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ILLEGAL EMPLOYMENT OF THIRD-COUNTRY NATIONALS: 2017-2022 SITUATION ANALYSIS

Common Template for an EMN Study

(Version 2023/06/01)

Subject: EMN study "ILLEGAL EMPLOYMENT OF THIRD-COUNTRY NATIONALS: 2017-2022 SITUATION ANALYSIS"

1. BACKGROUND AND RATIONALE FOR THE STUDY

The European Commission's 2007 Communication 'Stepping up the fight against undeclared work' states that any form of illegal employment of nationals or third-country nationals in the EU Member States decreases tax revenues, undermines the financing of social security systems, as well as distorts fair competition among firms.¹ In addition to this negative economic impact, employers who pursue illegal employment practices provide their employees with limited information on minimum standards in working conditions, employment regulations and their rights. Such illegal employment is often done in precarious conditions, which makes employees more susceptible to exploitation.

Preventing illegal employment is a policy objective and priority for the EU and its Member States. This is because the possibility of working in the EU without the required legal status is becoming one of the key drivers of irregular migration into the Union.² For the purposes of this template, in the EU context, illegal employment covers³ both the illegal employment of third-country nationals who are irregularly staying on the territory of an EU Member State and of legally residing third-country

¹ European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Stepping up the fight against undeclared work, 2007, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0628&from=EN>, last accessed 8 March 2023.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU action plan against migrant smuggling (2021-2025), 2021, https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-591_en_0.pdf, last accessed 14 April 2023, p. 20.

³ EMN Glossary, Version 8, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/illegal-employment_en, last accessed 8 March 2023.

nationals who are working outside the conditions of their residence permit and/or work permit.

Illegal employment is a complex phenomenon affecting several domains, including migration, employment, social policies, fiscal policy, and respect for individuals' rights. While the scale and occurrence of illegal employment differs between private households, small and medium businesses, and large companies, and across economic sectors, illegal employment provides grounds for those employers willing to cut labour costs and circumvent rules to take advantage of workers ready to undertake low-skilled, low-paid jobs in labour-intensive sectors and ready to work in difficult and often precarious conditions.⁴ It is important to note that these workers often have no alternative or better options, making it a necessity rather than a choice. As a result, the successful prevention of illegal employment is at the intersection between employment, migration and human rights matters.

Nevertheless, the EU competencies in employment and migration policies defined in the Treaty on the Functioning of the European Union (TFEU)⁵ differ. Member States are primarily responsible for employment policy, while migration policy initiatives, including prevention of irregular migration, is a competence that is shared between the EU and its Member States. In 2009, to tackle illegal employment and to increase Member States' coordination, the European Commission introduced the Employers' Sanctions Directive.⁶ The Directive was designed to provide Member States with rules to step up action against the illegal employment of third-country nationals who are illegally staying. The measures cover prevention, detection, and sanctions, and seek to deter employers from engaging in illegal employment, as well as seeking to increase protection of irregularly staying third-country nationals against exploitative employers.

Since then, the need for joint action against illegal employment has been reiterated in the 2015 European Agenda on Migration⁷ and the European Commission's 2020 Communication on a New Pact on Migration and Asylum.⁸ Both policy documents, as well as the European Commission's 2021 Communication on the Employers' Sanctions Directive,⁹ continue to emphasise the necessity to strengthen the effectiveness of the

⁴ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, 2021, https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592_en_0.pdf, last accessed 14 April 2023, p. 20.

⁵ Treaty on the Functioning of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>, last accessed 8 March 2023.

⁶ Council of the EU, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2009, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0052>, last accessed 8 March 2023.

⁷ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, a European Agenda on Migration, A European Agenda on Migration, 2015, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0240&from=EN>, last accessed 8 March 2023.

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

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, 2021, https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592_en_0.pdf, last accessed 8 March 2023.

Employers' Sanctions Directive and evaluate the need for future action. Furthermore, the EMN study on the Illegal Employment of Third-Country Nationals in the EU (2017) concluded that action against the illegal employment of third-country nationals needs to increase by introducing and implementing protective measures and risk assessments to improve the identification of undeclared work.¹⁰ Therefore, in terms of existing policy evaluations, a study providing systematic up-to-date analysis of measures, obstacles, and good practices to tackle illegal employment of third-country nationals in EMN Member States and Observer Countries is relevant. Additionally, the identification of illegal employment has become ever more relevant in the context of the war in Ukraine. According to data provided by UNHCR¹¹, since the war began in Ukraine, more than 8.2 million Ukrainian nationals have been recorded as arriving in Europe, while approximately 5 million have been registered under the Temporary Protection Directive in the EU. Many working-age adults are estimated to be working during their stay as beneficiaries of temporary protection, as they have the right to access the labour market of Member States. Nevertheless, the possibility for displaced Ukrainians to take part in illegal employment activities exists. The European Commission's 2022 Communication on Guidance for access to the labour market, vocational education and training and adult learning of people fleeing Russia's war of aggression against Ukraine emphasizes the need to ensure that beneficiaries of temporary protection are not exploited and do not partake in undeclared work activities.¹² Furthermore, research conducted in this field, claims that in the EU public employment services lack necessary data to account for the informal employment of Ukrainians fleeing the war.¹³ Similar conclusions can be drawn from the survey conducted by the European Union Agency for Fundamental Rights (FRA) showing that many displaced Ukrainian persons may be recruited for informal employment. As a result, it is also relevant to gather information from EMN Member States and Observer Countries on whether the situation for Ukrainians who fled the war in Ukraine has led to a specific impact or consequences on the illegal employment of third-country nationals.

2. STUDY AIMS AND OBJECTIVES

The study provides a descriptive overview of the illegal employment situation in the EU, as well as in some EMN Observer Countries. It will equip national and EU policymakers with a better understanding of the approaches adopted by EMN Member and Observer Countries concerning different aspects of the illegal employment of third-country nationals.¹⁴ In addition, the research will provide insights on the magnitude of illegal employment of third-country nationals in the EU and the sectors

¹⁰ EMN study on the Illegal Employment of Third-Country Nationals in the EU (2017), https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf, last accessed 8 March 2023, p. 45

¹¹ UNHCR, Operational Data Portal, <https://data.unhcr.org/en/situations/ukraine>, last accessed 8 March 2023.

¹² European Commission, Communication from the Commission on Guidance for access to the labour market, vocational education and training and adult learning of people fleeing Russia's war of aggression against Ukraine 2022/C 233/01, 2022, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0616\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0616(01)), last accessed 25 May 2023, p. 3.

¹³ GLOBSEC, Between Vague Return Prospects and Limited Employment Opportunities: The Challenges of Ukrainian Refugees' Labour Market Integration, 28 February 2023, <https://www.globsec.org/sites/default/files/2023-02/Policy%20Brief%20-%20Between%20Vague%20Return%20Prospects.pdf>, last accessed 25 May 2025, p. 3.

¹⁴ EMN Observer Countries to explain and address the situation concerning the illegal employment of relevant groups at the national level.

affected by it. Finally, the latest examples of good practices in illegal employment prevention will be provided to policymakers. As such, the study has the following aims:

1. Provide an overview of the situation of illegal employment of third-country nationals in EMN Member and Observer Countries since 2017 and an update on the 2017 EMN study on the Illegal Employment of Third-Country Nationals in the EU.
2. Gather insights about new developments regarding the institutional and legislative framework to fight the illegal employment of third-country nationals in EMN Member and Observer Countries and possible areas of concern in this field since 2017.
3. Identify new measures used in EMN Member and Observer Countries to detect cases of illegal employment of third-country nationals and protect the rights of illegally employed third-country nationals since 2017.
4. Share the latest good practices on the prevention of illegal employment of third-country nationals since 2017.

3. SCOPE OF THE STUDY

The scope of this EMN Study is the illegal employment of third-country nationals¹⁵ who are either legally staying or irregularly staying in the territory of an EU Member State.

TARGET GROUP

The study gives an overview of the diverse responses of EMN Member Countries and Observer Countries to counter the illegal employment of third-country nationals. With this in mind, the focus in this study is on illegal employment practices undertaken by employers and third-country nationals and the target group to be analysed is third-country nationals who engage in illegal employment.

The analysis considers illegal employment of third-country nationals through three key categories. First, a third-country national legally residing in the country but illegally employed in undeclared work. Second, a third-country national legally residing in the country working outside the conditions of their residence/immigration permit. Third, a third-country national irregularly staying in the country and working.

The possibility for employers to take advantage of workers or to exploit them applies to all these three categories. Nevertheless, the level of vulnerability for third-country nationals increases the more an employee is in an irregular situation, i.e., in terms of staying and working in the country. The study also accounts for cases of illegal 'self-employment', specifically platform work, undertaken by third-country nationals and this can fall under all three categories. Beneficiaries of temporary protection are included in the study, and this category is one example of a group falling under the first category. International protection applicants are excluded from the scope of this study, due to the diverging regulatory framework under which they access Member States' labour markets.

