

Illegal employment of Third-Country Nationals in the EU

Common Template of EMN Focussed Study 2016

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Action: EMN NCPs are invited to submit their completed Common Templates by **15th February 2017**. Further clarifications can be provided by contacting the EMN Service Provider (ICF International) at emn@icfi.com.

1 STUDY AIMS AND RATIONALE

Illegal employment of third-country nationals (TCNs) (i.e. contravening immigration or labour law) is a source of concern in the EU, both for economic and migration-related reasons. At macro-economic level, illegal employment decreases tax revenues and thus, may increase the welfare expenditure, posing a threat to the social security system of the (Member) State; at micro-economic level, it distorts competition among economic actors and creates social dumping.¹ In general, “undeclared work tends to obstruct growth-oriented economic, budgetary and social policies”² and, therefore, fighting it is an **economic policy objective**.³ Counteracting illegal employment is also a **migration policy objective**, specifically in the context of reducing irregular migration. Since it is considered that “the possibility of funding undeclared work is a key pull factor encouraging illegal immigration”,⁴ counteracting illegal employment becomes an instrument to reduce the incentives to irregular migration. Last but not least, fighting illegal employment of TCNs is also a **social policy and fundamental rights objective**, as it is common that the rights of illegally employed workers are violated.

On the causes of illegal employment, the scale of informal economy certainly affects the opportunities of illegal employment (for nationals and non-nationals). It is widely held that taxation and social security contributions are the main causes of the increase of the informal economy;⁵ however, not much evidence has been collected on the causal relationship between the regulatory framework on migration and illegal employment. Illegal employment can be attractive to employers as it provides less costly and more flexible labour force. To limit illegal employment, three types of actions are deemed to have a positive impact: employers’ sanctions, facilitating legal immigration, and reforming the labour market to increase the employment participation rate and enforce the labour standards.⁶

As illegal employment is a hidden and complex phenomenon, making reliable **estimates of its magnitude** is by definition challenging. Researchers have devised different methods to estimate the magnitude of illegal employment, ranging from indirect methods using proxy indicators, and/or statistical discrepancies, to direct survey methods. In the majority of cases, the available estimates do not distinguish between illegal employment of EU nationals and third-country nationals. Overall (including EU nationals), the Special Eurobarometer 402 ‘Undeclared work in the European Union’⁷ reports that in 2013, 4% of respondents carried out undeclared activities in addition to any regular employment in the previous 12 months. A much larger share, 32%, reported to personally know people who did not declare (part of) their income to tax and social security institutions. In relation

¹ European Commission, 2007. Stepping up the fight against undeclared work. COM(2007) 628 final. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0628>

² Ibidem.

³ While the statement is true for all forms of illegal employment, in this Study the focus will be on illegal employment of third-country nationals.

⁴ Ibidem.

⁵ Schenider, F., 2000. Illegal activities, but still value added ones (?): size, causes, and measurement of the shadow economies all over the world. CESifo Paper.

⁶ Sumption, M., 2011. Policies to Curb Unauthorized Employment. Migration Policy Institute

⁷ Special Eurobarometer 402, 2014. Undeclared work in the European Union. Available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_402_en.pdf

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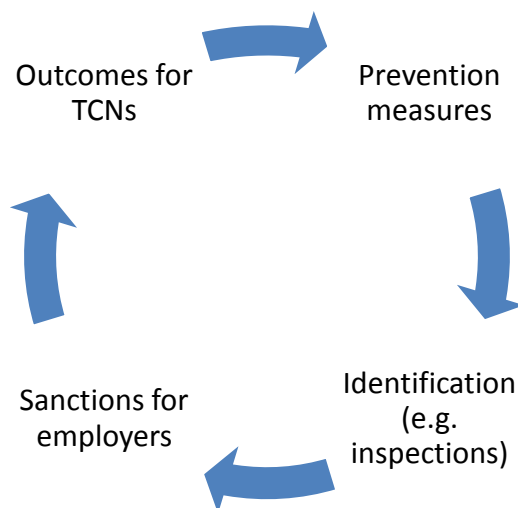
to GDP, it has been estimated that, in 2013, undeclared work in the EU was worth € 2.15 trillion, amounting to 18.5% of EU GDP.⁸

The aim of this Focussed Study is to map and analyse the measures in place at (Member) States level to fight illegal employment by TCNs, possible problematic areas and obstacles in this field and strategies and good practices to overcome them. In particular, the Study will begin by briefly looking into the contextual situation regarding illegal employment in the (Member) States in general to investigate the extent to which illegal employment of TCNs is an issue in the country (Section 1). The Study will then look into each stage of the 'illegal employment' cycle for TCNs:

- ★ **prevention** measures and incentives for employers and employees to avoid illegal employment practices and risk assessment analysis carried out by national authorities (Section 2);
- ★ national authorities and organisations involved in the **identification** of illegal employment of TCNs and their cooperation between different players, and measures and techniques used to carry out inspections (Section 3);
- ★ **sanctions** for employers illegally hiring irregularly and regularly residing third-country nationals, for instance criminal sanctions or administrative sanctions (Section 4);
- ★ **outcomes** for third-country nationals found to be working illegally (e.g. return decisions, period of voluntary departure) and protective measures (e.g. back payment of salaries and taxes, access to justice, facilitation of complaints) (Section 5);

Figure 1 below depicts the different steps of illegal employment policy in a cyclical manner. Firstly, the prevention measures are depicted as a first step in the policy cycle, which focus on incentives for employers and information campaigns. This is followed by identification of illegal employment through inspections and other measures which leads in itself to sanctions and outcomes for migrants. The first one is prevention (positive measures – incentives for employers, information campaigns), which is followed by identification leading to sanctions and outcomes for migrants. It is recognised that the various steps do not necessarily follow chronologically from each other; however, the notion of a cycle is used in the Study for organisational purposes, as it helps to highlight the different aspects which the analysis will focus on.

Figure 1: Illegal employment policy cycle



The Study also aims to provide a **descriptive overview**, when available at the national level, of illegal employment of third-country nationals, with particular emphasis on:

⁸ Visa Europe, Schneider, F., A.T. Kearney 2013. The Shadow Economy in Europe, 2013. Available at <https://www.atkearney.com/documents/10192/1743816/The+Shadow+Economy+in+Europe+2013.pdf>

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- ★ the **magnitude** of the phenomenon in terms of the estimate number of illegally employed TCNs,
- ★ the **sectors** where irregular third-country nationals are mostly employed,
- ★ the **profiles** of third-country nationals working illegally (if available, nationality, age, sex of the TCN, entry to the country, basis for stay etc.).

The **target audience** of the Study is composed of migration policy makers and policy makers in charge of formulating and applying employment law in (Member) States and the European Commission. Practitioners (such as police and border guard officers, tax offices) as well as researchers and the general public could also be interested in this Study.

2 SCOPE OF THE STUDY

The scope of this Focused Study is illegal employment of TCNs. The forms of employment of TCN that fail to comply either with employment or with migration law are defined by the general term of **'illegal employment'**. There are different types of illegal employment and not all of them are subject of this Study. The object of the employment activity can be licit or illicit. **'Undeclared work'** refers to a licit activity and is defined as "any paid activities that are lawful as regards to their nature but not declared to public authorities, taking into account differences in the regulatory system of (Member) States".⁹ Employment can be illegal because different forms of irregularities are present: these can concern employees or self-employed persons, employment carried out in the (Member) State or in another (Member) State (for instance, as posted workers). Moreover, the employment activities can be totally undeclared or only partially undeclared (for instance, when the working hours, the salary or the paid social contributions are not as specified in the official employment contract) and this difference may be taken into account by authorities in dealing with illegal employment. The types of illegal employment can be conceptually divided **by status** of the TNC and **by type of employment**, as shown in Table 1 below.

