purpose of labour exploitation.¹⁸² In the Netherlands, a comprehensive set of policies during 2018-2022 focused on combating labour exploitation of foreign nationals. Key initiatives included the 'Together against Human Trafficking' programme, which allocated additional resources and set up regional pilots to monitor labour exploitation. It focused on combating

169 CZ.

170 PL, SE.

171 BE, BG, EL, FR, IE, IT, SK.

172 FI, FR, IT, PL.

173 FR, PL.

174 FI, FR, LT, LV, NL.

175 National Parks Finland, 'Everyman's Right', n.d., <https://www.nationalparks.fi/everymansright>, last accessed on 26 September 2024.

176 BE, BG, CY, EE, FI, FR, IE, LT, LU, LV, NL, PL.

177 BE, CY, EE, FI, FR, IT, LT, NL, SE, SK.

178 BE, CY, FR, LT.

179 CY, FI, FR, IT, SE, SK.

180 CY, EE, FI.

181 CY, EE, FR.

182 FI, FR, IT, NL.

trafficking, accommodation of victims of trafficking, fair working conditions, and support for the police.

In France, policy developments included **compensation** for damage caused by illegal employment, while Ireland focused on regularisation and the closure of the Atypical Workers Scheme for non-European Economic Area (EEA) fishers and its successor scheme.

In Estonia and Italy, post-2020, measures addressed challenges **from the COVID-19 pandemic**. Estonia also introduced provisions **to support BoTP** displaced by Russia's war of aggression against Ukraine.¹⁸³

Planned policy changes

Over half of EMN Member Countries¹⁸⁴

planned policy changes. Cyprus is preparing a Memorandum of Cooperation between the Cyprus Police and Labour Inspectorate. Finland plans to enhance punishments for labour exploitation, improve supervision, target inspections, and combat trafficking in human beings. Planned changes in the Netherlands include policies targeting the parcel delivery sector, promoting sustainable employment relationships and regulation of flexible labour, including working as/with self-employed individuals. A renewed Action Plan is being developed under the 'Together against Human Trafficking' programme, which will continue existing actions and introduce new actions. The Netherlands is also working on a proposal for new legislation on human trafficking, notably to modernise the relevant article of the Criminal Code and thereby improve prosecution of offenders and protection of victims, as well as broadening the scope of criminal liability in respect of labour exploitation.

Practical changes

Practical changes implemented between 2017 and 2022

Practical changes since 2017 primarily focused on **collaboration, information exchange, and targeted**

interventions to address the multifaceted challenges associated with illegal employment.¹⁸⁵

In eight EMN Member Countries, practical changes included **information provision and campaigns**, using information technology (IT) for more effective prevention and detection of illegal employment of third-country nationals.¹⁸⁶ In 2019, Bulgaria established an official national website (information portal) to provide information on working conditions to foreign workers posted in the country. Individuals can take an online test to check if their posting poses any risks of violating the law.¹⁸⁷ Estonia launched a migration advisory service in multiple languages to reduce bureaucracy and support legal settlement. It also developed information systems, expanded consultation services, and addressed working conditions for persons displaced by the war in Ukraine. Finland appointed an advisory board on the employment and permit supervision of foreign workers and entrepreneurs for the period 2022–2024 and ran a multilingual helpline for seasonal workers.

Some practical developments were the direct result of legal and policy changes, including **more inspections and associated resources**,¹⁸⁸ **training and recruiting staff**,¹⁸⁹ and better **collaboration between authorities**, including cross-border.¹⁹⁰ In Lithuania, a specialised task forces was established by the State Labour Inspectorate, focusing on combating trafficking in human beings for the purpose of labour exploitation. In Luxembourg, the gradual increase in the recruitment of labour inspectors improved inspection capacity.

Planned practical changes

A number of EMN Member Countries¹⁹¹ reported **planned practical changes**. Austria is planning to introduce digital document scanners in financial police checks in 2024 to detect forged identity documents, enhancing document authentication. Cyprus plans to implement the 'Ergani II' IT system, whereby employees will be provided with codes to monitor whether their employers have registered them and view the terms of their employment.

183 EE.

184 BE, CY, EE, FI, FR, IE, IT, LV, NL, SE.

185 BE, BG, CY, CZ, EE, EL, FI, FR, IE, IT, LT, LU, LV, NL, SE, SI, SK.

186 BE, BG, CY, EE, FI, IE, NL, LV.

187 Government of Bulgaria, 'Posted Workers', n.d., <https://postedworkers.gli.government.bg>, last accessed on 25 September 2024, last accessed on 22 October 2024.

188 BE, CY, CZ, EL, LU (legal changes in 2023 are expected to make the sanctioning of employers more efficient), NL, SE.

189 BE, FI, FR, IE, LU.

190 CY, EE, EL, FI, FR, IE, IT, LT, LU, LV, NL, SI, SK.

191 AT, BG, CY, EE, EL, FR, SE.

3. PREVENTIVE MEASURES

The 2017 EMN study on the illegal employment of third-country nationals in the EU concluded that action against the illegal employment of third-country nationals needs to increase by introducing and implementing preventive measures and risk assessments to improve the identification of illegal employment.¹⁹² This section provides an overview of the preventive measures taken by EMN Member Countries to avert the illegal employment of third-country nationals and protect the rights of illegally employed third-country nationals since 2017, with a particular focus on key developments and trends, challenges and good practices.

This section reviews the economic sectors that EMN Member Countries **monitor** in their efforts to prevent the illegal employment of third-country nationals, as well as **risk assessments** after 2017 to identify those sectors of activity where irregularly staying third-country nationals were most likely to be employed.¹⁹³ It then examines measures and incentives to **prevent employers from employing third-country nationals illegally** and to **deter employees from accepting** such employment. Finally, the section highlights challenges and good practices provided by EMN Member Countries.



3.1. MONITORING AND RISK ASSESSMENT

The Employers Sanctions Directive (2009/52/EC) provides that “Member States shall ensure that effective and adequate inspections are carried out on their territory to control employment of illegally staying third-country nationals. Such inspections shall be based primarily on a risk assessment to be drawn up by the competent authorities in the Member States (article 14(1))”.¹⁹⁴

Most EMN Member Countries¹⁹⁵ regularly monitor and assess the economic sectors most at risk of employing third-country nationals illegally and focus the bulk of their monitoring efforts on those sectors.

Construction, accommodation and food services, manufacturing, and agriculture, forestry and fishing remain the industries traditionally most at risk, while newly emerging high-risk economic areas include beauty and wellness,¹⁹⁶ delivery services,¹⁹⁷ garage and motor vehicle industry,¹⁹⁸ security services¹⁹⁹, event management²⁰⁰ and demolition work.²⁰¹ Table 1 presents an overview of the economic sectors monitored/identified as risk sectors by EMN Member Countries.

192 European Migration Network (EMN), ‘Illegal employment of third-country nationals, in the EU’, 2017, https://home-affairs.ec.europa.eu/pages/page/emn-publishes-report-illegal-employment-third-country-nationals-eu_en, last accessed on 14 December 2023.

193 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, Article 14(2), <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32009L0052>, last accessed on 11 December 2023.

194 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

195 Only EL and NL monitor all sectors (as opposed to only priority sectors). LU monitors all sectors, illegal employment is identified more often in construction and HORECA.

196 FI.

197 AT, FI.

198 FI.

199 AT.

200 AT.

201 AT.

Table 1 Economic sectors²⁰² monitored/identified as risk sectors by EMN Member Countries

Economic sector	Specific economic activity (where relevant)	Priority sectors monitored/identified as risk sectors
Construction		AT, BE, BG, CY, CZ, EE, FI, FR, HR, HU, IT, LT, LU, LV, PL, SE, SI, SK
Accommodation and food services activities	HORECA services, delivery services: AT, FI Tourism: AT, CY, FR, IT	AT, BE, BG, CY, CZ, EE, FI, FR, HR, HU, IE, IT, LT, LU, PL, SE, SI
Manufacturing		BG, CY, CZ, EE, IT, LT, LV, SE, SI, SK
Agriculture, forestry and fishing	Forestry: AT, BG, EE, FI, IT Fisheries: BG, EE, IE, IT Animal farming: CY	AT, BG, CY, EE, FI, FR, HU, IE, IT, SE
Wholesale and retail trade, repair of motor vehicles and motorcycles	Garage/motor vehicles: BE, BG, CY, EE, FI, IT Car wash: BE Wholesale: SE	BE, BG, CY, CZ, EE, FI, FR, IT
Transportation and storage	Transportation: FI	CY, FI, FR, IE, LT, LV, SE
Other services activities	Beauty industry/wellness: FI, HU, IE, IT, SE	FI, HU, IE, IT, SE
Administrative and support service activities	Cleaning services: AT, FI, IT, SE	AT, FI, IT, SE, SK
Arts, entertainment and recreation	Arts and sporting activities: IT, SE	IT, LV, SE
Professional scientific and technical activities		CZ
Mining and quarrying		LV

Echoing the 2017 EMN study's finding that all reporting countries conducted **risk assessments**, these assessments continued to be key to target inspections in the majority of EMN Member Countries. Between 2017 and 2022, almost all EMN Member Countries carried out new risk assessments to identify sectors of activity where illegal employment of third-country nationals is most concentrated.²⁰³ Trends and high-risk sectors continued to be identified primarily through data collection on violations by employers or employees,²⁰⁴ as well as data from unannounced visits, complaints and tip-offs,²⁰⁵ referrals from other national authorities,²⁰⁶ and emerging trends from previous inspections.²⁰⁷ Two EMN Member Countries reported that their methodology for risk assessments had not changed.²⁰⁸

Five EMN Member Countries²⁰⁹ developed **national or strategic plans** to target and plan inspections based on the highest risk of non-compliance during a given period. In Ireland, the Workplace Relations Commission (WRC) conducts general risk assessments as part of its annual planning process for inspections, with risk of employment

permit law breaches forming part of the overall risk assessment process.²¹⁰ A risk profile (1-5) is assigned by the WRC to employers on closing investigations. These ratings also inform risk assessments and capacity deployment.²¹¹ Belgium developed the Strategic Plan for 2022-2025 to fight social fraud and social dumping to better target inspections of fraud. The Netherlands develops multi-year programmes and annual plans based on risk analyses. Its 2019-2022 plan identified 17 risk categories, with labour exploitation and illegal employment ranking first and third, respectively, among the 17 categories. Each risk score underlined the likelihood of each risk and its impact/harm on a third-country national. In Estonia, the Police and Border Guard Board (PBGB), the Tax and Customs Board, and the Labour Inspectorate collaborate proactively to share information, conduct joint risk analyses, and plan targeted actions in various areas, such as illegal employment of third-country nationals, trafficking in human beings, tax fraud, and labour inspections. The PBGB performs a detailed risk analysis every year, considering factors such as previous inspection results, criminal intelligence, socioeconomic changes, and migration trends. This helps

202 European Commission, 'Statistical classification of economic activities in the European Community', Eurostat Methodologies and Working Papers, NACE Rev 2, 2008, <https://ec.europa.eu/eurostat/documents/3859598/5902521/KS-RA-07-015-EN.PDF>, last accessed on 6 May 2024.

203 HR did not conduct any new risk assessments between 2017 and 2022.

204 AT, BE, BG, CY, EE, FR, FI, LU, LV, NL, PL, SE, SI, SK.

205 BE, CY, CZ, FI, IE, LU, LV, PL.

206 BE, FR, IE, LV, PL.

207 AT, BE, CY, CZ, EE, EL, HU, IE, LU, LV, NL.

208 AT, LU.

209 BE, FR, IE, NL, SI.

210 WRC, 'Home', n.d., <https://www.workplacerelations.ie/en/>, last accessed on 25 September 2024.

211 The WRC also carries out some 12 000 hours of unsocial hours inspections annually, informed by Regional Unsocial Hours Plans, with a significant focus on compliance with employment permit legislation.

the Labour Inspectorate to identify high-risk sectors, such as construction, manufacturing, and food service activities.

IT solutions were introduced or continued to be used by five EMN Member Countries²¹² in risk assessments (see Box 2).

Box 2: IT solutions used for risk assessments

Greece set specific criteria through the **risk analysis system** of the Labour Inspection information system (OPS SEPE) and the Ergani System (registers employment-related data). This allowed inspections to be planned in specific companies in specific sectors identified as high risk of non-compliance, such as wholesale and retail, restaurant services, tourist accommodation, and land transportation.

Belgium uses **data-mining and matching** (which selects a minimum number of targets, particularly in the context of new social dumping phenomena) to

predict risk and improve results of labour inspections. Periodic feedback from the social inspection services to the Data-Mining Directorate of the National Social Security Office increases the efficiency of data-mining.

Employer profile

Data on the profile of companies engaged in illegal employment of third-country nationals show a mixed picture. Typically, they represented **small companies, followed by medium-sized companies, operating mostly in sectors that employ unskilled and low-skilled labour, including in construction, hospitality and food service, manufacturing and agriculture** (see Table 2). Exceptions were noted in Cyprus and Finland, where violations were identified in companies regardless of their size.

Table 2: Profiles of companies engaged in illegal employment of third-country nationals, 2017-2022

EMN Member Country	Size of company	Economic sector/activity ²¹³
AT	Small, medium (often sub-contractors)	Construction Accommodation and food service activities Transportation Wholesale and retail trade Private households
BE	No data collected	Construction Hospitality and food services Car wash, garages, retail
BG	No data provided	Construction Hotels, restaurant Manufacturing Fishing, forestry Retail, trade, repair motor vehicles Transport
CY	No specific size	HORECA Agriculture, animal farming
CZ	Small, medium	Construction Accommodation and food services Manufacturing Wholesale and retail trade, repair of motor trade vehicles, Professional, scientific and technical activities
EE	Small, medium	Construction Manufacturing
EL	Small	Catering, small accommodation Agriculture Seasonal retail
FI	No specific size	Construction Restaurant Agriculture Manual labour

²¹² AT and LU (prior to 2017), BE, EL, LV (used to assess specific aspects (e.g. posting of workers) and sectors (e.g. construction)).

²¹³ Organised according to NACE categories, while retaining the specific terminology provided by EMN National Contact Points (EMN NCPs) to preserve detailed descriptions (e.g. car wash, event management).

EMN Member Country	Size of company	Economic sector/activity ²¹³
FR	Small	Construction HORECA Retail
HR	Small	No data provided
HU	Small	Construction Restaurants Agriculture
IE	Small	Food service activities Commercial sea fishing Wholesale & retail trade Hair & beauty
IT	No data collected	Construction HORECA Manufacturing Agriculture Retail/trade
LT	Small, medium	Construction Transport
LU	No data available	Construction Accommodation and food service activities (HORECA) Agriculture, forestry, fishing
LV	No data collected	Construction Manufacturing Transportation and storage Arts, entertainment and recreation Mining and quarrying
NL	No data available	No data available
PL	Small	Construction Industrial processing Administrative and support services
SE	No data provided	Construction Accommodation and food service activities Transportation and storage Wholesale and retail trade Other service activities Agriculture, forestry and fishing
SI	No data provided	Construction Cleaning
SK	Small	Construction Industrial production Retail and wholesale Administrative and support services

Box 3: Prevalence of small companies engaging in illegal employment schemes

A review in **France** between 2019 and 2021²¹⁴ showed that most companies were very small businesses, with eight out of 10 having fewer than 10 employees. Very small companies accounted for 79% of the offences, including 23% with 0 declared employees and 56% with 1-10 employees.

In **Ireland**, of the 166 employers found to have breached the Employment Permits Acts in 2022, 137

(83%) were small companies, 20 were medium-sized (12%) and nine (5%) were large.²¹⁵

In the **Slovak Republic**, between 2017 to 2022, illegal employment occurred mostly in small 'micro-enterprises', with 1-9 employees. Limited liability companies and self-employed businesses were considered the riskiest, while large employers with 250 or more employees, were least risky.

214 Ministry of Labour (France), 'Bilan du Plan National de Lutte contre le Travail Illégal 2019-2021 - Tome 2', <https://travail-emploi.gouv.fr/plan-national-de-lutte-contre-le-travail-illegal-bilan-et-perspectives-0> last accessed on 23 October 2024.