4. EU LEGAL AND POLICY CONTEXT

Although the implementation of employment policy is in the purview of the Member States, EU institutions formulate strategic policy documents to guide the actions of Member States. One of the first documents providing strategic guidelines in such a manner was the Council resolution on transforming undeclared work into regular

¹⁵ Where it is difficult in EU Member States to differentiate between third-country and EU nationals, please provide an explanation and focus on third-country nationals where possible.

employment adopted in 2003. This resolution stressed the need to strengthen the prevention of illegal employment, improve the capacity of national authorities responsible for preventing illegal employment practices and increase cooperation between social partners.¹⁶ The illegal employment theme reoccurred in 2006 when the European Commission published a Green Paper on modernising labour law to meet the challenges Member States face. One of the challenges identified was undeclared work, understood as an infringement of well-functioning and adaptable labour markets and, as such, led to the distortion of economic competition.¹⁷ A year later, the European Commission reiterated the same themes in its Communication on stepping up the fight against undeclared work by urging Member States to take a more systematic approach towards illegal employment and to adopt better evidence-based mechanisms.¹⁸ Finally, in 2009, the EU adopted a legislative instrument to tackle illegal employment of third-country nationals – the Employers’ Sanctions Directive. Article 1 of the Directive prohibits the employment of illegally staying third-country nationals and sanctions employers. To this end, the Directive is meant to lay down the minimum common standards on sanctions and measures to be applied in the Member States against employers who infringe that prohibition.¹⁹

The need to step up action against illegal employment of third-country nationals has continued to be emphasised in different EU policy documents. In 2014, the Communication on the application of the Employers’ Sanctions Directive found that EU Member States adopt different approaches in sanctioning the illegal employment of illegally staying third-country nationals,²⁰ and in 2015, the European Agenda on Migration reiterated the need to increase action against the illegal employment of third-country nationals.²¹

Directive 2014/36/EU of 26 February 2014 sets the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. The Directive aims at ensuring fair and transparent rules for the admission of third-country seasonal workers to the EU and at granting decent working and living conditions, equal rights and sufficient protection from exploitation. It also aims at reducing irregular migration. Similarly, the EU Action Plan against migrant smuggling for the period 2015-2020 stated that together with Member States, the European Commission should identify

¹⁶ Council of the EU, Council resolution on transforming undeclared work into regular Employment, 2003, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003G1029\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003G1029(01)&from=EN), last accessed 13 April 2023.

¹⁷ European Commission, Green Paper, Modernising labour law to meet the challenges of the 21st century, 2003, [https://www.europarl.europa.eu/meetdocs/2004_2009/documents/com/com_com\(2006\)0708_/com_com\(2006\)0708_en.pdf](https://www.europarl.europa.eu/meetdocs/2004_2009/documents/com/com_com(2006)0708_/com_com(2006)0708_en.pdf), last accessed 13 April 2023, p. 14-15.

¹⁸ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Stepping up the fight against undeclared work, 2007, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0628&from=EN>, last accessed 13 April 2023, p. 10.

¹⁹ Council of the EU, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2009, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0052&from=EN>, last accessed 14 April 2023, p. 4.

²⁰ European Commission, Communication from the Commission to the European Parliament and the Council on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, 2014, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0286>, last accessed 14 April 2023, p. 9.

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration, 2015, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0240&from=EN>, last accessed 14 April 2023, p. 9.

targets regarding the number of inspections to be carried out every year in the economic sectors most exposed to the illegal employment of irregular migrants such as the construction, agriculture and horticulture, housework/cleaning and catering and hospitality service sectors.²² Additionally, in 2016, the EU introduced the European Platform tackling undeclared work to improve cooperation, sharing of best practices, and identification of common principles for inspections between labour inspectorates and other enforcement authorities at the Union level.²³ The Council Decision establishing the Platform does not differentiate between the nationalities of illegally employed workers. However, it recognizes that undeclared work has different effects on different social groups, and some groups such as migrants, given the precariousness of their status, are in a particularly vulnerable position.²⁴

The prevention of exploitation and ensuring the protection of migrants was reiterated in the renewed EU action plan against migrant smuggling for the period of 2021-2025²⁵, which highlighted that the effective implementation of the Employers' Sanctions Directive is needed to deter irregular migration and to protect the rights of irregular migrant workers. The Communication on the application of the Employers' Sanctions Directive, which was presented together with the renewed EU action plan against migrant smuggling, contains the sanctioning of employers who hire irregular migrants with no right to stay, ensuring effective mechanisms for recovering unpaid wages, lodging complaints and reporting labour exploitation, as well as carrying out effective inspections in the economic sectors most at risk of illegal employment, as possible measures to achieve the goals set out by the European Commission.²⁶

5. PRIMARY QUESTIONS TO BE ADDRESSED BY THE STUDY

The study asks the following primary research questions, with reference to the reporting period 2017-2022:

1. What new national legal and policy changes on illegal employment of third-country nationals have been introduced in EMN Member and Observer Countries since 2017?
2. What new preventive measures and incentives are in place in the EMN Member or Observer Countries designed to mitigate the illegal employment of third-country nationals since 2017?

²² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Action Plan against migrant smuggling (2015 - 2020), 2015, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0285&from=en>, last accessed 14 April 2023, p. 8.

²³ Council of the EU, Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work, 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0344&from=EN>, last accessed 14 April 2023, p. 1.

²⁴ Ibid., p. 2.

²⁵ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU action plan against migrant smuggling (2021-2025), 2021, https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-591_en_0.pdf, last accessed 14 April 2023.

²⁶ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, 2021, https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592_en_0.pdf, last accessed 8 March 2023.

3. Have EMN Member or Observer Countries introduced any new initiatives to identify the illegal employment of third-country nationals since 2017?
4. What new sanctions for employers are in place in the EMN Member or Observer Countries, and what are the factors affecting their implementation since 2017?
5. What are the possible outcomes and/or sanctions introduced by EMN Member or Observer Countries for identified illegally employed third-country nationals since 2017?

If an EMN Member Country or Observer Country has implemented changes designed to account for the Ukrainian refugee situation, it should briefly provide information on these developments in the appropriate sections of the common template.

6. RELEVANT SOURCES AND LITERATURE

EMN STUDIES

- EMN, “Illegal employment of third-country nationals in the European Union”, Synthesis Report, 2017, https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf.

EU POLICY DOCUMENTS

- Council of the EU, [Council resolution on transforming undeclared work into regular employment \(2003/C 260/01\)](#), 2003.
- Council of the EU, [Decision \(EU\) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work](#), 2016.
- Council of the EU, [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.
- European Commission, [Communication from the Commission on Guidance for access to the labour market, vocational education and training and adult learning of people fleeing Russia’s war of aggression against Ukraine 2022/C 233/01](#), 2022. [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0616\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0616(01))
- European Commission, [Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Stepping up the fight against undeclared work](#), 2007.
- European Commission, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#), 2021.
- European Commission, [Communication from the Commission to the European Parliament and the Council on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals](#), 2014.
- European Commission, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee on the Regions on a New Pact on Migration and Asylum](#), 2020.
- European Commission, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration](#), 2015.
- European Commission, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the](#)

[Committee of the Regions, A renewed EU action plan against migrant smuggling \(2021-2025\)](#), 2021.

- European Commission, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Action Plan against migrant smuggling \(2015-2020\)](#), 2015.
- European Commission, [Green Paper on Modernising labour law to meet the challenges of the 21st century](#), 2006.
- European Commission, [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of Decision \(EU\) 2016/344 establishing a European Platform for enhancing cooperation in tackling undeclared work](#), 2020.

7. AVAILABLE STATISTICS

National statistics based on the reporting requirements of the Employers' Sanctions Directive (2009/52/EC) on:

- Inspections and sanctions for employers;
- Scale and profile of illegal employment of third-country nationals;
- Outcomes or consequences for third-country nationals.

For EMN Member and Observer countries that do not participate in the Employers' Sanctions Directive, equivalent national statistics will be provided where available.

8. DEFINITIONS

The following key terms are used in the common template. The definitions are taken from the EMN Asylum and Migration Glossary, unless specified otherwise in footnotes:

- **Illegal employment:** Economic activity carried out in violation of provisions set by legislation.
- **Illegal employment of a legally staying third-country national:** Employment of a legally staying third-country national working outside the conditions of their residence permit and / or without a permission to work which is subject to each EU Member State's national law.
- **Illegal employment of an illegally staying third-country national:** Employment of an illegally staying third-country national.
- **Irregular stay:** The presence on the territory of an EU Member State of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence in that EU Member State.
- **Informal economy:** All economic activities by workers and economic units that are -in law or in practice -not covered or insufficiently covered by formal arrangements.
- **Platform work:** any work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service.²⁷

²⁷ European Commission, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work, COM (2021) 762, Article 2(2), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0762>, last accessed 6 July 2023.

9. ADVISORY GROUP

A core AG, consisting of seven NCPs, COM and the Service Provider has been established to follow the development of the common template very closely and provide dedicated input and support.

- BE NCP
- CY NCP
- EE NCP
- FR NCP
- IE NCP
- LT NCP (Lead)
- LU NCP
- ICF/ EMN Service Provider
- COM

The following third parties will be invited to contribute to this study:

- Organisation for Economic Co-operation and Development (OECD)
- European Union Agency for Fundamental Rights (FRA)
- European Labour Authority (ELA)

10. TIMETABLE

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

Date	Action	
Study specifications		
Week 1	Circulation of the first draft to the AG for written feedback (one-week deadline for review)	AG Lead (NCP/ COM)
Week 2	First AG meeting and discussions on the written feedback	23 March 2023
Week 3	Circulation of the second draft to the AG (one-week deadline for review)	AG Lead and Service Provider
Week 7	Second AG meeting and discussions on the written feedback	24 April 2023
Week 8	Circulation of the third draft to the study lead (three days for review)	AG Lead and Service Provider
Week 9	Third AG meeting and discussions on written feedback	23 May 2023
Week 10	Circulation of the final draft to NCPs (two weeks deadline for review)	AG Lead and Service Provider
Week 12	Launch of the study	10 July 2023 or as soon as approved.
National reports (12 weeks)		
	Submission of national reports by EMN NCPs	To add (TPD deadline plus 4 weeks)
Drafting of study		
Week 1-4	Draft of the study to COM and AG members (one-week deadline for review)	
Week 5	Deadline for comments	
Week 6	Circulation of the first draft to all NCPs (two-weeks deadline for review)	

Date	Action	
Week 7-8	Deadline for comments	
Week 9-10	Circulation of the second draft to COM and all NCPs (two-weeks deadline for review)	
Week 11-12	Deadline for comments	
Week 13-14	Circulation of the third (final) draft SR to COM and all NCPs (two-weeks deadline for review)	
Week 15-16	Deadline for comments	
Week 17	Publication	

11. TEMPLATE FOR NATIONAL CONTRIBUTIONS

Common Template of EMN Study 2022

Illegal Employment of Third-Country Nationals: 2017-2022 Situation Analysis

NATIONAL CONTRIBUTION FROM POLAND

Disclaimer: The following information has been provided primarily for the purpose of contributing to this EMN study. The EMN NCP has provided information that is, to the best of its knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of the EMN NCPs' Member or Observer Country.

