

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

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The European Migration Network, created by Council Decision no. 2008/381/EC of 14 May 2008, has the objective of supplying up-to-date, objective, reliable and comparable information on migration and asylum in the Community institutions, to the authorities and institutions of the Member States and to the general public with a view to support policy and decision-making within the European Union.

Preface

The opinions expressed in this report are those of the authors. They do not necessarily reflect the positions of the Luxembourg Ministry of Family Affairs, Solidarity, Living Together and Reception of Refugees.

The present report was drafted by Adolfo Sommarribas, Ralph, Petry and Zane Rozenberga, staff members of the National Contact Point Luxembourg within the European Migration Network, under the overall responsibility of Prof. Dr. Birte Nienaber. Continuous support was provided by the members of the national network of the National Contact Point Luxembourg: Sylvain Besch (CEFIS), Charlotte Rauchs (General Department of Immigration, Ministry of Home Affairs), François Peltier and Charlie Klein (STATEC), Anne Daems, Pierre Weiss (Department of Integration, Ministry of Family Affairs, Solidarity, Living Together and Reception of Refugees), Pascale Millim (Ministry of Justice) and Pietro Lombardini (ONA, Family Affairs, Solidarity, Living Together and Reception of Refugees).

Methodology

National reports are produced by the respective National Contact Points (NCPs) on the legal and policy situation in their Member State according to common specifications. Subsequently, a comparative synthesis report is generated by the European Commission with its service provider giving the key findings from each national report, highlighting the most important aspects, and placing them as much as possible within an EU perspective. The various national accounts and the summary report are made publicly available.

The EMN engages primarily in desk research, i.e. it collects and analyses data and information already available or published at the Member State or international level. Legal texts, official documents (such as parliamentary documents) and reports have been used for this study. Furthermore, experts from the Ministry of Labour, Employment and the Social and Solidarity Economy, the General Department of Immigration at the Ministry of Home Affairs, the Inspectorate of Labour and Mines, STATEC, the Chamber of Employees, the labour union OGBL and the labour union LCGB, Caritas, CLAE, and CEFIS have been consulted.

EMN LUXEMBOURG STUDY FOR 2023

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

Disclaimer: The following information has been provided primarily for the purpose of contributing to the EMN study "Illegal Employment of Third-Country Nationals in the European Union (and possible EMN Observer countries)". The EMN Luxembourg 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 Luxembourg.

Top-line factsheet

The policy regarding the employment of third-country nationals has remained the same in Luxembourg since the last EMN study published in 2017. The aim is to sanction employers who illegally employ third-country nationals residing irregularly, while at the same time protecting the employees concerned. The prevention of illegal employment remains a national priority for Luxembourg and has recently been subject of public debate, as well as subject of developments with regards to practice and legislation.

In terms of changes in practice, it is worth noting that Luxembourg has made significant improvements regarding the recruitment of additional labour inspectors and the increase in labour inspections during the reporting period of this study (2017-2022). While all consulted stakeholders acknowledged these improvements, they also agreed that even more progress is needed regarding an increase of labour inspections and the recruitment of even more labour inspectors to better prevent and identify illegal employment of third-country nationals.

The most significant amendment to the law took place after the reporting period, namely in September 2023, when the Law of 7 August 2023 entered into force and increased the administrative and penal sanctions for employers who engage in the illegal employment of irregularly staying third-country nationals. This was the first amendment in this policy area since the transposition of the Employers Sanctions Directive (Directive 2009/52/EC) into the Luxembourgish Labour Code in 2012. This recent legal development seems to indicate that both the authorities and the legislator did not consider the sanctions provided for in the law to be high enough to effectively tackle the phenomenon, a view which is also shared by civil society actors. In addition, the Law of 7 August 2023 addressed the fact that the prohibition of illegal employment of third-country nationals with a valid residence permit in Luxembourg was not enshrined in the Labour Code (see answer to Q4 for more information).

Other relevant aspects in the context of the prevention and identification of illegal employment are the inter-institutional cooperation amongst the competent authorities, the importance of adequate training of the labour inspectors and other state officials who might be involved in labour inspections or who might support labour inspectors in cases where they do not have competence. The role of information that is provided to employers and third-country national workers regarding their respective rights and obligations has been repeatedly highlighted by several stakeholders. A key challenge

identified by the NGOs consulted in the context of this study relates to the fact that only very few illegally employed third-country nationals manifest themselves to the authorities because of their vulnerable situation, as they often run the risk of losing everything (e.g., financial income, livelihood, and they might have to leave the country and return to their country of origin).

In general, most situations of illegal employment of third-country nationals are normally detected as part of usual labour inspections and not in the context of specific inspections that would only target the identification of situations of illegal employment. According to the data available to the Inspectorate of Labour and Mines (ITM), the two economic sectors in which their inspectors most often encounter illegally employed third-country nationals are the HORECA and construction sectors.

SECTION 1: NATIONAL LEGAL AND POLICY FRAMEWORK CHANGES ON ILLEGAL EMPLOYMENT IN LUXEMBOURG

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?¹

X Yes

The Luxembourgish economy is mainly focussed on the finance and services sectors. The Luxembourg labour market was composed at the end of 2022 of 478.745 individuals from which 224.348 (46,9%) are cross-border workers (from Belgium, France and Germany).ⁱ In the resident population, the Luxembourgish nationals represent 25,9%,ⁱⁱ the EU citizens residing and working in Luxembourg represent 22%ⁱⁱⁱ and the third-country nationals represent only 5,2%.^{iv} In Luxembourg, illegal employment of third-country nationals is addressed as part of other employment, labour and immigration related matters. It also needs to be mentioned that Luxembourg is against any forms of employment that put labour force at risk and Luxembourg is against any form of precarious work.^v

Even though illegal employment of third-country nationals is not specifically mentioned in the Coalition Agreement of the outgoing government (2018-2023), one of the chapters is more generally dedicated to labour and employment.^{vi} Besides other things, this chapter suggested the need to reform "the Labour Code, which is still closely linked to industrial society, [because it] often no longer responds either to societal realities and aspirations or to business constraints."^{vii} Nevertheless, the planned reforms should not diminish the protective role of the Labour Code "which is an essential instrument of protection and security first and foremost for employees, but also for companies that must be protected against unfair competition."^{viii} Another problem addressed in the Coalition Agreement is "social dumping", which had been identified as a point of concern for Luxembourg in the previous study "Illegal employment of third-country nationals in the EU"^{ix} carried out by EMN Luxembourg at the beginning of 2017. The Coalition Agreement states that "'social dumping" will have to be fought with force and effectiveness. It is closely linked to the posting of workers. (...) An effective fight requires the implementation of sufficient resources to ensure the controls and consequent penalties. Better coordination of the administrations and services concerned should be continued."^x The most important priority included in the Coalition Agreement which in an indirect way addresses the problem of illegal employment of third-country nationals is the reform of the Inspectorate of Labour and Mines (*Inspection du Travail et des Mines* - ITM).

Since the entry into force of the Law of 21 December 2012 amending in particular the Labour Code and the amended Law of 29 August 2008 on the free movement of persons and immigration (hereafter 'Immigration Law'), the ITM is one of the authorities responsible for monitoring the provisions concerning the employment of irregularly staying third-country nationals set out in Title VII, Chapter II of the Labour Code (Articles L. 572-1 to L. 572-10). These articles provide terms and definitions related to employment of third-country nationals (Article L 572-2), the conditions that need to be respected by an employer in order to employ a third-country national (Article L 572-3), information on the sanctions for employment of irregularly staying third-country

¹ Hereinafter, 'your country.'

nationals (Article L 572-4), while Article L 572-5 lists the aggravating circumstances for illegal employment of third-country nationals and the sanctions in such cases. Furthermore, Article L. 612-1 (1) f) establishes that the ITM carries out a risk analysis to regularly identify the sectors of activity in which the employment of third-country nationals residing illegally in the territory is concentrated.^{xi}

Even though this study does not directly address the topics of trafficking in human beings, undeclared work and forced labour, it should be mentioned that the Coalition Agreement identifies “trafficking in human beings in all its forms - prostitution, slavery and forced labour” as “a scourge against which national and international efforts will be strengthened”.^{xii} In this context, it is worth to mention that the ITM is not only mandated to fight against illegal employment of third-country nationals, but also against undeclared work (which affects not only third-country nationals)^{xiii}, and trafficking in human beings.^{xiv}

In Luxembourg, illegally employed third-country nationals are normally detected as part of usual labour inspections. The overall number of inspections carried out by the ITM over the years has increased significantly, mainly due to the increase in the number of labour inspectors. At the same time, the number of inspections that have resulted in the detection of employment of irregularly staying third-country nationals has increased as well (see Table 1). For example, the number of inspections which resulted in the detection of irregularly staying third-country nationals almost doubled from 2017 to 2018. An even more significant increase can be observed from 2018 to 2019 (increase of 83%). The overall number of inspections carried out in 2020 is the highest of the total reporting period, but the number of inspections during which irregularly staying third-country nationals were detected went down in comparison to the previous year by around 11.5%. A steep increase in detections can be observed in 2022 when, in comparison to the year before, the number of inspections during which irregularly staying third-country nationals have been detected has doubled, but the number of third-country nationals who have been detected has increased by 145% from 65 persons in 2021 to 160 persons in 2022.

Table 1: Overview of inspections carried out by labour inspectors of the ITM from 2017 to 2022, which have resulted in detection of irregularly staying third-country nationals

	2017	2018	2019	2020	2021	2022
The total number of inspections that have been carried out by labour inspectors	470	3.667	5.682	12.728	11.385	10.171
The number of inspections during which irregularly staying third-country	6	11	61	54	52	105

nationals were detected						
The number of irregularly staying third-country nationals who have been detected	6	12	68	70	65	160

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Similarly, the data on the number of inspections carried out and the number of inspections during which irregularly staying third-country nationals are detected (see Table 1) suggests that the problem of illegally employed third-country nationals in Luxembourg is not very pronounced.

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.)?

X Yes

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

In Luxembourg, the issue of illegal employment of third-country nationals is usually either addressed when individual situations receive media coverage, as a result of parliamentary questions or on the basis of initiatives coming from the civil society organisations. Sometimes, the issue is also raised in the context of related issues such as trafficking in human beings for the purpose of labour exploitation (Report on Trafficking in Human Beings published by the Consultative Commission on Human Rights (*Commission consultative des Droits de l'Homme* – CCDH)), the regularisation of irregularly staying third-country nationals, or the fight against social dumping, etc.