215 Correspondence with the WRC, August 2023.



3.2. MEASURES AND INCENTIVES TO PREVENT ILLEGAL EMPLOYMENT OF THIRD-COUNTRY NATIONALS

Overview of preventive measures and incentives for employers

In EMN's 2017 report, preventive measure and incentives **for employers** included information campaigns, information support, agreements with social partners, and obligations for employers to notify authorities when employing third-country nationals.²¹⁶ Generally, all EMN Member Countries continued to use the same or similar measures as reported in 2017 (i.e. information campaigns; information support). The main development has been that since 2022, notably with the activation of the Temporary Protection Directive (2001/55/EC),²¹⁷ **campaigns and inspections targeted the employment conditions of persons entitled to temporary protection**, who fled Ukraine.²¹⁸ EMN Member Countries reported the following preventive measures:

- Awareness-raising for employers on employment regulations and sanctions,²¹⁹ including information days,²²⁰ expert seminars on the employment of third-country nationals,²²¹ and media releases on changes in legislation,²²²
- Mandatory obligation to notify authorities when employing third-country nationals;²²³
- List of unreliable employees,²²⁴ or blacklist of employers;²²⁵
- Temporary halt of operations/exclusion from tenders²²⁶/exclusion from public contracts and funding/²²⁷exclusion from subsidies for hiring employees.²²⁸

EMN Member Countries also referred to other measures with a possible deterrent – and thus preventive – effect:

- Sanctions and fines for employers (see section 5);²²⁹
- Inspections, including flash inspections and monitoring,²³⁰ increased numbers of labour inspectors,²³¹ and joint inspections by relevant bodies;²³²

- Inspections focused on conditions of work of BoTPs displaced by the war in Ukraine.²³³

Box 4: New measures introduced to prevent employers from engaging in illegal employment practices since 2017

Obligations to provide information on third-country national employees

In **Lithuania**, the Law on the Legal Status of Foreigners came into force on 1 March 2021. It provides for a legal obligation for employers to provide information on third-country nationals they employ temporarily, to the State Labour Inspectorate. The work conditions are then checked by the authorities.

Information campaigns

In **Latvia**, information materials for construction contractors²³⁴ were launched in 2018. Available online, they contained information on the work of inspectors at inspection sites, and the obligations and responsibilities of employers and employees.

Measures targeting the employment of BoTPs displaced by Russia's war of aggression against Ukraine

Two countries reported targeting employment and working conditions of persons fleeing Russia's war of aggression against Ukraine. **The Czech Republic** ran awareness-raising campaigns and targeted inspections, while **Lithuania** offered a webinar in 2022 to raise employers' awareness of entry and employment of third-country nationals who fled Ukraine.

Overview of preventive measures and incentives for employees

Similar to employers, the types of preventive measures and incentives **for employees** did not change markedly since those found in the 2017 EMN study (i.e. information campaigns; information support; notification

216 European Migration Network (EMN), 'Illegal employment of third-country nationals, in the EU', 2017, https://home-affairs.ec.europa.eu/pages/page/emn-publishes-report-illegal-employment-third-country-nationals-eu_en, last accessed on 14 December 2023.

217 Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof activated by Council Implementing Decision (EU) 2022/382 of 4 March 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0091&qid=1646384923837>, last accessed on 1 May 2024.

218 CZ, LT.

219 BE, CY, CZ, EE, EL, FI, FR, HU, IE, IT, LT, LU, LV, NL, SK.

220 EE.

221 CZ.

222 FI, LV, SK.

223 AT, BG, LT, LU, LV, NL, SK.

224 BG.

225 FR (Ministry of Labour (France), 'Blacklist of Companies', n.d., <https://liste-noire.travail-emploi.gouv.fr/>), last accessed on 26 September 2024),

SK (Industrial Property Office of the Slovak Republic, 'Register of Legal Entities', n.d., <https://www.ip.gov.sk/app/registerNZ/>), last accessed on 26 September 2024).

226 EE, EL, HR, SE, SK.

227 AT.

228 SE, SK.

229 AT, BE, BG, CY, CZ, EE, EL, FI, HR, IT, LU, LV, NL, SE, SK.

230 AT, BE, CY, EL, FI, IE, LT, LU, LV.

231 FI, IE (plans an increase in labour inspectors), LU.

232 BG, EE, FI, IE, IT, SK.

233 BE, CZ, LT, SK.

234 State Revenue Service of Latvia, 'Internal Normative Acts', n.d., <https://www.rs.gov.lv/lv/ieksejie-normativie-akti> - <https://www.rs.gov.lv/lv/media/5276/download?attachment>, last accessed on 28 December 2023.

obligations for commencing employment and changing employer; complaints mechanisms). The most common measures and incentives included **information campaigns** targeting employees, as well as services for filing **complaints** against employers.

Information campaigns targeting employees included government-led websites,²³⁵ co-operation with non-governmental actors and international organisations to inform employees of their rights,²³⁶ cross-border initiatives organising information days in different countries,²³⁷ contribution to ELA information campaigns,²³⁸ and the use of counsellors to provide information on labour rights.²³⁹ In Sweden, the Work Environment Authority and the Tax Agency launched a **consumer sensitisation campaign** to raise awareness of work conditions and risks in certain industries.²⁴⁰ The campaign also warned the public against buying goods and services from employers engaged in undeclared work and to check their records through an e-service.²⁴¹

Seven countries²⁴² provided targeted **information services and campaigns for BoTP and people from Ukraine entitled to temporary protection**.

- Five EMN Member Countries developed **dedicated information resources**. Ireland, Finland and Luxembourg provided information resources on employment rights for BoTP at all ports of entry.²⁴³ Also, Finland's tax administration website included a dedicated page for BoTPs, including information on how to apply for a tax card.²⁴⁴ In Lithuania, the State Labour Inspectorate prepared brochures on the conditions of employment in the country. Belgium established a Ukraine Working Group that implemented several initiatives. For example, social inspectors conducting preventive spot checks were instructed to pay closer attention to the rights of third-country nationals, including Ukrainians. A pamphlet outlining their rights was also developed. Finland also developed a mobile app (available in 26 languages) to provide information about employee rights and responsibilities and the key parties that provide help in Finland, if, for example individuals suspect their employer has mistreated them.
- Poland and Bulgaria established **contact points** to provide information on employment rights. Bulgaria set up a dedicated email address to handle enquiries on the employment rights of individuals who fled Ukraine. In Poland, a nationwide hotline for foreigners was launched, offering free legal advice in Ukrainian and Russian. Managed by the PIP Counselling Centre in

Warsaw, the hotline provided guidance on regulations governing legal employment and labour rights.

Complaints mechanisms in EMN Member Countries included information, mediation and other support services (see section 6.2). In Italy, the National Labour Inspectorate (INL) and the IOM cooperate to provide assistance to third-country nationals wishing to file complaints on labour irregularities. They appoint cultural mediators and assist people to take the necessary action. Estonia appoints labour rights counsellors to inform people of their rights and to assist with follow up.

Box 5: Preventive measures for employees since 2017

In 2020, **the Netherlands** launched a new platform (<https://www.workinnl.nl>) to provide information in various languages to third-country nationals on their rights.

Estonia established cooperation agreements with the Baltic states on cross-border cooperation, including on posted workers, with Norway on awareness-raising and exchanging information, and with Poland on improving and guaranteeing working conditions for employees posted to the territories of both countries.

In 2019, the PBGB held information days in Minsk, Warsaw, Helsinki and Tallinn (together with the Labour Inspectorate) for consular offices and foreign representations of third countries. They provided information on legal migratory pathways, the possibilities of working in Estonia, and the procedures regarding irregular migration. In total, 20 representatives participated.

In 2022, **Ireland** launched a short animation on how to make a complaint through the WRC Advisory Service and what happens at an adjudication hearing. It was translated into Polish, Romanian, Russian, Spanish and Ukrainian, with an inbuilt google translate function also included on the WRC website.

Lithuania contributed to ELA information campaigns. In 2021, the campaign focused on seasonal work, informing seasonal workers about their rights and employers about their obligations, to ensure fair working conditions across the EU. Campaigns focused on the transport sector in 2022 and on the construction sector in 2023.

235 AT, BE, BG, CY, EL, IE, LU, LV, NL, SI, SK.

236 AT, CZ, EE, IT, LU, LV, NL.

237 CZ, EE, LV, SK

238 CZ, LT, LU.

239 AT, EE.

240 Swedish Work Environment Authority, 'Arbetslivskriminalitet – så drabbas arbetstagare', n.d., <https://www.youtube.com/playlist?list=PLEIRHWOU5qeq-dMERXf6q0cNz2r4qc7Bv>, last accessed on 13 September 2023.

241 Swedish Tax Agency, 'Consequences of undeclared work', n.d., <https://skatteverket.se/foretag/drivaforetag/inkopupphandlingochleverantorskontroll/konsekvenseravsvartarbete.4.71004e4c133e23bf6db800098309.html>, last accessed on 25 September 2024.

242 BG, BE, FI, IE, LT, LU, PL.

243 BE, FI, IE, LT, LU.

244 Finnish Tax Administration, 'Temporary protection to persons fleeing Ukraine', n.d., https://www.vero.fi/en/individuals/tax-cards-and-tax-returns/arriving_in_finland/work_in_finland/temporary-protection-to-persons-fleeing-ukraine/, last accessed on 25 September 2024.



3.3. CHALLENGES AND GOOD PRACTICES IN PREVENTING ILLEGAL EMPLOYMENT OF THIRD-COUNTRY NATIONALS

Challenges

Challenges reported by EMN Member Countries can be broadly categorised into: difficulties with monitoring and inspections;²⁴⁵ language barriers to inform people of their rights and obligations,²⁴⁶ and administrative obstacles,²⁴⁷ including data protection issues.²⁴⁸

- Almost half of reporting EMN Member Countries experienced **difficulties in monitoring and inspections**²⁴⁹ which arose from practical issues such as an insufficient number of inspectors, or insufficient funding, but also from difficulties in establishing the identity of a person. For example, false statuses emerged in France, where people abused digital platforms to register for self-employment. In Ireland, non-compliant businesses were sometimes subject to frequent changes of directors and corporate identity, making them difficult to monitor.
- The 2017 EMN study identified **language barriers** as a significant obstacle in preventing illegal employment of third-country nationals, a challenge that continues to affect outreach to third-country nationals in eight EMN Member Countries,²⁵⁰ limiting the extent to which they could be effectively informed of their rights and obligations.
- Four EMN Member Countries reported that **administrative challenges**—such as restrictive privacy laws, difficulties in cross-border coordination, and issues with data accessibility—limited their effectiveness in preventing the illegal employment of third-country national.²⁵¹ Sweden reported administrative challenges, with privacy legislation limiting the possibility for public authorities to share data and information on third-country nationals. The Netherlands indicated difficulties in preventing illegal employment where a third-country national starts working in one EU Member State, but then moves to work illegally in another Member State. The Inspectorate of Labour and Mines (ITM) in Luxembourg noted data accessibility and exchange of data between competent authorities as one of the challenges, with a new legal regulation set to come into force in 2023. In Latvia, State Border Guards faced a significant challenge in quickly acquiring information and evidence when employers from other EU Member States posted third-country nationals to work in the country, as information through the Internal Market Information System (IMI) was often delayed. Verifying residence documents and employment rights issued by other Member States was also

problematic, as these documents frequently lacked clear details on employment status.

Good practices

EMN Member Countries described several good practices to prevent the illegal employment of third-country nationals, both in relation to deterring employers from hiring third-country nationals for illegal work and deterring third-country nationals from taking illegal employment (see Box 6). Good practices included actions to deter employers,²⁵² awareness-raising and information campaigns,²⁵³ partnerships and sharing intelligence between institutions²⁵⁴ and across borders.²⁵⁵

Box 6: Good practices in awareness-raising since 2017

Austria reported language classes for seasonal workers offered by the SEZONIERI Campaign,²⁵⁶ which included information on their rights. In response to persons fleeing the war in Ukraine, **Lithuania** developed a cooperation agreement with the Ukrainian Centre for Labour Rights Protection to provide people with information on labour rights in Ukrainian.

In 2017, **Estonia** launched a migration counselling service offering free settling-in advice to third-country nationals, while also providing support to employers, the business community, and education institutes that invited foreign nationals to the country. Advisers provided information and support free of charge, in person, online or by phone in Estonian, English and Russian. Between 2017 and 2022, counsellors provided an average of 10 700 consultations by phone, 7 200 in writing, and 430 Skype sessions per year.

France, in partnership with European social partners, sought to provide better information for posted Olympic games construction workers. A card (similar to a credit card) was produced in five languages (French, English, Portuguese, Polish and Italian), containing a QR code to obtain information on employee rights from the Labour Office website. These cards were made available to inspection officers and employee trade unions in March 2021.

Poland implemented a three-year information campaign 'I work legally' from 2017 to 2019 to raise awareness of legal obligations of employers and employees (mainly targeting citizens of Ukraine) working or planning to work in the territory of the Republic of Poland. Its aim was to promote legal work over

245 AT, BE, CZ, FI, FR, EL, IE, LT, LV, PL.

246 BE, CY, FI, FR, HR, HU, LU, LV.

247 LU, LV (administrative obstacles relating to posted workers), NL, SE.

248 BE, LU, SE.

249 AT, BE, CZ, FI, FR, EL, IE, LT, LV, PL.

250 BE, CY, FI, FR, HR, HU, LU, LV.

251 LU, LV (administrative obstacles relating to posted workers), NL, SE.

252 AT, CY, EL, LV, SE, SK.

253 AT, BG, CZ, EE, EL, FI, FR, IE, IT, LU, LV, NL, PL, SK.

254 CZ, FI, HR, IE, IT, LT, LU, LV.

255 EE, FI, HR, LV.

256 SEZONIERI Campaign for the Rights of Seasonal Harvesters in Austria is a joint initiative of trade unions and civil society actors (Sezonieri, 'Home', n.d., https://www.sezonieri.at/en/startseite_en/, last accessed on 25 September 2024).

employment in the 'shadow economy' and provide information on possibilities of assistance from the PIP.

Another good practice highlighted by six EMN Member Countries was **building partnerships and sharing intelligence** between different bodies and organisations at national and international level.²⁵⁷ Such cooperation helped institutions to obtain the necessary information to uncover poor working conditions and carry out effective inspections. In Finland, timely exchange of information between authorities was key to identifying OSH cases among third-country nationals. Cooperation between the police and the Regional State Administrative Agency (which conducts OSH monitoring) expedited the processing of labour exploitation and cases of illegal employment.

Austria, Cyprus, Greece and Sweden reported good practices to deter employers, citing the positive effects of fines²⁵⁸ and harsh sanctions. In Luxemburg, stakeholders from civil society indicated that sanctions foreseen by the law were not high enough and thus not a strong enough deterrent to prevent illegal employment of third-country nationals.

²⁵⁷ FI, HR, IT, LT, LU, LV.

²⁵⁸ In CY, employers who fail to register their employees are fined € 3 500 euro. Ongoing and coordinated cooperation and communication between the Labour Inspectorate and other ministries and authorities, high administrative fines issued to employers who fail to register their employees with the Social Insurance Fund, and awareness campaigns all lead to better results. In Sweden, fines doubled in 2018. The Prosecution Agency (A-Kim) subsequently joined the inter-agency collaboration and the collective ability to impose sanctions improved. In Austria, high penalties combined with checks by the financial police serve as an effective deterrent for employers.

4. IDENTIFICATION OF ILLEGAL EMPLOYMENT OF THIRD-COUNTRY NATIONALS

The 2017 EMN study on the illegal employment of third-country nationals in the EU highlighted the introduction of inter-agency cooperation mechanisms to improve identification processes. EMN Member Countries increased the use of technology and risk assessment tools for more planned and targeted inspections. More specifically, close and effective cooperation between authorities, including international collaboration schemes, and information exchange (e.g. common databases) were identified as common success factors. The language barrier and insufficient staffing to carry out effective and frequent inspections were considered to be the main weaknesses hindering identification efforts.

This section presents the progress made by EMN Member Countries to manage the identification of the illegal employment of third-country nationals. It covers national strategies to improve the identification of illegal employment of third-country nationals and roles and responsibilities of different authorities, including domestic collaboration schemes and international partnerships (section 4.1), measures and tools used for identification, including inspection developments across EMN Member Countries (section 4.2), and challenges, good practices, and success factors for effective identification (section 4.3).



4.1. DEVELOPMENTS TO IMPROVE IDENTIFICATION

National strategies to improve capacity for identification

Most EMN Member Countries reported progress in their efforts to reduce cases of illegal employment and enhance their administrative identification capacity since 2017.²⁵⁹ In addition to more intra-agency cooperation (section 6.1.2) and international partnerships (section 6.1.3), national strategies to improve capacity for identification reported by EMN Member Countries included:

EMN Member Countries introduced specific objectives to tackle social fraud and increase inspections.²⁶⁰ Belgium adopted a Strategic Plan for 2022-2025 to fight social fraud and social dumping, including specific inspection targets. The Social Information and Investigation Service (SIIS) subsequently launched an operational 2023-2024 Action Plan against social fraud and social dumping. This Action Plan required that the Belgian inspection services carry out at least 400 investigations annually on the posting of third-country nationals to identify cases of illegal employment. Italy, whilst not setting specific targets, introduced national policy documents

to enhance inspections, including national inspection guidelines under the 2020-2022 Plan to Tackle Labour Exploitation and Unlawful Recruitment in Agriculture, and the 2022-2025 National Action Plan against Trafficking and Serious Exploitation of Human Beings.