Regarding status of TCNs, they can enter the (Member) State via legal or illegal routes, and therefore can have a regular or irregular status. When illegally employed, they can be also regularly or irregularly residing. The position of third-country national workers engaged in illegal employment thus depends on their visa or residence permit and on the rights attached to it. Similarly, the extent to which their employment activity is illegal depends both on general employment conditions laid down in labour law (e.g. compliance with the employment contract) and in the specific conditions attached to their residence permit, as laid down in migration law.

This study focuses on the illegal (either totally or partially undeclared) employment of the following categories:

- ★ Third-country nationals regularly residing on the territory of the (Member) State working illegally – for example, without right to access to the labour market (for instance, tourists or some asylum seekers) or who contravene restrictions on their access to labour market, (e.g. students working above permitted hours)
- ★ Irregularly residing third-country nationals, i.e. persons who do not, or do no longer, meet the conditions to stay in the country. These include third-country nationals who arrived outside the legal channels of migration and third-country nationals who overstayed after their permit or visa expired.

Illegal employment of third-country nationals carrying out self-employment and posted work activities and posted workers is not covered by the Study.

⁹ European Commission, 2007. Stepping up the fight against undeclared work. COM(2007) 628 final. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0628>

Table 1: Typology of status and type of employment of TCNs

Status of third-country nationals		Type of employment (performed by TCNs)	
When entering the (Member) State	At time of illegal employment	Type of work	Type of irregularities
Legally (visa, residence permit)	Regular (workers, students, family members, refugees, asylum seekers, regularised persons)	Licit (undeclared work)	Totally undeclared OR Partially undeclared (difference in working hours, salary, social contributions from the work contract) OR working in a sector or profession in which s/he is not authorised.
Illegally	Irregular (over-stayers, persons who never received the permit)	<i>Illicit (goods smuggling, drug dealers, etc.) (*)</i>	<p>National OR cross-borders (when the employed activity is performed in the Member State the person is registered or in another Member State)</p> <p>Employees OR self-employed (*) (whether the person is employed or carries out self-employment activities)</p>

(*) Outside the scope of the Study

3 EU LEGAL AND POLICY CONTEXT

The phenomenon of illegal employment of third-country nationals is concerned both with migration and employment law and policy. The EU competence in employment and migration law differs, and, as a consequence, the types of policy instrument in place. **Employment policy**, including measures to tackle undeclared work (either of EU or third-country nationals), is primary responsibility of (Member) States, which should however coordinate their policies (Article 5 TFEU). The open method of coordination, creating a common framework, allows (Member) States to develop their employment policies with a view of pursuing common objectives. **Migration policy**, and in particular measures to “prevent and combat illegal migration”, is competence of the EU, which shall adopt specific measures to “develop a common immigration policy” (Article 79 TFEU).

To tackle undeclared work, in which both legally residing third-country nationals and EU nationals may be involved, in October 2003, the **Council** adopted a **resolution**¹⁰ on transforming undeclared work into regular employment. The resolution called (Member) States to “examine the common features of undeclared work across the (Member) States which might best be addressed by a common approach in the framework of the European Employment Strategy”.¹¹ In particular, it called on actions to *prevent* illegal employment, for instance by putting in place measures to encourage employers and employees to operate within the formal economy sector, by strengthening surveillance and implementing awareness raising actions; and it called on actions to *improve* the *capacity of measuring* the extent of the phenomenon and the progress in fighting it, for instance by cooperating on methodologies and good practices exchanges. The resolution invited also social partners to cooperate with the authorities in the fight against undeclared work.

¹⁰ Council, 2003. Council resolution on transforming undeclared work into regular Employment, 2003/C 260/01. Available at [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003G1029\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003G1029(01)&from=EN)

¹¹ Ibidem.

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Three years later, the Commission published a **Green Paper** entitled ‘Modernising labour law to meet the challenges of the 21st century’¹² to collect stakeholders’ views on several employment challenges, including undeclared work. In 2007, the Commission **Communication** ‘Stepping up the fight against undeclared work’¹³ was published. It noted that undeclared work continued to be a phenomenon of a considerable extent and a “financially attractive option” and highlighted that (Member) States adopted a piecemeal approach to tackle undeclared work while little evidence was collected on its results.

In 2009 the EU adopted a primary legislative instrument to tackle illegal employment of irregular TCNs, the **Employers’ Sanctions Directive** 2009/52/EC.¹⁴ The Directive includes measures to prevent, detect and sanction employers who engage in illegal employment (e.g. covering return costs of the TCN, Article 5), as well as some protective measures for irregularly residing TCNs involved (e.g. the right to receive back payments such as outstanding remuneration, Article 6). The **Report on the application of the Directive**,¹⁵ issued in 2014, found that (Member) States adopted very different approaches in sanctioning illegal employment. Moreover, some of the protective measures were not implemented by some (Member) States and the European Commission noted that (Member) States needed to make efforts to ensure that effective inspections were carried out and to improve the reporting system. The **2015 EU Agenda on Migration**¹⁶ also stressed the need to “step up action against illegal employment of third country nationals”, by better enforcing the Employers’ Sanctions Directive. The **EU Action Plan against migrant smuggling (2015-2020)**¹⁷ announced that together with Member States, the Commission would identify targets as regards the number of inspections to be carried out every year in the economic sectors most exposed to illegal employment.

In March 2016, the Commission launched the **European Platform on undeclared work** with the aim of enhancing cooperation between authorities and other actors at national and trans-national level, to ultimately improve (Member) States’ capacity to tackle undeclared work. The Platform is about undeclared workers as such, regardless of the nationality of the worker. However, the Council Decision establishing the Platform recognises that “undeclared work has different effects on different social groups” and that some groups, like “migrants”, given the precariousness of their status, are in a particular vulnerable position.¹⁸

With regard to the right to stay and work for specific categories of TCNs, several EU Directives include provisions on third-country nationals’ access to the labour market. Generally, permanent residence status (under national law and/or the **Long-Term Residence Directive** 2003/109/EC) grants the third-country national equal access with nationals to employment. Under temporary residence permits the access to the labour markets of (Member) States differs. At EU level, all third-country nationals entitled to work are covered by equal treatment conditions with nationals with regard to working conditions, as laid down in the **Single Permit Directive** 2011/98/EU (Article 12)¹⁹. Other work permits may have attached specific provisions laid down in the Directives:

- ★ the **EU Blue Card Directive** 2009/50/EC - EU Blue Cards have specific salary requirements
- ★ the **Seasonal Workers Directive** 2014/36/EU - seasonal permits have restrictions on the length of the permit

¹² European Commission, 2006. Modernising labour law to meet the challenges of the 21st century, COM(2006) 708 final. Available at [http://www.europarl.europa.eu/meetdocs/2004_2009/documents/com/com_com\(2006\)0708_/com_com\(2006\)0708_en.pdf](http://www.europarl.europa.eu/meetdocs/2004_2009/documents/com/com_com(2006)0708_/com_com(2006)0708_en.pdf)

¹³ European Commission, 2007. Stepping up the fight against undeclared work. COM(2007) 628 final. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0628>

¹⁴ IE and the UK do not participate in this Directive.

¹⁵ European Commission, 2014. Report on the application of 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, COM(2014) 286 final. Available at <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-286-EN-F1-1.Pdf>

¹⁶ European Commission, 2015. A European Agenda on Migration, COM(2015) 240 final. Available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

¹⁷ European Commission, 2015. EU Action Plan against migrant smuggling (2015 – 2020), COM(2015) 285 final. Available at http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/eu_action_plan_against_migrant_smuggling_en.pdf

¹⁸ European Parliament and Council, 2016. Decision on establishing a European Platform to enhance cooperation in tackling undeclared work, DECISION (EU) 2016/344. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0344&from=EN>

¹⁹ With the exception of long-term residents, seasonal workers, intra-corporate transferees, beneficiaries of international and temporary protection and asylum seekers, which are not covered by the Directive.