[Top-line factsheet \[max. 1 page\]](#)

The top-line factsheet will serve as an overview of the **National Contribution** introducing the study and drawing out key facts and figures from across all sections, with a particular emphasis on elements that will be of relevance to (national) policymakers. Please add any innovative or visual presentations that can carry through into the synthesis report as possible infographics and visual elements. **Please provide a concise summary of the main findings of Sections 1-5:**

Conclusions and summary of the national report are the answer to Q25.

SECTION 1: NATIONAL LEGAL AND POLICY FRAMEWORK CHANGES ON ILLEGAL EMPLOYMENT IN THE EMN MEMBER OR OBSERVER COUNTRY²⁸

For this and all sections, please include information on illegal self-employment, particularly platform work, where relevant.

Q1. Is the prevention of illegal employment of third-country nationals a national priority in your EMN Member or Observer Country?²⁹

X Yes, it is a national policy priority.

No, it is not a national policy priority.

Other.

²⁸ Since the EMN study on the Illegal Employment of Third-Country Nationals in the EU (2017), https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf, last accessed 8 March 2023.

²⁹ Hereinafter, 'your country.'

Please explain your answer.

According to the Law of 13 April 2007 on the State Labour Inspectorate (*Państwowa Inspekcja Pracy, PIP*), its tasks include controlling the legality of employment, other gainful employment and the performance of work by foreigners. In this regard, the subject of control is:

- the legality of the entrustment of work to a foreigner and the legality of the performance of work by a foreigner, including in particular:
 - possession of a valid visa or other document entitling a foreigner to stay in the territory of the Republic of Poland and the basis of a foreigner's stay in the territory of Poland authorizing him/her to perform work,
 - possession of the required work permit, or a temporary residence and work permit,
 - entrusting work to a foreigner and performance of work by a foreigner in the position and under the conditions specified in the work permit or in the temporary residence and work permit,
 - conclusion of employment contracts or civil law contracts in the required form (written),
- notification of a foreigner for social insurance,
- fulfilling the obligations of the entity entrusting work to a foreigner from whom a work permit is required,
- compliance by foreign employers with the minimum standards of Polish labour law with respect to foreigners posted to work in Poland.

In addition to issues relating to the legality of employment of foreigners, the State Labour Inspectorate constantly includes control of compliance with the provisions of labour law in relation to foreigners. In the area concerning the labour rights of foreigners, the activities of labour inspectors are focused, among others, on verification of compliance with the prohibition on concluding civil law contracts in conditions indicating the existence of an employment relationship (where an employment contract should have been concluded), regulations on technical safety at work and the principle of equal treatment of foreigners in terms of working conditions and other terms and conditions of employment - in comparison with Polish citizens. In the course of the inspection, issues relating to the registration of foreigners for social insurance are also examined. Most irregularities revealed in this regard relate to the non-payment of labour remuneration and other benefits of the employment relationship.

In connection with the expansion in 2007 of the tasks of the State Labour Inspectorate to include, among others, inspections of the legality of employment of foreigners, it was included in the issue of preventing and combating human trafficking. This is because labour inspectors are inspection authorities with direct access to workplaces and other places where foreigners work, areas particularly vulnerable to the crime of human trafficking for forced labour. It should be emphasized, however, that taking direct action in cases of trafficking in persons, including for forced labour, is outside the scope of the PIP's competence, i.e. the labour inspector is not authorised to take any investigative actions and collect evidence or information in these cases. In particular, the labour inspector is not equipped with the authority to conduct operational and investigative activities. The role of the State Labour Inspectorate is only to inform the relevant law enforcement agencies of circumstances revealed during inspections that indicate the possibility of committing a crime of human trafficking, particularly for forced labour.

In the above regard, the PIP's activities are carried out on the basis of guidelines for labour inspectors on how to deal with cases in which trafficking in persons, including for forced labour, is suspected. These guidelines were developed in 2021 by an ad hoc working group established at the Ministry of the Interior and Administration as part of the Team for Counteracting Human Trafficking, which included, among others, representatives of the State Labour Inspectorate, the Ministry of the Interior and Administration, the Border Guard, the Police and the La Strada Foundation Against Human Trafficking and Slavery, i.e. the majority of institutions and organizations which scope of action remains the elimination of this undesirable phenomenon. The aforementioned guidelines complement the relevant algorithms for action in this type of cases, adopted by the services which tasks include combating the crime of human trafficking (the Police and Border Guard).

Q2. Is there a current or has there been any recent public and/or policy debate (since 2017) regarding illegal employment of third-country nationals in your country (i.e., in Parliament, the media, etc.)?

Yes

No.

Please elaborate on the main issues of the debate and indicate the reasons of its emergence.

No information provided.

Q3. What are the major changes to: a) law, b) policy and c) practice since 2017 regarding illegal employment of third-country nationals in your country?

a) law

Until the end of 2017, it was, in principle, an offence of a third-country national, punishable by a fine, to perform work outside the conditions of their work permit, as was to perform work without a work permit or during an irregular stay. In 2018, the foreigner's responsibility for performing work outside the work permit conditions was abolished. An employer's responsibility for the illegal employment of a third-country national remains unchanged.

Amendment of the Act of 20 April 2004 on employment promotion and labour market institutions, which came into force on 1 January 2018. has simplified procedure - i.e. the system of entrusting work to citizens of Ukraine, Belarus, Russia, Moldova, Georgia or Armenia on the basis of declarations registered in district labour offices - and the reduction of numerous abuses occurring in connection with the application of this procedure.

As a result of this amendment, the provisions on entrusting work to foreigners on the basis of declarations were given statutory status, i.e. they were incorporated into the Law on employment promotion and labour market institutions, and were significantly expanded and clarified, compared to the previous wording included in the Ordinance of the Minister of Labour and Social Policy.

In addition, under the new regulations, a possibility has been established for the county head to issue a decision to refuse to enter the statement in the register of declarations if the circumstances indicate that the statement has been made for a sham, it will be used by a foreigner for a purpose other than performing work for a given

entity, or the entity entrusting work to a foreigner fails to comply with obligations related to conducting business or entrusting work to other persons.

The most important instrument, intended to tighten up the procedure regarding the performance of work by foreigners on the basis of declarations and reduce abuses in this area, is the imposition of new information obligations on the entity entrusting work to a foreigner. According to the amended Law on employment promotion and labour market institutions, an entity entrusting work to a foreigner whose statement has been entered in the register is obliged to notify the competent district labour office in writing within a specified period of time of the foreigner's taking up or not taking up work. At the same time, a new misdemeanor has been introduced, consisting in failure to comply with the above obligations or providing false information about the taking up, non-taking up or termination of work by a foreigner on the basis of a statement. This act is punishable by a fine of up to PLN 5,000.

Due to the ongoing war in Ukraine and the massive influx of foreigners from that country into Poland, the Act of 12 March 2022 on assistance to Ukrainian citizens in connection with the armed conflict on the territory of that state is in force. The referenced law opens the Polish labour market very widely to Ukrainian citizens. This is because, on the basis of an extremely simple procedure of electronic notification submitted by the employer, not only Ukrainians who arrived to Poland fleeing the war, but also all other Ukrainian citizens who are legally present on the territory of Poland have the right to perform work. The law provides for the possibility of legal performance of work by such foreigners, provided that the employer notifies the competent district labour office - via the website: praca.gov.pl - within 14 days of the day on which the Ukrainian citizen in question started working - of the assignment of work to such person.

In addition to the aforementioned notification, an additional condition for entrusting legal work to a Ukrainian citizen is that the work is entrusted with a working time of not less than that indicated in the notification or the number of hours not less than that indicated in the notification, and with remuneration of not less than that established at the rate specified in the notification, proportionally increased if the working time or the number of working hours is increased. This condition was introduced as a result of an amendment to the Act on Assistance to citizens of Ukraine in connection with the armed conflict on the territory of that state, which came into force in July 2022. Work on this amendment was undertaken at the initiative of the State Labour Inspectorate. As a result of the work of a team of experts from various interested institutions, including, among others, the Ministry of Family and Social Policy and the State Labour Inspectorate, a draft amendment to the aforementioned law was created - with the aim of ensuring an adequate standard of protection of the rights of Ukrainian citizens related to their work in the territory of Poland, and, above all, reducing the possibility of exploitation by dishonest employers or becoming a victim of human trafficking, as well as enabling labour inspectors to conduct effective control activities in this regard.

Q4. Please briefly describe and indicate if any new changes are planned to: a) law, b) policy and c) practice in the future.

a) law

It is likely that the principle will be introduced that a fine will be imposed in the amount set by the current legislation multiplied by the number of illegally employed foreigners (currently, a general rule applies that a fine is imposed in the amount

adequate to a gravity of the offence, which covers the number of illegally employed TCN's.).

The State Labour Inspectorate monitors on an ongoing basis the functioning of legislation in the controlled areas, while identifying barriers that reduce the effectiveness of inspections. On this basis, State Labour Inspectorate formulates legislative proposals to the competent authorities aimed at eliminating the mentioned impediments.

Among them, there is a proposal of introducing legal regulations covering the obligation to obtain work permits for foreigners in situations commonly referred to as "Ukrainian companies," i.e. when foreigners perform repeated non-monetary services for limited liability companies and joint stock companies under the Commercial Companies Code. This request is justified by the fact that over the past few years, the phenomenon of circumventing the provisions on the obligation to obtain work permits for foreigners through improper application of the provisions of the Commercial Companies Code has been increasing. The above request has been taken into account in the draft law on the employment of foreigners currently being prepared at the Ministry of Family and Social Policy (with the participation of other entities, including the State Labour Inspectorate).