Nine EMN Member Countries introduced new or enhanced existing capacities to conduct inspections.²⁶¹ Cyprus established the Labour Inspectorate Force in July 2017, which plays a pivotal role in tackling the illegal employment of third-country nationals, including intensifying inspections and enforcing employment rules. Since gaining access to the information systems of the Asylum Service of the Ministry of the Interior, it can use data efficiently for inspections and identification of illegal employment. Croatia created the State Inspectorate in April 2019 as a unified body to oversee various sectors. It merged 18 different inspection units, improving the efficiency and coordination of planning and supervision. France expanded the list of officers who can conduct inspections. The new additions include officers and agents from judicial police, tax and customs, social security, civil aviation, and maritime technical sectors. These officers cover various sectors for inspections, such as major sporting events.

²⁵⁹ BE, BG, CY, CZ, EE, EL, FI, FR, HR, IE, IT, LT, LU, LV, PL, SE, SI.

²⁶⁰ BE, FI, IT.

²⁶¹ CY, EE, FI, FR, HR, LT, LU, LV, SE.

Box 7: Finland's package of measures to improve identification

Finland implemented a number of measures to improve identification and safeguarding of third-country nationals' working conditions. In 2021, the Finnish OSH authorities received increased resources, leading to more effective responses to tip-offs and enhanced joint inspections. A national task force dedicated to monitoring foreign workers aimed to verify at least half of the inspected foreign workers' minimum terms of employment. Finland took inspiration from Norway's successful multi-authority cooperation model to prevent illegal employment and exploitation. Although some silo effects persisted, there was notable progress in coordination and information-sharing, as well as awareness-raising, capacity-building, and harmonising legal procedures within the administration. The creation of the national Investigation of Human Trafficking and Labour Exploitation (IHKA) task force in 2021 at the Helsinki Police Department was a significant step in fighting organised human trafficking and labour exploitation.²⁶²

A few EMN Member Countries also introduced initiatives targeted at sectors perceived to be most at risk.²⁶³

Ireland's WRC has been active in enforcing employment legislation in the fishing industry since 2016, particularly compliance with the Atypical Worker Permission Scheme which was open for fishers until the end of 2022.²⁶⁴ Identification activities involved regular in-port operations, compliance checks at the workplace, investigations of complaints from fishers and their representatives, liaising with other authorities responsible for immigration, the enforcement of working time regulations, and vessel tracking. The WRC has a cohort of inspectors with expertise and relationships in the fisheries sector and has developed specific protocols and practices for compliance operations within this industry. Since 2020, Italy's National Labour Inspectorate (INL) has taken part in several projects to identify and fight illegal employment of third-country nationals, such as the 'Su.Pr.Eme. Italy'²⁶⁵ and 'A.L.T. Caporalato!' projects,²⁶⁶ covering agriculture and other sectors across regions in Italy. These initiatives, expanded nationwide under the 'A.L.T. Caporalato D.U.E Actions',²⁶⁷ aim to combat labour exploitation and ensure the well-being of vulnerable workers.

Inter-agency cooperation initiatives

In the majority of EMN Member Countries, **the identification of third-country nationals who are illegally employed is typically a task of labour inspectorates**, which conduct inspections.²⁶⁸ In Austria, it is the Federal Ministry of Finance that is responsible for monitoring compliance with the laws regulating the employment of foreign nationals²⁶⁹ and the Financial Police are entrusted with identifying unlawfully employed workers. Nevertheless, in many EMN Member Countries, labour inspectorates also cooperate with other authorities to identify illegal employment and/or carry out inspections together, including immigration and asylum services,²⁷⁰ financial and tax authorities,²⁷¹ law enforcement and border control,²⁷² social security and insurance agencies,²⁷³ and OSH authorities.²⁷⁴ In Latvia, inspections are led by the State Border Guards, in close collaboration with the Labour Inspectorate and the financial and tax authorities.

Many EMN Member Countries involve other authorities in the identification process through inter-agency cooperation or multi-authority mechanisms.²⁷⁵ Ten EMN Member Countries²⁷⁶ reported developing or improving schemes to enhance cooperation between national authorities and other relevant actors, such as social partners, to identify cases of illegal employment of third-country nationals. These entailed:

A new cooperation agreement was established in **Belgium** in May 2018 between the Immigration Office and the Inspection Services to improve coordination and information-sharing. The Justice Platform was launched to facilitate the collaboration between inspection services and the judiciary. It focuses on data-mining and risk analysis tools and resources, as well as effective prosecution and legal follow-up by labour auditors or federal prosecutors.

A two-year National Tripartite Agreement was signed by the **Bulgarian** government and social partners in June 2020. Some of the main measures included easing labour market access for foreign graduates studying at Bulgarian universities, facilitating the recruitment of workers and experts from third countries, and harmonising Bulgarian laws and procedures with European norms in labour immigration.

262 The IHKA task force operates under the Helsinki Police Department to fight large-scale human trafficking and work-related crimes that span the geographical boundaries of several police departments in Finland.

263 IE, IT, SI.

264 The Atypical Working Scheme in Ireland is a short-term working visa for non-EEA nationals to facilitates specialised and highly skilled non-EEA employment of a short-term nature (generally less than 90 days) that is not supported by the Employment Permit legislation. Irish Immigration Service, 'Atypical Working Scheme', <https://www.irishimmigration.ie/coming-to-work-in-ireland/what-are-my-work-visa-options/applying-for-a-long-stay-employment-visa/atypical-working-scheme/>, last accessed on 25 September 2024.

265 Financed through the Asylum, Migration and Integration Fund (AMIF).

266 Henceforth, *caporalato* becomes 'unlawful recruitment in agriculture'.

267 IOM Italy, 'ALT Caporalato', n.d., <https://italy.iom.int/it/alt-caporalato-due>, last accessed on 25 September 2024.

268 BE, BG, CZ, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, NL, PL, SE, SI, SK (in cooperation with foreign police).

269 Act governing the Employment of Foreign Nationals, FLG No. 218/1975, in the version of FLG I No. 84/2023.

270 BE, BG, CY, IE, IT, NL, PL, SE, SK.

271 EE, EL, FI, FR, HU, IE, LU, LV, SE, SI.

272 BG, EE, FI, HR, IE, IT, LU, LV, PL, SE.

273 BE, EL, IE, PL.

274 CZ, FI, HU.

275 AT, BE, CY, EE, FI, FR, EL, HU, IE, IT, LT, LU, LV, NL, SE.

276 BE, BG, EE, FR, IE, IT, LV, NL, SE.

Box 8: Sweden's 'A-krim' project for reinforced inter-agency collaboration

A-krim is a joint initiative launched by the Swedish government in December 2017 to fight work-related crime, such as fraud, violations, and abuse. Led by the Work Environment Authority, other agencies involved include the Public Employment Service (PES), Economic Crime Authority, Social Insurance Agency, Gender Equality Agency, Migration Agency, Police Authority, and Tax Agency. The project sought to develop and implement effective inter-agency procedures for detecting, preventing, and combating crime in the workplace. Since made permanent, the project has received SEK 40 million (approximately € 3.5 million²⁷⁷) per year since 2022. A-krim cooperates with different stakeholders at national, regional, and local level, including social partners (employer organisations, unions, etc.), municipalities and civil society.

In **Estonia**, a new cooperation agreement was signed by the PBGB, the Tax and Customs Board, and the Labour Inspectorate to improve joint inspections. The agreement regularised the exchange of information for risk analysis and coordinated joint actions to address illegal employment and exploitation of third-country nationals, trafficking in human beings' offences, tax fraud, and the rights of the workers.

In **France**, the National Plan to Combat Illegal Employment 2019-2021 outlined national measures to strengthen information exchange networks between various control services working against illegal employment.²⁷⁸ The 2023-2027 Plan focuses on coordinated enforcement actions at both national and local levels, with anti-fraud committees in each department defining procedures and priority actions.

In **Ireland**, WRC inspectors collaborate closely with various authorities in respect of data on individuals' immigration status and to ensure effective inspections. These authorities include the Garda National Immigration Bureau, the Garda National Protective Services, and the Employment Permits Unit in the Department of Enterprise, Trade and Employment. It also engages with several institutions in fisheries,²⁷⁹ as a high-risk sector for illegal and undeclared work of third-country nationals, to share information and establish cooperative arrangements.

In March 2019, **Lithuania** introduced an innovative collaboration model, the Risk Analysis Centre and Joint Operational Centres. This framework enhances synergies between inspection and law enforcement authorities,²⁸⁰ fostering a holistic approach to tackling the shadow labour market, with a particular focus on illegal employment of third-country nationals.

Italy promoted a multi-agency approach to combat labour exploitation and forced labour in agriculture as part of its three-year Plan to Tackle Labour Exploitation

and Unlawful Recruitment in Agriculture (2020-2022). Key stakeholders included public and private actors, with the shared goal of providing effective and timely protection to victims. Inspection task forces played a crucial role, comprising local and regional inspectors, labour law enforcement authorities, and IOM cultural mediators.

The **Netherlands'** programme 'Together against trafficking in human beings' was initiated in 2018 by a large coalition, coordinated by the Ministry of Justice and Security. It aimed to strengthen cooperation between different actors in combating labour exploitation of third-country nationals.²⁸¹

International partnerships

EMN Member Countries collaborate at EU level and in broader international networks to develop a **coordinated response** to challenges related to irregular labour mobility, undeclared work, and labour exploitation of third-country nationals. Most EMN Member Countries reported being involved in **international and EU initiatives** to tackle the illegal employment of third-country nationals.²⁸²

Many EMN Member Countries indicated **active cooperation with the ELA** and its different working structures, including the European Platform tackling undeclared work.²⁸³ This institutional framework serves to intensify cooperation between countries²⁸⁴ by addressing challenges related to undeclared work and labour exploitation affecting third-country nationals.

Box 9: Cooperation between the ELA and EMN Member States

Belgium and **Austria** cooperate with the ELA to facilitate staff exchanges and visits by inspection authorities from other EU countries specifically related to the illegal employment of third-country nationals.

As part of the ELA's #EU4FairWork campaign in 2020, the Finnish OSH authorities organised the webinar 'Employee Rights in Finland' to inform immigrants and their support networks about unlawful labour practices. In 2022, **Finland** collaborated with the ELA on seminars on labour mobility and multi-authority cooperation, as well as taking part in joint action weeks for the identification of illegal employment of third-country nationals.

Greece takes part in ELA working groups for labour inspectors dedicated to fighting undeclared work, and in Dialogues for Peer Learning on the illegal employment of third-country nationals.

France and **Latvia** underlined the crucial assistance provided by the ELA in organising concerted and joint inspections involving several EU Member States to identify illegal employment among third-country nationals.

²⁷⁷ Conversion rate applied as of 20 November 2024.

²⁷⁸ These measures involved various inspection and coordination bodies, such as the Labour Inspectorate, the Social Security Collection Agency, the Agricultural Social Mutual Fund, the police, the gendarmerie, and land transport inspectors.

²⁷⁹ Naval Service, National Fisheries Monitoring Centre, Sea Fisheries Protection Authority, and the Department of Transport.

²⁸⁰ State Tax Inspectorate, State Border Guard Service, State Labour Inspectorate, the police, and the Financial Crime Investigation Service.

²⁸¹ The programme involves the NLA, municipalities, national police, Public Prosecutor's Office, Immigration and Naturalisation Service (IND), the Central Agency for the Reception of Asylum Seekers (COA), the Royal Netherlands *Marechaussee*, and various NGOs.

²⁸² AT, BE, BG, CY, CZ, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, PL, SI, SE, SK.

²⁸³ ELA, 'Undeclared Work', n.d., <https://www.ela.europa.eu/en/undeclared-work>, last accessed on 25 September 2024.

²⁸⁴ AT, BE, CY, CZ, FI, FR, EL, IT, LT, LU, LV, NL, SE, SK.

Other examples of European and international partnerships to combat unlawful employment of third-country nationals are provided in Box 10.

Box 10: Other EU-level and international cooperation schemes

Ireland has established formal agreements with the UK Gangmasters Licensing Authority, the ILO, and the Portuguese Labour Inspectorate, enabling information-sharing in cases of identifying illegal employment among third-country nationals.

Italy collaborates with the Senior Labour Inspectors Committee (SLIC), the ILO, and the G20 OSH Network to exchange best practices on joint inspections for the detection of undeclared work and labour exploitation among third-country nationals.

Lithuania has entered into bilateral agreements with Ukraine and Norway to enhance cooperation on working conditions and rights of cross-border workers, OSH, and the identification of illegal employment of third-country nationals.

Finland works closely with Nordic and Baltic countries within the Council of the Baltic Sea States (CBSS) to monitor illegal employment of foreign workers in the region.²⁸⁵

Labour authorities from **Hungary**, the **Czech Republic**, and **Ireland** are actively involved in the Internal Market Information (IMI) system, which plays an important role in information exchange with other countries on posting and employment of foreign workers.



4.2. IDENTIFICATION MEASURES

Inspections in EMN Member Countries 2017-2022

All EMN Member Countries conducted on-site inspections between 2017 and 2022, with 16 undertaking coordinated joint inspections between their labour inspectorates and other competent national authorities.²⁸⁶ Since 2017, the number of annual inspections increased

in six EMN Member Countries²⁸⁷ and decreased in seven others.²⁸⁸ No clear trend was identified in the remainder.

Four EMN Member Countries conducted targeted inspections to monitor the illegal employment of third-country nationals between 2017 and 2022.²⁸⁹ Of these, inspections decreased in two countries²⁹⁰ and increased in two countries.²⁹¹ In three, inspections targeting third-country nationals accounted for approximately 10% of all annual inspections.²⁹²

Table 3: Inspections by EMN Member Countries, 2017-2022

Country	No of inspections across sectors					
	2017	2018	2019	2020	2021	2022
AT	26 880	28 136	27 602	29 303	28 236	26 937
BE	12 649	14 051	14 658	10 080	15 174	14 559
BG	271	326	391	131	288	403
CY	2 096 ²⁹³	6 157	7 603	2 969	4 343	7 028
CZ	9 707	8 339	8 160	5 557	5 222	6 572
EL	30 492	31 040	32 221	29 692	32 115	36 313
FI	27 591	26 239	23 977	14 596	20 500	23 100
FR	262 550	280 248	299 996	241 576	255 647	233 309
HR	9 461	10 109	10 100	8 101	8 247	8 652
HU	n/a	16 651	15 509	13 192	14 355	13 889
IE	4 747	5 753	4 804	7 687	4 432	3 943
IT	158 879	150 084	141 806	75 995	84 901	83 416
LT	7 987	7 374	7 414	14 161	3 881	4 217
LU	470	3 667	5 682	12 728	11 385	10 171
LV	10 505	10 453	10 426	9 474	10 086	9 934
NL	n/a	n/a	n/a	n/a	n/a	n/a
PL	80 784	80 194	73 341	56 371	55 842	59 570

²⁸⁵ Council of the Baltic Sea States (CBSS), 'Task Force against Trafficking in Human Beings (TF-THB)', n.d., <https://cbss.org/cbss-bodies/tf-thb/>, last accessed on 25 September 2024.

²⁸⁶ BE, BG, CY, EE, EL, FI, FR, HU, IE, IT, LT, LU, LV, PL, SE, SK.

²⁸⁷ BE, BG, CY, EL, LU, SE.

²⁸⁸ CZ, HR, HU, IT, LV, LT, PL.

²⁸⁹ EE, FI, LV, PL.

²⁹⁰ EE, LV.

²⁹¹ FI, PL.

²⁹² FI, LV, PL.

²⁹³ Refers to inspections between July and December.

Country	No of inspections across sectors					
	2017	2018	2019	2020	2021	2022
SE	n/a	516	2 111	1 723	1 938	2 626
SI	6499	10 087	10 442	7826	10 000	10 875
SK	20 945	28 223	23 891	13 182	17 233	17 637

Country	No of inspections targeting third-country nationals					
EE	594	403	397	650	375	209
FI	n/a	n/a	n/a	n/a	1 534	2 350
LV	1 984	1 293	1 338	1 115	502	852
PL	7 190	7 817	8 348	4 312	6 418	8 895

Despite differing data collection methods, EMN Member Countries²⁹⁴ reported **notable developments in the scale of total annual inspections**.

Belgium, Bulgaria, Cyprus, Greece, Luxembourg and Sweden reported a **general increasing trend of total annual inspections** (see Table 3).

Belgium saw an overall fluctuating trend from 2017 to 2022. After an initial increase of around 16% in the first three years, there was a sharp decline of approximately 31% in 2020, likely due to restrictions during the COVID-19 pandemic. This was followed by a 50% recovery in 2021, then a slight decline in 2022.