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- ★ the **Intra-Corporate Transferees Directives** 2014/66/EU - intra-corporate transfer permits guarantees equal treatment with posted workers with regard to employment relationship
- ★ the **Family Reunification Directive** 2003/86/EC - does not impose any additional conditions to the equal treatment provisions in the Single Permit Directive
- ★ Directive 2016/801/EU 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** – which includes specific conditions for employment per category of TCNs covered under the Directive
- ★ the **Qualification Directive** 2013/32/EU and the **Temporary Protection Directive** 2001/55/EC - allow beneficiaries of international and temporary protection to work and do not impose specific conditions, except that the employment should be subject to the rules generally applicable to the profession
- ★ the **Reception Conditions Directive** 2013/33/EU – allows asylum seekers to take up employment activities and lays down specific requirements for them.

Table 2 below provides the main compulsory employment-related provisions included in the relevant Directives.

Table 2: Right to stay and work for specific categories of TCNs as defined by EU Directives

Categories			Relevant EU instruments	Main compulsory provisions concerning work
Right to stay	Right to work	Primary purpose		
√	√	Unspecified	Long Term Residence Directive ²⁰	Equal treatment with nationals with regard to access to employment (article 11)
		Work	Single Permit Directive ²¹	Equal treatment with nationals with regard to working conditions (Article 12)
			Blue Card Directive ²²	At least 1.5 (or 1.2) times the average gross annual salary in the (Member) State, 1-year work contract (Article 5), equal treatment with nationals in working conditions (Article 14)
			Seasonal Workers Directive ²³	Period of stay no longer than 9 months in 12 month-time (Article 14), Equal treatment in terms of employment, back payments, tax benefits (Article 23)
			Intra-Corporate Transferees Directive ²⁴	Previous employment within the same (group of) undertaking(s); position as manager, specialist or trainee employee; laws, regulations, universal collective agreements applicable to posted workers in similar situations complied with; remuneration that is not less favourable than nationals in comparable positions (Article 5); equal treatment with posted workers on employment relationships (Article 8)
			Students and Researches Directive	Hosting agreement or contract (Article 8), equal treatment with nationals with regard to working conditions (Article 12 of the Single Permit Directive)
		Family	Family Reunification Directive ²⁵	Equal treatment with nationals with regard to working conditions (Article 12 of the Single Permit Directive)
Study	Students and Researchers	Students are entitled to work (Art. 24); equal treatment		

²⁰ IE and the UK do not participate in this Directive.

²¹ IE and the UK do not participate in this Directive.

²² IE and the UK do not participate in this Directive.

²³ IE and the UK do participate in this Directive.

²⁴ IE and the UK do not participate in this Directive.

²⁵ IE and the UK do not participate in this Directive.

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		Directive ²⁶	with nationals with regard to working conditions (Article 12 of the Single Permit Directive)
	Protection	Qualification Directive (no SP) ²⁷	Access to employment for beneficiaries of international protection is subject to rules generally applicable to the profession and to the public service (Article 26)
		Temporary protection Directive (no SP)	Access to employment subject to rules applicable to the profession (Article 12)
		Reception Conditions Directive (no SP) ²⁸	Access to employment for asylum seekers no later than 9 months after lodging the application; the conditions for granting access to employment are laid down in the national law (Article 15)

4 RELEVANT SOURCES AND LITERATURE

EMN Studies

This Focussed Study is the first EMN Study on illegal employment. However, other Studies may present relevant information. In particular:

- ★ 2015 EMN [Study on determining labour shortages and the need for migration labour from third countries in the EU](#)

This Study provides an overview on (i) the role of labour migration in efforts to overcome labour shortages; (ii) the variety of instruments used to identify and monitor labour shortages at EU and national level (such as employer surveys, forecasts and qualitative studies); and (iii) the extent to which these instruments are used in designing labour migration policy at national level. Although it does not specifically tackle illegal employment, the Study provides some indications on the sectors which suffer from labour shortages and the extent to which these are targeted when designing labour migration policy. Untapped labour shortages could have an impact on the demand of illegal employment.

- ★ 2015 EMN [Study on dissemination of information on voluntary return](#)

The main aim of this Study is to identify approaches that have either targeted and/or have proven effective in reaching out to those irregular migrants who are not in contact with the authorities. In order to provide a wider context, the study also gathered information on (Member) States' policies and practices with regard to the dissemination of information on voluntary return more generally. In exploring the different tools, content and format of information provision, the study provides an assessment of the extent to which these factors influence the effectiveness of uptake of voluntary return. To the extent possible, it seeks to identify practices that have proven particularly effective and the factors which made them effective. This is relevant because return is one possible outcome for a third-country national found to be working illegally. Moreover, irregularly staying third-country nationals are one of the target of AVR(R) programmes.

- ★ 2015 EMN [Study on smuggling of migrants](#)

This Study maps and analyses policies, programmes and operational responses implemented by selected EU (Member) States and third countries aimed to fight against, reduce and prevent migrant smuggling. The Study provides a factual and comparative picture of the scale, characteristics, trends and patterns of the phenomenon, and based on this it draws concrete comparative assessments of practices in various parts of the world where smuggling of migrants occur. This Study, although not focused on the employment of irregularly staying migrants, is relevant in so far as the possibility of finding illegal employment opportunities is generally considered a pull factor of irregular migration.

- ★ 2012 EMN [Study on reducing irregular migration](#)

²⁶ IE and the UK do not participate in this Directive. IE does not participate in the Student Directive (Council Directive 2004/114/EC). IE does participate in the Researchers Directive (Council Directive 2005/71/EC).

²⁷ IE participates in the Qualification Directive (Council Directive 2004/83/EC) but not the recast Qualification Directive (Directive 2011/95/EU).

²⁸ IE and the UK do not participate in this Directive.

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This EMN Study on Practical Measures to Reduce Irregular Migration is to provide an overview of existing approaches, mechanisms and measures to reduce irregular migration in the EU and Norway. In particular, its aim is to inform policymakers and practitioners about the practical measures that have proved effective and proportionate in addressing the issue of irregular migration, both in relation to prevention and in providing pathways out of irregularity. The Study includes good practices and contextualises national policies and practices within the overall EU policy framework. A further aim is to present the available statistics and the methods of data collection used by (Member) States to estimate the irregular migrant population. In the section that describes the measures taken by (Member) States during the stay of irregularly residing migrants, the Study collects information on the specific measures adopted to prevent employment of irregular migrants.

The following EMN Studies may also be relevant:

- ★ 2015 EMN [Study on integration of beneficiaries of international protection](#)
- ★ 2014 EMN [Study on migrant access to social security and healthcare](#)
- ★ 2013 EMN [Study on highly qualified migrants](#)
- ★ 2013 EMN [Study on immigration of international students](#) 2012 EMN [Study on visa policy as migration channel](#)
- ★ 2011 EMN [Study on satisfying labour demand through migration](#)
- ★ 2006 EMN [Study on labour migration: health sector](#)

EMN Ad-Hoc Queries

The following EMN AHQs are relevant to this Study:

- ★ [Cooperation agreements with third countries regulating recruitment of workers](#) (1070.2016), requested by PL on 18th May 2016
- ★ [Illegal working](#) (1001.2015), requested by UK on 4th November 2015
- ★ [Inspections to control the employment of irregular migrants](#) (703.2015), requested by COM on 24th June 2015
- ★ [Payment of the Costs Associated with \(Administrative\) Expulsion](#) (629.2014), requested by CZ on 11th November 2014
- ★ [Penalties and sanctions for employing illegal workers](#) (530.2014), requested by UK on 20th January 2014
- ★ [Implementing Council Directive 2009/52/EC](#) (2013.452), requested by HU on 17th January 2013
- ★ [Overseas Domestic Workers](#) (167.2009), requested by UK on 2nd November 2009