For example, an article appeared in RTL Luxembourg on 4 December 2019 about a hotel in Vianden in which one employee denounced that there was a dozen of Portuguese and Brazilian workers who were forced to work under very harsh conditions (according to the plaintiff, working up to 78 hours per week).^{xv} Even though the article talks about a complaint filed with the ITM, there were no follow up articles nor any report on this issue.

Similarly, in 2019, the "Second Report on Trafficking in Human Beings 2017-2018"^{xvi} published by the CCDH (as the National Rapporteur on Trafficking in Human Beings) gained attention within several national newspapers. The report particularly focused on trafficking in human beings for the purpose of labour exploitation and the role that the ITM has to play in the detection of potential victims of trafficking and in the fight against the phenomenon of trafficking in Luxembourg. Furthermore, the report stressed that, for the first time, the majority of the registered cases are composed of victims of trafficking for the purpose of labour exploitation, whereas previously, sexual

exploitation was predominant. There were 17 cases of the former against 11 cases of the latter, recorded between 2017 and 2018 – with Albanian, Chinese and Romanian nationalities at the top of the list. Workers in precarious situations tend to face a higher risk of exploitation, above all migrants with irregular status, applicants for international protection and refugees, seasonal workers, temporary or posted employees and domestic workers. Particularly concerned areas include the construction sector, domestic work, road transport and the HORECA sector.^{xvii}

Moreover, during the Covid-19 pandemic, several NGOs requested a regularisation of irregularly staying third-country nationals. In June 2020, the Association for the Support of Immigrant Workers (*Association de Soutien aux Travailleurs Immigrés* - ASTI) issued a communication^{xviii} stating that already before the pandemic, workers living in Luxembourg in an irregular administrative situation worked in conditions that did not comply with legal requirements. Not having been declared to Joint Social Security Centre (*Centre commun de la sécurité sociale* – CCSS), they received a salary well below the legal minimum wage. As a result of the pandemic, these people found themselves without jobs, without state aid or the right to social assistance. In its communication, ASTI invited the Government to consider a regularisation as a solution to allow undocumented people to work and build a better future for themselves and their families.

The communication from ASTI was followed up by a parliamentary question n°2389 of 12 June 2020 from a member of parliament from the Left Party (*Déi Lenk*) who asked if the Government was aware of the worrying situation of undocumented persons in Luxembourg and if a regularisation campaign should be launched for undocumented people who can claim a certain length of stay in Luxembourg.^{xix} In their joint answer, the Minister of Family and Integration and the Minister in charge of Immigration and Asylum stated that since mid-April 2020 undocumented persons have been granted access to social grocery stores anonymously and without having to indicate any social security number. In addition, they indicated that any proposals for regularisation as recommended by the member of parliament could be examined.^{xx}

Following its General Assembly of 25 September 2020, the Liaison Committee of Organisations of Foreigners (*Comité de liaison des associations d'étrangers* – CLAE) published a resolution^{xxi} in which they also called for a new regularisation campaign. According to CLAE, it is important to offer people who have been living in Luxembourg for several years without a residence permit an opportunity to regularise their situation. In the resolution, CLAE referenced the heavy impact of the Covid-19 pandemic on people in irregular administrative situations.

In 2021, a case of presumed labour exploitation^{xxii} sparked complaints by five NGOs, namely ASTI, CID Fraen an Gender, CLAE, Finkapé – Réseau Afro-Descendant Luxembourg, and Time for Equality. In a joint press release, they publicly complained that in Luxembourg victims of exploitation and violence in an irregular situation are not protected by the law, as is the case for victims of human trafficking. The NGOs demanded from the Minister in charge of Immigration and Asylum to suspend the return order of this victim of labour exploitation and they also involved the Ministers of Equality between Women and Men and of Internal Security to demand a procedure to protect all victims of exploitation and abuse regardless of their residence status – which would also follow the latest recommendations of the European Union Agency for Fundamental Rights (FRA) on the protection of the rights of exploited migrant workers.^{xxiii} In his reply, the Minister in charge of Immigration and Asylum stated that the decision on the return of the presumed victim of labour exploitation has been taken based on the information available at that point in time. The Minister, however, announced that he is open for an exchange with the associations regarding the case in question.^{xxiv xxv}

At the end of the reporting period (2022), ASTI published a brochure entitled "Undocumented migrants in Luxembourg: beyond prejudices and fantasies" (*Les sans-papiers au Luxembourg: au delà des préjugés et des fantasmes*)^{xxvi}, intended for the political world, the media and the general population, with the objective to factualize the subject. Figures, profiles, feedback from the field, proposals and demands, as well as illustrated stories in comic strip format are aimed to help decision-makers and the press to better understand the topic. Two concrete proposals that are included in the brochure were already formulated by ASTI and CLAE in 2019 and presented to the Minister in charge of Immigration and Asylum. One of them calls for an extraordinary regularisation of irregularly staying third-country nationals, similar to the one conducted in 2013 and applicable to irregularly staying third-country nationals who were working in Luxembourg. The other suggests an amendment to the Immigration Law in order to limit situations not regulated by the law (French: "*situations de non-droit*") as much as possible and thus avoiding the necessity for exceptional regularisations in the future.^{xxvii}

A more recent development was a parliamentary motion introduced in 2023 by a Member of Parliament from the Left Party^{xxviii} to the bill n°7954 amending the Immigration Law in which the member of parliament invited the Government to implement an extraordinary regularisation campaign for third-country nationals who are irregularly staying in the territory of the Grand Duchy of Luxembourg. It was rejected by the Parliament the same day it was introduced.^{xxix}

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?

There have not been major changes in Luxembourg in law, policy and practice since 2017 regarding illegal employment.

a) law

Since 2017, the provisions relating to the employment of third-country nationals have not been significantly modified. First major changes entered into force after the reporting period of this study, on 1 September 2023, namely the Law of 7 August 2023 amending 1° the Labour Code; 2° the amended Law of 29 August 2008 on the free movement of people and immigration; 3° the amended Law of 18 December 2015 relating to the reception of applicants for international protection and temporary protection (hereinafter referred to as the Law of 7 August 2023)^{xxx}, which is outside of the reporting period of this study. The changes introduced by the law are reported as part of the answer to Q4.

At the same time, several minor changes have taken place during the reporting period, which, in some instances, have indirect links to the topic of this study. With regard to social dumping and labour exploitation, the Law of 8 March 2017 foresees a refusal of application for:

- a temporary intra-corporate transfer, the refusal to renew an ICT residence permit or its withdrawal in case the employer has been sanctioned for violations of the provisions of the Labour Code on the prohibition of illegal employment of irregularly staying third-country nationals or if s/he has failed to fulfil his or her legal obligations in the field of social security, taxation, labour rights or working conditions.^{xxxi}
- an authorisation of stay for seasonal work or the withdrawal of the work permit and the residence permit for "seasonal worker" in case the employer has been penalised for infringements of the provisions of the Labour Code on the prohibition

of illegal employment and employment of irregularly staying third-country nationals or if s/he has failed to fulfil his or her legal obligations in the field of social security, taxation, labour rights or working conditions.^{xxxii}

The previously mentioned reforms (see answer to Q1) of the ITM were started with the tabling of the bill n°7319 amending 1. the Labour Code; 2. the Law of 21 December 2007 reforming the Inspectorate of Labour and Mines (ITM), before the Parliament on 20 June 2018.^{xxxiii} The text of the bill aims, among other things, to reform the ITM by giving it a more efficient structure and ensuring the implementation of procedures, which are appropriate to all its missions. At the moment of the finalisation of this report, bill 7319 was still not adopted.

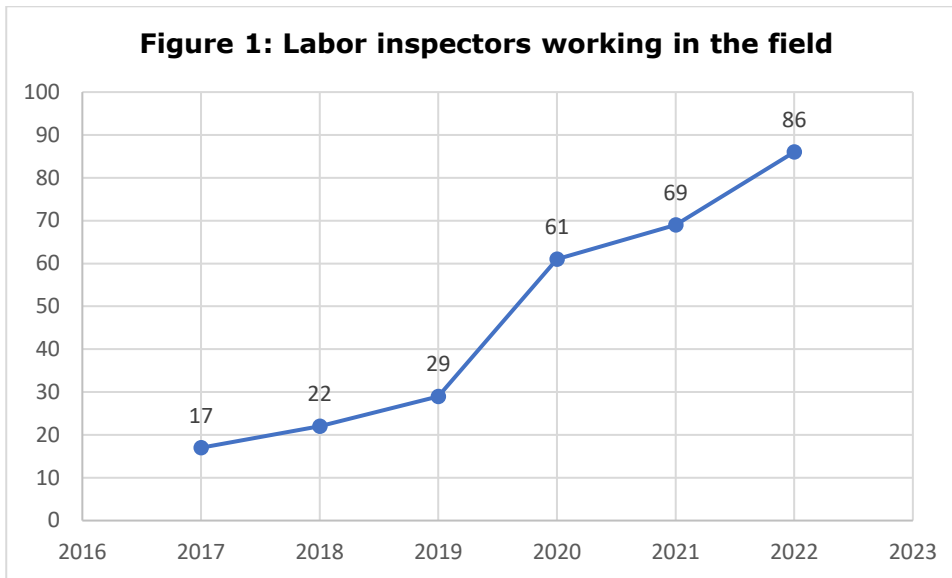
At the end of 2019, the CCDH published their second report on trafficking in human beings in Luxembourg.^{xxxiv} In this report, they indicated that Luxembourg is among the signatories of the Convention of the International Labour Organisation (ILO) on forced labour. However, Luxembourg has not yet ratified the 2014 Additional Protocol, which provides for the implementation of measures such as the protection of migrant workers against possible abusive or fraudulent practices. Following this criticism, the Law of 15 December 2020 approving the Protocol P029 to the Forced Labour Convention came into force on 22 December 2020.^{xxxv} The ratification of this protocol did not lead to changes in Luxembourg's legal provisions. However, it requires the Government to take measures to better protect workers, particularly migrant workers, from fraudulent and abusive recruitment practices and emphasizes the role of employers and workers in combating forced labour.^{xxxvi}

b) policy

The policy regarding the employment of third-country nationals has remained the same since 2017. The aim is to sanction employers who illegally employ third-country nationals residing irregularly, while at the same time protecting the employees concerned so that they can benefit from the rights in terms of working conditions, safety and health at work, which are due to them by virtue of the law.^{xxxvii}

c) practice

In practice, the checks by the ITM have been carried out in the same way since 2017. As mentioned in the answer to Q1, illegally employed third-country nationals are normally detected as part of usual labour inspections. The capacity of the ITM to carry out more inspections has gradually improved since the number of staff has been increased significantly (see Figure 1).^{xxxviii}