Bulgaria saw a significant rise in total annual inspections from 2017 to 2019. They were intensified after the COVID-19 pandemic and reached a record level in 2022, with a 40% increase compared to 2021. However, the number of illegally staying third-country nationals detected remained stable.

Similarly, the COVID-19 outbreak had a temporary impact on labour inspections in **Cyprus**, but inspection activity increased overall between 2017 and 2022. Currently, the Labour Inspectorate conducts 7 000 inspections and interviews about 16 000 workers each year, on average.

Greece's annual inspections carried out by the Labour Inspectorate gradually increased in all sectors of economic activity since 2017. Despite a slight decline during the COVID-19 pandemic, inspections quickly recovered and surged, reaching their highest level in 2022, with a 13% increase compared to 2021.

The increase in the number of labour inspectors on the ground in **Luxembourg**, from 22 in 2018 to 86 in 2021, significantly enhanced the detection of illegal employment of third-country nationals. For example, twice as many cases were detected in 2022 compared to 2021, and the number of illegally employed third-country nationals identified rose by 145% (from 65 in 2021 to 160 in 2022).

Sweden also witnessed an overall rise in the number of inspections between 2017 and 2022. In 2018, 516 inspections were carried out, soaring to 2 111 in 2019. The following years also showed high numbers of inspections, at 1 723 in 2020, 1 938 in 2021 and 2 626 in 2022.

Developments in the scale of inspections were also identified in EMN Member Countries where the number of annual inspections did not consistently rise over the reporting period.

In **Ireland**, in 2022, there were almost 4 000 inspection cases, and the number of employment permit law breaches detected was the highest since 2019.

France passed new legislation regulating postings and intensified inspections between 2019 and 2022 to ensure compliance with the updated posting rules (equal pay, working hours, etc.) and to prevent new forms of fraud following the COVID-19 pandemic. In 2022, France launched a large inspection campaign against illegal employment across sectors and regions, with 233 309 interventions carried out by the Labour Inspectorate, approximately 17% (38 674) of which targeted illegal work. Administrative sanctions also rose, with 633 prefectural orders for the temporary closure of undertakings in 2021.

Lithuania measures the effectiveness of illegal employment controls by using the ratio of illegal employment cases detected by inspectors to the number of inspections. According to this metric, effectiveness increased from 17.8% in 2017 to 39.7% in 2022, due to better planning of inspections.

In **Latvia**, the number of inspections across sectors fell from 1 984 in 2017 to 502 in 2021, but there was an increase in the number of fines issued, from 96 in 2017 to 189 in 2021 (with peaks in 2018 and 2019, at 399 and 361 fines issued, respectively).

Although most EMN Member Countries track data on annual inspections across all sectors rather than focusing specifically on third-country nationals, **some specific trends were identified during inspections**. Estonia and Latvia saw a decrease in targeted inspections of third-country nationals since 2017, while Poland experienced an increase. In Finland, data are only available for 2021-2022 but show a slight upward trend.

Five EMN Member Countries reported an increase in the number and share of illegally employed third-country nationals detected by competent authorities.²⁹⁵ In Italy, the number of inspections involving third-country nationals without residence permits increased from 730 in 2017 to 1 997 in 2022. Another five EMN Member Countries reported increased sanctions or legal actions against offending employers during the same period.²⁹⁶ Six EMN Member Countries reported reinforcing their inspection workforce.²⁹⁷

294 BG, CY, CZ, EL, FR, HU, IE, IT, LT, LU, LV, SE.

295 AT, CZ, IT, LT, SI.

296 CZ, EL, FR, PL, SE.

297 BE, CY, FI, FR, IE, LU.

Other methods and tools used for identification

Other methods and tools that can help to detect illegal employment affecting third-country nationals include: **monitoring and risk-assessment mechanisms** (see section 3.1); **common databases and information exchange practices; insights from previous inspections and evidence-based studies; online platforms for complaints; and tip-offs from the public and third-country nationals.**

Five EMN Member Countries indicated that **easing access to shared databases accessible to key actors was an important strategy to effectively identify and prevent unlawful employment of third-country nationals.**²⁹⁸ In Ireland, WRC inspectors have legal access to various databases, such as those of revenue authorities, the Department of Social Protection, and the Department of Enterprise, Trade and Employment. In Luxembourg, the Law of 7 August 2023 authorises the Labour Inspectorate to access data on third-country nationals from the Joint Social Security Centre (CCSS). Similarly, the Labour Inspectorate of Poland has access to the Central Database of Foreigners (CDF), an online platform managed by the PES that contains key data on foreign workers, since 2019. The CDF also facilitates cooperation and information exchange between the Inspectorate and other authorities.

Box 11: Estonia: Migration Supervision Database (MIGIS) for up-to-date information on third-country nationals

MIGIS is a new database that monitors the status and transit of third-country nationals in Estonia and helps to prevent or detect any offences or irregularities during their stay. MIGIS can automatically verify if the legal basis and/or conditions for stay and/or

work are fulfilled and flag those who need further investigation. It can also generate risk profiles based on specific criteria. MIGIS facilitates quick and easy data-sharing between relevant authorities and cross-checks (both manual and automatic) with various databases through X-Road, an open-source platform that enables secure data exchange between private and public sector organisations.²⁹⁹

Other relevant measures reported by three EMN Member Countries were evidence-based studies, evaluation reports and interviews.³⁰⁰ The labour authority in Hungary relies on EUROPOL reports that identify the sectors most affected by labour exploitation, which often involve illegal employment of third-country nationals. In Slovenia, a joint report by the government, the Economic and Social Council and the Inspection Council reviews the legal changes, activities, and outcomes in the field of undeclared work and suggests solutions and areas for improvement in identification and inspection processes. Cyprus conducts separate interviews for employees and employers to prevent and detect unlawful labour practices and irregularities among third-country nationals.

Seven EMN Member Countries offer various channels for reporting illegal employment of third-country nationals, such as dedicated hotlines and online systems.³⁰¹ For example, Greece has an online complaints system and a hotline for people to anonymously report cases of third-country nationals working illegally.³⁰² In Bulgaria, the Labour Inspectorate has developed specialised software, available in English, that helps workers and employees to check if their work is declared or not, and offers advice on how to deal with offences.³⁰³ Cyprus and Italy also have dedicated hotlines to identify employers for inspections.



4.3. GOOD PRACTICES AND CHALLENGES IN IDENTIFYING ILLEGAL EMPLOYMENT OF THIRD-COUNTRY NATIONALS

Good practices and success factors

Most EMN Member Countries described good practices for the effective identification of illegal employment of third-country nationals.³⁰⁴ Practices include cooperation and information-sharing between different authorities, targeted workplace inspections, collaboration with the academic sector, making use of technology-driven solutions, and adjusting the legal framework to address evolving labour conditions.

Cooperation and information exchange are key factors in identification processes, as highlighted by many EMN Member Countries.³⁰⁵ Lithuania launched a new domestic cooperation model in 2019 involving tax, border

control, police, and financial authorities to combat the shadow labour market, especially the illegal employment of third-country nationals. Inter-agency collaboration is crucial in Sweden, where cooperation with social partners facilitates the effective identification of cases of illegal employment of third-country nationals and organised crime. Belgium and Cyprus engage in staff exchanges and capacity-building activities in cooperation with the ELA and the European Platform tackling undeclared work.

Ten EMN Member Countries shared successful examples of **different ways to conduct and target workplace inspections.**³⁰⁶ In Austria and Finland, unannounced workplace inspections are considered central to identifying cases of illegal employment of third-country nationals. In

298 BE, BG, EE, IE, LU.

299 e-Estonia, 'X-Road', n.d., <https://e-estonia.com/solutions/interoperability-services/x-road/>, last accessed on 26 September 2024.

300 CY, HU, SI.

301 BE, BG, CY, EL, FI, IE, IT.

302 Hellenic Labour Inspectorate, 'Home', n.d., <http://www.hli.gov.gr>, last accessed on 26 September 2024.

303 The self-assessment tool 'Check if you are working undeclared' is accessible free of charge (Government of Bulgaria, 'Undeclared Work', n.d., <https://www.gli.government.bg/udw/>, last accessed on 26 September 2024).

304 AT, BE, CY, CZ, EE, EL, FI, FR, HU, IE, IT, LT, LU, LV, NL, SE, SI, SK.

305 BE, CY, EE, FI, FR, HU, IE, LT, LU, LV, NL, SE, SI, SK.

306 AT, BG, CZ, EL, FI, IE, LV, PL, SE, SI.

the Czech Republic, Ireland and Greece, inspectors target workplaces based on inquiries and substantial evidence indicating possible illegal employment or labour exploitation, including issues related to trafficking in human beings.³⁰⁷

Three EMN Member Countries highlighted how **IT** can play a key role in facilitating the detection and reporting of migration-related issues.³⁰⁸ Estonia has implemented digital solutions for its migration systems, such as MIGIS and the RIS, which allow data-driven verification and interinstitutional coordination. Greece has created an online complaint service to facilitate anonymous reporting. In Austria, new IT systems have been developed to protect companies, particularly in the construction sector, from accidentally employing staff unlawfully.³⁰⁹

Estonia and the Czech Republic have adapted their **legal frameworks to remove judicial obstacles** and improve their inspection capacities in response to changing labour conditions. In the Czech Republic, employers must notify the social security administration of employees who receive temporary protection, as well as those who have short-time work contracts, which often affect third-country nationals.³¹⁰

Belgium highlighted the importance of **collaborating with the academic sector** to combat illegal labour practices, noting that universities and educational institutions contribute to a deeper understanding of emerging trends and facilitate research-driven strategies.

Challenges

Challenges reported by EMN Member Countries can be broadly categorised into: (1) communication and trust issues between authorities, third-country nationals and employers due to language barriers and fear of consequences; (2) risk of identity fraud and document falsification; (3) difficulties in detecting labour offences in sectors that rely on seasonal work; and (4) limited resources to monitor and identify illegal employment of foreign workers.

Eight EMN Member Countries reported that **language barriers** were a significant obstacle to detecting illegal employment of third-country nationals.³¹¹ A foreign employee may not be able to access information on labour law and procedures or complaints mechanisms due to poor language skills or lack of awareness. The authorities and employers may also face communication difficulties due to the absence of a common language. Suggestions to overcome these barriers included authorised translators, alternative communication methods, multilingual websites, and language-specific training for inspectors. **Trust issues and fear of consequences** were also mentioned as hampering (self) identification.³¹² In Austria, third-country nationals are hesitant to assert their rights, even if they know them, as they see little personal advantage in doing so. In Finland, Luxembourg and Austria,

stakeholders from OSH authorities, civil organisations and the Chamber of Labour, respectively, note that the vulnerability of third-country nationals plays an important role, particularly their fear of consequences (risk of losing employment, income for themselves and their (reliant) families, fear of return).

Seven EMN Member Countries indicated that **forged identity documents and false identity claims** were a serious challenge hindering the detection of the illegal employment of third-country nationals.³¹³ In Austria, one type of fraud involves registering a different person (who is lawfully permitted to work) instead of the actual employee (who is working unlawfully). The Austrian financial police has also observed a rise in the use of forged documents by third-country nationals, especially fake ID cards from other EU Member States, as they are simpler and cheaper to fake than passports. False statuses have also emerged in France, with people abusing digital platforms to register for self-employment. Bulgaria reported difficulties in obtaining reliable information during workplace inspections due to the lack of official identity documents for third-country nationals.

Four EMN Member Countries reported difficulties in **detecting labour-related offences in the seasonal sectors of tourism, agriculture and fisheries**.³¹⁴ Bulgarian authorities have intensified their monitoring efforts during the peak seasons of these sectors, focusing on the lawful establishment of labour relationships, especially for third-country nationals. Due to the specific nature of crop production work, which requires quick recruitment of a large workforce, enhanced control measures are implemented to prevent undeclared work. Finland and Ireland also reported challenges in identifying illegal employment in these sectors. In Ireland, the WRC promoted EMPACT JADs in the agricultural sector to detect illegal practices particularly affecting foreign workers. Finland highlighted sector-related challenges outside of seasonal industries, specifically identifying illegal entrepreneurship, as these cases fell outside the jurisdiction of OSH authorities. Finland also noted challenges in obtaining consistent accounts from employees on their working conditions, as some individuals did not recognise or acknowledge that they were being exploited.

Three EMN Member Countries highlighted the structural challenge of **limited administrative and operational capacity** (inspectors and resources) to monitor and identify situations of exploitation and illegal employment of foreign workers.³¹⁵ Greece reported difficulties for inspectors to reach site locations due to the volatility of working hours and locations. Finland noted operational challenges affecting how cases were identified and classified, e.g. differing interpretations of legislation among the authorities involved.

307 In Ireland, WRC inspectors do not have a statutory role in relation to trafficking in human beings, but will refer indications of trafficking to the police authorities.

308 AT, EE, EL.

309 These IT systems run automatically in the background and check, for example, personal data and the completeness of the relevant documents and permits before a potential employee is hired.

310 This legal obligation is in force since April 2023 (i.e. outside the study period).

311 BE, BG, CY, FI, LT, LU, LV, SK.

312 AT, FI, LU

313 AT, BE, BG, FR, FI, HU, SE.

314 BE, BG, FI, IE.

315 CY, IE, NL.

5. SANCTIONS FOR EMPLOYERS

The 2017 EMN study on the illegal employment of third-country nationals in the EU highlighted that EMN Member Countries had adopted, or were in the process of implementing, new measures to deter illegal employment. These included increasing sanctions for illegally employed third-country nationals and employers, establishing lists of trusted or unreliable employers, addressing malpractice of employment intermediaries (e.g. employment agencies), setting up specific offices, running communication campaigns, and stepping up and improving inspections.

This section covers the main changes in the legal frameworks of EMN Member Countries since 2017, as well as

the challenges and good practices in implementing and enforcing sanctions. It provides a detailed overview of the legislative developments and policy shifts across the EMN Member Countries, such as increased fines, revised responsibilities of employers, and coordination mechanisms (section 5.1). It then examines the obstacles faced by EMN Member Countries in applying sanctions, such as cross-border issues, coordination gaps, and judicial and administrative barriers (section 5.2). The last section presents some practices for future action adopted by EMN Member Countries to overcome the challenges and improve the effectiveness of sanctions (section 5.3).



5.1. RENEWED APPROACHES TO SANCTIONS FOR EMPLOYERS

National legislative developments

Since 2017, many EMN Member Countries have revised their legal frameworks, enacted legislative amendments to existing sanctions, or implemented new measures to sanction employers hiring third-country nationals illegally.³¹⁶ New developments show a continued commitment to improving the deterrent effect of sanctions and fully operationalising the Employers Sanctions Directive (2009/52/EC). These developments included:

Eleven EMN Member Countries reported to have **increased financial penalties.**³¹⁷

- In **Bulgaria**, amendments to the Law on Labour Migration and Labour Mobility introduced new sanctions for third-country nationals working without authorisation, from € 250 to € 2 500.³¹⁸ Employers, whether natural persons or legal entities, who hire third-country nationals illegally, also face proportional penalties, with increased fines for repeated offences.
- In 2021, **Cyprus** increased the penalties imposed on employers in breach of labour rules on third-country nationals. Employers found guilty now face up to five years in prison and/or a fine of up to € 20 000.

- In 2018, **Estonia** increased the fines tenfold for legal entities engaging in illegal employment practices. New legal provisions allow authorities to impose fines for various offences related to illegal employment. It also introduced amendments to ensure compliance with labour rules, guaranteeing the payment of wages and limiting the conditions of short-term employment.
- A new legal framework in **Hungary** requires employers to pay a detailed labour fine for each employee who works without a permit. The fine is calculated based on the salary paid, or at least the minimum wage. The employer is then excluded from receiving public subsidies and participating in public procurement processes for two years.
- In **Italy**, Inter-Ministerial Decree No 151 of 2018, implementing the Employers Sanctions Directive, sets the criteria for the extra administrative fine based on the average cost of return.
- Since 2018, in **Poland**, the maximum fine for offences related to entrusting illegal work to third-country nationals has been increased from € 2 700 to € 6 700.³¹⁹ At the same time, the minimum fine has been reduced from € 670 to € 225.³²⁰ This gives more flexibility to labour inspectors to impose fines directly instead of referring the case to court.

³¹⁶ AT, BG, CY, CZ, EE, FI, FR, HU, IT, LT, LU (reported changes in 2023, i.e. outside the reporting period), LV, NL, PL, SI, SE.

³¹⁷ BG, CY, EE, FR, IT, LT, LU (reported changes in 2023, i.e. outside the reporting period), NL, PL, SI, SE.

³¹⁸ In the national report, the sanctions were listed as ranging from BGN 500 to BGN 5,000 (€ 255.65 to € 2 556.65 approx, exchange rate on 25 August 2024).