Other relevant studies and reports

- ★ Schneider, F., 2000. Illegal activities, but still value added ones (?): size, causes, and measurement of the shadow economies all over the world. CESifo Paper.
The paper provides a definition of 'shadow economy' and measures the size of the shadow economy in 76 countries. It also analysis the main causes of the increase of shadow economy and the consequent effects on the official economy. The paper also discusses a variety of methods to estimate the size of the shadow economy.
- ★ Boswell, C., & Straubhaar, T. (ed.) 2004, [The illegal employment of foreigners in Europe](#). *Intereconomics*.
This forum on illegal employment of foreigners in Europe gathered the contributions of different scholars. Christina Boswell and Thomas Straubhaar provides an overview of the problem; Horst Entorf and Jochen Moebert analyse the relationships between demand for illegal immigrant labour, migration decisions and market outcomes, with some costs-benefit considerations. Alessandra Venturini focuses on the extent to which illegally residing migrants compete with national workers. Christiane Kuptsch examines the international legal framework for the protection of illegally residing migrants, and discusses migrants' reasons in accepting illegal employment and employers' preferences for irregularly residing migrants in the context that creates incentives to illegal employment. Finally, Philip Martin examines the policy responses to unauthorised or irregular workers, including prevention measures, sanctions and legalisation programmes.
- ★ OECD 2000, [Combating the Illegal Employment of Foreign Workers](#).

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The report is divided into two parts: in the first part, the impact of irregular migration on the economy and the labour market is analysed, in particular the political and economic issues linked to the illegal employment of foreign workers and the effect of regularisation programmes; the second part provides an analysis and evaluation of measures undertaken to fight illegal employment involving irregularly residing third-country nationals across OECD countries and with a focus on US and France.

- ★ Schiff, M. 2004, [When Migrants Overstay Their Legal Welcome: A Proposed Solution to the Guest-Worker Program](#). IZA DP No. 1401 Discussion Paper Series.

The paper discusses guest worker programmes, i.e. programmes that allow the temporary stay of third-country nationals for work purposes, and their biggest pitfall, which is the inability to prevent third-country nationals to overstay the expiration of their visa and the engagement in the illegal job market. The paper, which has an economic approach, presents a model whereby a well-designed guest-worker programmes is associated with high chances of third-country nationals to go back to their countries once the programme is terminates. The model has three components: a bond-system involving the government, the employer and an agency; an insurance system whereby the government temporarily holds part of the third-country income, which will return with interest when the third-country national leaves; cooperation with sending countries.

- ★ Sumption, M., 2011. Policies to Curb Unauthorized Employment. Migration Policy Institute.

The paper discusses employers' motivations to hire irregular migrants and the policies to curb the phenomenon; in particular, the paper discussed employer sanctions, facilitating legal immigration, and labour market reforms and enforcing labour standards.

- ★ Visa Europe, Schneider, F., A.T. Kearney 2013. [The Shadow Economy in Europe](#), 2013.

The study provides an estimate of the scale of shadow economy in terms of percentage of GDP. It covers the year 2013 and the whole EU. When possible, data are disaggregated by Member State, macro-regions and sectors. The study discusses also the effectiveness of measures taken to tackle informal economy.

- ★ Special Eurobarometer 402, 2014. [Undeclared work in the European Union](#).

This special survey was conducted in the 27 Member States and Croatia in 2013. The respondents were 26.563 and represented different social and demographic groups. The questions were on their experience with undeclared work, personally or in terms of knowing someone engaged with undeclared work.

- ★ SIP (Association for Legal Intervention), 2014. [Unprotected. Migrant workers in an irregular situation in Central Europe](#).

The report analyses the practical obstacles in the implementation of the measures foreseen in the Employers' Sanctions Directive, to protect irregular migrants working illegally, specifically in Czech Republic, Hungary, Poland, Slovakia and Romania. The report presents an overview of how the EU addresses irregular migration; profiles the country under analysis as regards their immigration; and provides information on the implementation of the Employers' Sanctions Directive at the national level. It also focuses on the provision of legal assistance to documented vis-à-vis undocumented migrant workers and collects best practices.

- ★ European Union Agency for Fundamental Rights, 2015. [Severe labour exploitation: workers moving within or into the European Union. States' obligations and victims' rights](#).

This report provides an overview of the international and EU law on labour exploitation, it defines severe labour exploitation, which is a type of labour exploitation criminalised under national law, and maps its forms. It analyses risk factors and risk management for severe labour exploitation, strategies to monitor labour exploitation and techniques and challenges to prevent it. Finally, the Report provides an overview of victims' access to justice, regularisation and support services.

- ★ OECD 2015. [International Migration Outlook](#).

The 2015 edition of the OECD International Migration Outlook has a special focus on employment. It looks at the recent development in international migration movements and policies, at recent labour market trends and integration policies and at changing patterns in international migration of doctors and nurses. Policies to tackle illegal employment of migrants are also mentioned.

- ★ PRICUM 2015. [Employers' Sanctions: Impacts on undocumented migrant workers' rights in four EU countries](#).

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The position paper on the Employers' Sanctions Directive analyses the impacts of the Directive on third-country nationals, with a specific focus on the effectiveness of the protective elements for irregular migrants working illegally, i.e. availability and accessibility of complaint mechanisms and recuperation of outstanding wages and access to residence permits. The paper is based on four case studies (Belgium, Czech Republic, Italy, the Netherlands), which cover four different geographical areas. The paper finds that the mechanisms to protect and enforce the rights of undocumented workers are not effective, as many practical obstacles persist. On the contrary, the repercussions of illegal employment on the employers remain limited.

- ★ ILO 2013. [Labour inspection and undeclared work in the EU](#).

The purpose of this study is to consider the role that national labour inspection systems in the EU have as part of a strategic policy response to undeclared work. It was coordinated by the ILO's Labour Administration and Inspection Programme (LAB/ADMIN) in cooperation with the European Commission's Labour Law Unit. This comparative study aims to fill the gap of knowledge within labour inspectorates on how to deal effectively against fraud, undeclared work and challenges in the informal economy.

- ★ ICMPD ongoing. [Clandestino Project - Undocumented Migration: Counting the Uncountable Data and Trends Across Europe](#).

The project covers 11 EU countries and provides data and estimates on the stock population and flows of undocumented migrants, with a comparative approach.

5 AVAILABLE STATISTICS

EU-level statistics on the number of illegally employed third-country nationals, both regularly and irregularly residing, are not available. However, other relevant background statistics on the population of third-country nationals and on employment are available:

- ★ Third country nationals found to be illegally present - annual data (rounded) (migr_eipre)
- ★ Immigration by five-year age group, sex and citizenship (migr_imm1ctz)
- ★ First permits by reason, length of validity and citizenship (migr_resfirst)
- ★ All valid permits by reason, length of validity and citizenship on 31 December of each year (migr_resvalid)
- ★ Long-term residents by citizenship on 31 December of each year (migr_reslong)
- ★ Employment by sex, age and detailed economic activity (from 2008 onwards, NACE Rev. 2 two digit level) - 1 000 (Ifsa_egan22d)
- ★ Employment by sex, age, professional status and occupation (1 000) (Ifsa_egais)
- ★ Employment by sex, age and citizenship (1 000) (Ifsa_egan)

The Employers' Sanctions Directive impose on (Member) States²⁹ the obligation to report to the Commission data on the number and results of inspections pursuant to Article 14(1) of the Directive, measures applied under Article 13 and possibly 6 and 7 of the Directive. The following data are therefore available:

- ★ Number of inspections carried out by sector (and as percentage of the total number of employers in the sector)
- ★ Number of inspections which detected illegally staying third-country nationals (and as percentage of the total number of employees in each sector)
- ★ Sanctions, in particular how many proceedings have been opened following the inspections, how many have been closed and the total amount of the imposed fines
- ★ Criminal sanctions, in particular the number of prosecutions initiated following the inspections, the final decisions, the average duration of imprisonment imposed and the total sum of imposed fines

²⁹ IE and the UK do not participate in this Directive.