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

The following elements indicate the developments, significant legislative changes, that took place after the reporting period of this study, thereby reflecting the situation as of 8 November 2023.

a) law

As mentioned in the answer to Q3 above, the Law of 7 August 2023 entered into force on 1 September 2023 and introduced, among others, the following changes to the law:^{xxxix}

- a. in the past, the Labour Code foresaw the prohibition of illegal employment of irregularly staying third-country nationals (persons who do not have a residence permit). However, it did not prohibit employment of legally residing third-country nationals without a work permit.^{xi} The amendment is addressing this gap.
- b. The Law of 7 August 2023 also introduced a legal presumption that the labour relationship between an employer and a legally residing third-country national without a work permit lasted at least three months. This presumption can only be challenged by the parties by "written" proof.^{xii}
- c. Seeing that there is a lack of precision in the aggravating circumstances in cases of simultaneous occupation of irregularly staying third-country nationals which led to different jurisprudence, the Government has provided clarity and precision to allow the public prosecutor office to criminally prosecute the employers who violate the legislative text and allow the criminal courts to apply the sanctions when condemning these employers.^{xiii}
- d. The Law of 7 August 2023 now applies the same aggravating circumstances of trafficking in human beings to situations of illegal employment of third-country nationals.^{xiii} In this context, if the inspectors of the ITM identify a situation that may constitute trafficking in human beings during an inspection, it notifies the public prosecutor office through a report.^{xiv}
- e. The Law of 7 August 2023 increases the amounts of the administrative fines and the criminal sanctions, bringing them closer to those provided for in France. The main intention is to have a dissuasive effect with employers so they will be

discouraged to employ irregularly staying third-country nationals or legally residing third-country nationals without a work permit.^{xlv}

- f. The Law of 7 August 2023 also grants competence to the inspectors of the ITM to verify and detect the infractions regarding the interdiction of illegal employment by third-country nationals, whether they are irregularly staying or legally residing but without a work permit.^{xlvi}
- g. The Law of 7 August 2023 foresees an amendment of the Immigration Law, allowing the controlling agents to exchange personal data they must have in order to apply the provisions of Chapters II and IV of the Labour Code regarding residence permits, authorization of stay and work permits of third-country nationals.^{xlvii}
- h. Finally, the Law of 7 August 2023 establishes provisions concerning the exchange of data between the competent authorities and the Joint Social Security Center (*Centre commun de la sécurité sociale* – CCSS).^{xlviii}

b) policy

With the Law of 7 August 2023, the Government has taken the decision to strengthen the fight against the employment of irregularly staying third-country nationals or of legally residing third-country nationals without a work permit by means of these more dissuasive provisions. At the same time, any further policy changes could become evident in the future after the newly elected Government will conclude the new Coalition Agreement following the general elections held in Luxembourg on 8 October 2023.

c) practice

As the Law of 7 August 2023 has only been in force for a very short period, it is not yet possible to predict what will be the changes in practice. Nevertheless, it is expected that the new legal provisions will allow for more efficient sanctioning of employers who have decided to benefit from illegal employment of third-country nationals.^{xlix} Access to the data from the CCSS could also allow to improve the work efficiency of the labour inspectors of the ITM. At the time of preparation of this study it was not clear which data sets will be made available to the ITM and if any of the data could be useful for the identification of illegally employed third-country nationals.¹

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?

X Yes

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

According to the data available to the ITM, the two economic sectors in which the labour inspectors most often encounter illegally employed third-country nationals are the HORECA and construction sectors.ⁱⁱ Two sectors that can be characterized by difficult working conditions, comparatively low salaries and constraining working hours.ⁱⁱⁱ

This is also confirmed by the CCDH as in their third "Report on Human Trafficking in Luxembourg. Years 2019-2020" it has been indicated that based on preliminary 2021-data, the trends observed for the years 2019 and 2020 are also confirmed for the year 2021. The number of cases of human trafficking for the purpose of labour exploitation is constantly increasing. This mainly concerns the construction sector and the HORECA sector. To satisfy the high demand following the end of the lockdowns, the construction sector increasingly resorted to undeclared work.^{liii}

The prevention measures in place do not specifically target HORECA or construction sector, but all sectors of the labour market. Trainings for labour inspectors as well as dedicated trainings provided by the ITM to the officers of the Grand-Ducal Police to increase their knowledge about the application of the Labour Code have been indicated by stakeholders as one of the most important aspects in prevention of the illegal employment.^{liv}

Stakeholders from civil society organisations have mentioned the sector of domestic services as one where they encounter third-country nationals who are illegally employed, but there is no data available to support this information.^{lv} Similar conclusions were drawn from a journalistic research report on "undeclared work", published in November 2023, which also covered the topic of illegal employment of third-country nationals.^{lvi} According to the ITM, they have not detected cases of illegally employed third-country nationals during their inspections on employers employing domestic staff.^{2 lvii}

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?

X Yes

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.

To carry out risk analysis to identify the sectors of activity in which the employment of irregularly staying third-country nationals is concentrated in Luxembourg, the ITM is using their database IDOMIS (ITM Document Information System). All the information collected during the inspections as well as information on assistance activities is recorded in this database. Information in the system needs to be introduced in a specific manner which later can be used by the ITM to generate information for identification of companies that have not complied with legal provisions regarding working conditions and occupational safety and health. The system also permits to identify the types of offences that companies have committed. This information allows to further plan the inspections either on the same company or on other companies in the same sector of activity.

Another tool called "e-détachement" has the same functionalities and applications as IDOMIS, but it is specifically dedicated to monitor the activities of the companies

² NACE REV.2 classification, which constitutes the reference framework for the production and dissemination of statistics relating to economic activities in Europe, the heading "T" includes household activities as employers of domestic staff (class 97) as well as the undifferentiated activities of households as producers of goods and services for their own use (class 98).

established abroad which temporarily second employees to Luxembourg as part of the provision of services.

According to the ITM, more data would need to be available to improve the risk analyses. As mentioned in the answer to the Q4, the legislative changes that came into force after the reporting period of this study, namely the Law of 7 August 2023, provides the ITM with the rights to access data available to the CCSS, this could allow to better control the compliance of the employers with the provisions concerning the employment of third-country nationals.^{lviii}

The risk analysis carried out by the ITM is based on the experience gained over the years.^{lix}

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.

The ITM reported that they are not in a position to provide information on the profiles of employers as they do not have access to the number of employees employed by the companies concerned.^{lx}

The information that can be provided in this context related to the sectors of activity in which irregularly staying third-country nationals have been detected during inspections (see Table 2).

Table 2: Number of irregularly staying third-country nationals detected during inspections

Economic activities	Number of irregularly staying third-country nationals detected during inspections					
	2017	2018	2019	2020	2021	2022
Agriculture, forestry and fishing	0	1	2	2	4	11
Manufacturing	0	2	1	1	1	3
Construction	1	5	16	35	26	45
Wholesale and retail trade, repair of motor vehicles and motorcycles	0	0	4	6	1	10
Transportation and storage	0	0	1	0	1	5
Accommodation and food service activities	4	4	32	18	25	67
Information and communication	0	0	1	1	0	2
Financial and insurance activities	0	0	1	0	0	0
Real estate activities	0	0	1	0	1	0
Professional, scientific and technical activities	0	0	1	0	0	3

Administrative and support service activities	1	0	5	5	4	9
Human health and social work activities	0	0	1	0	0	0
Other service activities	0	0	2	2	2	5
TOTAL	6	12	68	70	65	160

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Stakeholders from civil society organisations have indicated that in their experience mainly small enterprises tend to illegally employ irregularly staying third-country nationals.^{lxi}

Q8. What measures and/or incentives are in place to

- a) prevent employers from engaging in the illegal employment of third-country nationals
- b) 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.

One of the measures, most often mentioned by different stakeholders,^{lxii} to demotivate employers from illegal employment of third-country nationals is information provision on legal proceedings that need to be respected when hiring third-country nationals. An example, suggested by stakeholders to illustrate the lack of knowledge of employers, relates to situations where a third-country national with a residence permit issued by another EU Member State is hired without verification if the person has received a work permit in Luxembourg. Quite often employers think that the residence permit issued by another EU Member State allows the person to work in Luxembourg without any additional formalities, which is not the case and results in illegal employment of third-country national.^{lxiii}

Official websites of state institutions are seen by stakeholders as important source of information with regard to sensitizing both employers and employees on their rights and obligations. The biggest benefit of the websites is that the information is provided in several languages. The Government's information portal guichet.lu is one of the websites most mentioned by the stakeholders.^{lxiv} On this website, information is provided in three languages – French, German and English. Another important source of information is the website of the ITM itm.public.lu where information on the employment of third-country nationals is provided in French and German.

In addition, inter-institutional cooperation plays an important role in the prevention and reduction of illegal employment of third-country nationals in Luxembourg. In this regard, labour inspectors of the ITM work closely with representatives of the Grand Ducal Police, the Ministry of Foreign and European Affairs, the Directorate of Immigration and representatives of the Ministry of Justice both in preparation of information campaigns, provision of trainings as well as in the framework of field inspections.

Over the reporting period, the ITM was able to increase the number of inspectors working in the field (see Figure 1), enabling them to carry out more inspections, and thereby deterring employers from employing irregularly staying third-country nationals, and, at the same time, informing third-country nationals of their rights in terms of working conditions, health and safety at work. A further increase in staff numbers would enable the ITM to carry out even more inspections and detect even more offences relating to the employment of irregularly staying third-country nationals.^{lxv}

Sanctions have been mentioned by stakeholders as an important tool to demotivate employers from engaging in the illegal employment of third-country nationals.^{lxvi} As it was mentioned in the answer to Q4, the legislative changes that came into force after the reporting period of this study, namely the Law of 7 August 2023, increases the amounts of the administrative fines and the criminal sanctions. The main intention is to have a dissuasive effect with employers so they will be discouraged to illegally employ irregularly staying third-country nationals or legally residing third-country nationals without a work permit.

