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

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Explanatory note

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1. 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.



2. CONTEXT AND SCOPE OF THE INFORM

This EMN informs offers a concise overview of the main topics covered by the EMN study on Illegal Employment of third-country nationals: 2017 – 2022 situation analysis. It documents the illegal employment of third-country nationals in EMN Member Countries between 2017-2022, building on the earlier EMN study until 2017.¹ 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.

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)² 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.

1 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.

2 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.



3. NATIONAL LEGAL AND POLICY FRAMEWORK AND PRACTICES

Tackling illegal employment of third-country nationals remains a policy priority among EMN Member Countries.³ This involves prioritising key areas such as identifying irregularly staying and unlawfully employed third-country individuals,⁴ setting specific targets for investigating illegal employment,⁵ and creating suitable conditions for legal pathways for these individuals.⁶ Another common priority is improving processes for the return of irregularly staying third-country nationals.⁷

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.⁸ The COVID-19 pandemic and Russia's war of aggression against Ukraine heightened these debates, emphasising concerns about equality, workers' rights, protections, and vulnerabilities.⁹ For instance, the pandemic underscored the increased vulnerability of platform and gig workers¹⁰ in respect of labour and social law issues,¹¹ while BoTP faced heightened risks of undeclared work.¹² 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.¹³

Most EMN Member Countries implemented¹⁴ legislative, policy or practical changes during the reporting period, with further planned changes¹⁵ beyond the reporting period. Most implemented legislative changes,¹⁶ primarily to set out sanctions and fines for employers¹⁷ and in one case for third-country nationals¹⁸, as well as to better implement EU law¹⁹ (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 changes²⁰ to address trafficking in human beings for the purpose of labour exploitation²¹ and enhance investigations into illegal employment.²² Since 2017, practical changes have centred on raising awareness,²³ increasing inspections,²⁴ recruiting and training staff,²⁵ and fostering initiatives for internal and cross-border cooperation.²⁶



4. PREVENTIVE MEASURES

Most EMN Member Countries²⁷ regularly identify and monitor high-risk sectors for illegal employment of third-country nationals. Almost all EMN Member Countries²⁸ 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,²⁹ delivery services,³⁰ garage and motor vehicle industry,³¹ security services,³² event management³³ and demolition work.³⁴ 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

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

4 AT, CY, FR, IT, SK.

5 BE, CY, EL, FR, SK.

6 FR, IE, LU.

7 BG, HR, SI.

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

9 AT, ES, IE, LU, SK.

10 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).

11 AT, IE.

12 CZ, ES, LT, SE, SK.

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

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

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

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

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

18 CZ.

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

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

21 FI, FR, IT, NL.

22 BE, CY, FR, LT.

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

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

25 BE, FI, FR, IE, LU.

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

27 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).

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

29 FI.

30 AT, FI.

31 FI.

32 AT.

33 AT.

34 AT.

employers include awareness-raising,³⁵ mandatory obligation to notify authorities when employing third-country nationals,³⁶ lists of unreliable employees,³⁷ or blacklisted employers.³⁸ 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.³⁹ Preventive measures targeting employees primarily involve

information campaigns,⁴⁰ with seven countries⁴¹ 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,⁴² language barriers in communicating rights and obligations,⁴³ and administrative obstacles,⁴⁴ including data protection issues.⁴⁵



5. 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.⁴⁶

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.⁴⁷ Since 2017, the number of annual general labour inspections increased in six EMN Member Countries⁴⁸ and decreased in another seven.⁴⁹ No clear trend could be identified in the remainder. Four EMN Member Countries⁵⁰ conducted targeted inspections on the illegal employment of third-country nationals from 2017-2022, with inspections decreasing in two countries⁵¹ and increasing in two.⁵² In three cases, inspections targeting third-country nationals make up 10% of all annual inspections, on average.⁵³

EMN Member Countries have introduced new methods to identify unlawful employment of third-country nationals since 2017, including common databases and information exchange practices,⁵⁴ better use of insights from previous inspections and studies,⁵⁵ and hotlines and online platforms for complaints.⁵⁶

