

Tackling Illegal Employment of Third-Country Nationals

Nordic-Baltic Migration Conference on Changes in Migration Policies and Integration of New Arrivals to Labour Market, Session II

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Introduction

The second session of the **Nordic-Baltic Migration Conference on Changes in Migration Policies and Integration of New Arrivals to Labour Market** was organised by the Estonian National Contact Point for the European Migration Network (EMN) and concentrated on the topic of ‘**Tackling Illegal Employment of Third-Country Nationals**’.

Illegal employment of third-country nationals (TCNs) — defined as employment that contravenes migration and/or labour laws — is a common source of concern in the EU for economic, migration-related, social and fundamental rights reasons. It is also linked to trafficking in human beings for labour exploitation.

Ms Dr Ave Lauren (EMN), who facilitated Session II, explained that the Session was divided into two parts. First, there was a presentation on the findings of European Migration Network’s EU-wide study on ‘Illegal Employment of Third-Country Nationals in the European Union’, focusing on the challenges and best practices that the Member States have in this field. The aim was to provide an overview of the current state of affairs, which was then followed by a panel discussion on how to move forward with countering illegal employment of third-country nationals in the future, on the issues that need to be addressed first and the possible strategies for addressing them.

Key takeaways

- **The sectors in which illegal employment is most prevalent** include agriculture, construction, manufacturing, hospitality and catering services. Illegal employment is more prevalent in labour-intensive and low-skilled sectors with a high turnover of staff and low wages.
- **The challenges facing us in the next years** include growing globalisation and transnational mobility, the number and complexity of different migration systems that complicates keeping track of who is responsible for the salaries and taxes, demographic changes that could increase the demand for migrant workers as well as a growing demand in the long term and home care work sectors.
- **Immigration law should not dominate labour law.** Rights such as minimum wages and working time regulations should extend to all workers.
- The best way to combat the illegal work of foreign workers is **to fight illegal employment as such.**
- One of the key solutions is to **strengthen countries’ industrial relations systems** by involving strong workers’ and employers’ organisations, community monitors as well as controls.
- **Employers (especially main contractors) should be made more aware of their responsibility** to ensure that there are no labour violations in their chain of production.
- Countries might also want to consider possibilities to regularise irregular working

– i.e., to open up legal channels for such labour migrants. This concerns the integrity of the migration systems.

Summary of the introductory presentation

The session started with a presentation by **Mr Silver Stõun** from the EMN Estonia about the findings of the EMN's EU-wide study on 'Illegal Employment of Third-Country Nationals in the European Union and the Nordic-Baltic Region'. The aim of this study was to map and analyse the measures in place at the Member States level for combating illegal employment of TCNs, problematic areas and obstacles in this field, and potential strategies and good practices for overcoming them.

The study revealed that the **sectors in which illegal employment is most prevalent** are agriculture, construction, manufacturing, hospitality and catering services. **Businesses most likely to involve illegal employment** are those in labour-intensive and low-skilled sectors – i.e., those with a high turnover of staff and low wages.

According to the study, **the main challenges for employers** are monitoring, detecting and providing proof of illegal employment, which is a long, time-consuming and difficult process; and the additional difficulty of providing proof that the criteria for qualifying a case as a crime of human trafficking are met. At the same time, **the main challenges for TCNs** are limited accessibility of information on employment rights due to language barriers and the overall lack of preventive measures targeting TCNs in particular.

Combating illegal employment is a policy objective at the EU level as well as the Member States level. While the EU adopted the **Employers' Sanctions Directive 2009/52/EC** to tackle the illegal employment of irregularly staying TCNs, there have also been many measures adopted by individual Member States to fight against illegal employment.



Image 1. Silver Stõun, EMN Estonia

The **Member States** consider the most effective measures in the fight against illegal employment to be:

- ▀ **foreseeing and actually imposing sanctions**, which can be considered a preventive measure to deter the employers;
- ▀ **establishing partnerships and sharing intelligence** among different bodies and organisations at the national level, and
- ▀ **developing and using electronic services** to enable the employers to check whether the TCN has the right to work.

Other Member State level measures include establishing lists of trusted and unreliable employers, addressing malpractice of employment intermediaries, setting up specific offices, organising communication campaigns and improving inspections.

Summary of the panel discussion

The session continued with a panel discussion on the topic of '**Moving Forward: How to Counter Illegal Employment in Future?**', facilitated by **Ms Ruth Annus** from the Ministry of the Interior of Estonia and featuring **Ms Christiane Kuptsch** from International Labour Organisation (ILO), **Jonathan Chaloff** from the Organisation for Economic Co-operation and Development (OECD) and **Ms Liis Valk** from the Estonian Police and Border Guard Board (PBGB).