Obstructing the inspection activities of labour inspectors by entities entrusting work to foreigners, e.g., failing to show required documents, failing to appear for summonses, failing to provide explanations in matters covered by the inspection, etc., remains a serious problem. In the above regard, with respect to the responsible persons, labour inspectors initiate and conduct misdemeanor proceedings (including sending motions for punishment to the court) or notify the prosecutor's office of suspicion of a crime. Therefore, at the request of the State Labour Inspectorate, the draft law on the employment of foreigners, which is currently being prepared, includes provisions that provide for the possibility of refusing to issue a work permit and to enter a statement in the register, in a situation where the entity entrusting work to a foreigner obstructs the control of the Labour Inspectorate.

State Labour Inspectorate prepared also other proposal of legal provisions, however, they are not a part of currently proceeded legal acts or amendments to the existing law. They include: establishing an obligation to notify persons employed or performing other gainful work to social insurance before allowing them to work (presently - within 7 days from the date when the obligation to insure arises); introducing provisions that would allow the State Labour Inspectorate to have direct access to the data remaining in the Social Insurance Institution's resources regarding the notification of employees for social insurance using electronic communication tools; limiting the possibility of employing foreigners only based on labour contracts and those civil law contracts to which the obligation of social insurance, including accident insurance, applies; obliging the entity entrusting work to a foreigner to provide him/her with documents related to taking up and performing work in a language that he/she understands; providing the State Labour Inspectorate with direct access to the data contained in the "POBYT" system; allowing labour inspectors to use materials obtained during reconnaissance or observation conducted directly prior to entering the controlled entity (e.g., photographs or recordings).

The need for establishing regulations governing the rights of persons performing work using mobile applications (such as UBER, BOLT, iTAXI, MYTAXI, FREE NOW, etc.) and the obligations of entities that entrust work to such persons was also underlined.

SECTION 2: PREVENTION MEASURES INTRODUCED

When applicable, take into consideration the Ukrainian refugee situation in your country since the beginning of the war in Ukraine, if this has led to a specific impact / consequences on the illegal employment of third-country nationals in your country.

Q5. Does your country monitor specific economic sectors regarding the prevention of illegal employment of third-country nationals?

Yes.

No.

Please indicate specific sectors targeted (e.g., the construction, agriculture and horticulture, housework/cleaning, hospitality, etc.). If you have answered no, please elaborate.

On the basis of the Act of 15 June 2012 on the consequences of entrusting work to foreigners unlawfully residing on the territory of the Republic of Poland, the State Labour Inspectorate:

- cooperates with the minister in charge of labour and the minister in charge of internal affairs in determining - on the basis of an assessment of the risk of entrusting work to foreigners residing without a valid document authorising their stay in the territory of Poland - sectors of activity at the section level, in accordance with the Polish Classification of Activities, with a particular intensity of this phenomenon;
- transmits, by 30 April of the following calendar year, to the minister in charge of labour and to the minister in charge of internal affairs, aggregate data on the results of conducted inspections of the legality of employment, other gainful employment and performance of work by foreigners, within the scope concerning the entrustment of work to foreigners residing without a valid document authorizing their stay in the territory of the Republic of Poland.

When selecting entities for inspection, labour inspectors are guided by the risk assessment prepared by the Ministry of Family and Social Policy in October 2019, which identifies sectors of activity with a particular intensity of entrusting work to foreigners staying without a valid document authorising their stay in Poland. Based on the analysis, the Ministry identified 3 sections of the Polish Classification of Activities with the highest intensity of the performance of work by foreigners illegally residing in the territory of the Republic of Poland, namely:

- accommodation and food service activities (I),
- construction (F),
- other service activities (S).

Q6. Has your country carried out new risk assessments to identify sectors of activity in which the illegal employment of third-country nationals is most concentrated since 2017?

Yes.

No.

If you have answered yes, please provide information on 1) methods and tools used; 2) authorities involved and 3) how the results of the risk assessments are used in practice (e.g. to target inspections). If you have answered no, please elaborate.

See also the answer to Q5.

In accordance with the procedures used for many years, State Labour Inspectorate conducts control activities in the field of legality of employment of foreigners primarily in entities doing business in industries in which a high intensity of illegal employment of foreigners was found in previous years, including entrusting work to foreigners residing in the territory of the Republic of Poland without a valid residence document. In 2022, the highest number of foreigners who were entrusted with illegal work was found in entities operating in the following sections of the economy: administrative and support services, including temporary employment agencies (29% of illegally employed), in construction (27%) and in industrial processing (11%).

In order to carry out the tasks of controlling the legality of employment of foreigners, specialised sections of legality of employment function in all district labour inspectorates. In addition to control and supervisory activities, the tasks of these sections include monitoring the illegal labour market, that is, obtaining and analyzing information on cases of illegal labour within the jurisdiction of the district labour inspectorate.

On this basis, inspections are undertaken, among others, in entities that, according to incoming signals (including media reports), commit violations of the law against foreigners. An important source of such information are complaints filed by foreigners, as well as requests and notifications submitted to the PIP by other authorities.

In addition, the State Labour Inspectorate has implemented procedures according to which, in addition to planned inspections of the legality of employment of foreigners, labour inspectors, as a rule, verify the legality of entrusting work to foreigners during each inspection of an entity in which the performance of work by foreigners from outside the EU/EEA and Switzerland was found. Control activities are aimed at verifying the legality of entrusting work to citizens of Ukraine, in particular to this group, which entered the territory of Poland after 24 February 2022 due to hostilities. Labour inspectors also check the legality of employment of foreigners coming from Asian countries (including India, the Philippines, Bangladesh, Nepal, Vietnam) and brought to work on the territory of Poland from Latin American countries. Employment agencies providing employment intermediation services to foreigners, i.e. referring such persons for employment or other gainful employment to entities operating in the territory of Poland, as well as temporary employment agencies and user employers entrusting temporary work to foreigners, are subject to special supervision.

Controls on the legality of entrusting work to foreigners are subjected not only to entities based in Poland, but also to foreign companies that delegate foreigners to temporarily perform work in the territory of the Republic of Poland as part of the provision of services - especially with regard to the correctness of the delegation and the fulfillment of the obligations imposed on foreign entities that delegate workers to Poland by regulations on the legality of employment (e.g., with regard to the work permits required in such cases).

Q7. What are the profiles of employers (i.e., type of enterprise: small, medium, large; type of industry/sector) that have been found to have engaged in illegal employment schemes of third-country nationals in your country?

Please provide an overview.

In 2022, illegal employment of the largest number of foreigners was generally found by labour inspectors in enterprises where 10 to 49 people were working (1,800 foreigners). However, in terms of the number of foreigners inspected, the largest number of illegally employed foreigners was revealed in establishments where up to 9 people worked - labour inspectors showed that one in five of the foreigners inspected was illegally employed.

The largest number of illegally employed foreigners was found by labour inspectors in 2022 in entities operating in the following sections of the economy: administrative and support services, including temporary employment agencies (29% of illegally employed), in construction (27%) and in industrial processing (11%).

Number of foreigners illegally performing work in 2020-2022 (by selected sections of PKD)

PKD (Polish Classification of Economic Activities)	2020	2021	2022
Administrative and support services (including temporary employment agencies)	1 001	1 712	1 478
Construction	712	994	1 371
Industrial processing	261	779	593
Accommodation and food services	160	364	426
Transport and storage management	304	445	381
Trade and repair	163	276	325
Professional activities	44	121	172
Other service activities	58	39	166
Healthcare and social assistance	10	49	94
Education	12	1	36
Agriculture, forestry, hunting	50	67	32
Information and communication	12	28	29
Real estate services	6	32	23
Culture, entertainment and recreation	5	21	20

- Q8.** What measures and/or incentives are in place to
- prevent employers from engaging in the illegal employment of third-country nationals
 - prevent third-country nationals from becoming illegally employed?

For example, awareness raising campaigns, reviews of sectors excluded from employment permits/shortage occupation lists. Please identify developments introduced by national authorities since 2017 and indicate if they target the employer or the third-country national, or both.

No information provided.

- Q9.** What 1) challenges and 2) good practices can be identified in your country in prevention of illegal employment of third-country nationals?

Please briefly describe the situation since 2017 and please indicate the source or who has identified the challenges and good practices.

1) Challenges identified by the Ministry of Family and Social Policy are:

- mass-scale migration; insufficient resources of inspection services; employment of third-country nationals in the informal economy, including platform work.

2) Good practices identified by the State Labour Inspectorate are:

People migrating to Poland for work purposes should be able to legally perform work without the abuse by employers. The first step towards this goal is to provide information on what rights foreigners have and what opportunities exist for them to work legally in Poland. Therefore, in order to reduce the scale of the phenomenon of illegal employment of foreigners and to prevent violations of the labour rights of foreigners, in addition to its inspection activities, the State Labour Inspectorate has for many years been conducting large-scale educational and informational activities aimed at employers and foreigners performing work on Polish territory.

The State Labour Inspectorate (PIP) provides legal advice on labour law and the legality of employment to all interested parties, including foreigners. Migrant workers and employers benefit from legal advice provided in person and by telephone, as well as constituting answers to questions sent by traditional mail and e-mail.

A nationwide hotline for foreigners - in Ukrainian and Russian - operating at the PIP Counseling Center in Warsaw, through which they can obtain free legal advice on regulations governing legal employment and labour rights, also serves this purpose. The relevant telephone numbers have been posted on the State Labour Inspectorate's website. Legal advice in Ukrainian and Russian is also provided as far as possible at the level of district labour inspectorates.

Preventive projects on the issues in question, undertaken by the PIP during the period covered by the report, included:

- 3-year information campaign 'I work legally' - detailed information below;
- participation in the 'Rights all year round' campaign by the European Labour Authority (ELA) - detailed information below;
- popularisation by PIP employees of the issue of legal employment of foreigners and observance of their labour rights, as well as the provision of legal assistance to foreigners in the framework of conducted trainings and other events (e.g., job fairs).

The State Labour Inspectorate in 2017-2019 implemented a 3-year information campaign "I work legally." The overarching goal of the campaign was to raise the legal awareness of employers and employees - including foreigners (mainly citizens of Ukraine), working or planning to work in the territory of the Republic of Poland, in particular:

- promoting the choice of legal work over employment in the "shadow economy" and illegal work;
- stigmatizing the unauthorised practices of employers who choose to assign work in violation of applicable laws;
- informing about the forms and possibilities of using the substantive assistance of the State Labour Inspectorate in eliminating irregularities.