Since 2017, EMN Member Countries have developed or improved schemes promoting inter-agency cooperation.⁵⁷ While labour inspectorates typically lead the identification of illegally employed third-country nationals through inspections,⁵⁸ they often collaborate with other authorities, such as immigration and asylum services,⁵⁹ financial and tax authorities,⁶⁰ law enforcement and border control,⁶¹ social security and insurance agencies,⁶² and occupational safety and health (OSH) authorities.⁶³ Most EMN Member Countries also engage in international and EU initiatives to combat illegal employment of third-country nationals,⁶⁴ actively collaborating with the ELA and its platform for tackling undeclared work.⁶⁵

EMN Member Countries face several key challenges in identifying the unlawful employment of third-country nationals: communication and trust due to language barriers⁶⁶ and fear of consequences by the third-country nationals concerned;⁶⁷ identity fraud and document falsification risks (also rising on digital platforms);⁶⁸ detecting labour offences in seasonal work sectors;⁶⁹ and limited resources for monitoring and identifying illegal employment of foreign workers.⁷⁰

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

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

37 BG.

38 FR, SK.

39 CZ, LT.

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

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

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

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

44 LV reported administrative obstacles relating to posted workers.

45 BE, LU, SE.

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

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

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

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

50 EE, FI, LV, PL.

51 EE, LV.

52 FI, PL.

53 FI, LV, PL.

54 BE, BG, EE, IE, LU.

55 CY, HU, SI.

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

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

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

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

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

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

62 BE, EL, IE, PL.

63 CZ, FI, HU.

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

65 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.

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

67 AT, FI, LU.

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

69 BE, BG, FI, IE.

70 CY, IE, NL.



6. SANCTIONS FOR EMPLOYERS

EMN Member Countries have introduced various changes to sanctions for employers, including increased financial penalties,⁷¹ prison sentences for serious offences,⁷² clarified legal responsibility for labour offences,⁷³ and exclusion of offending employers from public procurement.⁷⁴ EMN Member Countries face challenges in sanctioning

offending employers, including lack of testimonies from third-country nationals,⁷⁵ difficulties in obtaining sufficient proof of illegal employment for the imposition of sanctions,⁷⁶ cross-border issues with subcontractors and letterbox companies,⁷⁷ coordination gaps between authorities,⁷⁸ and inadequate sanctions to deter illegal employment.⁷⁹



7. 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 Countries⁸⁰ 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,⁸¹ issuance of a return decision,⁸² or a fine⁸³ for either the employer or the illegal worker.
- In most EMN Member Countries,⁸⁴ 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 and/or work permit.

Where a third-country national is identified as a victim of exploitation or trafficking in human beings, most EMN Member Countries⁸⁵ activate specific procedures,⁸⁶ including granting a temporary residence permit and option to initiate or automatically trigger an application for international protection.

In most EMN Member Countries,⁸⁷ the procedures for third-country nationals to lodge a complaint against employers are the same, regardless of residence status.

Some⁸⁸ 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 proficiency⁸⁹ or knowledge of rights,⁹⁰ fear of consequences,⁹¹ difficulty locating employer,⁹² preference for ongoing income over back payment of due wages,⁹³ lack of trust in authorities,⁹⁴ lengthy investigations and judicial proceedings,⁹⁵ limited available evidence to lodge a complaint,⁹⁶ and lack of lawyers/specialised personnel working pro bono.⁹⁷

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. Some⁹⁸ collaborate with third parties (e.g. non-governmental organisations (NGOs), trade unions) to share tailored information on employment, while others⁹⁹ 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.¹⁰⁰

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

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

73 EE, FI, LT, LV.

74 EE, FR, HU, LT, SI.

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

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

77 **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.

78 FI, HR, LU, SE.

79 FI, IE, LU, PL.

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

81 FR, LU, LV, NL, SE.

82 AT, CZ, EE, SL.

83 EL, FI, SI.

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

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

86 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.

87 All except IE, SE.

88 BE, FI, LU, SE.

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

90 BE, FI, IE, LU, LV.

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

92 AT, IE, LV, PL.

93 AT, LU, LV.

94 BE, LU.

95 BE.

96 BE.

97 BE.

98 AT, FI, FR, IE, LU.

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

100 FI, IE, LU.



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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