³¹⁹ The original amounts in the national report were listed as PLN 10 000 to PLN 30 000 for maximum fines, and PLN 3 000 to PLN 1 000 for minimum fines. Conversion rate applied as of 25 August 2024.

³²⁰ The original amounts in the national report were listed as PLN 3 000 to PLN 1 000 for minimum fines. Conversion rate applied as of 25 August 2024.

- The **Netherlands'** sanctions policy for violations of the Foreign Nationals Employment Act has undergone several changes since 2017. A significant change is the consideration of several factors in determining fine amounts, such as the employer's legal status, the circumstances and number of foreign nationals involved, and the employer's history and intentions. This now allows for fines to be adjusted proportionally, a differentiation that was not applied before 2022. Fines are no longer increased solely because a third-country national is found to be residing illegally in the Netherlands, unlike in 2017.
- In **Sweden**, amendments to the Aliens Act in 2018 gave the Police Authority more power to conduct workplace inspections. Employers who employ third-country nationals without valid residence or work permits now face higher financial penalties.

In five EMN Member Countries measures were introduced to **exclude offending employers from public procurement**.³²¹ For example, Slovenia updated the Prevention of Undeclared Work and Employment Act and the Public Procurement Act in 2021 to include more types of illegal employment practices that can exclude contractors from participating in public procurement processes.

Four EMN Member Countries introduced developments **imposing prison sentences for serious offences**.³²² France intensified its efforts to combat illegal employment by imposing additional sanctions against employers. New measures include mandatory dissemination of criminal convictions for illegal employment, particularly in cases involving organised crime, minors, or vulnerable individuals. This approach aims to increase transparency and deterrence. However, judges retain the discretion to waive this requirement based on the circumstances of the offence and the profile of the offender. Administrative sanctions for employers were revised to ensure stricter compliance with labour laws.

Furthermore, four EMN Member Countries **clarified the legal responsibility of employers for labour offences**.³²³ In Latvia, in 2019, a chapter on administrative offences in immigration (including fines for employers and

employees) was moved from the Administrative Violations Code to the Immigration Law. The Immigration Law obliges employers to ensure that third-country national workers comply with the rules of entry, stay and exit, and to notify the competent authorities of any non-compliance. In Lithuania, amendments to the Law on Employment were introduced in June 2021 and established the responsibility of legal persons to report third-country nationals employed or posted for temporary work to the competent authorities.

Austria introduced two legal changes, the first, in 2021, abolished the accumulation principle in the Act to Combat Wage and Social Dumping. This means that employers now face a single administrative offence for infringements against this Act, irrespective of the number of workers affected, if they fail to provide appropriate remuneration.³²⁴ The second change, in 2022, increased flexibility in penal provisions, granting PES the discretion not to suspend work permits for individuals engaged in illegal employment under certain conditions.³²⁵

Box 12: Finnish legal adjustments to regulate sanctioning of employers

In Finland, the Aliens Act stipulates fines for employers employing third-country nationals without the right to work, while the Criminal Code specifies the applicable penalties.³²⁶ In 2021, the Act was amended to include residence permits for victims of labour exploitation and sanctions for employers exploiting workers. These changes also allowed the rejection of a worker's residence permit if the employer's compliance with entry or residence rules was questionable.

Proposed legislation in August 2022 further clarified the responsibility of employers and contractors, especially in sectors such as construction and shipbuilding. The new rules came into force in February 2023 (after the reporting period) and require both employers and contractors to check the right to work and extend the suspension of the issuance of residence permits to non-compliant employers to all work-related residence permits.

! 5.2. CHALLENGES FOR SANCTIONING

EMN Member Countries identified the **main challenges in sanctioning offending employers** as: (1) lack of testimonies from third-country nationals to identify and sanction offending employers; (2) obstacles to prove illegal employment for the imposition of sanctions; (3) cross-border sanctioning, especially when the responsibility chain involves subcontractors and letterbox

companies; (4) coordination and information-sharing gaps between authorities; (5) insufficiently severe sanctions to deter employers from engaging in illegal employment of third-country nationals.

321 EE, FR, HU, LT, SI.

322 BE, CY, FR, IE.

323 EE, FI, LT, LV.

324 According to a ruling by the Court of Justice of the European Union (CJEU) in 2019, some of the penalties issued by the Austrian government were disproportionate and contrary to EU law (Austrian Parliament, 'Press Release: National Council - Highlights of the 2021 Session', 2021, https://www.parliament.gv.at/aktuelles/pk/jahr_2021/pk0834, last accessed on 26 September 2024).

325 For example, in the event of extenuating circumstances, such as a low level of culpability or the violation being committed for only a short period. The employer must also provide credible evidence that specific measures have been put in place to prevent further violations.

326 Employers who unlawfully employ third-country nationals face fines of € 1 000 to € 30 000 under the transposition of the Employers Sanctions Directive.

Lack of testimonies from third-country nationals

Nine EMN Member Countries³²⁷ highlighted the lack of reporting from third-country nationals as a key challenge. According to Finland, third-country nationals often do not disclose labour-related abuses to the authorities because they fear possible backlash from their employers. In Ireland, NGOs reported that undocumented people experiencing exploitation were unlikely to come forward during joint police-WRC inspections due to a fear of being returned. Italy indicated similar challenges, combined with the difficulties in protecting those who were exploited from intimidation or retaliation from the employers or criminal groups involved. Austria suggested that the decision of third-country nationals to refrain from asserting their rights was influenced by the immediate need for income, the risk of losing employment, and the fear of consequences under aliens law, especially among those with uncertain residency status.

Language and communication barriers deter third-country nationals from reporting illegal labour abuse or exploitation.³²⁸ In the Czech Republic, authorities struggle to obtain witness statements or encounter inconsistent testimonies. Linguistic mediation is essential to identify victims of illegal employment and collect their testimonies, which are crucial to proving labour offences.

Obstacles to proving and sanctioning illegal employment

Another common challenge for EMN Member Countries is obtaining evidence to prove illegal employment of third-country nationals. This is even more difficult in cross-border situations.³²⁹ In Finland, authorities face an added challenge when intervening in illegal employment involving posted workers, as offences are often detected only after the (short time) employment relationship has ended, and the posted third-country national worker and company have left the country. In Ireland, some employers who break employment laws elude detection by changing their licensed name and re-applying for employment permits. In Sweden, some employers deliberately file for bankruptcy to avoid financial sanctions, then resume their business activity under different ownership. In Lithuania, third-country nationals might not cooperate with the authorities or give inconsistent testimonies, especially when questioned at the infringement site. Estonia highlighted that they face judicial obstacles to hold legal persons responsible for labour offences.

Sanctioning employers of illegally staying third-country nationals is often hindered by time-consuming and complex administrative proceedings, as reported by four EMN Member Countries.³³⁰ Latvia pointed out that requesting information from competent foreign authorities on posted workers requires lengthy procedures and constant follow-up, which slows the sanctioning process.

Cross-border sanctioning

According to six EMN Member Countries,³³¹ tracking and enforcing sanctions against unlawful employment practices across borders is particularly challenging. In Austria, the cross-border enforcement of sanctions for offences related to foreign postings is highly complex when the employer is registered in another EU country. Belgium and Latvia reported similar challenges, often exacerbated by the fact that subcontracting chains (involving multiple layers of companies in the employment relationship) dilute employer accountability and responsibility for compliance with labour law. Frequent use of letterbox companies makes identification even more challenging in cross-border situations.

Coordination and information-sharing gaps between authorities

Four EMN Member Countries³³² reported challenges in coordinating actions and sharing information between national authorities for the identification and sanctioning of employers who break labour laws. The Finnish Immigration Service reported that personal data protection limited its ability to share information and cooperate with other authorities in enforcing sanctions. Another challenge is to document and transmit the tacit knowledge and expertise from key stakeholders and organisations to authorities, which are not widely distributed, but, rather, concentrated in the hands of a few people. Sweden noted that the imposition of financial sanctions on employers required increased coordination between several authorities, such as the police, prosecution, courts, enforcement, administrative and financial services, and argued for the simplification of related procedures.

Other challenges

Four EMN Member Countries acknowledged that **the level and type of sanctions in their countries might be insufficiently severe and/or enforceable to prevent employers from engaging in illegal employment of third-country nationals.**³³³ Poland reported that, despite amendments to its legal framework in 2018, the sanctions for breaking the rules on legal employment are not sufficiently severe. The maximum penalty that a labour inspector can impose (approximately € 450)³³⁴ often does not deter employers from illegally hiring third-country nationals. Similarly, Luxembourg implemented legislative changes in 2023 (after the reporting period) to address concerns that the levels of sanctions were not severe enough to effectively prevent instances of illegal employment.³³⁵

France reported that **digitalisation and the emergence of business-to-business platforms** posed new challenges for identification and sanctioning, as they created new forms of illegal employment that were more difficult to track.

327 AT, BE, FI, IE, IT, LT, LU, LV, SE.

328 CZ, HR, IT, LV.

329 BE, CZ, FI, IE, LT, LV, SE, SK.

330 BE, CZ, LV, SE.

331 AT, BE, EE, FI, LV, SK.

332 FI, HR, LU, SE.

333 FI, IE, LU, PL.

334 The original amount in the national report was listed as PLN 2 000. Conversion rate applied as of 25 August 2024.

335 In Luxembourg, the administrative fine has been increased from € 2 500 to € 10 000 per illegally employed third-country national and the criminal sanction from € 20 000 to € 125 000 per illegally employed third-country national in the event of aggravating circumstances.



5.3. GOOD PRACTICES AND SUCCESS FACTORS

Many EMN Member Countries have implemented diverse solutions to address the challenges related to sanctioning employers of illegally staying third-country nationals.³³⁶ These include digital tools for better coordination and tracking of sanction outcomes, methods to increase the deterrent effect of sanctions, and assessments of employer reliability. These practices can serve as models for other countries to improve their sanctioning capacity.

Increased deterrence of sanctions

According to six EMN Member Countries,³³⁷ the deterrent effects of sanctions contribute to preventing illegal labour practices among employers. In Austria, severe sanctions, combined with regular checks by the financial police, are a strong deterrent for employers attempting to engage in unlawful employment of third-country nationals. Similarly, in Greece, a comprehensive system of escalating administrative sanctions and the possible temporary suspension of activity dissuade employers from employing third-country nationals illegally. In France, the dissemination of sanctions through the publication of criminal convictions creates a dissuasive effect for potential fraudsters. The Slovak Republic uses multiple sanctioning tools, which include fines and public disclosure of the offenders' identities. These measures lead to other negative consequences, such as offenders' eligibility for subsidies, contributions and participation in public procurement.

Coordinated approaches to improve sanctioning

Six EMN Member Countries reported that effective coordination between authorities or inter-agency cooperation is crucial to improve the effectiveness of sanctioning processes.³³⁸ Belgium has developed the e-Dossier platform as part of its Social Fraud Strategic Plan for 2022-2025, which enhances collaboration among stakeholders, enables real-time tracking of progress made with a case, and supports prevention, detection, and enforcement through digital means. France's National Plan to Combat Illegal Employment 2023-2027 includes measures to improve coordination between authorities by better targeting interventions and combining traditional and new tools for effective sanctions. Sweden has continued to develop joint efforts to sanction illegal employment of third-country nationals by involving the Prosecution Authority in its inter-agency cooperation system.

Legal adjustments and reliability assessments

Five EMN Member Countries³³⁹ reported that national strategies and legal improvements are key to their stance against illegal labour practices. Estonia reformed the Aliens Act in 2020 and 2022 to give authorities more power to sanction employers engaging in unlawful practices. This includes a new clause for reliability assessment, which allows a thorough evaluation of employers, educational institutions, or other entities involved in long-stay visa applications.

Finland implemented legal measures in 2023 (after the reporting period) to clarify employers' responsibilities. It also highlighted proactive monitoring, financial sanctions, and prevention mechanisms to address the illegal employment of third-country nationals. Bulgaria introduced the concept of 'unreliable employers' by establishing a list of offenders to increase deterrence and foster a culture of compliance in the fight against illegal employment of third-country nationals. France publishes lists of offenders and communicates the sanctions to increase their deterrent effect.

Box 13: Good practices in sanctions against employers

In **Cyprus**, employers failing to register with the Social Insurance Fund face administrative fines of € 3 500 for each employee. They must prove compliance with the law, as the 'reverse burden of proof' is on the employer.

The INL in **Italy** offers training and guidance for inspection staff. It also provides a handbook on the maximum sanctions for undeclared work (2022) highlighting the scope of sanctions, their amounts, penalties, cases of exclusion (among other topics) and containing a dedicated section on the employment of non-EU workers without a residence permit.

The **Netherlands** identifies good practices in increasing fines for employers based on proportionality, increasing the probability of apprehension and simplifying judicial procedures for imposing sanctions.

Lithuania and **Hungary** believe that non-monetary sanctions have considerable potential to deter employers from engaging in unlawful employment of third-country nationals, notably by excluding offenders from public procurement processes.

³³⁶ AT, BG, EE, FI, FR, HU, IE, IT, LT, LU, NL, SE.

³³⁷ AT, EL, FR, HU, PL, SK.

³³⁸ BE, FI, FR, LU, LV, SE.

³³⁹ BG, EE, FI, FR, NL.

6. OUTCOMES AND SUPPORT FOR THIRD-COUNTRY NATIONALS

The 2017 EMN study on illegal employment of third-country nationals highlighted that the issuance of a return decision was the most common outcome for illegally employed and irregularly staying third-country nationals. The comparison of possible outcomes was important, i.e. countries will act in a particular way depending on the case in question and often at the discretion of the national authorities. This section presents how the situation evolved between 2017 and 2022.

This section explores the possible outcomes that might result from the detection of a situation of illegal employment involving third-country nationals. The term 'outcome' refers to any administrative or civil consequence affecting

the status of the third-country national found in illegal employment. The outcomes are first analysed for the three main categories of third-country nationals, as well as for victims of trafficking in human beings, given the priority given to this group by the EMN Member Countries. It then highlights the procedures in place for employees to lodge complaints against their employers, followed by an overview of the possibilities for third-country nationals to claim back remuneration and the main channels through which third-country nationals are provided with information on their rights and preventing situations of illegal employment.



6.1. OUTCOMES FOR EMPLOYEES FROM THIRD COUNTRIES, ACCORDING TO THEIR LEGAL STATUS

EMN Member Countries outlined the conditions under which residence and/or work permits can be withdrawn, revoked and not renewed, in accordance with the provisions of various EU legal migration directives' conditions. These include:

- Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as **seasonal workers**,³⁴⁰
- Directive (EU) 2021/1883 – conditions of entry to and residence in the European Union of non-EU nationals for the purpose of **highly qualified employment**,³⁴¹
- Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an **intra-corporate transfer**,³⁴²

- Directive (EU) 2016/801 — entry and residence conditions for non-EU nationals for the purposes of **research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing**,³⁴³
- Directive 2003/109/EC concerning the status of third-country nationals who are **long-term residents**,³⁴⁴
- Directive 2003/86/EC on the right to **family reunification**.³⁴⁵

Specific legislation applies for third-country nationals without a residence or work permit, notably the most prominent is the Employers Sanctions Directive (2009/52/EC) as detailed in section 6.1.3. For victims of trafficking in human beings, the main relevant legislative framework

³⁴⁰ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32014L0036>, last accessed on 16 July 2024. Ireland does not participate in this Directive.

³⁴¹ Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32021L1883>, last accessed on 16 July 2024. Ireland does not participate in this Directive.

³⁴² Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, <https://eur-lex.europa.eu/eli/dir/2014/66/oj>, last accessed on 16 July 2024. Ireland does not participate in this Directive.

³⁴³ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast), <https://eur-lex.europa.eu/eli/dir/2016/801/oj>, last accessed on 16 July 2024. Ireland does not participate in this Directive.

³⁴⁴ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, <https://eur-lex.europa.eu/eli/dir/2003/109/oj>, last accessed on 16 July 2024. Ireland does not participate in this Directive.

³⁴⁵ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32003L0086>, last accessed on 16 July 2024.

includes the EU Anti-Trafficking Directive (2011/36/EU)³⁴⁶ and the Victims of Human Trafficking Residence Permit Directive (2004/81/EC),³⁴⁷ outlined in section 6.1.4. These delineate specific harmonised outcomes for EU Member States to apply where such individuals are detected. It is important to distinguish between the Employers Sanctions Directive, which addresses ‘particularly exploitative working conditions’, and the separate legal frameworks of the EU Anti-Trafficking Directive and the Victims of Human Trafficking Residence Permit Directive, which deal with the higher evidentiary demands of prosecuting trafficking for labour exploitation.