An employer who employs one or more irregularly staying third-country nationals or legally residing third-country nationals without a work permit is liable to an administrative fine of € 10 000 (increase from € 2 500 in the past) per third-country national.^{lxvii} In addition, an employer who has employed an irregularly staying third-country national under one or more of the following aggravating circumstances is liable to imprisonment for between eight days and one year and a fine of between € 2 501 and € 125 000 per third-country national^{lxviii} (instead of € 20 000 applied in the past):

- the offence is persistently repeated;
- the offence involves the simultaneous employment of at least two irregularly staying third-country nationals or third-country nationals in an irregular situation;
- the infringement is accompanied by particularly abusive working conditions;^{lxix}
- the offence is committed by an employer who uses the work or services of an irregularly staying third-country national or third-country national in an irregular situation with the knowledge that this person is a victim of human trafficking;
- the offence relates to the illegal employment of a minor who is a third-country national residing illegally or in an irregular situation.

Finally, the Law of 7 August 2023 also proposes that the entrepreneur who sub-contracts an employer who employs an irregularly staying third-country national may, jointly with the employer or instead of him/her be liable for any financial sanction.^{lxx}

Actors from non-governmental organisations have suggested that it is not sufficient to just impose a fine on the employer, it needs to be followed through that the fine gets paid.^{lxxi} This is also partly addressed in the parliamentary question n° 8033 of May 25 2023.^{lxxii} Even though the parliamentary question does not directly address the question of the number of fines imposed on employers for the employment of irregularly residing third-country nationals, it does question the amount of fines imposed and actually paid to the Registration Duties, Estates and VAT Authority.

Several awareness raising campaigns have been carried out during the reporting period to sensitize both the employers and the employees. As part of the activities organized by the European Labour Authority (ELA) during 2021, the ITM played an active part in the awareness-raising and enforcement campaign entitled "Rights for all seasons", directed at seasonal workers and the employers hiring them, and which aimed at drawing attention to the challenges of seasonal work, which ran from June to October 2021.^{lxxiii}

Despite trafficking in human beings not being directly linked to the scope of this study, it should be mentioned that over the years there have been several inter-institutional activities carried out by the Monitoring Committee for the fight against human trafficking - interministerial committee, chaired by the Ministry of Justice, is responsible for coordinating prevention activities and assessing trafficking.^{lxxiv}

Since 2019 Luxembourg has supported and participated in the prevention campaigns on trafficking in human beings initiated by the European Crime Prevention Network (EUCPN).^{lxxv} In relation to this campaign, the Ministry of Justice expressed concerns about keeping contact with victims of trafficking in human beings (VHTs) and reaching out to potential VHTs during the Covid-19 lockdown.^{lxxvi} At the beginning of the lockdown, early March 2020, a pop-up window on the dedicated website www.stoptraite.lu, as well as, specific Facebook posts were created to further reach out to VHTs during and after the lockdown informing and reassuring potential victims that being confined or locked up does not prevent them from fleeing and asking for help.^{lxxvii} Through a poster campaign and on social networks, the message was disseminated in several languages and at very specific locations (train stations, bus and tram stops, assistance and reception services, etc.) in order to reach vulnerable populations directly.^{lxxviii}

At the same time, a leaflet for potential VHTs was finalized in 2020. It contains information in 13 languages most often identified among victims or potential victims, namely English, German, French, Spanish, Portuguese, Serbo-Croatian, Romanian, Farsi, Chinese, Arabic, Tigrinya, Albanian and Russian^{lxxix} and in the form of pictograms. The contact information of organisations where people can look for help, can be removed discreetly from the leaflet and is aimed at foreigners, especially foreign workers most at risk of being exploited. The Grand Ducal Police and the ITM recognised this leaflet as being valuable to their work in detecting victims of labour exploitation. The aim of the leaflet was to reach-out to as many VHTs or potential VHTs as possible in a discreet manner.^{lxxx}

Since the beginning of Russia's unprovoked war against Ukraine, millions of people have fled Ukraine. To support those people who have arrived in Luxembourg, to help them to know their rights of the Labour Code and thus to reduce the risk of labour exploitation, an information booklet was created by the Ministry of Labour, Employment and the Social and Solidarity Economy, the ITM and the National Employment Agency (ADEM). The brochure in four languages (Ukrainian, French, English and Russian) is available on the website of the ADEM^{lxxxi} and three of the language versions (Ukrainian, French and English) are available on the website of the ITM^{lxxxii}.

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.

The challenges and good practices in prevention of illegal employment of third-country nationals have been provided by the ITM, as the administration responsible for the monitoring of the provisions concerning the employment of irregularly staying third-country nationals, as well as by the Directorate of Immigration and by other stakeholders from civil society organisations.

1) Challenges

Insufficient coordination between the various applicable legal provisions (i.e., the Labour Code^{lxxxiii}, the Social Security Code^{lxxxiv} and the Immigration Law) and an insufficient monitoring system means that the illegal employment of third-country nationals cannot be systematically and therefore effectively sanctioned.^{lxxxv}

Availability of information both for the employers and employees on their rights and obligations as well as on the application of the Labour Code has been mentioned by most of the stakeholders as an important aspect in preventing illegal employment of third-country nationals.^{lxxxvi}

2) Good practices

The legislative changes that came into force after the reporting period of this study, namely, the Law of 7 August 2023 allow the ITM to combat offenses relating to the illegal employment of third-country nationals. Furthermore, these same provisions provide for increased amounts of administrative fines and criminal sanctions which makes it possible to further dissuade employers from employing third-country nationals who are irregularly staying or who are legally residing but work without a work permit. Moreover, the new provisions of the Law of 7 August 2023 allow the ITM to obtain information on third-country nationals from the CCSS and thus improve the detection of offenses in this area.

The measures provided as part of the answer to Q8 concerning inter-institutional cooperation, awareness-raising and sensitization of employers and third-country nationals also constitute examples of good practice to reduce and prevent the phenomenon of illegal employment of third-country nationals. These practices also allow to better protect the employees concerned.

A further increase in staff numbers would allow the ITM to carry out even more checks and detect even more offenses relating to the employment of third-country nationals staying irregularly or who are legally residing but work without a work permit.^{lxxxvii}

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)?

X Yes

Please briefly describe.

The capacity of the ITM to carry out more inspections has gradually improved since the number of staff has been increased (see Figure 1)^{lxxxviii}. Between 2017 and 2022, the number of labour inspectors on the ground more than quadrupled, passing from 17 inspectors in 2017^{lxxxix} to 86 inspectors in 2022^{xc}.

The new provisions of the Law of 7 August 2023 allow the ITM to obtain information on third-country nationals from the CCSS and thus improve the detection of offenses related to the illegal employment of third-country nationals.

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.).

As previously mentioned, in Luxembourg, illegally employed third-country nationals are normally detected as part of usual labour inspections and not in the context of specific inspections that would only target the identification of situations of illegal employment.

Table 3: Inspections carried out by labour inspectors of the ITM from 2017 to 2022

Description (NACE REV.2) ³	Number of inspections carried out per sector of activity					
	2017	2018	2019	2020	2021	2022
Agriculture, forestry and fishing	3	37	80	48	93	119
Mining and quarrying	0	0	8	7	3	11
Manufacturing	27	680	668	923	993	1.092
Electricity, gas, steam and air-conditioning supply	0	15	45	41	39	50
Water supply, sewerage, waste management and remediation	0	5	36	60	57	69
Construction	122	1.397	3.509	9.291	7.428	6.786
Wholesale and retail trade, repair of motor vehicles and motorcycles	62	246	273	587	600	619
Transportation and storage	33	297	121	155	225	116
Accommodation and food service activities	112	202	224	396	534	313
Information and communication	6	77	33	153	77	50
Financial and insurance activities	8	51	29	53	70	37
Real estate activities	7	18	42	144	130	69
Professional, scientific and technical activities	0	180	137	175	240	145

³ NACE REV.2 Statistical classification of economic activities in the European Communities

Administrative and support service activities	47	282	308	434	618	451
Public administration and defence, compulsory social security	0	29	30	15	16	28
Education	0	0	4	6	11	3
Human health and social work activities	17	44	52	76	92	57
Arts, entertainment and recreation	12	95	23	22	20	24
Other services	10	0	57	130	129	125
Activities of households as employers; undifferentiated goods- and services-producing activities of households for own use	4	1	2	11	10	7
Activities of extra-territorial organisations and bodies	0	0	0	1	0	0
TOTAL	470	3.667	5.682	12.728	11.385	10.171

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As mentioned in the answer to Q5, according to the data available to the ITM, the two economic sectors in which the labour inspectors most often encounter illegally employed third-country nationals are the HORECA and construction sectors.^{xci} Sectors that can be characterised with relatively high number of low-skilled workers engaged in manual work.

Since 2019, the number of inspections carried out in the construction sector constitute the biggest part regarding the total number of inspections performed by the labour inspectors of the ITM (see Table 4). The main aim of the inspections is not to identify cases of illegal employment of third-country nationals, but the general application of the norms foreseen in the Labour Code concerning working conditions and health and safety at work.

Table 4: Proportion of labour inspections in the construction sector regarding the total number of inspections carried out from 2017 to 2022

	2017	2018	2019	2020	2021	2022
Construction	122	1.397	3.509	9.291	7.428	6.786
TOTAL number of inspections	470	3.667	5.682	12.728	11.385	10.171
%	25,9%	38,1%	61,76%	72,99%	65,2%	66,7%

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It has not been possible to identify the institution responsible at the national level for the collection and provision of data in accordance with the article 14 of Directive 2009/52/EC.

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.

The ITM has reported that their labour inspectors have participated in internal and external training courses on the employment of irregularly staying third-country nationals. External trainings were provided by the Grand Ducal Police, by representatives of the Ministry of Foreign and European Affairs and by representatives of the Ministry of Justice.^{xcii} During the reference period of this study, the labour inspectors of the ITM have also increased their collaboration with the representatives of these institutions within the framework of inspections. In addition, the knowledge of the labour inspectors and the collaboration between the agents of the above-mentioned institutions also make it possible to combat fraud in the employment of irregularly staying third-country nationals more effectively.^{xciii}

All these measures have made it possible to increase the quality and the effectiveness of inspections regarding the illegal employment of irregularly staying third-country nationals.^{xciv}

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)?

Please briefly describe.