6 DEFINITIONS

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary.

'Asylum': is a form of protection given by a State on its territory, based on the principle of non-refoulement and internationally or nationally recognised refugee rights and which is granted to a person who is unable to seek protection in their country of citizenship and/or residence, in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

'Back payments': any outstanding remuneration and any outstanding taxes and social security contributions that the employer should in pay to the third-country nationals for the work which they have undertaken (Directive 2009/52, recital (14))

'Economic migrant': a person who leaves their country of origin purely for economic reasons that are not in any way related to the refugee definition, in order to seek material improvements in their livelihood.

'Employer Sanction': in the context of migration, penalties, including fines, repayments to victims/the State and incarceration, imposed on employers by the (Member) State for breaking employment and/or migration rules.

'Employment': the exercise of activities covering whatever form of labour or work regulated under national law or in accordance with established practice for or under the direction and/or supervision of an employer.

'Family reunification': the establishment of a family relationship which is either: i) the entry into and residence in a (Member) State, in accordance with Council Directive 2003/86/EC, by family members of a third-country national residing lawfully in that (Member) State ('sponsor') in order to preserve the family unit, whether the family relationship arose before or after the entry of the sponsor; or ii) between an EU national and third-country national established outside the EU who then subsequently enters the EU.

'Legal entry': in the global context, the entry of an alien into a foreign country in compliance with the necessary requirements for legal entry into the receiving State. In the Schengen context, and for a stay not exceeding 90 days within 180 days consecutive, the entry of a third-country national into a Schengen (Member) State in compliance with Art. 6 of the Schengen Borders Code.

'Illegal employment': economic activity carried out in violation of provisions set by legislation.

'Illegal employment of a regularly staying third-country national': employment of a legally staying third-country national working outside the conditions of their permit or document which states the legal basis for the foreigners stay on the territory of a Member State. This is subject to each (Member) State's national law.

'Illegal employment of an irregularly staying third-country national': the employment of an illegally staying third-country national.

'Irregular migrant': in the global context, a person who, owing to irregular entry , breach of a condition of entry or the expiry of their legal basis for entering and residing, lacks legal status in a transit or host country. In the EU context, a third-country national present on the territory of a Schengen State who does not fulfil, or no longer fulfils, the conditions of entry as set out in the Schengen Borders Code, or other conditions for entry, stay or residence in that (Member) State.

'Posted worker': a worker who, for a limited period, carries out his/her work in the territory of a Member State other than the State in which they normally work.

'Principle of equal treatment': the principle that there shall be no direct or indirect discrimination based on racial or ethnic origin, sex, religion or belief, disability, age or sexual orientation.

'Overstayer': in the global context, a person who remains in a country beyond the period for which entry was granted. In the EU context, a person who has legally entered but then stayed in an EU (Member) State beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and/or residence permit.

'Right to family unity': in the context of a refugee, a right provisioned in Art. 23 of Directive 2011/95/EU and in Art. 12 of Directive 2013/33/EU obliging (Member) States to ensure that family unity can be maintained.

'Schengen Borders Code': the rules governing border control of persons crossing the external EU borders of the (Member) States of the European Union.

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'Single Permit': a residence permit issued by the authorities of a (Member) State after a single application procedure allowing a third-country national to reside legally in its territory for the purpose of work.

'Smuggling of migrants': the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the irregular entry of a person into a (UN) (Member) State of which the person is not a national or a permanent resident.

'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.

'Social partners': bodies representing employers, workers and governments when meeting for the purpose of consultations and negotiations on labour, social and economic practices, policies and legislation.

'Student': in the EU migration context, a third-country national accepted by an establishment of higher education and admitted to the territory of a (Member) State to pursue as their main activity a full-time course of study leading to a higher education qualification recognised by the (Member) State, including diplomas, certificates or doctoral degrees, which may cover a preparatory course prior to such education according to its national legislation.

'Temporary protection': a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons.

Undeclared work is a specific form of illegal employment defined as "any paid activities that are lawful as regards to their nature but not declared to public authorities, taking into account differences in the regulatory system of (Member) States".³⁰

7 ADVISORY GROUP

The Advisory group for this Study consists of:

★ EMN NCPs:

- BE NCP (Elisa van der Valk, Koen Dewulf)
- EE NCP (Marion Pajumets, Barbara Orloff)
- HR (Nera Komaric)
- HU NCP (Agnes Tottos)
- IE NCP (Susan Whelan, Emma Quinn)
- IT NCP (Mattia Vitiello)
- LV NCP (Ilva Ievina, Stanislavs Lopatinskis)
- LU (Adolfo Sommarribas)
- PL (Joanna Sosnowska)
- UK NCP (Laura Broomfield, Katharine Beaney)

★ European Commission (Agnieszka Sternik, Tomasz Ostropolski)

★ EMN Service Provider (Veronika Vasileva, Martina Belmonte)

³⁰ European Commission, 2007. Stepping up the fight against undeclared work. COM(2007) 628 final. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0628>

8 TIMETABLE

The following timetable has been proposed for the Study going forward:

Date	Action
<i>26th September 2016</i>	Circulation of <u>Version 1</u> of the Common Template to AG members to provide comments (by 30 th September 2016)
<i>12th October 2016</i>	Circulation of <u>Version 2 (following comments from AG)</u> of the Common Template
<i>18th October 2016</i>	Circulation of <u>Version 3</u> to all EMN NCPs to provide comments
<i>3rd November 2016</i>	Finalisation of the Common Template and official launch of the Study
<i>15th February 2017</i>	Completion of the National Reports by EMN NCPs
<i>1st March 2017</i>	First draft of the Synthesis Report ³¹
<i>27th March 2017</i>	Finalisation of the Synthesis Report and National Contributions for publication

9 TEMPLATE FOR NATIONAL CONTRIBUTIONS

The template provided below outlines the information that should be included in the National Contributions of EMN NCPs to this Focussed Study. The indicative number of pages to be covered by each section is provided in the guidance note. For National Contributions, the total number of pages should **not exceed 35 pages**, including the questions and excluding the Statistical Annex. A limit of **25** pages will apply to the Synthesis Report, in order to ensure that it remains concise and accessible. The national templates used as sources for EMN synthesis reports should be published on the EMN website as an annex to the Synthesis Report (in the form of hyperlinks) in order to facilitate more in-depth analysis by users.

³¹ Provided that at least 20 EMN NCPs have submitted a National Contribution in time for the synthesis stage of the Study.

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Top-line "Factsheet" (National Contribution) [maximum 1 page]

Overview of the National Contribution – introducing the Study and drawing out key facts and figures from across all sections of the National Contribution, with a particular emphasis on elements that will be of relevance to (national) policymakers.

Please also provide a concise summary of the main findings of Sections 1-5 below, for example:

- ★ Extent to which illegal employment of third-country nationals (TCNs) is an issue in general in your (Member) State;
- ★ Key prevention and identification measures regarding illegal employment of TCNs in place in your (Member) State;
- ★ Possible sanctions for employers and sanctions and other outcomes for TCNs;
- ★ Mechanisms on access to justice and enforcement of rights of illegally employed TCNs;
- ★ Challenges as well as good practices in the field.

Executive Summary (Synthesis Report) [maximum 3 pages]

Executive Summary of the Synthesis Report: this will form the basis of an EMN Inform, which will have EU and national policymakers as its main target audience.

*Illegal employment of Third-Country Nationals in the EU***Section 1: Contextual overview of the general situation regarding illegal employment in the (Member) States [maximum 1 page]**

This introductory section of the Synthesis Report will aim at setting the scene for the Study and contextualize the Study in terms of providing a brief overview of the general situation in the (Member) State with regard to illegal employment of TCNs.