Other relevant EU directives that may frame the outcomes for illegally employed third-country nationals include the Victims’ Rights Directive (2012/29/EU)³⁴⁸ and the Employers Insolvency Directive (2008/94/EC).³⁴⁹

The analysis of the responses from EMN Member Countries reveals a split between countries where the primary immediate action in the wake of detection of illegal employment is to sanction the employer (see section 5), with a focus on protecting victims of trafficking of human beings,³⁵⁰ and countries that focus mostly (in addition, and not mutually exclusive, to victim protection) on issuing permit revocations or return decisions.³⁵¹ These approaches are not mutually exclusive. The outcomes vary considerably, depending on whether the worker was legally staying in the country when they were identified as working illegally, and the type of permit they were granted. The following subsections explore these different scenarios, first analysing the situation of third-country nationals with both a residence and a work permit, then third-country nationals with a residence permit but

without a work permit, and finally those without either a residence or a work permit.

Third-country nationals with a residence permit and a work permit

In the majority of EMN Member Countries **where a residence permit automatically includes a work permit**, for a third-country national with both a residence and a work permit who is found in a situation of illegal employment, the main outcomes are the withdrawal, cancellation or revocation of their residence permit and a consequential return decision (see Table 4). Withdrawal of the residence permit and work permit can also be enforced where the residence permit is not linked to the work permit,³⁵² or when third-country nationals can be granted a separate residence and work permit for certain activities or grounds of stay.³⁵³

The EU legal migration directives also play a significant role in shaping these outcomes in EMN Member Countries, as they set the minimum conditions for issuing (or rejecting) and withdrawing (or non-renewing) titles of residence to different categories of third-country nationals (e.g. seasonal workers, students and researchers). If one of these conditions is no longer complied with, for example because the permit was linked to an employment contract that has ended, or when other specific restrictions on the right to work are violated, the directives stipulate that the permit must or can be withdrawn or not renewed. For instance, the Seasonal Workers Directive requires Member States to reject applications or withdraw authorisation for seasonal work where the employer has been sanctioned under national law for undeclared work and/or illegal employment (Articles 8 and 9).³⁵⁴

346 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>, last accessed on 16 July 2024. Please note that this Directive was amended in 2024: Directive (EU) 2024/1712 of the European Parliament and of the Council of 10 October 2024 on conditions of entry and residence of third-country nationals for the purpose of highly skilled employment, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401712&qid=1731509312172, last accessed on 20 November 2024.

347 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0081>, last accessed on 16 July 2024.

348 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029>, last accessed on 16 July 2024.

349 Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008L0094-20151009>, last accessed on 16 July 2024.

350 AT, BG, CY, EE, FI, FR, HU, IT, LT, LU (reported changes in 2023, i.e. after the reporting period), LV, NL, PL, SE, SI.

351 AT, CY, CZ, FI, HR, HU, IE, LU, LV, NL, PL, SI, SK.

352 IE.

353 FR.

354 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex%3A32014L0036>, last accessed on 20 November 2024. Ireland does not participate in this Directive.

Table 4: Consequences of illegal employment for third-country nationals legally residing in a EMN Member Country and enforcement mechanism

EMN Member Country	Outcomes for third-country nationals
AT	<p>Employment with the approval of the labour market authorities but without registration has no consequences, especially since the person has a residence permit and unlawful employment is not a punishable offence for the employee. This could occur if the person could lawfully be employed but is not registered with the authorities and/or does not pay taxes and social security contributions.</p> <p>If the employment is outside the scope of labour market authorisation, the residence permit may not be extended (e.g. for students) and a return decision may be issued. This could happen if the third-country national is employed by an employer other than that indicated on the Red-White-Red (RWR) Card (single permit).</p>
BE	Automatic withdrawal of the work permit on detection of illegal employment - residence permit ends 90 days after work permit withdrawal. Issuance of removal order and potential detention for removal.
BG	<p>Right of a third-country national worker to access the labour market can be revoked if the Ministry of Labour and Social Policy finds that their employment does not match the authorised position, workplace, or employer.</p> <p>Executive Director of the Employment Agency can deny labour market access if the third-country national has been penalised for illegal employment within the past five years or has previously worked illegally in Bulgaria, either during a prior residence or at the time of their current application.</p>
CY	Labour Inspectorate informs the Civil Registry and Migration Department about the possibility to revoke the residence permit.
CZ	Possible withdrawal of the work and residence permit. Risk of cancellation of the single permit for failure to report changes to the Labour Authority, if the authorisation to work is linked to a single job or employer.
EE	Registering employment is the responsibility of the employer. Illegal employment in case of legal stay may trigger misdemeanour proceedings and the legal stay may be terminated (with the option of voluntary return).
FI	<p>Undeclared work may lead to tax fraud charges, fines, or imprisonment.</p> <p>Residence permit may be cancelled if grounds for issuance no longer exist. The third-country national may apply for a new permit, which will be assessed on a case-by-case basis. If a residence permit is cancelled and the person is not granted a new permit, the police may begin the process of removal from the country.</p>
FR	Third-country nationals can be granted a separate residence and work permit for certain activities/ground of work in France. Withdrawal or refusal of the renewal of the residence and work permit. Issuance of a return decision if legally possible.
HR	Fine and withdrawal of the residence and work permit - issuance of a return decision.
HU	Withdrawal of residence permit - issuance of return decision - coordination with relevant authorities for further actions.
IE	Immigration permission can be withdrawn and, if relevant, the employment permit revoked, ³⁵⁵ subject to the same removal process ³⁵⁶ as persons found to be irregularly present in the State. Issued with a deportation letter.
IT	Maximum penalty for undeclared work is the same, irrespective of nationality or permit status. This includes the collection of social security contributions and insurance premiums, preceded by an issuance of warning about the employee's assets.
LU	<p>Directorate of Immigration warns third-country national about legal requirements and potential loss of residence permit</p> <p>Possible revocation of residence permit or refusal of renewal for working outside permit limits. Withdrawal of the right of residence may also be considered.</p>

³⁵⁵ Subject to section 16 of the Employment Permits Act 2006, as amended.

³⁵⁶ Section 3 of the Immigration Act 1999.

EMN Member Country	Outcomes for third-country nationals
LV	Right to work is limited to a specific sector and employer. If an inspection shows an infringement, an administrative offence proceeding is started against the employee and their visa or residence permit is revoked. If the revocation is ignored, the issuance of a consequent return decision follows.
NL	Revocation of residence and work permits if the original conditions are not met or regulations unfulfilled - revocation of the residence permit is possible. ³⁵⁷ Possible return decision.
PL	Lighter liability for third-country nationals working illegally. Procedure of voluntary return for illegal employment.
SI	Annulment of the single permit if consent of Employment Service is withdrawn due to an enforceable fine incurred by employer.
SE	Extent of the illegal work affects the sanctions, i.e. illegal work in addition to authorised work would be reported to the Police Authority but may not necessarily lead to a rejection of renewal (or revocation). A person who has engaged in illegal work only would be more likely to receive a rejection of a renewal (or revocation). The Police Authority urges third-country nationals with a work permit in another EU Member State to leave if detected working in Sweden.
SK	If in defiance of the residence permit as authorised by the police force, possible outcomes for illegal work or any activity other than those defined in the temporary residence or visa are detention and return. If the third-country national is undertaking illegal work in defiance of the work permit granted by the labour inspectorate, labour offices and labour headquarters, the possible outcome is a financial penalty.

Four EMN Member Countries³⁵⁸ drew particular attention to **third-country nationals staying for the purpose of study**, where inspections mainly focused on whether the number of hours foreseen in a student job contract was in accordance with Article 24(3) of the Students and Researchers Directive (2016/801/EU) (see Box 14).³⁵⁹ The Directive stipulates that Member States are not allowed to restrict the working hours of third-country nationals with a student permit to less than 15 hours a week.

Box 14: Consequences of illegal employment for third-country nationals with a student permit

Austria: Third-country nationals with a study permit working more than the allowed number of hours foreseen by law risk not having their residence permit renewed after its expiration.

Belgium: Students who work more than the authorised 20 hours a week can lose their residence permit.

Ireland: Students are permitted to access the labour market for up to 20 hours per week during term time and 40 hours during the summer and over the Christmas holiday period (15 December–15 January). Where a student is found to be working in excess of these hours, they might not have their immigration permission renewed at the next renewal date. If they are found in breach of these conditions, they may be subject to the same removal process as persons found to be irregularly present in the national territory.

Luxembourg: If the total amount of hours (per week/month) is exceeded, students from third countries risk losing their residence permit if the situation persists.

Third-country nationals with a residence permit but without a work permit

For eleven EMN Member Countries, the main consequences for a third-country national found in a situation of illegal employment while legally staying on the national territory include withdrawal or rejection of renewal of the residence permit,³⁶⁰ issuance of a return decision,³⁶¹ or a fine for the employer or the illegal worker.³⁶²

In **Austria**, pursuing employment without the approval of the labour market authorities will result in a return decision, but personal and family life is taken into account.

In **Belgium**, in most cases, there is no risk of losing the residence permit. If the worker also received social benefits while working illegally, they may be required to reimburse these benefits or lose their right to such benefits.

Bulgaria imposes administrative liability on employers for hiring without the corresponding permit or registration with the Employment Agency.

In **Greece**, employers are fined, while Slovenia also fines employers allowing third-country nationals to work without the proper permit, with a 10-day voluntary departure period for the third-country nationals.

³⁵⁷ Aliens Act (*Vreemdelingenwet*) 2000.

³⁵⁸ AT, BE, IE, LU.

³⁵⁹ Each Member State shall determine the maximum number of hours per week or days or months per year allowed for such an activity, which shall not be less than 15 hours per week, or the equivalent in days or months per year. The situation of the labour market in the Member State concerned may be taken into account.

³⁶⁰ FR, LU, LV, NL, SE.

³⁶¹ AT, CZ, EE, SI.

³⁶² EL, FI, SI.

In **Finland**, the only residence permit that does not include any kind of right to work is that for third-country nationals not granted asylum or a residence permit on the basis of subsidiary protection or humanitarian protection, but who are issued a temporary residence permit for a maximum of one year if they cannot be removed from the country because they are under the threat of the death penalty, torture, persecution or other treatment violating human dignity (according to Section 89 of the Aliens Act). Third-country nationals found in an illegal employment situation while benefiting from this permit can be fined for their violation of the Aliens Act.

Ireland allows certain third-country nationals to access the labour market without an employment permit, but they are subject to the conditions of the immigration permission they hold. Where a third-country national who holds a residence permit that does not permit them to work takes up employment, they may be subject to the same removal process as persons found to be irregularly present on the national territory (i.e. Section 3 of the Immigration Act 1999).

Third-country nationals without a residence permit or work permit

The outcomes for third-country nationals without a residence or work permit should be understood in the context of the Employers Sanctions Directive (2009/52/EC), which accords rights to undocumented migrants in situations of illegal employment.

Employers are required to pay undocumented migrant workers outstanding remuneration at a level of at least the minimum wage for at least three months (such as due wages, social security contributions, taxes). The Directive stipulates that Member States shall put in place mechanisms to ensure that third-country nationals can reclaim remuneration and associated transfer costs, even if they have been returned. These mechanisms should also allow third-country nationals to involve relevant third parties (e.g. unions), which should in turn not face any risk of being accused of facilitating irregular migration. In cases of labour exploitation, Member States may grant temporary residence permits.

Against this backdrop, EMN Member Countries³⁶³ responses show that **a return decision** (and in some cases arrest and removal from the national territory) is **the most common outcome for third-country nationals without a residence or work permit**. While the risk of exploitation or trafficking in human beings exists in all three scenarios, the risk is far higher in this last scenario and the consequences are likely to be more serious. The identification of these grave situations may happen independently of the identification of illegal employment; in such cases, special procedures are put in place and more investigations follow.

In Austria and Belgium, representatives from the labour inspectorate or the financial police report illegally working undocumented third-country nationals to the relevant authorities, leading to potential detention and return

decisions. However, in Belgium, certain protections may shield victims of labour exploitation from detention.

In Greece, return decisions are issued for illegally staying third-country nationals. In Finland, a third-country national who resides in the country without the required residence permit or who is deliberately employed or pursues a trade without the right to gainful employment can be sentenced to a fine for a violation of the Aliens Act (Section 185). The police can decide on refusal of entry or submit a proposal for refusal of entry or return to the Finnish Immigration Service. In Ireland, undocumented third-country nationals found to be working irregularly may be issued with an intention to deport letter. In France, administrative³⁶⁴ and penal sanctions occur. An order to leave the national territory may also be issued and a refusal to grant a residence permit if requested.

Italy, Lithuania and Luxemburg involve other stakeholders in the process. Italy and Lithuania require labour inspectors to report violations to the judicial authorities and, in Lithuania, to the State Border Guard Service as well. Luxembourg communicates information about irregular migrants to the Ministry in charge of immigration and asylum. The Grand-Ducal Police manage their return and provide a voluntary departure period, which is determined by the Ministry in charge of immigration and asylum.

In Latvia, the main outcome is the **initiation of an administrative offence proceeding** for each identified violation, followed by a return decision. In the Netherlands, when it becomes clear the person illegally working is irregularly staying, they can be placed into custody based on the Compulsory Identification Act. If a return decision is issued, they have a period of 28 days to depart voluntarily. In Sweden, the employee is questioned and subsequently issued a return decision, potentially in combination with a detention decision and an entry ban.

Victims of trafficking in human beings and exploitation

The outcomes for illegally employed third-country nationals identified as victims of trafficking in human beings and exploitation should be understood in the context of the rights granted to them under EU law.

The **Anti-Trafficking Directive** (2011/36/EU)³⁶⁵ ensures that victims are not prosecuted for crimes they were forced to commit due to trafficking. It mandates assistance and support, such as safe accommodation, medical treatment, psychological help, and counselling, regardless of the victim's willingness to testify, with additional support for child victims. The Directive also guarantees victims access to legal representation and compensation schemes for victims of violent crimes.

The Victims of Human Trafficking **Residence Permit Directive** (2004/81/EC) allows for a residence permit if the victim, after a reflection period, cooperates with authorities and severs ties with traffickers. These permits last at least six months and can be renewed as necessary. Permit holders gain access to education, vocational training, the

363 AT, BE, CY, FI, FR, HU, IE, IT, LU, LV, NL, SE, SI.

364 Up to one year imprisonment and a fine of € 3 000 for the employee (Article L. 8256-1 of the Labour Code).

365 Please note that this Directive was amended in 2024 (beyond the study's temporal scope): Directive (EU) 2024/1712 of the European Parliament and of the Council of 10 October 2024 on conditions of entry and residence of third-country nationals for the purpose of highly skilled employment, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401712&qid=1731509312172, last accessed on 20 November 2024.

labour market, and programmes to help them to integrate into society.

The **Employers Sanctions Directive** (2009/52/EC) also requires Member States to define the conditions under which they may grant temporary permits to third-country nationals that were employed in exploitative conditions (Article 13(4)). As previously mentioned, victims of exploitation as addressed by the Employers Sanctions Directive represent a distinct category from victims of trafficking, who are specifically covered under the EU Anti-Trafficking Directive and the Victims of Human Trafficking Residence Permit Directive.

In all three cases, if the identification process proves that the third-country national is a victim of exploitation or trafficking in human beings, **most of the respondent EMN Member Countries³⁶⁶ have specific procedures in place,³⁶⁷ ranging from the granting temporary residence permits to the activation of an application for international protection.**

As per the Victims of Human Trafficking Residence Permit Directive (2004/81/EC), EMN Member Countries can **offer temporary residence permits to irregularly staying victims of trafficking.** The Victims of Human Trafficking Residence Permit Directive stipulates that after reporting to the police and/or agreeing to cooperate in the criminal investigation, the third-country national can receive a temporary residence permit as a victim of trafficking in human beings. Victims can also apply for this temporary residence permit if they are unable or unwilling to report to the police due to medical restrictions, minor age or serious threat. For this group, the residence permit is valid for one year. Extensions are possible if the above conditions still apply. In Luxembourg, competent authorities may issue an irregularly staying third-country national with a residence permit³⁶⁸ for a period of six months if they are a victim of illegal employment under certain aggravating circumstances, namely if the infringement is accompanied by particularly abusive working conditions or if the third-country national is a minor. This residence permit is linked to an obligation for the third-country national to cooperate in the criminal proceedings against the employer.

Box 15 explains the procedure in Finland, which has a special focus on third-country nationals working or residing irregularly in the country as a minor or an adult subject to specific exploitative conditions.

Box 15: Support in Finland for third-country minors and adults working under exploitative circumstances

A temporary residence permit can be issued to a third-country national who has worked without a work and residence permit, if the person was a minor during the period of work or performed under working conditions that indicate specific exploitation (Section 52d of the Aliens Act). Victim Support Finland reports

that these residence permits are rarely applied for and therefore rarely issued in practice and have extensive processing times. If exploitation is not identified, or the person is unwilling to cooperate with the preliminary investigation authorities, they may be issued a return decision. Apart from removal from the country, the return decision may include a fine for illegal residence and illegal employment. According to the law, persons deemed victims of extortionate work discrimination rather than victims of exploitation are not necessarily issued with a residence permit. In this sense, illegal employment may prevent the detection of trafficking in human beings, because a person may be unwilling to inform the authorities that they have been employed illegally.

