

The European Migration Network (EMN) is co-ordinated by the European Commission with National Contact Points (EMN NCPs) established in each EU Member State plus Norway.

Illegal Employment of Third-Country Nationals in the EU: Challenges and Solutions

European Migration Network

Silver Stõun

EMN National Contact Point for Estonia

EMN study on illegal employment of TCNs in the EU

- Overview of the study
- Identification of illegal employment
- What are the sanctions?
- What are the challenges?
- Best practices
- Lessons learnt
- Conclusions

Overview

- National Contributions from 23 EMN NCPs:

Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovakia, Spain, Sweden, United Kingdom

- The information provided refers to the situation in the (Member) States in the first half of 2017.
- The aim of the Study is to comparatively map and analyse the measures in place at Member States to fight illegal employment of TCNs as well as to tackle the problematic areas and good practices.

Overview

The study examines each stage of the illegal employment policy cycle:



The Study focuses on two categories of TCNs:

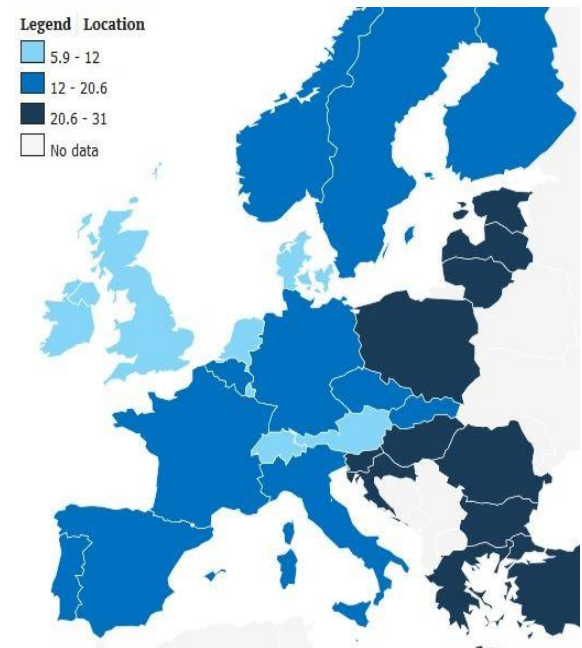
- a) Regularly residing working illegally
 - TCNs without the right to access the labour market
 - TCNs who contravene restrictions on their access to labour market
- b) Irregularly residing working illegally
 - TCNs who arrived outside the legal channels of migration
 - TCNs who continue to reside and work after their permit or visa has expired*

*Illegal employment of TCNs working as self-employed or as posted workers is not covered by the Study

Overview

- Illegal employment is a hidden phenomenon linked to the **informal economy** of the Member States.
- Illegal economy – economic activities to obtain income whilst avoiding state regulation, taxation or detection.
- Sectors in which illegal employment is most prevalent:
 - Agriculture
 - Construction
 - Manufacturing
 - Hospitality
 - Food services
- Businesses most at risk of illegal employment are in labour-intensive and low-skilled sectors; in those with a high turnover of staff and low wages.

Percentage of informal economy in EU/EFTA Member States' GDP in 2015



Profile of illegally employed TCNs:

Sweden

- No data available

Finland

- From Russia, Nepal, Nigeria, Bangladesh, Ethiopia, Pakistan
- Age 25-29 (26%)

Estonia

- From Ukraine, Russia and Moldova
- Age 30-39 (32%)
- 79% male

Latvia

- Mostly from Russia and Ukraine
- Age between 18-50
- Mostly men

Lithuania

- From Russia, Ukraine, Belarus and Moldova
- 95% male

Illegally employed in:

Sweden

- Catering and tourism
- Wholesail and retail

Finland

- Cleaning
- Construction
- Transport
- Catering and tourism

Estonia

- Construction
- Agriculture

Latvia

- Construction
- Ship building
- Freight services

Lithuania

- Wholesale and retail
- Motor vehicle repair services

Identification of illegal employment

- Who is responsible for identifying illegal employment?
 - Labour inspectorates
 - Police and border guard
 - Custom-, financial- and immigration authorities
- What are inspections based on?
 - Risk assessments
 - Signals of irregularities
 - Whistleblowers

What are the sanctions?

For employers	For illegally employed TCNs
<ul style="list-style-type: none">• Fines• Confiscation of financial gains and equipment• Ineligibility for public contracts• Temporary/definitive closure• Withdrawal of trading license• Revocation of residence permit• Imprisonment	<p>Illegally employed and irregularly staying</p> <ul style="list-style-type: none">• Fine• Return• Detention• Entry ban <p>Illegally employed and regularly staying</p> <ul style="list-style-type: none">• Fine• Losing residence rights• Detention• Imprisonment

What are the challenges?

Regarding employers

- Monitoring, **detecting and providing proof of illegal employment** - traces of such activity can be covered quickly. (BE, FI, GR, LU)
- **Nature of the process as being long, time-consuming and difficult** - criminal proceedings can take place over long periods of time, as many investigative acts are needed in the process. (BE, CZ)
- An added difficulty in regards to providing proof that the criteria required for a case to **qualify as a crime of human trafficking** are met. (BE)

Regarding illegally employed TCNs

- Limited accessibility of information on employment rights for TCNs due to **language barriers**. (FI, IE)
- Overall **lack of preventive measures** which specifically target TCNs. (SK)
- **Insufficient number of staff** as a factor preventing officials to carry out the number of on-site inspections they would like and thus, detect illegal employment. (LU, SK)

Best practices

In implementing sanctions for employers	In providing outcomes for illegally employed TCNs
<ul style="list-style-type: none">• Having a streamlined, integrated and comprehensive policy and legal framework. (BE, EL, FI, FR, LT, SI)• An integrated framework for imposing both administrative and criminal sanctions through the relevant legislation. (GR)• Stipulating, in a single law, all violations incurring administrative liability to employers for illegal employment. (LT)• Closure of business, as well as the publicly available information in the local press and the publishing of the order of closure on the business premises. (FR)	<ul style="list-style-type: none">• Information provision and protection. (DE, FI, LV, SE)• Offering counselling and legal support to TCNs working illegally. (DE)• Claims against employers/ for back payments. (AT, BE, IE)• Advice can also be provided by other parties, such as the occupational safety and health authorities. (ES)

Lessons learnt

- Some Member States stressed the **deterrent effect for employers of the apparent risks of being sanctioned** for illegally employing TCNs, as one of the key strengths of their preventative measures. (AT, BE, DE, ES, FI)
- Not only the strictness of legislation, but also the **actual application of sanctions** and level of corruption in the Member States is perceived as a key factor in deterring employers from employing TCNs irregularly.
- Another success factor commonly highlighted by Member States is **establishing partnerships (formal and informal)** and sharing intelligence among different bodies and organisations at national level.
- **Electronic services** could be utilised increasingly to make it more convenient for employers to verify a foreign national's right to employment. (FI)

Conclusion

- Illegal employment is a source of concern for economic, migration-related and social and fundamental rights reasons.
- Fighting illegal employment is a policy objective:
 - EU level: Employers' Sanctions Directive 2009/52/EC
 - Member State level: most have adopted or are implementing new measures
 - Sanctions for illegally employed TCNs and employers
 - Establishing lists of trusted or unreliable employers
 - Addressing malpractice of employment intermediaries
 - Setting up specific offices
 - Running communication campaigns
 - Improving inspections



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More information: www.emn.eu





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Thank you for your attention!