The campaign 'I work legally' was under the honorary patronage of the Speaker of the Sejm of the Republic of Poland, and the Social Insurance Institution - a strategic partner - was actively involved in its implementation. In addition, the campaign was

supported by employers' organizations (Konfederacja Lewiatan, Pracodawcy RP, Związek Rzemiosła Polskiego), trade unions (Ogólnopolskie Porozumienie Związków Zawodowych and Niezależny Samorządny Związek Zawodowy "Solidarność) and the Association for Legal Intervention (a non-governmental organization providing legal assistance to foreigners). As part of the campaign, a special website has been launched: www.prawawpracy.pl. This website contains factual materials on the legality of employment of Polish and foreign citizens, electronic versions of free PIP publications in Polish, Ukrainian and English, videos for employers and employees, pointing out the benefits of legal work and the dangers of illegal employment, and other campaign materials. Following the campaign, the website continues to be administered and updated by the State Labour Inspectorate. In addition, the campaign included, among other things:

- free training courses for employers and employees, organised by each district labour inspectorate;
- radio spots that were aired on nationwide stations in prime time;
- film spots for employers and employees on the benefits of legal work and the dangers of illegal employment (the main characters in these spots were Ukrainian women who told the story of their employment in Poland);
- spots displayed on LCD screens on public transportation in 20 of Poland's largest cities (in 14 provinces), including Warsaw, Krakow, Lodz, the Tri-City, Wroclaw, Poznan, Szczecin, Bialystok, Lublin and Upper Silesia;
- newsletter for employers;
- factual inserts addressed to employees and employers of foreigners, which were added to more than 100 local press titles.

In 2021 the State Labour Inspectorate has joined the implementation of the European Labour Authority's (ELA) information campaign entitled 'Rights for All Seasons'. The above initiative was addressed to a group of workers, including foreigners, and employers, including employment agencies, offering seasonal work, primarily in the agricultural sector. The main goal of the ELA campaign was to promote registered seasonal work and combat undeclared seasonal work. Campaign activities focused primarily on:

- increasing seasonal workers' awareness of their rights, the negative consequences of undeclared work, as well as the possibility of reporting undeclared work in order to obtain protection, assert their rights and convert it into registered work;
- informing seasonal workers of the obligations incumbent on their employers to guarantee, among other things, safe working conditions, and supporting employers in complying with these requirements;
- making employers aware of their obligations to assign legal work and the benefits of assigning work in the formal sector, as well as the risks involved in assigning undeclared work;
- promoting cooperation between national authorities and the social partners to provide seasonal workers with adequate information on the laws and regulations that apply to their work, as well as organising assistance, guidance and counseling networks.

The aforementioned activities were implemented from 1 August to 31 October 2021, and particularly intensified in the period 20-24 September 2021 - designated by the European Labour Office as Action Week.

Throughout the period of implementation of the 'Rights all year round' campaign, the organisational units of the State Labour Inspectorate carried out educational and informational activities to raise the level of knowledge of employers and employees on the subject of seasonal work. The primary form of these activities was training. From August to the end of October 2021, 136 trainings were held across the country, during

which the audience was acquainted with seasonal labour regulations. More than 1.2 thousand employers and 2.5 thousand employees, including about 150 foreigners, were trained during this period. Some of the information materials posted on the PIP website and distributed as part of the activities of district labour inspectorates were translated into Ukrainian - due to the large share of seasonal workers from this country taking up seasonal work on Polish territory.

The topics of the campaign were also promoted during conferences and seminars, of which the State Labour Inspectorate was an organiser or participant. During the three months of the campaign, more than 40 such events were organised, popularising the issue of seasonal work. Activities to promote the slogans and content of the campaign also included counseling and legal advice on seasonal work conducted by labour inspectors, as well as the organisation of advisory points at PIP information stands during fairs, agricultural exhibitions, open days and other mass events. Knowledge in this area was popularised at more than 800 stands and information points, and it is estimated that these stands were visited by almost 14,000 people.

Experts of the State Labour Inspectorate answered inquiries from people interested in the legal aspects of seasonal labour, including foreigners, as part of telephone duty. Some district labour inspectorates, including those in Katowice and Rzeszów, launched a special hotline dedicated to advice on seasonal labour.

Due to the cooperation of district labour inspectorates with regional media outlets, the campaign themes were also promoted on television, radio, press, Internet and social media on a non-profit basis. During the three months of campaign activities, more than 370 different types of reports, interviews, coverage and messages related to the campaign message appeared in the mass media. The reach, i.e. the number of potential recipients of the indicated publications (from 1 August to 31 October 2021), is 1 million 800 thousand.

A total of more than 25 thousand copies of publications of the State Labour Inspectorate were used during all activities carried out in the course of the campaign's implementation. A special leaflet was prepared entitled 'Seasonal work of foreigners', both in paper form (distributed free of charge by all district labour inspectorates) and in electronic form - downloadable from www.pip.gov.pl. In addition, a special 16-page thematic insert was prepared for the monthly magazine 'Labour Inspector' published by the State Labour Inspectorate, which was devoted to seasonal labour and new legal regulations on the employment of foreigners. Improving the availability of knowledge about the regulations and rules for entrusting foreigners with work under conditions that comply with the applicable labour laws and about the legality of employment is also one of the main objectives set out in the document entitled 'Strategy for the functioning of the State Labour Inspectorate in the situation of an increased influx of foreigners into the territory of the Republic of Poland following the hostilities in Ukraine' adopted by the Management of the State Labour Inspectorate in connection with the massive influx of Ukrainian citizens into Poland as a result of the armed conflict in the territory of that country.

A leaflet developed by the State Labour Inspectorate is being distributed among Ukrainian citizens and entities entrusting work to such foreigners, which contains basic information - provided in Ukrainian - on the principles of performing legal work on the territory of Poland, with particular emphasis on the new legal regulations in this area, contained in the Act of 12 March 2022 on assistance to citizens of Ukraine in connection with the armed conflict on the territory of that state. Other materials prepared in Ukrainian include a leaflet 'New Employee - Employer's Obligations', as well as a number of leaflets containing information on the principles of safe and hygienic work in many sectors of the economy.

The aforementioned information materials are available on the PIP website, and also successively distributed in paper form to, among others, social partners (employer organisations and trade unions) and labour offices, so that Ukrainian citizens can easily access them. In addition, State Labour Inspectorate has posted extensive information on the rules for taking up employment in Poland, answers to frequently asked questions, and video tips (with subtitles in Ukrainian) on Inspectorate's website, which since 2023 has also been maintained in Ukrainian (and English). Polish-Ukrainian employment contract forms can also be downloaded from the PIP website, as well as bilingual information on employment conditions, which can be a convenience for smaller companies in particular.

SECTION 3: IDENTIFICATION OF ILLEGAL EMPLOYMENT MEASURES IMPLEMENTED

When applicable, take into consideration the Ukrainian refugee situation in your country since the beginning of the war in Ukraine, if this has led to specific impact / consequences on the illegal employment of third-country nationals in your country.

Q10. Have there been developments to improve the identification of illegal employment of third-country nationals taken place in your country since 2017 (e.g., new offices/agencies being introduced, increased number of inspections or other)?

Yes.

No.

Please briefly describe.

In 2019, labour inspectors gained direct access (online) to the Public Employment Service's (PES) Central Database of Foreigners, containing, among other things, records of work permits and declarations of entrustment of work to a foreigner. This has greatly accelerated and streamlined both the inspection planning process (e.g., typing of employers to be inspected) and the inspection activities themselves at the selected entities.

The operational and technical preparation of the State Labour Inspectorate for downloading data from the above database was possible thanks to the Inspectorate's participation in the project called 'Monitoring of work and residence for gainful purposes of foreigners in the territory of the Republic of Poland' (in short: 'MPPC project'), within the framework of the Operational Program 'Digital Poland' 2014-2020. The MPPC project was almost 85% financed from the European Regional Development Fund, and slightly more than 15% was national co-financing. The leader of the project was the Ministry of Family, Labour and Social Policy (currently: Ministry of Family and Social Policy), and among its partners, in addition to the State Labour Inspectorate, were the following institutions: Border Guard Headquarters, the Office for Foreigners and the Social Insurance Institution. Implementation of the project covered the period from 1 July 2017 to 30 June 2020.

Providing labour inspectors with direct access to the PES database has brought cooperation on the legality of employment of foreigners between the PIP and voivodes and starosts (district labour offices) to a higher level. The exchange of information in the traditional form (usually paper) has been replaced by obtaining information from a database jointly fed by all parties.

Q11. How many inspections are carried out per year (in absolute numbers and as a percentage of employers for each sector)?

See article 14 of Directive 2009/52/EC. Please briefly describe and provide more information on inspections if available (e.g., number of fines issued, investigations launched, etc.).

In 2022, labour inspectors carried out almost 9 thousand inspections of the legality of employment and performance of work by foreigners. The legality of entrusting work to more than 40.7 thousand foreigners was checked, including 33 thousand citizens of Ukraine.

Inspections of the legality of employment, other paid work and performance of work by foreigners in 2017-2022

Specification	2017	2018	2019	2020	2021	2022
Total number of inspections	7 190	7 817	8 348	4 312	6 418	8 895
Number of all foreigners covered	45 989	40 371	43 382	19 343	29 754	40 748
Number of third-country nationals inspected	45 159	39 730	42 945	19 189	29 513	40 361
- including citizens of Ukraine	39 399	33 660	36 213	15 851	23 525	32 996

In 2022, the entrustment of illegal work to 5183 foreigners from 48 countries was shown, accounting for 12.8% of the controlled foreigners from third countries, i.e. outside the EU/EEA area and Switzerland (in 2021 it was 4,958 foreigners - 16.8%).