Four EMN Member Countries provide the **option to initiate or automatically trigger the process for granting international protection** to identified victims of trafficking in illegal employment situations.³⁶⁹ In Austria, trafficked persons may apply for international protection or for a Residence Permit for Individual Protection.³⁷⁰ France automatically grants third-country nationals who file complaints or testify against trafficking in human being offenders a 10-year residence permit if the accused is convicted, provided they have severed all ties with that person (as per the Victims of Human Trafficking Residence Permit Directive (2004/81/EC)). In Hungary, victims of trafficking in human beings and/or exploitation may also be entitled to a humanitarian residence permit³⁷¹ if they cooperate with the authorities or if they were a minor without a valid residence permit or authorisation to stay at the time of employment. In Belgium, individuals in situations of employment where there are also indications of trafficking in human beings for the purpose of labour exploitation³⁷² can obtain the status of victim of trafficking in human beings.

Italy and Ireland mentioned other measures, including for **employment reactivation and reintegration.** In Ireland, in certain cases, a person who has fallen out of employment or immigration permission through no fault of their own can apply for a new employment permit, a so-called reactivation employment permit (REP). In Italy, in addition to identifying the perpetrators and implementing the appropriate repressive measures, the National Labour Inspectorate (INL) contributes to activating appropriate channels for the social and professional reintegration of the victims through cooperation with anti-trafficking bodies. When preparing reports for the Prosecutor's Office on the crimes in question, INL staff pay special attention to evaluating all useful elements (victim's report/cooperation, situation of violence and serious exploitation, endangerment, etc.) for the possible reduction of the time limit for the issued residence permits.

As per the Victims of Human Trafficking Residence Permit Directive (2004/81/EC), EMN Member Countries ensure the **reflection period for potential victims of trafficking**

³⁶⁶ AT, BE, BG, CY, FI, FR, HU, HR, IE, IT, LU, LV, NL, SE, SK.

³⁶⁷ European Migration Network (EMN), 'Third-country national victims of trafficking in human beings: Detection, identification and protection', 22 March 2022, https://home-affairs.ec.europa.eu/whats-new/publications/emn-study-third-country-national-victims-trafficking-human-beings-detection-identification-and_en, last accessed on 26 September 2024.

³⁶⁸ Immigration Law, Article 95(1); Employers Sanctions Directive, Article 13(4).

³⁶⁹ AT, BE, FR, HU.

³⁷⁰ Article 57 para 1 subpara 2 Asylum Act 2005.

³⁷¹ Act II of 2007 on the Entry and Stay of Third-Country Nationals, para 29(1).

³⁷² Belgian definition of human trafficking is broader than forced labour and encompasses degrading work conditions.

in human beings can last for a maximum of 90 days (30 days if the Dublin Regulation is applicable to the victim). The Directive mentions that during this period, the third-country national can reflect on whether they will report to the police and cooperate in the criminal investigation. The Netherlands offers a 90-day reflection period. Slovenia allows victims of illegal employment to stay for a period of 90 days, offering temporary residence permits for cooperation in criminal proceedings or enforcement

of employment rights. Sweden provides a 30-day reflection period for potential victims to decide on legal action against employers, with authorities empowered to apply for a temporary residence permit of at least six months on their behalf. This permit can be renewed at the discretion of the principal investigator and the beneficiary has access to assistance from other actors, including social services and healthcare, during the period of the permit.



6.2. PROCEDURES TO LODGE A COMPLAINT AGAINST EMPLOYERS

The Employers Sanctions Directive (2009/52/EC) requires Member States to have effective mechanisms and legal procedures in place for third-country nationals to lodge complaints against employers. Similarly, the Victims' Rights Directive (2012/29/EU) sets out that Member States shall ensure that victims can file the complaint in a language they understand and get a written receipt of their complaint, which should be translated at their request.

For all respondent EMN Member Countries, variations exist within the procedures allowing a third-country national in a situation of illegal employment to lodge a complaint against their employer. These variations are based on

factors such as intertwining of employment and immigration laws, language barriers, and awareness of workers' rights among third-country nationals.

The majority of EMN Member Countries³⁷³ follow the same procedure, irrespective of whether or not the illegally employed third-country national is regularly residing in the country. Four EMN Member Countries³⁷⁴ put complementary procedures in place through associations for the protection of victims of exploitation, trade unions and workers' representatives.

Table 5 presents the complaints mechanisms in the EMN Member Countries.

Table 5: List of EMN Member Countries with national procedures to lodge a complaint against employers

EMN Member Country	Complaints mechanism	Additional information
AT	Lodge claims with support of the Chamber of Labour Access to support services for labour and social law, regardless of regular or irregular stay	Unlawfully employed third-country nationals have the same rights as Austrian/EU workers
BE	Labour inspectors report illegal employment cases Lodging a complaint with labour inspectors can offer some protection, e.g. against detention	
BG	Third-country nationals working illegally or as seasonal workers have the option to report violations committed by their employers Complaints can be lodged with the General Labour Inspectorate Executive Agency	
CY	Lodge complaints online through the Department of Labour Relations website Option for these complaints to be anonymous	
CZ	Complaints to issue investigations against employers can be lodged by illegally employed persons and members of the public	
EE	Lodge complaints through the Labour Dispute Committee as an extrajudicial authority for employment relationship disputes	Free counselling service via phone and email (via Labour Inspectorate)
EL	Lodge complaints through the Labour Inspectorate, online or in person Four-digit hotline (1555) for expedited process	

373 All except IE, SE.

374 BE, FI, LU, SE.

EMN Member Country	Complaints mechanism	Additional information
FI	Lodge complaints with the police, Finnish Immigration Service, or national hotline managed by OSH authorities	National hotline available in English, Swedish, Finnish
FR	Lodge complaints through bodies competent to establish undeclared work to initiate investigations	
IE	Lodge complaints through WRC inspection and adjudication services for complaints Investigation by an inspector or complaint submission to an adjudication officer Mediation officer option	Different legislation involved in requesting an investigation or submitting a complaint
IT	Complaints possible through various means: in person at Territorial Labour Inspectorates (ITLs), online, or ordinary mail	
LT	Complaints only accepted in the national language (or Russian and English) with an official translation	
LU	Similar procedures as for complaint filing, but concerns raised about insufficient judicial remedies for employees	Legal sanctions not always applied due to lack of awareness by public authorities
LV	Lodge complaints to the State Labour Inspectorate and/or the State Border Guard. Complaints can be submitted electronically, by post, by phone, in person Anonymous complaints can be submitted.	
NL	Lodge complaints by phone or online, also anonymously to the Labour Authority, as the competent authority	No difference in reporting complaints about violations of the labour laws and signs of labour exploitation for national (and EU) citizens or third-country nationals
PL	Lodge complaints to PIP in Polish or Ukrainian	Translation provided directly by the PIP for foreign languages No formal differences between national citizens and third-country nationals in filing complaints
SE	Any worker can apply for an injunction from the Enforcement Authority Labour-related disputes are handled by the Labour Court Majority of complaints involve back payments Return decisions inform possibilities for salary-related legal actions	Back payment issues frequently reported
SI	Lighter consequences and protection if a complaint is filed before an investigation is initiated Reporting the employer during undeclared employment avoids punishment	
SK	Lodge complaint in person, by mail, email, phone, etc. Labour Inspectorate obliged to inform an illegally employed third-country national who is not a holder of the residence/work permit about their rights to submit a complaint	Same procedures and rights as domestic or EU workers

Challenges preventing third-country nationals lodging complaints

All EMN Member Countries have mechanisms for third-country nationals to lodge complaints, but several obstacles hinder their effectiveness:

- Lack of language proficiency to fill in the forms,³⁷⁵ or knowledge of workers' rights in the country;³⁷⁶
- Fear of the consequences of lodging a complaint, particularly among those staying irregularly, as in most

³⁷⁵ BE, FR, IE, LU, LV, SK.

³⁷⁶ BE, FI, IE, LU, LV.

cases the authorities would have had no prior knowledge of their presence,³⁷⁷

- To assert their rights, workers need to know or be able to locate their employer. This can be challenging in practice, as unlawful employment relationships are often established informally or through intermediaries;³⁷⁸
- Continuing income can often be more attractive than any possible payment of arrears resulting from the assertion of claims, as in the latter case the income is lost;³⁷⁹
- Lack of trust in authorities (labour inspectors, police, immigration authorities) fuelled by the scarcity of official protection measures against the issuance of removal orders or detention decisions;³⁸⁰
- Length of investigation and judicial proceedings before the Labour Court, during which contact with the worker may be lost, especially if they have no legal representation;³⁸¹

- Limited and disorganised proof available to lodge a complaint, with the burden of providing the information disproportionately on the worker;³⁸²
- Lack of lawyers or specialised personnel working pro bono.³⁸³

Role of third parties in lodging complaints on behalf of employees

As per the Employers Sanctions Directive (2009/52/EC), third-country nationals can be represented by third parties in lodging complaints.

All respondent EMN Member Countries³⁸⁴ give third-country nationals the possibility to decide if they want to lodge a complaint by themselves or with the support of a third party.

The scale and type of help offered by third parties may vary, while the type of organisation is usually the same, i.e. representatives of trade unions, associations protecting workers' rights or associations protecting vulnerable workers (e.g. victims of exploitation or trafficking in human beings).

Table 6: Possibility for a third party to lodge a complaint on behalf of a third-country national employee in EMN Member Countries

EMN Member Country	Yes/No and specific circumstances	Type of third party involved
AT	Yes, support in matters of labour and social law is available for all workers, regardless of their nationality and whether or not they have a valid employment contract Third parties can represent third-country nationals in labour and social court proceedings and in administrative (criminal) proceedings in certain circumstances	Representation in labour and social law proceedings: Chamber of Labour Representation in administrative (criminal) proceedings: Drop-in centre for undocumented workers (UNDOK) Support in matters of labour and social law: Chamber of Labour and UNDOK
BE	Yes, for actions limited to the recovery of unpaid wages, and limited to workers in an irregular stay, in accordance with the Employers Sanctions Directive (2009/52/EC)	Trade unions, Federal Migration Centre (Myria), Cire, Foyer Brussels, Fairwork Belgium
BG	Yes, if the employer does not pay the obligation, an employed third-country national illegally residing on the territory of Bulgaria may file a claim against that employer, including when they returned or were returned to their country of habitual residence, within a three-year period, in accordance with the Civil Procedure Code	All third parties with a proven legal interest have the right to become involved on behalf or in support of a third-country national working illegally or in a seasonal capacity, provided they have the individual's consent. This involvement applies to both administrative and civil proceedings
CY	Yes, in all circumstances No difference between illegally and legally employed third-country nationals	Trade unions

³⁷⁷ AT, BE, FI, FR, LU, LV.

³⁷⁸ AT, IE, LV, PL.

³⁷⁹ AT, LU, LV.

³⁸⁰ BE, LU.

³⁸¹ BE.

³⁸² BE.

³⁸³ BE.

³⁸⁴ AT, BE, BG, CY, CZ, EE, EL, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, PL, SE, SI, SK.

EMN Member Country	Yes/No and specific circumstances	Type of third party involved
CZ	Yes, for legally employed third-country nationals	For legally employed third-country nationals: trade unions and associations for workers' rights For illegally employed third-country nationals: NGOs or human rights associations
EE	Yes, following the Labour Dispute Resolution Act (power of attorney or statutory right). No difference between illegally and legally employed third-country nationals	Trade unions, employee's representative, Gender Equality and Equal Treatment Commissioner Office, family member
EL	Yes, if legally authorised by the represented person	Trade unions, associations, natural person
FI	No. Trade unions or public legal aid offices cannot file a complaint on behalf of an employee, although an employee may get support from these third parties.	Trade unions, Public Legal Aid Office, Victim Support Finland and the National Assistance System for Victims of Human Trafficking can provide advice and support to third-country nationals whether they are staying in the country legally or without the right of residence
FR	Yes, trade unions (following the Labour Code) may take legal action on behalf of the person even without written consent provided the latter has not declared their opposition to that action	Trade unions
HR	Yes, in all cases when power of attorney is given	All associations with an interest in the matter
HU	Yes, in all cases, following the Act on Complaints and Public Interest Disclosure	All associations, natural persons and legal bodies
IE	Yes, remedies are different for illegally or legally staying third-country nationals, with those in an irregular situation having access to more limited remedies	NGOs, trade unions
IT	Yes, in all circumstances, according to Legislative Decree No 109/2012	Trade unions or any other organisation
LT	Yes, according to the Civil Code and Labour Code in administrative and civil proceedings	Social partners, trade unions, associations
LU	Yes, according to Labour Code and New Code of Civil Procedure. Trade unions can take legal action with no additional cost only if the action is limited to disputes arising from collective bargaining agreements. In all other cases, the coverage of costs is provided by the trade union only if the person is a member (sometimes with a waiting period) A written authorisation from the person concerned is required for NGOs to file a complaint on their behalf	Trade unions, NGOs
LV	Yes, only when the person has given prior authorisation. No difference between illegally and legally staying/working persons	NGOs, trade unions, associations with a specific interest in the matter (including human rights protection)
NL	Yes, trade unions in administrative or civil proceedings. In case of temporary employees (<i>uitzendkrachten</i>) with a generally applicable (<i>algemeen verbindend verklaarde</i>) collective labour agreement: Foundation for Compliance with the Collective Agreement for Temporary Employees	Trade unions
PL	Yes, provided the person consents. No difference between illegally and legally staying/working persons	Trade unions, natural person, NGOs (within the scope of labour law or social insurance)
SE	Yes, in all circumstances	Trade unions, NGOs, specialised associations (migrant rights, human rights, protection of vulnerable people)
SI	Yes, in all circumstances	Trade unions, natural person, associations

EMN Member Country	Yes/No and specific circumstances	Type of third party involved
SK	Yes, authorisation is required	A legal entity whose purpose or object of activity is the protection of the rights and interests of nationals of third countries, trade unions



6.3. PAST REMUNERATION PAYBACK: MODALITIES AND TIMING

The Employers Sanctions Directive (2009/52/EC) stipulates that employers or subcontractors are required to pay undocumented third-country nationals outstanding remuneration, at a level of at least the minimum wage for at least three months. The Directive also states that the employer must also pay any costs related to sending the money to another country, if the worker has returned or been returned. Both the Employers Sanctions Directive (2009/52/EC) and the Seasonal Workers Directive (2014/36/EU) also foresees that if an employer acting as a subcontractor has infringed the Directive and the main contractor or any intermediate subcontractor have not undertaken due diligence obligations as defined by national law, the main contractor and any intermediate subcontractor may in addition to, or in place of the employer, be liable to pay any back payments owed to the seasonal worker under national law (Article 17(3)(c)).

In the majority of cases presented by EMN Member Countries, **no distinction is made between third-country nationals residing regularly or irregularly in the country in respect of the processes for claiming unpaid wages and enforcing remuneration for illegally employed third-country nationals.** The right to remuneration payback is given independently of whether the worker might have returned to the country of origin or been subject to a return decision, and in this case, the costs for the remittance of arrears are borne by the employer. Similarly, unless otherwise specified, there is no minimum duration for a presumed employment relationship to pay back outstanding remuneration. As per the Employers Sanctions Directive (2009/52/EC), Member States shall provide that an employment relationship of at least three months duration be presumed if there is no other way to prove the actual duration of the work relationship. However, in the Netherlands, for example, the presumption is six months.³⁸⁵

Some EMN Member Countries reported to ensure that all workers, **regardless of their legal or immigration status, are entitled to fair remuneration and protection under employment laws.**³⁸⁶ In Austria, regardless of regular or irregular stay, unlawful employment leads to certain entitlements, including outstanding remuneration, compensation claims, and costs of transferring remuneration abroad all at the employer's charge. In France, irregular workers have rights equivalent to regular employees. In Luxembourg, labour inspectors ensure

remuneration compliance, and the mechanisms apply to all employees irrespective of legal status. Employees are also entitled to overtime bonuses. In Lithuania, both regular and irregular workers (including those irregularly staying in the country) have rights to claim unpaid remuneration through Labour Dispute Commissions.

In Ireland, the status of the third-country national is relevant to the remuneration process. For workers with permission to work in Ireland, WRC adjudication officers may make awards and grant compensation in relation to unpaid wages arising from contraventions of employment legislation. Workers who do not have permission to work in the State may instead take civil proceedings against their employer to recover wages due to them. The legislation also provides that the Minister for Enterprise, Trade and Employment may take these proceedings on behalf of such workers.