There is cooperation between the national authorities competent in the identification of situations of illegal employment of third-country nationals.^{xcv} According to the Labour Code, officials and agents of the Grand Ducal Police, of the Customs and Excise Agency^{xcvi}, members of the ITM and officials of the Department issuing business permits (authorisations of establishment) of the Ministry of Economy^{xcvii} are competent to investigate and record situations of illegal employment of third-country nationals.^{xcviii} In this context, the competent authorities, specifically the Grand Ducal Police, Customs, the ITM and the Ministry of Foreign and European Affairs, collaborate in the context of inspections of employment of irregularly staying third-country nationals and exchange relevant data following an inspection during which an irregularly staying third-country national is detected.^{xcix}

However, there are no cooperation mechanisms in place with other relevant organisations (such as IGOs or NGOs) in this context.^c There haven't been any specific cooperation mechanisms in place during the reporting period of this study and there are no plans to exchange relevant data with other organisations due to a lack of legal provisions in this context. Nevertheless, these other organisations have the possibility to inform the competent authorities of any suspicions in this area.^{ci} This was confirmed by NGOs, which reported that they generally do not cooperate with the national authorities in the context of identifying situations of illegal employment of third-country nationals, but rather provide information and assistance to migrants.^{cii} This might, however, include informing the authorities of a situation of (suspected) illegal

employment or lodging a complaint in this regard, provided that they have received a written authorisation from the person concerned to act on their behalf (see also answers to Q19a) and Q20).^{ciii}

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)?

X Yes

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

The ITM took part in several joint inspections with Belgian and French labour inspectors. However, these checks were not limited solely to the employment of third-country nationals, but also involved inspections on working conditions and health and safety at work, during which situations involving the illegal employment of irregularly staying third-country nationals may also be detected.^{civ}

The ITM has also reported on several initiatives that are not always primarily focused on illegal employment of third-country nationals, but that are nevertheless relevant in the broader context of this study.^{cv} For example, bilateral agreements in the context of working conditions have been signed with Belgium, France, Poland, and Portugal. The agreement with Portugal specifically covers cooperation regarding illegal employment, whereas the agreements with Belgium, France and Poland do not specially cover illegal employment, but cooperation on working conditions (whereby illegal employment can be regarded as part of working conditions).^{cvi} Furthermore, as regards the posting of workers, the ITM is the national liaison office in Luxembourg. As part of its duties in this area, the ITM must liaise with other liaison offices in the other EU Members States.^{cvii}

In addition, the ITM actively participates in activities of the Benelux institutions, the European Labour Authority (ELA), the Advisory Committee on Safety and Health at Work (ACSH) of the European Commission, the Senior Labour Inspectors Committee (SLIC) of DG EMPL of the European Commission, the European Agency for Safety and Health at Work (EU-OSHA) and the Group of Experts on Action against Trafficking in Human Beings (Greta) of the Council of Europe.^{cviii}

Despite not being directly linked to the scope of this study, it should be mentioned that Luxembourg engages in enhanced cooperation at the level of the Benelux regarding, inter alia, the fight against human trafficking.^{cix} As already mentioned in the answer to Q1, a recent report from the CCDH stressed that the majority of the registered cases of victims of human trafficking are victims of trafficking for the purpose of labour exploitation, whereas previously, sexual exploitation was predominant.^{cx} In this context, and upon request from the Ministry of Justice, EMN Luxembourg drafted a publication entitled "Interpretation and distinction between labour exploitation in the context of trafficking in human beings and particularly exploitative working conditions under the Employers Sanctions Directive".^{cxii} Based on this publication, Luxembourg organised a day of exchange as part of its Benelux presidency in 2022, with representatives of the judicial authorities, social inspections, immigration departments, the Ministry of Justice, and assistance services from the three Benelux countries.^{cxii}

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.

1) Challenges

From the point of view of the ITM, the key difficulty in this area is linked to being able to detect situations in which third-country nationals are illegally employed. One important aspect in this context is the absence of a database that would include all third-country nationals who are illegally employed.^{cxiii} According to the ITM, the database of the CCSS only includes those who have been affiliated with social security schemes and who may be in breach of the conditions of their residence permit or work permit, or more generally in breach of working conditions. However, for those who have not been affiliated with the CCSS, the only possibility to detect them is during unannounced inspections or in the event of a complaint or a denunciation.^{cxiv} The ITM reported therefore that the access to all the necessary data with regard to the employment of third-country nationals still remains a challenge when it comes to identifying situations of illegal employment of such nationals.^{cxv} As indicated in the answers to Q4 and Q8, the Law of 7 August 2023 introduced the exchange of data with the CCSS in the Labour Code.^{cxvi}

While all stakeholders acknowledged that the staff increase of labour inspectors within the ITM (see the answer to Q3 c)), as well as the overall increase of conducted labour inspections (see the answer to Q1), was an important step forward, they also agreed that more progress is needed with regard to an increase of labour inspections and the recruitment of even more labour inspectors in order to better prevent and identify illegal employment of third-country nationals.^{cxvii}

The NGOs consulted in the context of this study have reported that a key challenge they encounter during their work relates to the fact that only very few illegally employed third-country nationals manifest themselves to the authorities because of their vulnerable situation.^{cxviii} In many cases, they run the risk of losing everything, e.g. their financial income, their livelihood, and might have to leave the country and return to their country of origin.^{cxix} In some cases, they might provide facts or information about their employment circumstances, but they often don't go as far as denouncing them to the authorities. The organisations further mentioned that part of their work is to inform migrants and help them to build confidence so that they may take further steps to improve their situation, such as reporting or denouncing their employer. Without a clear will expressed by the persons concerned, and without a written authorisation to act on their behalf, the NGOs cannot act in order to change the situation for the persons that seek their support.^{cxx}

The consulted labour unions and the Chamber of Employees confirmed this perspective and added that sometimes employers even hold the identity documents of their employees in order to completely subjugate them. It is in their view therefore necessary for the ITM, as far as possible, to increase the number of inspections in order to free these employees from conditions that are in some instances tantamount to slavery.^{cxxi}

2) Good practices

According to the ITM, the measures mentioned in the answers to Q8 and Q9 concerning training, awareness-raising and prevention are also good practices in the area of

identification of illegal employment, as they help to reduce the phenomenon of illegal employment of irregularly and regularly staying third-country nationals and to provide even better protection for the employees concerned.^{cxxii} Furthermore, according to the ITM, the information on the employment of third-country nationals that is available on the website of the ITM and the official government portal allows both the employers and employees to be informed on the subject matter.^{cxxiii} The ITM further reported that the good cooperation between the relevant authorities (Grand-Ducal Police, Customs, ITM and the Ministry of Foreign and European Affairs) contributes to the good functioning of operations.^{cxxiv}

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?

X No

Please provide any other relevant information on sanctions.

During the reporting period of this study (2017-2022), there have not been any amendments to the sanctions to employers for illegally employing third-country nationals, which are stipulated in articles L. 572-4, L. 572-5, L. 572-6, L. 572-7, L. 572-8 and L. 573-3 of the Labour Code.^{cxxv} In fact, the legislation on sanctions to employers for illegally employing third-country nationals hadn't been amended since the amendment of the Labour Code by the Law of 21 December 2012, which transposed the Employers Sanctions Directive into national law.

However, as indicated in the answers to Q4 and Q8, the legislative changes that came into force after the reporting period of this study, namely the Law of 7 August 2023, increased the administrative fines and criminal sanctions regarding illegal employment of irregularly staying third-country nationals for the first time. Moreover, this law also introduced the same financial and penal sanctions for employers who engage in the illegal employment of third-country nationals who have a valid residence permit in Luxembourg. However, this amendment is outside of the reporting period of this study.

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.

1) Challenges

Stakeholders from the civil society indicated that, during the reporting period of this study (2017-2022), the sanctions foreseen by the law were not high enough. As a consequence, these sanctions were not deemed dissuasive enough in order to effectively prevent situations of illegal employment of irregularly staying third-country nationals.^{cxxvi} The ITM agreed that the increase in the number of identified cases of

illegally employed irregularly staying third-country nationals, mainly due to an increase in the number of inspections, could lead to the belief that the amount of the sanctions was not high enough to dissuade employers from employing irregularly staying third-country nationals.^{cxxvii}

As indicated in the answers to Q4 and Q16, the Law of 7 August 2023 aims to remedy this situation by increasing the administrative fine from 2.500€ to 10.000€ per illegally employed third-country national to make it even more of a deterrent to illegally employ third-country nationals. This new law also increased the criminal sanction from 20.000€ to 125.000€ per illegally employed third-country national in the event of aggravating circumstances, as stipulated by the Labour Code.^{cxxviii} This also seems to indicate that the authorities as well as the lawmakers had identified this as a challenge for Luxembourg. Furthermore, with the Law of 7 August 2023, the same sanctions now apply to the illegal employment of third-country nationals with a valid residence permit in Luxembourg.

A related challenge in this context, highlighted by actors from the civil society, is the effectiveness of the payment of sanctions imposed on employers. As already mentioned in the answer to Q8, a parliamentary question from May 2023 indicates that there are discrepancies in this area.^{cxxix}

The fact that only very few illegally employed third-country nationals manifest themselves to the authorities because of their vulnerable situation, as reported by the NGOs (see answer to Q15), also puts a challenge to the sanctioning of such infractions. The authorities can only impose sanctions against employers if a complaint is filed against them, or if they identify irregularities in the context of their inspections.

2) Good practices

According to the ITM, the fact the Minister in charge of Labour imposes an administrative fine on the basis of a report sent to him or her by the Director of the ITM is a good practice, as this procedure works very well.^{cxxx} The Labour Code further stipulates that the reports relating to breaches of illegal employment of third-country nationals drawn up by the authorities competent to investigate and report such situations (see answer to Q13) are sent to the Director of the ITM. This provision thus allows for all the inspection reports to be centrally collected by the ITM and, consequently, to have one single sanction procedure for all the situations detected and identified by the various competent authorities.^{cxxxi}

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:

Please describe all situations in detail.

As a first general comment, the Directorate of Immigration of the Ministry of Foreign and European Affairs reported that the outcomes vary from case to case given the many different situations that may be encountered in practice.^{cxxxii}

a) third-country nationals with a residence permit and a work permit.