In the case of foreigners performing work on the basis of a statement on entrusting work to a foreigner, the percentage of illegally employed foreigners was 14.9%, in the category of those working on the basis of a seasonal work permit - 3.8%, and in the group of those for whom a notification of employment was submitted to the district labour office - 6.5%.

The largest group of illegally employed foreigners were citizens of Ukraine - 3,943 people. This was followed by illegal employment of citizens of Belarus (458 foreigners), Georgia (273), Moldova (131), the Philippines (62), Indonesia (51) and Russia (37). In addition to issues concerning the legality of the employment of foreigners, the State Labour Inspectorate constantly inspects compliance with labour laws against foreigners. In 2022, the largest number of irregularities revealed in this regard concerned:

- non-payment of remuneration for work and other benefits of the employment relationship,
- conclusion of civil law contracts with foreigners in conditions characteristic of the employment relationship,
- lack of or untimely notification of social insurance.

In 2022, labour inspectors examined the legality of the stay in the territory of the Republic of Poland of 40,361 foreigners who do not have citizenship of an EU/EEA member state or Switzerland. The largest number of entities inspected for the legality of residence of foreigners belonged to the sections of the economy (according to the PKD): Construction (1,822 entities, i.e., 0.26% of the total number of entities in this section), Manufacturing (1,679 - 0.31%), Trade, repair of motor vehicles (1,060 - 0.11%), Accommodation and food service activities (923 - 0.57%), Administrative and support services (763 - 0.34%) and Transportation and warehousing (727 - 0.25%).

The inspection revealed 11 entities, in which work was performed by 14 foreigners residing in the territory of the Republic of Poland without a valid document authorising their stay in this territory. Of the mentioned entities:

- 3 entities belonged to section: Manufacturing and 3 to Construction;
- 2 entities belonged to section: Administration and support activities;
- 1 entity belonged to section: Trade, 1 - Repair of Motor Vehicles, 1- Transportation and Warehousing, and 1 - Real Estate Services.

The largest number of entities in which there was an entrustment of work to foreigners residing without a valid document authorising their stay in the territory of the Republic of Poland - in relation to all entities operating in a given industry - labour inspectors revealed in the following sections of the economy: Administration and support activities, Manufacturing, and Construction.

Detailed data on the number of entities in each section of the Polish Classification of Activities (PKD) covered by PIP inspections in the field of entrusting work to foreigners residing without a valid document authorising their stay in the territory of Poland, as well as entities in which this phenomenon was revealed, taking into account the percentage share of such entities in each section - are included in the table below.

Sections of socio-economic activities		Number of entities in the section of the national economy (in the REGON register *)	Entities inspected by the State Labour Inspectorate	Entities in which the entrustment of work to foreigners residing without a valid document entitling them to stay on the territory was revealed.		
			Number	Proc. of total entities	Number	Proc. of total entities
A	Agriculture, forestry, hunting, fisheries	71 322	125	0,18%	-	-
B	Mining and quarrying industries	4 482	13	0,29%	-	-
C	Industrial processing	399 486	1679	0,31%	3	0,00075%
D	Generation and supply of electricity, gas, steam, hot water	15 356	13	0,08%	-	-
E	Water supply; sewage and waste management	14 427	67	0,46%	-	-
F	Co central heating	699 068	1822	0,26%	3	0,00043%
G	Trade; repair of motor vehicles	1 005 572	1060	0,11%	1	0,00010%
H	Transportation and warehouse management	290 042	727	0,25%	1	0,00034%
I	Accommodation (hotel services) and catering	161 144	923	0,57%	-	-
J	Information and communication	260 423	91	0,03%	-	-

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K	Financial and insurance activities	123 436	23	0,01%	-	-
L	Real estate services	293 374	80	0,02%	1	0,00034%
M	Professional, scientific and technical activities	537 748	213	0,03%	-	-
N	Administration and support activities	174 820	763	0,34%	2	0,00114%
O	Public administration and defense; compulsory social security	26 796	27	0,01%	-	-
P	Education	172 499	153	0,02%	-	-
Q	Healthcare and social assistance	294 476	217	0,04%	-	-
R	Culture, entertainment and recreation activities	89 903	88	0,04%	-	-
S	Other service activities	341 356	234	0,04%	-	-
T	Households	-	-	-	-	-
U	Extraterritorial organizations and teams	274	1	0,00%	-	-
X	Unspecified activities	-	1	0,15%	-	-

The table below presents information on the sanctions applied in connection with the entrustment of work to foreigners residing in the territory of Poland without a valid document authorising their stay, which were imposed as a result of inspections carried out by the State Labour Inspectorate in 2017-2022.

FINANCIAL PENALTIES	Directive 2009/52/EC Results based on inspections from 2017-2022					
	2017	2018	2019	2020	2021	2022
Proceedings initiated after inspection	14	28	30	11	17	13
Proceedings completed	9	27	30	11	15	13
Total amount of imposed fines (PLN)	33000	63750	32800	13900	24400	14800

Q12. Have there been measures put in place by your country to ensure that the inspections carried out to detect cases of illegal employment of third-country nationals are effective and adequate?

Please describe.

One of the most important measures to conduct effective inspections of the legality of employment of foreigners is to equip PIP inspectors with the appropriate powers. Polish labour inspectors enjoy the following powers:

- free entry to the territory and facilities and premises of the inspected entity;
- demand from all employees or persons who are or were employed in the controlled entity, or who perform or performed work for it on a basis other than employment relationship, including self-employed persons, as well as persons using the services of employment agencies - written and oral information on matters covered by the inspection, as well as summoning and questioning such persons in connection with the inspection;
- recording the course and results of inspections of facilities, premises and workplaces by means of apparatus and technical means for recording image or sound;
- checking the identity of persons performing work or staying on the premises of the controlled entity, as well as persons using the services of employment agencies, questioning them and requesting statements on the legality of employment or other gainful activity;
- covering with secrecy the circumstances that allow disclosure of the identity of the employee or person providing the labour inspector with information related to the inspection;
- commencement of the inspection without authorisation, i.e., upon presentation of only an official ID card, if the factual circumstances justify the immediate undertaking of the inspection at the entrepreneur;
- the absence of an obligation for the labour inspector to notify the inspected entity of his or her presence, where such notification could affect the outcome of the inspection.

Q13. Do the national authorities and other relevant organisations cooperate to identify situations of illegal employment of third-country nationals in your country? Has your country introduced any specific cooperation mechanisms since 2017 (i.e., partnerships with IGOs, NGOs or other)?

A prerequisite for effective control activities of the State Labour Inspectorate in the field of legality of employment of foreigners is close cooperation with other control bodies and services responsible for supervising the correctness of the assignment and performance of work by citizens of other countries in the territory of the Republic of Poland. Recognising the need to coordinate activities in the above area, the National Labour Inspectorate has for many years been actively cooperating with the Border Guard, provincial governors (voivodeship offices), provincial marshals (provincial labour offices), as well as with district labour offices, the Social Insurance Institution and the Police. The essence of this cooperation is the joint implementation of inspection activities or undertaking inspections at the request of another body, notification of irregularities found during inspections - in accordance with the jurisdiction of the partner bodies, as well as taking preventive and training initiatives to raise the level of knowledge of applicable regulations among employers and foreigners.

The scope and forms of cooperation with the Border Guard are defined in the Agreement of the Chief Labour Inspector and the Chief Commander of the Border Guard of 10 December 2018 on the principles of cooperation between the State Labour Inspectorate and the Border Guard. Among the activities covered by the cooperation, it is worth mentioning, among others, joint inspections and inspections carried out at the request of the Border Guard, the identification of sectors of activity in which the employment of illegally staying third-country nationals is concentrated. In addition, very important aspects of the current cooperation between the State Labour Inspectorate

and the Border Guard are also: initiatives of a preventive nature - to improve the state of compliance with the law, exchange of experience and good practices, especially in terms of improving control methods, exchange of available interpretations of regulations, organisation of joint training and exchange of lecturers, as well as mutual substantive assistance of PIP and Border Guard employees.

Another important institutional partner of the State Labour Inspectorate in the field of legality of employment of foreigners are the provincial offices that issue work permits for foreigners. This interaction allows the State Labour Inspectorate to obtain information on entities suspected of violating regulations on the legality of employment of foreigners. These entities are then typed for planned inspections. In turn, the information provided by the PIP on the results of the inspections carried out provides the basis for the provincial governor to revoke work permits for illegally employed foreigners or to refuse to issue work permits for foreigners in a given entity.

It is worth noting that the amendment to the Law on employment promotion and labour market institutions, which came into force on 1 January 2018, obliges the State Labour Inspectorate to make available to voivodes and starosts, free of charge, the information it possesses on the criminal record of an entity intending to employ foreigners for offenses related to entrusting illegal labour to foreigners or certain crimes, in particular against the rights of persons performing gainful employment and the crime of human trafficking. This criminal record is a prerequisite for refusal to issue permits for work of foreigners in a given entity and refusal to enter in the records by the district labour office of declarations of entrustment of work to foreigners submitted by this entity. The most important aspect of the interaction of individual district labour inspectorates with provincial marshals or provincial labour offices is the ongoing transmission of information to these institutions about serious violations of the conditions for running employment agencies found by labour inspectors in the course of inspections. Labour inspectors in charge of inspecting these agencies are in constant working contact with provincial marshals' offices or provincial labour offices, especially with regard to the exchange of information necessary for the proper selection of entities for planned inspections. In cooperation with provincial marshals and provincial labour offices, the State Labour Inspectorate also conducts a number of informational, preventive and training activities for those running employment agencies. In order to improve the quality of services provided by employment agencies, district labour inspectorates, in addition to disseminating information materials, also organise a number of training courses for representatives of agencies and their affiliated organisations. At the same time, it is worth noting that agencies are leading in terms of the number of foreigners employed, but also, unfortunately, in the statistics of their illegal employment.