A few EMN Member Countries reported having mechanisms in place to allow third-country nationals to **claim unpaid wages and compensation, even after employment has ended or a return decision has been issued.**³⁸⁷ Illegally employed third-country nationals in Greece, regardless of their past or present status, can pursue legal action to recover remuneration and claim outstanding remuneration even after returning to their country. In Bulgaria, inspection bodies can instruct employers to pay unpaid wages and compensations after employment termination. If the employer does not pay those unpaid wages and compensations, the third-country national may file a claim against them, even if a return decision has already been issued, within a three-year period, in accordance with the Civil Procedure Code. In Finland, the Employment Contracts Act ensures wages for illegally employed individuals, allowing legal action or support from the wage guarantee system if the employer is insolvent.

A few EMN Member Countries also **facilitate state-managed processes to recover and secure unpaid wages for undocumented or irregularly employed workers.**³⁸⁸ In Belgium, recovered wages for undocumented workers without bank accounts can be held by the government for up to 30 years, allowing time for claims.

EMN Member Countries also mentioned **enforcing strict employer obligations to ensure payment of**

³⁸⁵ Directive 2009/52/EC, Article 23 (sub 1 and 2) in conjunction with Article 2, sub j.

³⁸⁶ AT, EL, FR, IT, LU, LV, LT.

³⁸⁷ BG, EL, FI, LT, LU.

³⁸⁸ BE, BG, IE.

outstanding wages and social contributions for unlawfully employed third-country nationals.³⁸⁹ In Cyprus, employers are required to pay owed wages at least equal to the minimum daily wage and social security contributions, as well as covering remittance costs. In the Czech Republic, liability exists under the Employment Act for those allowing illegal work, with obligations enforceable within 90 days. In Estonia, penalty payments can be imposed on employers failing to pay remuneration, with the possibility of retroactive precepts. Labour Dispute Committee decisions are binding but can be contested in court within 30 days (according to the Labour Dispute Resolution Act). In Hungary, labour authority inspections enforce payment during the verification process. If the employer does not comply, an enforcement is carried out by the Tax Administration. In Poland, PIP inspectors direct employers to pay the remuneration due, while in Slovenia, employers must settle obligations for illegally employed third-country nationals.

Other EMN Member Countries added that they **utilised legal and administrative tools, such as mediation and technical assessments, to secure wage payments and compensation for illegally employed workers.**³⁹⁰ In Croatia, police officers inform illegally employed third-country nationals of their right to claim salary

compensation and file complaints or lawsuits against the employer, which is obliged to compensate under the Aliens Act. In Italy, the mechanisms currently available for INL inspection staff to guarantee the payment of wages for all workers, regardless of their nationality, are the ‘monocratic conciliation’, a mediation between the employer and the employee, and the ‘preliminary warning’ (*diffida accertativa*), a technical assessment sent to the employer, allowing the employee to obtain the amounts for due and unearned patrimonial credits once the preliminary warning becomes enforceable.³⁹¹

Two EMN Member Countries reported **offering judicial and labour dispute resolution processes** to ensure third-country nationals can claim their wages, with mechanisms to challenge decisions or enforce compliance.³⁹² In Latvia, third-country nationals can claim back their salary through the State Labour Inspectorate and/or court, regardless of their legal status or whether they are employed regularly or irregularly. In the Netherlands, third-country nationals can claim their wages based on the illegal employment they provided for the employer. The only condition is a proven violation of the Dutch Civil Code, stating that the employer is due to pay the wage to the employee at a defined moment.



6.4. INFORMATION ON EMPLOYMENT RIGHTS FOR THIRD-COUNTRY NATIONALS

The obligation to provide information about rights and procedural safeguards is present in the EU labour migration directives, for example in the Seasonal Workers Directive (2014/36/EU, Article 11). Also, the new recast Single Permit Directive (2024/1233), which has to be transposed into national law by May 2026 contains such obligations (see Articles 9 and 16). In this context, **all EMN Member Countries have various measures in place to inform third-country nationals on their employment rights, regardless of their employment or residential status in the country** (e.g. information campaigns, hotlines, multilingual helpdesks). Detailed information on the rightful labour conditions and standards are given during labour inspections in all responding EMN Member Countries. **The types of information channel vary between EMN Member Countries.**

Many EMN Member Countries³⁹³ offer tailored **multilingual information leaflets**. Austria offers multilingual information leaflets and low-barrier access and target-group-specific advice services through its drop-in centre for undocumented workers (UNDOK). The Czech Republic translates all official information on labour law, conditions and safety of work, and occupational health into English.³⁹⁴ In Estonia, information on rights, obligations and procedures are carried out in a language that the third-country national understands (with an interpreter if necessary). Leaflets in English are also published by the Ministry of Labour and Social Insurance. The PBGB

ensures either the presence of a translator or conducts proceedings in a language the third-country national understands. In Greece, the Labour Inspectorate distributes printed material, translated into various languages during on-site inspections. Luxembourg makes general information on illegal employment available in French and German, and partly in English. If necessary, third-country nationals can use the interpreting services of the Luxembourgish Red Cross.

In Sweden, the dissemination of information is more general and covers different scenarios, including exploitation. Regional coordinators against trafficking in human beings occasionally participate in workplace inspections. Leaflets targeting third-country migrant workers have been developed by the Gender Equality Agency and the Work Environment Authority in multiple languages.

In Cyprus and Poland, **information on workers’ rights is included alongside the employment contract**, which is usually translated into English (Cyprus) or a language the third-country national understands (Poland).

EMN Member Countries have introduced **online measures**. Since 2020, the new website of Bulgaria’s General Labour Inspectorate is the main up-to-date source of information for third-country nationals and is also used to raise awareness of their employment rights. While the Dutch government does not provide specific information to illegally employed third-country nationals on their rights, it

389 CY, CZ, EE, LU.

390 HR, IE, IT.

391 Governed by Legislative Decree No 124/2004.

392 LV, NL.

393 AT, BE, CY, CZ, EE, EL, FI, LU, PL, SE.

394 *Práce cizinců v ČR*, ‘Work of foreigners in the Czech Republic’, <https://praccezincuzi.cz/en/>, last accessed on 20 November 2024.

does provide detailed information to third-country nationals working in the Netherlands via the 'WorkinNL' website, which includes information on the rights and duties of legally working and residing third-country nationals.

Italy's approach is described in Box 18.

Box 16: Multilingual listening and information helpdesk in Italy

Italy's pilot of a multilingual listening and information helpdesk at the ITLs yielded positive results in enhancing awareness-raising campaigns on migrant workers' rights. The INL collaborates with the interinstitutional helpdesk to combat unlawful recruitment³⁹⁵ to provide a multilingual service for third-country nationals, victims or potential victims of labour exploitation in the southern regions, supported by intercultural mediators, operators and experts in the legal, social-health, labour law and administrative fields.

Some EMN Member Countries share **tailored information on employment rights in cooperation with third parties (e.g. NGOs)**. In France, the information provided

by the Ministry of Labour, Employment and Integration is complemented by manuals targeting irregularly staying third-country nationals produced by several NGOs and trade unions. Similarly, in Austria, the Austrian trade union for production workers (Pro-GE), in cooperation with NGOs, runs a multilingual information campaign targeting seasonal agricultural workers,³⁹⁶ including information and advice on rights. In Ireland, information provided by the WRC is complemented by NGOs. The WRC promotes its work and resources through information campaigns, website and social media, and stakeholder engagement. Its Information and Customer Service Unit receives calls from employees (primarily), employers and other relevant parties. The Migrants Rights Centre Ireland (MRCI) also provides information to third-country national workers at its drop-in centre and through information leaflets. In Finland, information and advice for working foreign nationals is widely available from public authorities, NGOs and trade unions.

Some EMN Member Countries³⁹⁷ **pay special attention to the recent situation of persons displaced by the war in Ukraine in the labour market**, especially prevention of work exploitation.

³⁹⁵ Activated within the P.I.U. Su.Pr.Eme. project.

³⁹⁶ SEZONIERI, 'Home', n.d., https://www.sezonieri.at/en/startseite_en/, last accessed on 26 September 2024.

³⁹⁷ BG, FI, LT, LU, LV, PL.

7. CONCLUSIONS

The study provides an overview of the efforts by EMN Member Countries between 2017 and 2022 to counter the illegal employment of third-country nationals, while protecting those at risk of exploitation. It builds on the 2017 EMN study,³⁹⁸ documenting existing and planned legislation, policy and practical schemes framing national approaches. The present study focuses on efforts to prevent and identify illegal employment, targeting both employed third-country nationals and their employers, highlighting challenges faced and progress made. It also provides a snapshot of the main economic sectors affected.

Several conclusions can be drawn from the study.

The illegal employment of third-country nationals continues to be a high political priority. In some areas, this has prompted significant legislative, policy and practical changes.

As identified in the 2017 EMN study, tackling the illegal employment of third-country nationals remains high on the political agenda of EMN Member Countries, resulting in changes to national legislative and policy frameworks. These changes chiefly involved changes to legislation to be better equipped to implement EU law (notably the Employers Sanctions Directive (2009/52/EC)) and clarifying and strengthening sanctions for employers found guilty of illegally employing third-country nationals. The types of practical changes introduced did not vary significantly from initiatives identified in the 2017 EMN study (information campaigns, support, etc.), but increased in quantity.

The illegal employment of third-country nationals remains a significant concern, sparking ongoing national debates, encompassing various dimensions, including migration, economic, social, and fundamental rights concerns.

EMN Member States continue to debate the societal impacts of the illegal employment of third-country nationals, including the protection and regularisation of workers involved. The main development since 2017 was heightened discussion of issues of workers' rights and vulnerabilities, highlighted by the COVID-19 pandemic and Russia's war of aggression against Ukraine. Sustained and growing attention to the illegal employment of third-country nationals has enhanced understanding of the phenomenon, as evidenced by the development of more precise typologies of illegally employed third-country nationals. In contrast to the 2017 EMN study, which relied on two broad categories (third-country nationals regularly and

irregularly residing in the country), this study employs three detailed and defined categories: third-country nationals legally residing but working undeclared; those legally residing but violating the terms of their residence or work permit; and those irregularly staying and working in the country. This progress highlights the evolution in understanding resulting from years of debate and change.

Efforts to prevent the illegal employment of third-country nationals have shown limited progress, with only minimal changes. Nevertheless, all EMN Member Countries have conducted risk assessments, as required by Article 14(2) of the Employers Sanctions Directive (2009/52/EC), which remain a crucial tool for targeting inspections.

Most EMN Member Countries carried out new or updated previous risk assessments to identify sectors at higher risk of illegal employment of third-country nationals. The use of information campaigns and support for employers, and to a lesser extent for third-country nationals, remained prevalent preventive measures, consistent with trends in the 2017 EMN study. Developments since 2017 include the fact that some countries most affected by Russia's war of aggression in Ukraine introduced information campaigns targeting BoTP. In addition, EMN Member Countries have somewhat increased the use of technology in their preventive efforts (e.g. new information portals, online complaints mechanisms).

EMN Member Countries' risk mapping shows that 'traditional' sectors remain the primary contributors to the illegal employment of third-country nationals.

Construction, accommodation and food services, manufacturing, and agriculture remain the primary sectors at high risk for illegal employment of third-country nationals. SMEs, especially in low-skilled labour sectors, are prominently involved in these activities. However, data gaps persist in some countries, hindering comprehensive analysis. Emerging sectors since 2017, such as beauty and wellness, delivery services, and the garage and motor vehicle industry, are increasingly vulnerable to illegal employment practices.

Since 2017, EMN Member Countries have improved their capacities to identify instances of illegal employment of third-country nationals.

All EMN Member Countries carried out on-site inspections between 2017-2022. Many made significant changes to

³⁹⁸ European Migration Network (EMN), 'Integration of applicants for international protection in the labour market', 2020, https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf, last accessed on 22 October 2024.

inspection activities, with some significantly increasing their activities, increasing inspection staff and identifying more infringement cases. The most notable change between 2017 and 2022 was the interruption of inspections in some EMN Member Countries due to COVID-19, at a time where precarity of workers was increased. Some EMN Member Countries also introduced new tools to improve inspection efforts, including common databases and regular practices to incorporate insights from studies and evaluations.

EMN Member Countries continue to build on effective cooperation and exchange of information at national level, with a high level of engagement in EU and international forums.

Labour inspectorates continue to play a primary role in identifying third-country nationals engaged in illegal employment, often collaborating with other agencies. EMN Member Countries have developed or improved existing schemes promoting inter-agency cooperation. The illegal employment of third-country nationals remains a cross-border issue, increasingly exemplified in the level of international cooperation, such as through the ELA (established in 2019) and its European Platform tackling undeclared work. Most EMN Member Countries report engaging on the topic at EU and international level.

Communication and administrative challenges persist, hindering the identification and effective sanctioning of employers involved in illegal employment of third-country nationals.

Language barriers persist as a major challenge, hindering communication and trust among state actors and third-country nationals, particularly in identification. Additional concerns are insufficient administrative capacity and funding for inspections, coupled with challenges in obtaining evidence for employer sanctions and the extent to which sanctions effectively act as deterrents. New challenges since 2017 include data protection issues impeding data-sharing between countries, an increase in forged documents complicating illegal employment detection, and difficulties in identifying labour-related offences in seasonal sectors such as agriculture and fisheries. The rise of false statuses on digital platforms also poses challenges in locating individuals engaged in illegal employment.

Increased cooperation is frequently cited as a good practice in combating illegal employment of third-country nationals.

EMN Member Countries cite increased cooperation between national actors and beyond as a valued practice for all phases of the illegal employment cycle. This includes inter-agency cooperation between national actors, as well as initiatives to increase cooperation with other countries and sectors. Such initiatives may involve the use of common databases to identify and prevent the illegal employment of third-country nationals.

Overall, EMN Member Countries are intensifying their efforts to prevent, identify and combat the illegal employment of third-country nationals, and protect them from exploitation. However, the extent of change varies across the illegal employment cycle, with a more limited focus on preventive measures. The effectiveness of national efforts is hampered by significant obstacles, including persistent language barriers and the extent to which sanctions for employers effectively deter them from (continuing) to engage in illegal employment of third-country nationals.

Outcomes and support for third-country nationals detected in illegal employment situations have remained consistent since 2017, with assertion of the rights of third-country national workers in practice continuing to be the main challenge.

Outcomes for third-country nationals depend on whether they have a residence permit and/or a work permit. The most common outcomes are still withdrawal of permits, a fine or a return decision, unless they are identified as victims of exploitation and/or trafficking in human beings, whereby they may be eligible for temporary residence permit.

Third-country nationals in all EMN Member Countries have the possibility to lodge complaints against their employers, but the challenges to effectiveness in practice remain the same as in the 2017 EMN study: lack of trust in authorities, including fear of consequences; lack of language skills to file complaints; the heavy burden of proof on the worker or on intermediaries; and the lack of lawyers working pro-bono.



For more information

EMN website: <http://ec.europa.eu/emn>

EMN LinkedIn page: <https://www.linkedin.com/company/european-migration-network>

EMN X account: <https://x.com/emnmigration>

EMN YouTube channel: <https://www.youtube.com/@EMNMigration>

EMN National Contact Points

Austria www.emn.at/en/

Belgium www.emnbelgium.be/

Bulgaria www.emn-bg.com/

Croatia emn.gov.hr/

Cyprus www.moi.gov.cy/moi/crmd/emnncpc.nsf/home/home?opendocument

Czech Republic www.emncz.eu/

Estonia www.emn.ee/

Finland emn.fi/en/

France www.immigration.interieur.gouv.fr/Europe-et-International/Le-reseau-europeen-des-migrations-REM3/Le-reseau-europeen-des-migrations-REM2

Germany www.bamf.de/EN/Themen/EMN/emn-node.html

Greece <https://migration.gov.gr/emn/>

Hungary www.emnhungary.hu/en

Ireland www.emn.ie/

Italy www.emnitalyncp.it/

Latvia www.emn.lv

Lithuania www.emn.lt/

Luxembourg emnluxembourg.uni.lu/

Malta emn.gov.mt/

The Netherlands www.emnnetherlands.nl/

Poland www.gov.pl/web/european-migration-network

Portugal rem.sef.pt/en/

Romania www.mai.gov.ro/

Spain www.emnspain.gob.es/en/home

Slovak Republic www.emn.sk/en

Slovenia emnslovenia.si

Sweden www.emnsweden.se/

Norway www.udi.no/en/statistics-and-analysis/european-migration-network---norway#

Georgia migration.commission.ge/

Republic of Moldova bma.gov.md/en

Ukraine dmsu.gov.ua/en-home.html

Montenegro www.gov.me/mup

Armenia migration.am/?lang=en

Serbia kirs.gov.rs/eng

North Macedonia