Q1. Please provide an overview of the **general situation with regard to illegal employment** on the basis of available research and information in your (Member) State, including, *inter alia*:

- Q1a. Extent to which the grey and informal economy is present in your (Member) State;
- Q1b. Extent to which fighting illegal employment is a political priority in your (Member) States;
- Q1c. Public and/or policy debates in the area of illegal employment;
- Q1d. Extent to which illegal employment of TCNs is an issue in your (Member) State (e.g. severity and intensity of the issue), in particular concerning the TCNs;
- Q1e. Available research on the main routes to an irregular employment situation in your (Member) State;
- Q1f. Any (planned) changes in law or practice in the field of illegal employment;
- Q1g. Issues with illegal employment in particular industries and sectors and particular types of employer (e.g. is it more prevalent in SMEs or larger businesses, start-ups or more established businesses?);
- Q1h. Profiles of the illegally working individuals (EU, EEA or TCNs);
- Q1i. Other related issues experienced in your (Member) State which may directly affect the extent of illegal employment in your (Member) State, such as corruption, trafficking in human beings, etc.

Please specify the reference/source of the information.

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Section 2: Prevention measures [maximum 5 pages]

*This section of the Synthesis Report will provide a comparative overview of the prevention measures of illegal employment of TCNs available in the (Member) States. Particular distinction will be made between (i) measures and incentives for employers and (ii) measures and incentives for employees. Furthermore, a cross-cutting distinction will be made between the two main categories of TCNs subject to examination of this Study: (i) **irregularly staying and illegally working TCNs** and (ii) **regularly staying and illegally working TCNs**. The section will also examine how risk assessments are carried out. Moreover, any good practices and success stories in prevention measures will be highlighted in the Synthesis Report under this section.*

Q2. Please describe the types of **preventive measures** targeting TCNs as well as employers of TCNs to discourage them from employing a TCN illegally in your (Member) State:

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a. **Preventive measures and incentives for employers:** Please indicate which measures and incentives for employers exist in your (Member) State and describe the measures.

Measure/incentives for employers	<u>Irregularly staying and illegally working TCNs</u> <i>*Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. **Please specify if these measures are established to tackle illegal employment or are general incentives.</i>	<u>Regularly staying and illegally working TCNs</u> <i>*Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. **Please specify if these measures are established to tackle illegal employment or are general incentives.</i>
<p>a.1. Information campaigns targeted at employers</p> <p><i>Outreach/awareness-raising activities to inform employers on the criteria by which they can hire TCNs</i></p> <p>For each campaign that has been run in your MS indicate:</p> <ul style="list-style-type: none"> - Which sectors were targeted? - How the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.) 		
<p>a.2. Information support for employers</p> <p><i>Simplification of administrative procedures and information support for employers recruiting TCNs (e.g. helpline, information on government website etc.)</i></p>		
<p>a.3. Partnership agreements and initiatives by Social Partners</p> <p><i>Conclusion of agreements between trade unions and employer organisations in the same sector (e.g. construction industry) establishing bilateral agreements of actions to curb illicit activities.</i></p>		
<p>a.4. Obligation of the employer to notify the authorities about employing a TCN</p>		
<p>a.5. Other measures/incentives for employers</p>		

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b. **Measures and incentives for employees from third countries:** Please indicate which measures and incentives for employees from third countries exist in your (Member) State and describe the measures.

Measure/incentive for employees	<i>Irregularly staying and illegally working TCNs</i> <i>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</i>	<i>Regularly staying and illegally working TCNs</i> <i>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</i>
<p>b.1. Financial incentives for employees</p> <p><i>Financial and fiscal incentives, including social security incentives – i.e. any social security incentives aimed at encouraging employers to legally register their employees</i></p>		
<p>b.2. Information campaigns targeted at employees (potential or current)</p> <p><i>(including pre-departure campaigns and post-departure campaigns in third countries)</i></p> <p>For each campaign that has been run please:</p> <ul style="list-style-type: none"> - Provide detail of the campaigns, including who are the target groups; what country, type of workers, etc. - Explain how the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.) 		
<p>b.3. Information support for employees from third countries</p> <p><i>(e.g. One-stop shop information points)</i></p>		
<p>b.4. Other measures/incentives for employees (incl. obligation of TCN to notify the authorities about any changes in employment conditions)</p>		

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Q3. Does your (Member) State carry out **risk assessments** to identify the sectors of activity ('sensitive sectors') in which the illegal employment of TCNs is most concentrated? (Yes/No)

Please indicate if there are differences between the two main categories of TCNs:

(i) irregularly staying and illegally working TCNs and (ii) regularly staying and illegally working TCNs

If **Yes**, please describe:

a. What are the **methods and tools** used for carrying out the risk assessments?

b. Which **authorities** are involved in drawing up the risk assessment?

c. How are the **results** of the risk assessments used in practice (e.g. used to target inspections)?

Q4a. What are **the strengths and weaknesses** of prevention measures of illegally employed TCNs in your (Member) State? Please reference the sources of the information provided.

Q4b. What **good practices** can be identified in your (Member) State in the area of prevention of illegal employment? What were the particular **success factors** with measures that can be identified as good practices? Please reference the sources of the information provided.

Section 3: Identification of illegal employment of TCNs [maximum 7 pages]

This section of the Synthesis Report will aim to provide an overview of the identification practices of illegal employment of TCNs in the (Member) States. It will start with a descriptive overview of the types of national authorities involved in the identification of TCNs as well as look into specific identification measures in place and how these are carried out in practice.

Q5a. Which types of **national authorities** are responsible for identification of illegally employed TCNs?

**Please indicate if there are any differences in the approach to identification between the two main categories of TCNs: (i) irregularly staying and illegally working TCNs and (ii) regularly staying and illegally working TCNs.*

***Please specify if these authorities are specifically tasked to identify illegally employed TCNs or involved in general checks on illegal employment.*

Q5b. Are there special authorities responsible for **specific sectors**? If yes, please describe.

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Q5c. With regard to **labour inspectorates**, do they have separate functions/departments targeted to the detection of illegal employment of migrants from third countries?

Q5d. How do national authorities and other organisations involved **cooperate**? Are there any specific cooperation mechanisms/fora in place in your (Member) State? Is there any legal basis specifying that authorities must cooperate, including a cooperation agreement or it is done on an ad-hoc basis by authorities?

Q5e. Please provide **statistics on the number of staff/inspectors** involved in identification/inspections on illegal employment per authority and if available, per sector for 2015 (or if not available for latest available year). Please specify if the staff is specifically dedicated to identifying illegally employed TCNs or are involved in general checks on illegal employment.

Q6. What **identification measures** regarding illegal employment of TCNs exist in your Member State? (e.g. inspections; border checks; checks of premises by migration officials; other types of checks) Please describe.

Q7. How are **inspections carried out** in your (Member) State?

**Please provide information if any differences exist between the two main categories of TCNs: (i) irregularly staying and illegally working TCNs and (ii) regularly staying and illegally working TCNs.*

More specifically, please answer the following questions:

Q7a. What methods are used for selecting/sampling employers to be inspected (targeted labour inspections to specific sectors/categories of TCNs)?

Q7b. How are inspections planned? Are they based on the results of a risk assessment?

Q7c. Could inspections be triggered by reporting/signals from (a) the general public (e.g. whistleblowers) and (b) from illegally employed TCNs? Is there a hotline established to signal illegal employment cases? If yes, please describe.

Q7d. Which authorities (a) decide on carrying out the inspections and (b) carry out the inspections?

Q7e. Which elements are checked? (e.g. checking employees residence and/or employment permits or inspecting employer records (payslips, contracts of employment etc)

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Q7f. What are the entry/search powers of inspectorates? Do labour inspectorates cooperate with the police/other law enforcement authorities while carrying out inspections? If yes, are cases of illegal employment of TCNs/exploitation automatically reported to police/law enforcement authorities?