Information obtained by the State Labour Inspectorate from district labour offices on entities that have submitted to these offices a disproportionately large number of declarations on the entrustment of work to foreigners from Ukraine, Belarus, Moldova, Georgia and Armenia is very important for combating irregularities and abuses related to the use of the simplified system of employing foreigners on the basis of declarations. Pursuant to the Act of 13 October 1998 on the social insurance system - the Social Insurance Institution provides the State Labour Inspectorate with:

- a list including data of premium payers who, in the last quarter, reported at least one foreigner to social insurance - by the end of the last working day of the month following the end of the quarter to which the list refers, and
- data of the insured foreigner - within 7 days of receipt of a written request from the State Labour Inspectorate.

Accordingly, the data transmitted to the PIP regarding the payers of contributions entrusting work to foreigners are updated in quarterly cycles. However, in order to obtain data covering a specific foreigner, an individual application is required.

Based on recent agreements between the Social Insurance Institution's Headquarters and the State Labour Inspectorate, all requests for access to data by the Institution are made electronically - through the Social Insurance Institution's Electronic Services Platform. Ultimately, it would be advisable to enable labour inspectors to have direct access (online) to the databases of the Social Insurance Institution.

At the request of labour inspectors, the police provide them with assistance and assistance in their inspection activities. This increases the level of security of the inspectors and makes it possible to immediately verify the data of persons present on the premises of the inspected workplaces without identity documents. In addition, an important element of cooperation is the possibility to use the powers of the Police in the field of operational and reconnaissance activities, carried out before the planned start of a joint inspection. Inspections assisted by Police officers are carried out primarily in situations where there is a risk of exposing the inspectors to danger, and in the case of activities undertaken on vast areas (such as construction sites, road and field works). The assistance of the Police is also particularly valuable in the case of obstructing inspection activities or preventing the labour inspector from entering the premises of the inspected entity.

In addition to cooperation with other bodies and institutions, the State Labour Inspectorate also conducts ongoing cooperation with non-governmental organisations that provide assistance to foreigners, such as the International Organisation for Migration (IOM), the Foundation Against Trafficking in Persons and Slavery La Strada and the Association for Legal Intervention. The most common forms of cooperation in this area are, in particular, the provision of substantive support by PIP employees and the conduct of training courses for those providing legal assistance to foreigners within the framework of the aforementioned organisations, the implementation of joint information and educational projects, as well as the distribution of publications prepared by the other party that popularise knowledge in the field of labour law and legal employment.

Q14. Has your country pursued international/European cooperation initiatives to identify cases of the illegal employment of third-country nationals since 2017 (i.e., cooperation agreements or practises between two or more countries)?

Yes.

No.

If you have answered yes, please provide information on initiatives.

The State Labour Inspectorate has entered into agreements with its foreign counterparts in some EU/EEA countries, i.e. labour inspectorates in: Belgium, Bulgaria, the Czech Republic, Spain, the Netherlands, Lithuania, Luxembourg, Norway, Portugal and Slovakia. The agreements are aimed at strengthening bilateral relations and ensuring efficient and effective exchange of information on law enforcement in the area of occupational safety and health and labour law. State Labour Inspectorate attaches particular importance to the exchange of information on posted workers in the performance of the tasks of liaison institutions.

On the other hand, PIP's cooperation with third countries concerning the taking up of work by their citizens on Polish territory is carried out mainly through the diplomatic missions of these countries and is not based on agreements. In terms of preventive activities, it should be considered very important to provide foreigners interested in labour migration to Poland with knowledge about the legality of employment and labour rights in our country - already at the stage before coming to Poland and before concluding a contract with an employer or employment agency. In this regard, the State Labour Inspectorate cooperates with diplomatic missions of third countries in the Republic of Poland, responding on an ongoing basis to labour complaints reported by embassies and consulates, requests for clarification of the law, requests to conduct training for citizens of a given country undertaking work in Poland, etc.

Recently, the State Labour Inspectorate have established cooperation with the Embassy of Mexico, providing assistance to diplomats from that country in developing an information leaflet for Mexican citizens intending to take up or already working on the territory of Poland. As an example of such activities, one can also point to the support provided by PIP to the Embassy of the Republic of Indonesia in the process of informing current or potential Indonesian employees about the legal regulations and formal requirements related to taking up employment in Poland, as well as the possibilities and ways of reporting violations of labour laws by the employer.

Q15. What 1) challenges and 2) good practices can be identified in your country in the area of the identification of illegal employment of third-country nationals since 2017?

Please briefly describe the situation since 2017 and please indicate the source or who has identified the challenges and good practices.

The answer to the above question is contained in the explanations given in connection with questions: 2, 4-6, 10 and 13-14.

SECTION 4: SANCTIONS FOR EMPLOYERS INTRODUCED

When applicable, take into consideration the Ukrainian refugee situation in your country since the beginning of the war in Ukraine, if this has led to specific impact / consequences on the illegal employment of third-country nationals in your country.

Q16. Has your country amended legislation on sanctions to employers for illegally employing third-country nationals since 2017?

Yes.

No.

Please provide any other relevant information on sanctions.

Since 1 January 2018, the maximum amount of fines for offenses related to entrusting illegal labour to foreigners was tightened in general. Previously, such offenses were subject to a maximum fine of PLN 5,000 or PLN 10,000. After the change it is PLN 30,000. At the same time, in the case of an offense constituting entrustment of illegal work to a foreigner, the minimum fine has been reduced from PLN 3,000 to PLN 1,000, which allows labour inspectors to use fines (before the amendment, in such cases it was only possible to send motions for punishment to court).

Q17. What 1) challenges and 2) good practices can be identified in your country in the area of sanctioning employers for illegal employment of third-country nationals since 2017?

Please briefly describe the situation since 2017 and please indicate the source or who has identified the challenges and good practices.

According to the State Labour Inspectorate, it is very important to take measures in order for the illegal employment no longer pay off for dishonest entrepreneurs. Currently - despite the legislative changes made in 2018 - there are low and not very severe sanctions for violations of regulations on the legality of employment. For example, the maximum fine that a labour inspector can apply is PLN 2,000. There is also a lack of more severe repressions than just fines. Therefore, the State Labour Inspectorate have proposed the introduction of legal regulations that would make the amount of fines imposed dependent on the number of foreigners to whom a given entity has entrusted illegal work. A proposal for a provision taking into account the above proposal has been included in the draft law on the employment of foreigners, which is being worked on at the Ministry of Family and Social Policy.

In addition, in the opinion of the state Labour Inspectorate, the protection of third-country nationals providing work would be much more effective if sanctions for more serious violations of regulations on the legality of employment of foreigners and the labour rights of this category of workers were imposed in the form of administrative fines, rather than through misdemeanor proceedings. This is because, in such a case, the sanction would be imposed on the entity (e.g., the company) illegally employing the foreigner, and not - as is currently the case under Polish law - on the particular individual who is to blame for the irregularities found. It would also be appropriate to consider the possibility of imposing non-monetary sanctions on entities illegally employing foreigners, which successfully operate in other European Union countries, often proving to be a more severe punishment than even a high fine. This could include, for example, a ban on bidding on public contracts for a specified period of time or a multi-year ban on hiring foreigners.

SECTION 5: OUTCOMES FOR THIRD-COUNTRY NATIONALS

When applicable, take into consideration the Ukrainian refugee situation in your country since the beginning of the war in Ukraine, if this has led to specific impact / consequences on the illegal employment of third-country nationals in your country.

Q18: If a situation of illegal employment is detected, please describe the outcome (regularisation, detention, return, other) that applies to the following categories of employees:

- a) third-country nationals with a residence permit and a work permit.
- b) third-country nationals with a residence permit but without a work permit.
- c) third-country nationals without a residence permit and a work permit.

Please describe all situations in detail.

According to the Act of 20 April 2004 on employment promotion and labour market institutions, illegal performance of work by a foreigner means performance of work by a foreigner:

- who is not authorised to perform work, in particular, does not have a valid visa or other document authorising him/her to stay in the territory of the Republic of Poland, or
- who does not have an appropriate work permit, not being exempted under specific legislation from the obligation to have a work permit, or
- whose basis of residence does not entitle him/her to perform work.

As a result of the amendments to the regulations introduced on 1 January 2018, the liability of foreigners was relaxed. Circumstances involving the provision of work by a foreigner under different conditions or in a different position than that specified in the work permit or temporary residence and work permit were removed from the definition of illegal performance of work by a foreigner. Thus, the possibility of applying a fine to a foreigner in such cases for the offense of illegal performance of work by a foreigner was formally excluded. Then, as of 15 November 2018, the lower limit of the fine for the above offense was lowered. Currently, in connection with its commission, a foreigner is subject to a fine of up to PLN 5,000. Previously, it was a fine of no less than PLN 1,000 (i.e. from PLN 1,000 to PLN 5,000).

As a rule, illegal employment is the ground for a voluntary return of a third-country national.

This does not apply to a third-country national who is employed outside the conditions of his/her work permit.

Q19a. What effective procedures are in place to allow third-country nationals in illegal employment to lodge complaints against their employer?

Please briefly describe. Effective procedures are understood as those used in practice and trusted by migrant workers.

In the event that the entity entrusting the work fails to comply with the provisions of the labour law (including those relating to wages and other benefits of the labour relationship), the rules and principles of occupational safety and health, or the provisions relating to the legality of employment - the person performing the work (including a foreigner) may file a written complaint with the State Labour Inspectorate. The State Labour Inspectorate accepts not only complaints written in Polish. A complaint can also be filed in a foreign language, such as Ukrainian. Although the Polish Language Act of 7 October 1999 requires that official letters be submitted in Polish, the PIP does not require this of foreigners. Translation of complaints filed in foreign languages is provided by the Inspectorate.

On the basis of a complaint, the labour inspector conducts an inspection at the entity to which the complaint relates, and the person concerned receives written information about the findings. Current regulations require labour inspectors to keep confidential (especially to the employer) the fact that an inspection is being conducted following a complaint and the personal information of the complaining employee or other person. This information can only be disclosed if the complainant gives written consent. If a violation of the law is found, the labour inspector shall apply the appropriate legal measures - for example, issue a notice (possibly an order), impose a fine by way of a fine, or send a request for punishment to court in connection with offenses committed. If the measures taken by the State Labour Inspectorate are unsuccessful, the employee can pursue his/her claims through the courts (it is also possible to take the case immediately to the labour court, without using the complaint to the PIP). The information received from the labour inspector about the results of the inspection can be used by the employee as evidence in court proceedings against the employer. In

addition, the court may admit as evidence documentation from the inspection or question the inspector who conducted the inspection as a witness.