Immigration law cannot "trump" labour law and labour rights are human rights, stated **Ms Kuptsch (ILO)** in the beginning of

the discussion. There are many protective norms (e.g., minimum wages, working time regulations, etc.) that apply to all persons and their work environments, irrespective of the nationality and immigration status of the person. According to Ms Kuptsch, the second important task is to **reduce incentives for employers to illegally employ foreign workers**. This can be done through increased peer control, stronger trade unions and raising awareness among the social partners of the value of such a system. The aim should be to **combat illegal employment as such**.

Mr Chaloff (OECD) pointed out that the phenomenon of illegal work **undermines the integrity of migration systems and labour markets**. Countries might also want to consider possibilities to regularise irregular working — i.e., to open up legal channels for such labour migrants, as suggested by the expert from the OECD.

Liis Valk (PBGB) added that from the police perspective, the core problem is the **rise of violations in working conditions**. The main issue is not the illegal stay as such, but the fact that the employer has not gone through the necessary procedures to pay taxes and register the employee or uses some scheme in order to avoid the requirements. Illegal employment is a common concern for many institutions (the police, tax office, labour inspectorate).



Image 2. Christiane Kuptsch, Jonathan Chaloff, Liis Valk and Ruth Annus

There are no major differences between people staying illegally or legally and working illegally — the main issue concerns **the rights of workers**, concluded Ms Annus, and proceeded to ask about the **key challenges in the coming years**. Ms Kuptsch said that the challenges for the next years include globalisation and the number and complexity of different migration systems. It is easy for people to **benefit from “grey zones”**. The task to ensure that **universal norms of non-discrimination** nevertheless hold is a complicated one.

Mr Chaloff sees challenges arising from a **changing work environment** (e.g., increased amount of remote working); **demographic changes**, which will also influence demand, including an increased demand for more home care work, which is often performed illegally; and a **migration policy** that allows people to be transnationally mobile and enter the country for a short stay. The latter can lead to unclarity on where do the migrants get their salaries from and who pays the taxes.

Ms Valk added that there is a **diverse set of rules in place in the EU and the neighbouring countries**. The rules are complex and it can be difficult to do business while observing them. Given that people are switching jobs regularly, it should be possible to change their residence permit easily.

The discussion proceeded with the question on **strategies for going forward with diminishing illegal work**. Ms Kuptsch noted that all stakeholders should be responsible for implementing such a strategy. **The role of workers and employment organisations should be bigger** and Member States and relevant organisations should learn from each other’s good practices.

Mr Chaloff added that these strategies carry risks. In many countries, the rules are too complicated to follow and **the procedures should be simplified**. As for the sectors at risk (e.g. construction), an example of a good practice is the subcontract badge system used in the Nordic countries, which places the responsibility on the end user. Another issue is that people who are illegally employed should be able to **bring charges**

against the employer. There is also the question of using biometrics, which will only work with wilful employers.

Ms Valk proposed increasing the risks that come with illegal employment — here, the keywords are **sanctions and cooperation between different agencies.** In the construction sector, one of the strategies is to improve cooperation with the main contractors and decrease their tolerance of illegal work.

Appendix 1

Programme of Session II: Tackling Illegal Employment of Third-Country Nationals

14:00-14:03 Opening Statement from the Session Facilitator, **Dr Ave Lauren**

14:03-14:20 Illegal Employment of Third-Country Nationals in the European Union and the Nordic-Baltic Region, **Silver Stõun**, Estonian National Contact Point for the European Migration Network

14:20-15:10 Panel Discussion on Moving Forward: How to Counter Illegal Employment in Future?

Facilitator of the Discussion: **Ruth Annus**, the Ministry of the Interior of Estonia

Panellists: **Christiane Kuptsch**, Labour Migration Branch, International Labour Organisation; **Jonathan Chaloff**, International Migration Division, Directorate for Employment, Labour and Social Affairs, OECD; **Liis Valk**, Development Department of Estonian Police and Border Guard Board



The European Migration Network (EMN), established by the Council of the European Union in 2008 and co-ordinated by the European Commission, is a network for information collection and exchange on migration and asylum issues, comprised of National Contact Points (EMN NCPs) and national networks of relevant stakeholder organisations.

The EMN plays a key role in providing up-to-date, objective, reliable and comparable information on migration and asylum topics to policy makers (at EU and Member State level) and the general public.

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