Q7g. How often are inspections carried out in different sectors? Are inspections conducted at random intervals? If so, please give an indication of time between visits.

Q7h. How are inspections carried out (e.g. on-sight inspections/controls; interviewing and checking workers)?

Q8. What **technical tools and methods** are in use for identification of illegal employment of TCNs (e.g. planning maps, criteria to select enterprises, manuals, operational guidelines, checklists and scripts for interviews, visit protocols and visit follow up procedures)?

Q9. What are the **strengths and weaknesses** of identification measures of illegally employed TCNs in your (Member) State? What good practices can be identified in your (Member) State in the area of identification of illegal employment? What were the particular success factors with measures that can be identified as good practices?

Section 4: Sanctions for employers [maximum 5-10 pages]

This section of the Synthesis Report will aim to map the types of sanctions for employers which are found to be illegally employing TCNs. In addition, any good practices and success stories will also be recorded.

Q10. For each of the listed sanctions, please elaborate whether this type of sanction is imposed in your (Member) State (Yes/No) and if Yes, please describe in which cases are these sanctions applied.

Sanctions for employers	<u>Irregularly staying and illegally working TCNs</u> <i>*Please indicate if this sanction is imposed in your (Member) State (Yes/No), and if yes in which cases ** Please provide reference to the specific legal provisions</i>	<u>Regularly staying and illegally working TCNs</u> <i>*Please indicate if this sanction is imposed in your (Member) State(Yes/No), and if yes in which cases ** Please provide reference to the specific legal provisions</i>
Fines (e.g. fines imposed per illegally hired employee)		
Imprisonment of employers <i>(Please indicate the aggravating</i>		

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<i>circumstances)</i>		
Confiscation of financial gains (e.g. share of profit or revenue of the employer)		
Ineligibility for public contracts		
Temporary or definitive closure of company or worksite		
Confiscation of equipment/property		
Suspension of activity		
Withdrawal of trading license/disbarment of activity		
Withdrawal of residence permit if the employer is a TCN		
Other sanctions		

Q11a. Do the procedures differ if the employer did not intentionally hire irregular worker? How is this established? What if the residence permit of the employee was revoked?

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Q11b. What happens if the residence permit of the employee was revoked?

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Q12a. Does legislation in your (Member) State provide for criminal sanctions for: a/b/c/d/e (as per Art.9.1 of the Employer Sanctions Directive 2009/52) or domestic equivalent?

Criminal sanctions for employers	Description
	<i>*Please indicate if this sanction is imposed in your (Member) State, and if yes in which cases ** Please provide reference to the specific legal provisions</i>
(a) the infringement continues or is persistently repeated	
(b) the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	

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(c) the infringement is accompanied by particularly exploitative working conditions	
(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings	
(e) the infringement relates to the illegal employment of a minor	

Q12b. Has your Member States amended legislation on sanctions for illegally employed TCN since July 2014³²? If so, please provide details.

Q13. What are the **strengths and weaknesses** in sanctioning employers who illegally employed TCNs in your (Member) State? What good practices can be identified in your (Member) State in the area of sanctions for employers? What were the particular **success factors** with measures that can be identified as good practices? Please reference the sources of the information provided.

Section 5: Outcomes for TCNs found to be working illegally [maximum 5-10 pages]

This section of the Synthesis Report will aim to identify the possible outcomes and measures for TCNs found to be working illegally in the (Member) States. Hypothetical scenarios 'case studies' are presented under Question 21.

Q14. In the event that an **irregularly staying and illegally working TCN** is detected, please describe in which situations s/he is:

Q14a. *issued with a return decision. Please also describe the procedure after an illegally employed TCN is detected and how is this communicated to immigration authorities.*

Q14b. *is granted a period for voluntary departure*

³² The European Commission issued implementation report on the Employers' Sanctions Directive on 22 May 2014. This EMN study aims to examine whether/and if so – to what extent there has been new legislation/practices following that date.

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Q14c. *has received an entry ban*

Q14d. *fined (Please elaborate on the different types of sanctions in place)*

Q14e. *detained (Please also describe which authorities have the right to detain illegally employed TCNs)*

Q14f. *receives work permit*

Q14g. *receives residence permit*

Q14h. *Please indicate outcomes if identified as a victim of trafficking of human beings*

Q14i. *Other sanctions/outcomes*

Q15. In the event that a **regularly** staying and illegally working TCN is detected, please describe in which cases:

Q15a. *s/he can lose their residence rights*

Q15b. *the illegal work is tolerated or regularised*

Q15c. *fined*

*Illegal employment of Third-Country Nationals in the EU***Q15d.** *detained*

Q15e. *issued a return decision*

Q15f. *Other sanctions/outcomes*

Q16. What are the consequences for TCNs who have temporary or permanent residence permit in one EU country and is illegally employed in your (Member) State?

Q17. Please describe the possibility for compensation or unpaid wages to the illegally working TCNs- i.e. back payment of the salary (see definition of back payment in the definition section)

a. In the event that back payment of salaries, social security contributions and income taxes are due in favour of the illegally employed TCN, please describe mechanisms in place which provide for the liability of the employer to pay:

(i) outstanding remuneration

(ii) amount equal to taxes and social security contributions (which is due to the State and not the TCN)

b. Does your national legislation foresee that, in addition to employers, direct contractors and any intermediate subcontractor may also be required to pay any outstanding remuneration and taxes?

c. Please provide comments on difficulties encountered or success factors with measures that can be identified as good practices in relation to claims for back payments.

d. In addition to back-payment, can employer be ordered to cover other expenses, such as payment of living expenses (please define how living expenses are defined/ calculated) and cost of return of illegally employed TCNs

Q18a. Does the legislation in your (Member) State foresee the right of illegally employed TCN to make a claim against employer including in cases in which they have, or have been, returned?

b. if the answer is positive, is it a specific claim, or it falls under general provisions concerning the right to bring a case before civil or labour courts

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c. may third parties with legitimate interest act on behalf or in support of TCN in relevant administrative or civil proceedings (e.g. trade unions, organisation of migrant workers, public authorities)

d. Please provide comments on difficulties encountered or success factors with measures that can be identified as good practices.

Q19a. Does your (Member) State provide for information to illegally employed TCNs on their rights?

If Yes, is this foreseen in legislation, or else is it a part of general administrative guidelines or practices?

Please provide comments on difficulties encountered or success factors with measures that can be identified as good practices in relation to information obligations.

Q19b. Have any of measures referred to under questions 17-19 been introduced in your legislation after July 2014³³? If yes, which ones?

Q20. What good practices can be identified in your (Member) State in the area of outcomes for illegally employed TCNs (sanctions and other outcomes)? What were the particular **success factors** with measures that can be identified as good practices? Please reference the sources of the information provided.

Q21. Case studies

*In order to better understand the different procedures used when authorities detect illegal employment of third-country nationals, five hypothetical case studies have been designed. It is recognised that outcomes for TCNs may largely differ depending on their particular situation. In this respect, the case studies will help to illuminate the elements which exist for national authorities to use discretion in response to this. For each of the case studies below, please describe the general procedure **after detecting illegal employment** and the consequences in your (Member) State for the third-country national. In order to determine the procedure and the consequences in accordance with the rules of your Member State, additional information about the particular circumstances of each case may be required. EMN NCPs are asked to identify the different circumstances relevant for each case.*

Q21a. A third-country national residing and working irregularly

Mr. Adawe Shire, a 38 years-old carpenter from Somalia entered your (Member) State via irregular means with his wife and 2-year old daughter. They have been in the (Member) State for three years. Mr. Shire has been working without an employment contract at a construction company as a general construction worker. Now he has found a job in his profession and would like to sign a contract and apply for a legal residence permit. What happens after the labour inspectorate detected irregularities on a random control? What are the consequences for him? If Mr. Shire is not detected but he is offered a new job with a written contract can his situation be regularised?