During the reporting period of this study, sanctions against illegal employment only applied to individuals who are irregularly staying on the Luxembourgish territory. As reported in the answer to Q4, the Law of 7 August 2023 addressed this gap. Since the entry into force of this Law on 1 September 2023, illegal employment of legally staying third-country nationals is also forbidden by law and implies the same sanctions for the employers.

Luxembourg applies the single permit directive so in principle if the third-country national has a residence permit it includes the work permit.

The third-country national who is working outside of the limits of his/her residence permit (for example a salaried worker who is authorized to work during the first year of their residence permit and limited to only one sector and one profession without having informed the Directorate of Immigration)^{cxxxiii} can have their residence permit revoked or the renewal of their permit refused.^{cxxxiv} Normally, the Directorate of Immigration will notify the third-country national that they have to respect the legal requirements of the residence permit and warn them they risk the loss of their residence permit if the situation persists.

Most of the cases that can be reported in this context concern either of the following situations:

- students who are working more hours per week/month than they are authorized; or
- third-country nationals with a salaried worker residence permit who are authorized to work in one sector and one profession, but who are effectively working outside of the authorized sector and profession; or
- holders of a residence permit for private reasons who are authorized to find a job as an accessory activity under the residence permit, but who are instead detected to exercise a salaried activity as a primary activity not covered by the residence permit.^{cxxxv}

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

See answer to Q18 a) above. It is important to indicate that the only possible applicable case concerns third-country nationals who have a residence permit in a neighbouring country (Belgium, France or Germany) and decide to look for an employment in Luxembourg without applying for a work permit.^{cxxxvi} A second possible scenario concerns third-country nationals with an authorization of stay for private reasons but that have not obtained a work permit.

In both scenarios, the employer and the employee are liable to the sanctions set out in the Labour Code.^{cxxxvii} Any repercussions on the right of residence will depend on the seriousness of the situation and are assessed on a case-by-case basis. Withdrawal of the right of residence may be considered in such cases in accordance with article 101 of the Immigration Law.^{cxxxviii}

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

If the third-country national is detected and they are an irregular migrant^{cxxxix}, the situation will be communicated by the authority who did the detection to the Ministry in charge of immigration and asylum. The Grand-Ducal Police is responsible for transporting the persons concerned to the detention centre and, together with the representatives of the Ministry of Foreign and European Affairs,

for arranging the return of irregularly staying third-country nationals to their country of origin.^{cxli}

The Minister in charge of immigration and asylum will issue a duly motivated removal decision^{cxlii} which provides the individual 30 days to voluntarily leave the country^{cxliii} (if they are not a threat to national security, public security or public order^{cxliiii}). If the individual does not leave the country within the indicated deadline (unless they make a request for an extension^{cxliiv}), they will be forcibly removed^{cxliv} and may be placed in detention.^{cxlvi} The sanctions against the employer do not block the execution of the return decision. Nevertheless, the employer will have to pay the remuneration owed^{cxlvii}. Before the removal decision is enforced, the irregularly staying third-country national will be systematically and objectively informed by the controlling agents of their rights and the possibility to have access to free legal aid.^{cxlviii}

Irregularly staying third-country nationals may be issued a residence permit for a period of six months if they are a victim of illegal employment under certain aggravating circumstances^{cxlix}, namely if the infringement is accompanied by particularly abusive working conditions^{cl} or if the third-country national is a minor.^{cli}

This residence permit may be issued in accordance with article 95 (1) of the Immigration Law, as stipulated in article 13 (4) of the Employers Sanctions Directive. This residence permit is linked to an obligation for the third-country national to cooperate in the criminal proceedings against the employer who is the author of the infringement(s).^{clii}

d) Beneficiaries of temporary protection (Ukrainians refugee situation since 2022)

In Luxembourg, beneficiaries of temporary protection do not fall under any of the three categories listed above. While they have an immediate access to the Luxembourgish labour market without having to request a work permit, they are not issued a residence permit in Luxembourg.^{cliii} If the conditions for granting temporary protection are met, a temporary protection certificate is issued, allowing the holder to remain on the territory of Luxembourg, but not conferring a right of residence in accordance with the legislation on the entry and residence of foreign nationals.^{cliv}

The Directorate of Immigration has reported that if a situation of illegal employment of a beneficiary of temporary protection is detected, the outcome is the same as in any other situation of detection of illegal employment, without however having an impact on their protection status.^{clv}

In addition to the above, the Chamber of Employees, as well as the two largest labour unions in Luxembourg reported in this context that in the event of a breach of the employer's obligations (such as declaring the vacancy to the ADEM), the employee from a third country risks of being refused a residence permit and being obliged to leave the country (in accordance with article 42 of the Immigration Law).^{clvi} The same may happen if, in accordance with Article 43 of the Immigration Law, the third-country national concerned has a work permit limited to a sector or profession with the same employer and the employer dismisses them or they their job for another reason. The Chamber of Employees and the two labour unions therefore argued that the fact that the employee concerned has to suffer the real sanction of having to leave the country is an immeasurable means of pressure for the employer, which could lead the employer to not always respect the conditions of work and remuneration as set out in the Labour Code.^{clvii}

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.

The ITM reported that third-country nationals who find themselves in a situation of illegal employment can lodge a complaint with them in the same way as any other employees (i.e., either via telephone, post, e-mail or in person at one of their four regional offices).^{clviii} Moreover, the ITM informs third-country nationals of their rights in terms of working conditions and health and safety at work as part of an inspection. Other procedures, such as those relating to assistance for victims of trafficking in human beings, are provided by the Ministry of Foreign and European Affairs, the Grand Ducal Police, the Ministry of Justice or civil society organisations, where appropriate.^{clix}

According to the Chamber of Employees, as well as the two largest labour unions in Luxembourg, the judicial remedies available to the employees concerned are insufficient and do not protect them enough.^{clx} They have reported that the failure by the employer to verify the third-country national's residence permit before hiring the employee often results in the termination of the employment contract and the withdrawal of the residence permit.^{clxi} In their view, although the law provides for a variety of sanctions against employers in the event of illegal employment, these sanctions often come to nothing because the public authorities are often not aware of situations of illegal employment and therefore cannot prosecute such infringements (see also answer to Q15).^{clxii}

Third-country nationals may decide to get in contact with NGOs or a labour union to receive support and help regarding their situation. In such cases, an NGO or a labour union will either recommend the person concerned to get in touch with the ITM to report an infraction or file a complaint, or these stakeholders can file a complaint on their behalf, provided that they have received a written authorisation from the person concerned (see also answer to Q20).^{clxiii}

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 ITM reported that as far as they are concerned, all employees can lodge a complaint with them in the same way.^{clxiv} The NGOs consulted in the context of this study have also confirmed that they apply the same procedures regardless of the legal status of the person concerned. In case the NGOs have a suspicion that the third-country national could be a victim of trafficking in human beings, they refer the person to the Grand Ducal Police or the support services for victims of trafficking in human beings.^{clxv}

The Chamber of Employees, as well as the two largest labour unions in Luxembourg indicated in this context that the procedures and remedies provided for in the Labour Code, in particular article L.572-7, do not seem to them to comply with the Employer Sanctions Directive (Directive 2009/52/EC) and do not provide sufficient protection for the employees concerned.^{clxvi} More specifically, they are of the opinion that said article in the national law would seem to be contrary to article 13 of Directive 2009/52/EC insofar as the exercise of the right to a remedy is limited in time, i.e., only prior to the enforcement of any removal decision (see also answer to Q18 c)), whereas article 13 of said Directive is intended to guarantee effective mechanisms throughout the period during which employees from third countries are irregularly staying on the territory of

the host country. According to the Chamber of Employees and the two labour unions, the national law may lead people to believe that remedies can only be exercised in the event of an administrative decision to withdraw a residence permit, whereas such remedies must be available from the moment of entry into the territory and whenever employees' rights are infringed (not only in relation to an administrative decision, but also in the context of employment relations and other matters).^{clxvii} In their reading of the national law, the right of employees to be informed of the remedies available seems therefore to be limited to cases where offences have been recorded by the ITM, the Grand Ducal Police or the customs authorities, but there is no provision foreseen prior to that.^{clxviii}

Moreover, the Chamber of Employees and the two labour unions raised the question if labour unions can be considered as third parties "designated by the Member States" (as stipulated in article 13 of Directive 2009/52/EC), when the right to join a labour union is an option, not an obligation, and employees from third countries are not always familiar with the Luxembourgish legal and labour union culture, nor do they always have the courage to join a trade union for fear of reprisals from their employer.^{clxix}

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?

There is no norm in the Labour Code nor in the New Code of Civil Procedure that forbids a third party to engage on behalf or in support of an illegally employed third-country national in the context of an administrative or civil proceeding.

According to the ITM, a representative of a labour union may act on behalf of a third-country national if they have a valid power of attorney to do so. This was also confirmed by the NGOs consulted in the context of this study.^{clxx} On the other hand, a labour union, as well as an NGO, can report any irregularities of which they are aware of to the ITM.^{clxxi}

The labour unions have reported in this context that a distinction must be made between the legal standing of labour unions and the coverage of costs by affiliated members of a labour union in the event of a legal action by a member.^{clxxii} The provision of acting on behalf of a third party (legal standing) is defined in Article L. 162-13 of the Labour Code and is limited to disputes arising from a collective bargaining agreement (CBA), either by direct action or by intervention. It is only in the context of such disputes arising from a CBA that labour unions have the capacity to take legal action.^{clxxiii} On the other hand, coverage of costs of legal action by the labour union is reserved only for affiliated members (sometimes with a waiting period) and for disputes concerning the Labour Code and social security (there may be differences in the statutes of the various unions concerning the waiting period and the subject of the disputes for which the costs are covered).^{clxxiv}

With regards to the question if there are differences between engaging on behalf of legally residing and irregularly staying third-country nationals, the labour unions have reported that, to the best of their knowledge, no difference is made according to the regularity or irregularity of the status of the migrant workers as regards the legal standing of labour unions in court and the coverage of costs by the union for any legal action by their affiliates.^{clxxv}

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.

Yes. Article L. 572-2 (9) of the Labour Code expressly indicates that the remuneration of an irregularly staying third-country national who was illegally employed includes the salary and any other fees as defined in the Labour Code^{clxxxvi} that will have been received by comparable workers doing the same work. Moreover, any employer is liable for the payment of remuneration, contributions and taxes from the start of the employment relationship and for the hours effectively worked by the third-country national, including the three months preceding the date of an inspection. In the case of overtime, the employee is also entitled to overtime bonuses.^{clxxxvii} In addition, article L. 572-9 of the Labour Code establishes a presumption that the employment relationship has lasted at least three months except if proven otherwise by the employer or the employee.