Claims arising out of or in connection with an employment relationship, as well as determination of the existence of an employment relationship (if the legal relationship between parties has the features of an employment relationship), are heard by common courts.

Q19b. Are there different procedures in place to lodge complaints against employers if the third-country nationals in illegal employment are irregularly staying?
See article 13 of Directive 2009/52/EC. Please elaborate.

The procedures for filing complaints against employers are the same in Poland - both for illegally employed foreigners who are in the territory of the Republic of Poland legally and those who are in the territory illegally.

Q20. In which cases can a third party (for instance a trade union or an association) engage on behalf or in support of third-country nationals in illegal employment in administrative or civil proceedings against an employer?
Are there differences between engaging on behalf of regularly and irregularly staying third-country nationals?
Please elaborate.

Under Article 221 par. 3 of the Code of Administrative Procedure, complaints can be filed in the interest of another person - with his/her consent. This also applies to complaints filed with the State Labour Inspectorate. In practice, a third party may file a complaint on behalf of a foreigner on the basis of a power of attorney granted to the third party by the foreigner.

In cases within the scope of labour law or social insurance, non-governmental organisations may, within the scope of their statutory duties and subject to the written consent of an employee or insured person, bring actions on behalf of the employee or file appeals against the decisions of pension institutions and, subject to the written consent of an employee or insured person, join them in pending proceedings. An employee may also be represented by an agent of a trade union, a labour inspector or an employee of the workplace where the employee is or was employed.

There are no differences between engaging on behalf of regularly and irregularly staying third-country nationals.

Q21. Are there mechanisms in place in your country for the remuneration of a third-country national following a period of illegal employment (for example mechanisms to recover payment for overtime work) and what are the conditions for remuneration?
Are there different mechanisms in place for regularly and irregularly staying third-country nationals?
Please describe.

If the labour inspector, as a result of an inspection at the employer's premises, finds that a foreigner employed under an employment contract is not receiving due benefits, he/she may direct an administrative decision (order) or an application (request) to the employer for payment of due remuneration for work, including overtime, as well as for payment of other employment benefits, such as compensation for unused vacation

leave. In addition, the inspector may direct a request for payment of remuneration at the minimum hourly rate - in the case of certain civil law contracts, i.e., a contract of mandate and contracts for the provision of services to which the provisions on commission apply respectively. If the measures taken by the State Labour Inspectorate are unsuccessful, a foreigner may take legal action. The procedures in the above regard are not differentiated by the legality of the foreigner's stay.

Q22. How long does the presumed employment relation have to be for an employer to have to pay back outstanding remuneration and amounts equal to taxes or social security contributions?

Please describe.

In general, the claims to which a foreigner is entitled in connection with the performance of work do not depend on the length of the employment relationship or other contract under which the foreigner provided work. Procedures are provided for foreigners illegally residing in the territory of Poland to facilitate the enforcement of claims for work performed that have not been paid by the employer.

Pursuant to the Act of 15 June 2012 on the consequences of entrusting work to foreigners unlawfully residing on the territory of the Republic of Poland (which implements the provisions of Directive 2009/52/EC of 18 June 2009 providing minimum standards for penalties and measures applicable to employers of illegally residing third-country nationals), in the case of entrusting work to a foreigner on the basis of an employment relationship, the existence of an employment relationship for a period of 3 months is presumed when claiming outstanding wages and related benefits, unless the employer or the foreigner proves a different period of employment. In the case of entrusting work to a foreigner on a basis other than employment relationship, when claiming outstanding remuneration and related benefits, it shall be presumed that remuneration for the performance of the entrusted work was agreed upon in the amount of three times the minimum wage, unless the entity entrusting work to the foreigner or the foreigner proves that remuneration was agreed upon in a different amount.

Q23. Are there mechanisms in place to ensure that irregularly staying third-country nationals can receive any back payment of remuneration in cases in which they have been returned?

Please describe.

According to the Law on the consequences of entrusting work to foreigners unlawfully residing on the territory of the Republic of Poland, the entity entrusting work to a foreigner residing without a valid document authorising his/her stay on the territory of Poland is obliged to cover the costs associated with sending the foreigner's outstanding dues to the country to which the foreigner has returned or has been expelled.

Q24. Does your country provide information to illegally employed third-country nationals on their rights? Is this information translated?

Does the information provided differentiate between regularly and irregularly staying third-country nationals?

Please indicate when this information is provided to third-country nationals, in what form and by what authorities/organisations. Please also indicate any identifiable challenges or good practices found in this context.

It follows from the provisions of the Act of 20 April 2004 on employment promotion and labour market institutions that an entity entrusting work to a foreigner is obliged to enter into a written agreement with the foreigner and to provide the foreigner, before signing the agreement, with a translation of the agreement into a language understood by the foreigner (if the foreigner does not speak Polish to a degree that makes it possible to read the content of the agreement drawn up in that language). In addition, the employment agency is obliged to inform in writing the foreigner directed to employment or other gainful employment to entities conducting activities on the territory of the Republic of Poland, in a language understandable to him, about the rules on entry, stay and work of foreigners on the territory of Poland. The referenced provisions do not distinguish between third-country nationals residing legally or illegally in the territory of Poland.

Polish law, however, does not provide for an obligation to present to a foreign worker in a language he/she understands other documents related to the performance of work, which should be considered a serious shortcoming. Among such documents, one can mention in particular: a work permit, a statement on entrusting work to a foreigner who is a citizen of Ukraine, Belarus, Moldova, Georgia or Armenia, information on the terms and conditions of employment (e.g., the daily and weekly working time norms applicable to the employee, the frequency of payment of remuneration for work, the amount of vacation leave to which the employee is entitled, the length of the notice period applicable to the employee, etc.), work regulations, remuneration regulations, information on occupational risks associated with the work performed and the rules of protection against hazards, statements of termination or termination of the employment contract without notice, instructions for use (operation) of machinery.

SECTION 6: CONCLUSIONS

Q25. Please synthesise the main and most important findings of your national report by drawing conclusions from your responses.

In Poland the State Labour Inspectorate (Państwowa Inspekcja Pracy, PIP), is main body responsible for controlling the legality of employment, other gainful employment and the performance of work by foreigners - the legality of the entrustment of work to a foreigner and the legality of the performance of work by a foreigner. The statistics in the contribution to the study are provided by this institution.

The State Labour Inspectorate cooperates in the area of legality of employment of foreigners with other authorities and inspection services responsible for supervising the correctness of the assignment and performance of work by citizens of other countries in the territory of the Republic of Poland. Recognising the need to coordinate activities in the abovementioned area, the National Labour Inspectorate has for many years been actively cooperating with the Border Guard, provincial governors (voivodeship offices), provincial marshals (provincial labour offices), as well as with district labour offices, the Social Insurance Institution and the Police. The essence of this cooperation is the joint implementation of inspection activities or undertaking inspections at the request of another body, notification of irregularities found during inspections - in accordance with the jurisdiction of the partner bodies, as well as taking preventive and training initiatives to raise the level of knowledge of applicable regulations among employers and foreigners.

Concerning changes related to illegal employment of third-country nationals in Poland one of the most important is connected with waiving the punishment of illegally employed third-country nationals. Until the end of 2017, it was, in principle, an offence

of a third-country national, punishable by a fine, to perform work outside the conditions of their work permit, as was to perform work without a work permit or during an irregular stay. In 2018, the foreigner's responsibility for performing work outside the work permit conditions was abolished, however, employer's responsibility for the illegal employment of a third-country national remains unchanged.

On the other hand Poland has tightened regulations on penalties for employers for illegally employing third-country nationals. Since 1 January 2018, the maximum amount of fines for offenses related to entrusting illegal labour to foreigners was tightened in general (to maximum fine of PLN 30 000 from PL 5 000 or PLN 10 000). At the same time, in the case of an offense constituting entrustment of illegal work to a foreigner, the minimum fine has been reduced from PLN 3,000 to PLN 1,000, which allows labour inspectors to use fines (before the amendment, in such cases it was only possible to send motions for punishment to court).

Other changes have also been introduced in regard to illegal employment of the third-country nationals in Poland connected to entrusting work to foreigners based on the declaration and the employment of Ukrainian citizens fleeing the war in their country. Moreover, additional changes related to the fines imposed are planned to be introduced.

Regarding the profiles of employers which have been found to have engaged in illegal employment schemes of third-country nationals in Poland the latest data from 2022 shows that of the largest number of foreigners was generally found by labour inspectors in enterprises where 10 to 49 people were working (1,800 foreigners). However, in terms of the number of foreigners inspected, the largest number of illegally employed foreigners was revealed in establishments where up to 9 people worked (one in five of the foreigners inspected was illegally employed). Sections of economy in which the largest number of illegally employed foreigners was found in 2022 are: administrative and support services, including temporary employment agencies (29% of illegally employed), in construction (27%) and in industrial processing (11%).

Since 2017 in Poland take place some developments to improve the identification of illegal employment of third-country nationals. One of the most important was introduced in 2019. Labour inspectors gained direct access (online) to the Public Employment Service's (PES) Central Database of Foreigners, containing, among other things, records of work permits and declarations of entrustment of work to a foreigner. This has greatly accelerated and streamlined both the inspection planning process (e.g., typing of employers to be inspected) and the inspection activities themselves at the selected entities.

Several challenges have been identified in regard to prevention of illegal employment of third-country nationals and they include: mass-scale migration; insufficient resources of inspection services; employment of third-country nationals in informal economy. In regard to good practices, it was underlined that – among others – information provision is crucially important when it comes to prevention of illegal employment, therefore the number of educational and informative actions have been organised in this regard.