³³ The European Commission issued implementation report on the Employers' Sanctions Directive on 22 May 2014. This EMN study aims to examine whether/and if so – to what extent there has been new legislation/practices following that date.

*Illegal employment of Third-Country Nationals in the EU***Q21b. A third-country national on a student permit employed more hours than allowed**

Ms. Svitlana Ivanenko, a student holding Ukrainian citizenship, aged 22, moved to your (Member) State one year ago. Svitlana is enrolled in a two year master's programme at university. She holds a residence permit for students. For the past six months she was also employed for 10 hours per week at a local café³⁴. During some months of the academic year as well as the summer break at university, Svitlana started to work longer hours at the café, leading to work of almost 45 hours per week during term time for 3 months without changes in her part-time student contract. What happens after the labour inspectorate detected that Svitlana was working 40 hours per week? Please specify the maximum hours per week that students are allowed to work in your (Member) State.

Q21c. A third-country national who resided and worked regularly, but whose permit has expired

Jiao Bao, a 33 years old web designer from China arrived in your Member State two years ago through a temporary residence permit arranged through an IT company that employed him. She lost her job and found a job in a local bar for which she was not authorised by her residence permit. After four months of working in the local bar, she applies for a job at another IT company and receives a job offer. However, in the meantime she was detected by the labour inspectorate of working irregularly in the local bar. What happens after the detection taking into consideration that she holds a job offer?

Q21d. A third-country national present as a tourist

Marija Bogdanovic, a Serbian citizen, aged 45 has entered your (Member) State as a tourist one month ago. Due to visa liberalisation for the Western Balkans countries, Marija has the right to remain in your (Member) State for up to 90 days per six-month period as a tourist without requiring a visa³⁵. During her stay in your (Member) State, Marija has been working for a family she met through friends as a housekeeper and babysitter. She has been living with the family and has been paid cash for her work. After two months the family asks Marija to stay and work for them full time. They offered to grant her a work contract and asked her to apply for a residence permit. Marija intends to apply for a residence in permit in your (Member) State during the 90 days period she enjoys visa liberalization. However, Marija is detected by the authorities in your (Member) State before applying for the permit. What would be the consequence for Marija?

A21e. A third-country national seasonal worker

Mr. Karim Harrak, a 25 year old from Morocco entered your (Member) State as a seasonal worker for strawberry picking. He has been residing on a seasonal worker permit and is required to leave your (Member) State after the legally allowed duration for stay expired³⁶. The contract with his current employer is valid for six months. However, after his contract expired he remained in your (Member) State and took on another job in a hotel. He

³⁴ Based on Directive 2016/801 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) allowing students to take up employment of at least 15 hours per week. IE and the UK are not participating in this Directive.

³⁵ Based on the visa free travel decision adopted by the EU Member States on 30 November 2009: http://europa.eu/rapid/press-release_IP-09-1852_en.htm?locale=fr

³⁶ Based on Directive 2014/36/EU – Seasonal workers – allowing third-country nationals to reside in a Member State between five months and nine months in any 12-month period. The permit is renewable. IE and the UK are not participating in this Directive.

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thus remained in your (Member) State longer than the legally allowed duration. After a few months in the second job, he applied again as a seasonal worker for strawberry picking. However, he is detected that he has overstayed in the country. What would be the consequences for Karim?

A21f. A third-country national working from an international trading company

Mrs Awa Diop arrived from Senegal in your country illegally a year ago and has been working for an international trading company during that time irregularly ever since. For the last five months she has not been payed her salary by her employer. She decides to sue the company and to give up her false identity which the employer was aware of. What would be the consequence for Mrs Diop?

Section 6: Conclusions (Synthesis Report) [maximum 3 pages]

The Synthesis Report will outline the main findings of the Study and present conclusions relevant for policymakers at national and EU level. (Member) States should include any overall conclusions in the Top-line Factsheet at the beginning of the Common Template rather than duplicate information in this Section.

Annex 1 Statistical Annex**1. Inspections and sanctions for employers**

The European Commission has collected data under the reporting requirements of the Employers' Sanctions Directive impose on (Member) States³⁷.

The following data are therefore available:

- ★ Number of inspections carried out by sector (and as percentage of the total number of employers in the sector)
- ★ Number of inspections which detected illegally staying third-country nationals (and as percentage of the total number of employees in each sector)
- ★ Sanctions, in particular how many proceedings have been opened following the inspections, how many have been closed and the total amount of the imposed fines
- ★ Criminal sanctions, in particular the number of prosecutions initiated following the inspections, the final decisions, the average duration of imprisonment imposed and the total sum of imposed fines

The statistics for 2015 has been made available on the IES in the Study folder: **EMN Outputs ->EMN studies ->.Illegal employment study ->Working Papers and Additional documents->Employer Sanctions Directive data**. EMN NCPs are encouraged to review the statistics and flag up any methodological issues or changes in the statistics. The Service Provider will make use of the statistics for the purposes of the Synthesis Report. EMN NCPs are also encouraged to use the statistics in the preparation of their national report.

Question A.1: Please provide statistics on a number of convictions for employing illegally staying TCNs for years 2014, 2015 and 2016, if possible broken down by specific criminal offences enlisted in Article 9.1. a-e of Directive 209/52, i.e.:

Convictions for employers	2014	2015	2016
Total number of convictions			
(a) infringement continues or is persistently repeated			

³⁷ IE and the UK do not participate in this Directive.

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(b) infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals			
(c) the infringement is accompanied by particularly exploitative working conditions			
(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings			
(e) the infringement relates to the illegal employment of a minor			

Question A.2: Please provide statistics on type and number of sanctions for employers in your (Member) State

Type of sanction for employers (please fill in)	2014	2015	2016

2. Scale and profiles of illegal employment of TCNs

Question A.3: Please provide statistics on a number of identified illegally employed TCNs. Please explain if any differences in the data provided here and the data under the reporting requirements on Directive 2009/52 available on the EMN IES in [this folder](#).

Illegally employed TCNs	2014	2015	2016	Methodological notes
Number of cases of identified <u>illegally staying</u> and illegally employed TCNs				
Number of cases of identified <u>legally staying</u> and illegally employed TCNs				

Question A.4: Please provide statistics on the profiles of illegally employed TCNs in your (Member) State for 2015

Illegally employed TCNs	Top 10 nationalities	Age disaggregation	Sex disaggregation	Methodological notes
Number of cases of identified <u>illegally staying</u> and illegally employed TCNs				
Number of cases of identified <u>legally staying</u> and illegally employed TCNs				

3. Outcomes for TCNs

Question A.5: Please provide statistics on the outcomes of identified illegally employed TCNs.

Illegally employed TCNs	2014	2015	2016	Methodological notes
Number of residence and/or work permits issued to detected <u>illegally staying</u> and illegally working TCNs				
Number of residence and/or work permits issued to detected <u>legally staying</u> and illegally working TCNs				

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Number of illegally employed TCNs who were granted a period for voluntary return				
Number of illegally employed TCNs who were given an order to leave the country following a labour inspection				
Number of illegally employed TCNs who were deported following an inspection				
Number of illegally employed TCNs who were identified as victims of trafficking in human beings				
Number of decisions obliging employers to pay back payments/ amount equal to taxes and social security contributions				

Question A.6: Please provide statistics on the types and number of sanctions for illegally employed TCNs

Type of sanctions available for illegally employed TCNs (e.g. fines, imprisonment, etc)	2014	2015	2016	Methodological notes

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Question A.7: Number of complaints lodged against employers for employing illegally TCNs. Please provide any disaggregation/break down on the type of complaints if available – such as complaints lodged by third parties, complaints lodged by TCNs, etc.

Number of complaints	2014	2015	2016	Methodological notes

Question A.8: Descriptive overview of the profile of employers, including affected sectors of labour market

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Question A.9: Please provide any additional statistics and general observations on the availability of data and methodology of available data

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