The labour inspectors verify that the third-country national has been paid in accordance with legal and contractual provisions.^{clxxxviii} In the event of non-payment of wages by the employer, the ITM orders the employer to pay the employee within a certain period. In order to verify whether the salary has actually been paid to the employee, the ITM requires the employer to provide proof that the salary has been paid (such as a proof of payment or a bank statement).^{clxxxix} If the employer fails to do so, an administrative fine will be imposed, and if the legal minimum wage is not respected, the employer may also face criminal sanctions. The ITM may continue to order the employer to pay the employee until the situation has been rectified.^{clxxx} The mechanisms in place at the ITM regarding remuneration of wages are the same for all employees, irrespective of their legal status.^{clxxxi}

The labour unions and the Chamber of Employees reported that they believe, despite the safeguards provided for in the Labour Code, that employees from third countries need to be better informed about their rights, and in particular about the means available to them to claim back remuneration and other outstanding payments.^{clxxxii} According to them, if employees are not informed enough about their rights in this matter, the law is likely to remain a dead letter, and dishonest employers are likely to continue their illegal practices of employing cheap labour.^{clxxxiii}

Since the legislative change introduced by the Law of 7 August 2023, the abovementioned provisions apply in the same way to illegally employed third-country nationals with a valid residence permit in Luxembourg.^{clxxxiv}

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.

As mentioned in the answer to Q21, the employment relationship is presumed to have lasted at least three months, except if proven otherwise by the employer or the employee.^{clxxxv} Moreover, any employer is liable for the payment of remuneration, contributions and taxes from the start of the employment relationship and for the hours effectively worked by the third-country national, including the three months preceding the date of an inspection.^{clxxxvi}

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.

In accordance with the Labour Code, an employer who has employed an irregularly staying third-country national is obliged to bear all costs arising, where applicable, from sending unpaid remuneration to the country to which the irregularly staying third-country nationals have been returned.^{clxxxvii} The labour inspectors order the employer to pay the employees concerned. If they fail to do so, they are liable to an administrative fine and, where applicable, criminal sanctions.^{clxxxviii} The fact that a third-country national has been returned to their country of origin but has not yet received the remuneration to which they are entitled to does not change the fact that the employer is obliged to pay the person concerned. In this case, the employer will be required to prove to the ITM that they have paid the remuneration to the employee's bank account abroad.^{clxxxix} For this to be done, the employer must have knowledge of this bank account. If this is not the case, the third-country national may inform the ITM of this fact, which will instruct the employer to transfer the remuneration to the bank account of the person concerned (see also answer to Q21).^{cxc}

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.

Yes. Information on illegal employment of third-country nationals is available on the public website of the ITM in the form of a FAQ, in French and in German.^{cxc} Moreover, information on the legal provisions and requirements to employ third-country nationals (information for employers) as well as information on the rights and obligations of third-country national employees (information for employees) is available on the Government portal "Guichet.lu", which is available in French, German and English.^{cxcii}

At the same time, several stakeholders mentioned that the accessibility of this public information is still a challenge for Luxembourg.^{cxciii} The issue, according to them, is not that there is no public information available, but it does not mean that every employee consults this information as it might be hard to find, in particular by third-country nationals themselves.^{cxciv} The labour unions and the Chamber of Employees further reported in this context that, in addition to the information that is made available to the public, the support and assistance of third-country national employees should be strengthened through better coordination and collaboration between all the stakeholders concerned.^{cxcv}

Information is also provided by NGOs who are offering support and information to migrants, often in the context of their regular consultations with migrants or if they organise specific activities, such as workshop on access to employment or access to the labour market.^{cxcvi} If possible, this information is translated into languages that third-country national migrants understand, for example into English or Portuguese.^{cxcvii} If necessary, they can use the interpreting services offered by the Luxembourgish Red Cross.^{cxcviii}

During inspections, labour inspectors will orally inform third-country nationals of their rights in terms of working conditions and health and safety at work, as well as their right to free legal aid.^{ccix} This information is currently translated orally using translation websites that can be consulted on mobile phones. The labour inspectors also provide them with information sheets on the topic. There are plans to translate these information sheets into different languages, such as Chinese, Russian, Ukrainian, Arabic, Indian, Albanian, Portuguese, Spanish and English.^{cc}

The information on working conditions and health and safety at work provided by the ITM to employees is the same for all employees, independent of their legal status.^{cci} Moreover, with regards to trafficking in human beings, information is provided by the *Infotraite* services, i.e. the support services for victims of trafficking in human beings, and the Grand Ducal Police.^{ccii}

Moreover, as mentioned in the answer to Q18 c), irregularly staying third-country nationals will be systematically and objectively informed by the controlling agents of their rights and the possibility to have access to free legal aid before any removal decision is enforced.^{cciii}

Lastly, in 2022, the ITM also played an active part in the campaign to raise awareness on the risks of people fleeing the war in Ukraine of becoming victims of exploitation and human trafficking by publishing, together with the Ministry of Labour, Employment and the Social and Solidarity Economy and the National Employment Agency (ADEM), an information brochure on employment law, enabling the people concerned to know their rights and thereby reducing the risk of exploitation. The brochure is available in French, English, Ukrainian and Russian.^{cciv}

SECTION 6: CONCLUSIONS

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

The prevention of illegal employment of third-country nationals remains a policy priority in Luxembourg, as well as subject of sustained public debate.

Even though during the reporting period of this study (2017-2022) there have not been major policy changes in relation to illegal employment of third-country nationals, significant legislative changes to the Labour Code came into force shortly after the reporting period, namely the Law of 7 August 2023 which increased the administrative and penal sanctions for employers who engage in the illegal employment of irregularly staying and legally residing third-country nationals. For the sake of completeness, the provisions introduced by the new Law have been included in different parts of this study. In Luxembourg the two sectors where illegally employed third-country nationals are identified the most are the HORECA and construction sector. There is no practice in place to carry out targeted inspections, with a specific aim to identify illegally employed third-country nationals, persons are detected as part of usual labour inspections.

According to different stakeholders, the sensitization of both employers and employees is one of the key measures to prevent illegal employment. Sensitization is also part of labour inspections as inspectors have the mission of advising and assisting employees and employers through providing practical, legal and technical information on the implementation of the Labour Code.^{ccv} Official websites of state institutions are considered an important source of information when it comes to informing employers and third-country nationals on their rights and obligations. The continuous development of the mentioned websites would be beneficial, in particular the availability of different language versions, this way increasing the accessibility of information.

Throughout the reporting period, the numbers of the labour inspectors of the ITM and the numbers of inspections carried out have increased significantly. In this context, it should be noted that the adequate capacity of labour inspectors is another measure that contributes to the prevention of illegal employment. Equally important in the prevention and reduction of illegal employment of third-country nationals is inter-institutional cooperation, this implies not only joint efforts when working on the ground, but also when it comes to trainings provided to the staff members of all relevant institutions.

There were no new financial or penal sanctions introduced during the reporting period (this legislative change only came into force with the Law of 7 August 2023), nevertheless some stakeholders suggested that there is a large gap between the fines that are imposed on the employers and the fines that are actually paid to the Registration Duties, Estates and VAT Authority.

In the context of the war in Ukraine, no specific impact or consequences could be observed in relation to the illegal employment of third-country nationals. As communicated by the responsible authorities, in those cases when illegal employment of a beneficiary of temporary protection is detected, the outcome is the same as in any other situation of detection of illegal employment, without however having an impact on the protection status of the person.

ENDNOTES

ⁱ Statec.lu, Emploi salarié intérieur par lieu de résidence et nationalité, (Q.4, 2022). URL :

[https://lustrat.statec.lu/vis?fs\[0\]=Th%C3%A8mes%2C1%7CPopulation%20et%20emploi%23B%23%7CMarch%C3%A9%20du%20travail%23B5%23&pg=0&fc=Th%C3%A8mes&df\[ds\]=ds-release&df\[id\]=DF_B3002&df\[ag\]=LU1&df\[vs\]=1.0&pd=2015-Q1%2C2022-Q4&dq=Q.&ly\[cl\]=TIME_PERIOD&ly\[rw\]=RESIDENCE](https://lustrat.statec.lu/vis?fs[0]=Th%C3%A8mes%2C1%7CPopulation%20et%20emploi%23B%23%7CMarch%C3%A9%20du%20travail%23B5%23&pg=0&fc=Th%C3%A8mes&df[ds]=ds-release&df[id]=DF_B3002&df[ag]=LU1&df[vs]=1.0&pd=2015-Q1%2C2022-Q4&dq=Q.&ly[cl]=TIME_PERIOD&ly[rw]=RESIDENCE)

ⁱⁱ Ibid.

ⁱⁱⁱ Ibid.

^{iv} Ibid.

^v Information provided by the Ministry of Labour, Employment and the Social and Solidarity Economy on 12 October 2023.

^{vi} Government of Luxembourg, "Accord de coalition 2018-2023", p. 149 – 158. URL: <https://gouvernement.lu/en/publications/accord-coalition/2018-2023.html>

^{vii} Idem, p. 149.

^{viii} Idem, p. 154.

^{ix} EMN Luxembourg, "Illegal employment of third-country nationals in Luxembourg". URL: <https://emnluxembourg.uni.lu/emn-luxembourg-study-integration-of-applicants-for-international-protection-in-the-luxembourgish-labour-market-2/>

^x Government of Luxembourg, "Accord de coalition 2018-2023", p. 157. URL: <https://gouvernement.lu/en/publications/accord-coalition/2018-2023.html>

^{xi} Article L. 612-1 (1) f) of the Labour Code.

^{xii} Government of Luxembourg, "Accord de coalition 2018-2023", p. 26. URL: <https://gouvernement.lu/en/publications/accord-coalition/2018-2023.html>

^{xiii} Inspectorate of Labour and Mines (ITM), "D-12. Travail clandestine et illégal ». URL: <https://itm.public.lu/fr/questions-reponses/droit-travail/travail-clandestin.html>

^{xiv} Inspectorate of Labour and Mines (ITM), "Annual Report 2022", 2023, pp. 52-53. URL: <https://gouvernement.lu/en/publications/rapport-activite/minist-travail-emploi/itm/2022-rapport-activite.html>

^{xv} RTL Today, "Ex-employee accuses Vianden hotel of exploitation and human trafficking", 4 December 2019. URL: <https://today.rtl.lu/news/luxembourg/a/1440474.html>

^{xvi} Consultative Commission on Human Rights (CCDH), "Report on human trafficking in Luxembourg 2017-2018", 2019. URL: https://ccdh.public.lu/fr/actualites/2019/20191106_Rapport_traite_2017-2018.html

^{xvii} EMN Luxembourg, "Annual Report on Migration and Asylum: 2019", 2020, p. 77.
URL: https://emnluxembourg.uni.lu/wp-content/uploads/sites/225/2020/07/Annual-Report-on-Migration-and-Asylum-2019_EN.pdf

^{xviii} ASTI.lu, "L'ASTI soutient les sans-papiers – les oubliés de la crise", 8 June 2020.
URL: <https://www.asti.lu/lasti-soutient-les-sans-papiers-les-oublies-de-la-crise/>

^{xix} Parliamentary question n°2389 of 12 June 2020 concerning undocumented migrants.
URL: <https://wdocs-pub.chd.lu/docs/exped/0108/121/217217.pdf>

^{xx} Joint answer of the Minister for Family and Integration and the Minister in charge of Immigration and Asylum of 9 July 2020 to the parliamentary question n°2389 of 12 June 2020 concerning undocumented migrants. URL: <https://wdocs-pub.chd.lu/docs/exped/0109/095/218956.pdf>

^{xxi} CLAE, "Résolution de l'Assemblée générale du 25 septembre 2020", 25 September 2020. URL: <https://www.clae.lu/mailling/presse-resolution-ag/?frame=0>

See also: Quotidien.lu, "Covid au Luxembourg: le CLAE veut une régularisation de sans-papiers", 28 September 2020. URL: <https://lequotidien.lu/politique-societe/covid-au-luxembourg-le-clae-veut-une-regularisation-de-sans-papiers/>

^{xxii} In June 2021, a woman from Brazil whose residence status in Luxembourg was irregular, reported the physical and sexual abuse and the exploitation she experienced at her workplace to the police. After her interview the police confiscated her passport and subjected her to a voluntary return, that is, she was ordered to leave Luxembourg within 30 days.

Source: ASTI, CID Fraen an Gender, CLAE, Finkapé - réseau Afrodescendant Luxembourg, Time for Equality, "Quand la victime est punie...", Press release, 24 June 2021. URL: <https://www.asti.lu/quand-la-victime-est-punie-communique/>

^{xxiii} European Union Agency for Fundamental Rights (FRA), "Step up rights protection of exploited migrant workers", 24 June 2021, URL: <https://fra.europa.eu/en/news/2021/step-rights-protection-exploited-migrant-worker>

^{xxiv} Ministry of Foreign and European Affairs, "Information from the Minister for Immigration and Asylum, Jean Asselborn, following the press release 'When the victim is punished...' signed by five Luxembourg associations", Press release, 28 June 2021, URL: <https://maee.gouvernement.lu/fr/actualites.gouvernement%2Bfr%2Bactualites%2Bto-utes-actualites%2Bcommuniques%2B2021%2B06-juin%2B28-asselborn-information.html>

^{xxv} EMN Luxembourg, "Annual Report on Migration and Asylum: 2021", 2022, p. 68.
URL: https://emnluxembourg.uni.lu/wp-content/uploads/sites/225/2022/06/Annual-Report-on-Migration-and-Asylum-2021_EN.pdf

^{xxvi} ASTI, "Les « sans-papiers » au Luxembourg : au-delà des préjugés et des fantasmes"
URL: <https://www.asti.lu/les-sans-papiers-au-luxembourg-au-dela-des-prejuges-et-des-fantasmes/>

xxvii *Idem*, p. 23.

xxviii Parliamentary motion n°4095, introduced by Nathalie Oberweis (Left Party) on 8 March 2023 concerning an extraordinary awareness campaign on the criteria for regularising third-country nationals without a valid residence permit. URL: <https://wdocs-pub.chd.lu/docs/exped/0137/152/275526.pdf>

xxix Chambre des Députés du Grand-Duché de Luxembourg, parliamentary motion n°4095. URL: https://www.chd.lu/fr/motion_resolution/4095

xxx Law of 7 August 2023 amending 1° the Labour Code; 2° the amended Law of 29 August 2008 on the free movement of people and immigration; 3° the amended Law of 18 December 2015 relating to the reception of applicants for international protection and temporary protection. Published in Memorial A556 of 28 August 2023. URL: <https://legilux.public.lu/eli/etat/leg/loi/2023/08/07/a556/jo>

xxxi Law of 8 March 2017 amending 1) the amended Law of 29 August 2008 on the free movement of people and immigration; 2) the amended Law of 28 May 2009 on the Detention Centre; 3) the Law of 2 September 2011 regulating access to the artisan, merchant, industrial and certain liberal professions, Art. 47-2 (1) d), e) and (2) d), e), published in Memorial A298 of 20 March 2017. URL: <http://legilux.public.lu/eli/etat/leg/loi/2017/03/08/a298/jo>

xxxii *Ibidem*, Art. 49quinquies (1) b), e) and (2) c), f).

xxxiii Bill 7319 amending 1. of the Labour Code 2. the Law of 21 December 2007 reforming the Inspectorate of Labour and Mines, introduced in Parliament on 20 June 2018. URL: <https://www.chd.lu/de/dossier/7319>

xxxiv Consultative Commission on Human Rights (CCDH). "Report on human trafficking in Luxembourg 2017-2018". URL: https://ccdh.public.lu/fr/actualites/2019/20191106_Rapport_traite_2017-2018.html

xxxv Law of 15 December 2020 approving Protocol P029 - Protocol of 2014 to the Forced Labour Convention, 1930, entered in force by the General Conference of the International Labour Organization, in Geneva on 11 June 2014. Published in Memorial A 1023 of 18 December 2020. URL: <http://legilux.public.lu/eli/etat/leg/loi/2020/12/15/a1023/jo>

xxxvi EMN Luxembourg "Annual Report on Migration and Asylum 2020", 2021, p. 44. URL: https://emnluxembourg.uni.lu/wp-content/uploads/sites/225/2021/06/Annual-Report-on-Migration-and-Asylum-2020_EN-3.pdf

xxxvii Information provided by the Inspectorate of Labour and Mines (ITM) on 12 July 2023.

xxxviii Information provided by the Inspectorate of Labour and Mines (ITM) on 12 July 2023.

xxxix Law of 7 August 2023 amending 1° the Labour Code; 2° the amended Law of 29 August 2008 on the free movement of people and immigration; 3° the amended Law of

18 December 2015 relating to the reception of applicants for international protection and temporary protection. Published in Memorial A556 of 28 August 2023. URL: <https://legilux.public.lu/eli/etat/leg/loi/2023/08/07/a556/jo>

^{xi} Articles L. 574-1 to L. 574-7 of the Labour Code, as amended by Article 13 of the Law of 7 August 2023.

^{xli} Article L. 574-7 of the Labour Code, as amended by Article 13 of the Law of 7 August 2023.

^{xlii} Article L. 572-5 of the Labour Code, as amended by Article 4 of the Law of 7 August 2023.

^{xliii} Bill n° 8227 amending 1° the Labour Code; 2° amended law of 29 August 2008 on free movement of persons and immigration; 3° amended law of 15 December 2015 on the reception of applicants for international protection and temporary protection, p.13. URL: <https://wdocs-pub.chd.lu/docs/exped/0139/113/279130.pdf>

^{xliv} Idem, p. 14.

^{xlv} Articles L. 572-4 and 572-5 of the Labour Code, as amended by Articles 3 and 4 of the Law of 7 August 2023.

See also: Bill 8227 amending: 1° the Labour Code; 2° amended Law of 29 August 2008 on free movement of persons and immigration; 3° amended law of 15 December 2015 on the reception of applicants for international protection and temporary protection, p. 10. URL: <https://wdocs-pub.chd.lu/docs/exped/0140/176/281762.pdf>

^{xlvi} Article L. 612-1 (1) f) of the Labour Code, as amended by Article 14 of the Law of 7 August 2023.

^{xlvii} Article L. 573-6 of the Labour Code, as amended by Article 12 of the Law of 7 August 2023.

^{xlviii} Article L. 573-6 of the Labour Code, as amended by Article 13 of the Law of 7 August 2023.

^{xlix} Information provided by the Inspectorate of Labour and Mines (ITM) on 12 July 2023.

^l Information provided by the Inspectorate of Labour and Mines (ITM) on 12 July 2023.

^{li} Information provided by the Inspectorate of Labour and Mines (ITM) on 13 September 2023.

^{lii} European Agency for Safety and Health at Work "Construction safety risks and prevention". URL : <https://oshwiki.osha.europa.eu/en/themes/construction-safety-risks-and-prevention> , "E-fact 22 - Safety and health risks in HORECA". URL : https://osha.europa.eu/sites/default/files/E-fact_22_-_Safety_and_health_risks_in_HORECA.pdf

^{liii} Consultative Commission on Human Rights (CCDH), "Rapport sur la traite des êtres humains au Luxembourg 2019-2020", 6 December 2021, p. 20. URL: <https://ccdih.public.lu/fr/actualites/20201/traite0.html>

^{liv} Information provided by the Inspectorate of Labour and Mines (ITM) on 12 September 2023.

^{lv} Information provided by CLAE on 2 August 2023 and by ASTI on 6 November 2023.

^{lvi} Peschel, Franziska, „forum_story Schwarzarbeit“, in *Forum* Nr. 434, November 2023, p. 40-42. URL: https://www.forum.lu/wp-content/uploads/2023/11/f_s_Schwarzarbeit.pdf

^{lvii} Information provided by the Inspectorate of Labour and Mines (ITM) on 13 September 2023.

^{lviii} Information provided by the Inspectorate of Labour and Mines (ITM) on 13 September 2023.

^{lix} Information provided by the Inspectorate of Labour and Mines (ITM) on 13 September 2023.

^{lx} Information provided by the Inspectorate of Labour and Mines (ITM) on 13 September 2023.

^{lxi} Information provided by CLAE on 2 August 2023 and by Caritas on 13 September 2023.

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^{cxlv} Article 111 (1) of the Immigration Law.

^{cxlvi} Article 120 (1) paragraph 2 of the Immigration Law

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