



European Platform  
tackling undeclared work

# **Counteracting undeclared work and labour exploitation of third- country national workers**

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## EXECUTIVE SUMMARY

Undeclared work of third-country nationals is a serious concern for fair competition in host-countries, decent employment relations, but also social and fundamental rights of those workers. Although the relevant data are scarce, the recent 2019 Eurobarometer survey suggests that third-country nationals more often engage in undeclared work – and are consequently exposed to exploitative working conditions. This raises important issues for enforcement authorities who detect work irregularities on the ground and aim to ensure fair and decent work.

**The aim of this report is twofold.** Firstly, it explores different ways of engaging in undeclared work by non-EU nationals, linking this to labour exploitation. Secondly, it focuses on labour, tax and/or social security authorities and social partners' measures used to tackle undeclared work and labour exploitation of third-country nationals, ranging from prevention to detection and deterrence. To that effect, this report includes promising practices to address the complex issue of undeclared work of third-country nationals.

### **Definitions of undeclared work, illegal employment and labour exploitation**

This report uses the working definition for undeclared work used by the European Commission: 'any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory system of Member States'. This activity-based definition excludes economic activities which are illegal or unpaid by their nature. Thus, undeclared work as defined above, includes: undeclared employment, unregistered employment, undeclared self-employment, labour infringements through the use of umbrella companies, and other specific informal practices which are not declared to labour, social security and tax authorities.

Illegal employment is defined as an 'economic activity carried out in violation of provisions set by legislation regulating the employment of third-country nationals (European Migration Network (EMN), 2018). In the EU context, this covers both the illegal employment of a third-country national who is irregularly staying on the territory of an EU Member State and of a legally resident third-country national working outside the conditions of the residence permit/visa and/or without a work authorisation. Thus, illegal employment of third-country nationals is either the result of irregular residency or the missing/restricted right to work.

Labour exploitation lacks an official EU-wide legal definition and varies in degrees of severity, with most international definitions pointing towards its more severe forms, such as forced labour and slavery. In this report it is understood based on the definition by the European Union Agency for Fundamental Rights (FRA): 'work situations that deviate significantly from standard working conditions as defined by legislation or other binding legal regulations, concerning in particular remuneration, working hours, leave entitlements, health and safety standards and decent treatment' (FRA, 2015).

### **Methodology**

Reliable estimates of the incidence of undeclared work among third-country nationals are scarce and the report is therefore based primarily on the following qualitative evidence:

- **Desk research** into the key evidence available at European, international and (selected) Member State level in relation to undeclared work, labour exploitation and illegal employment of third-country nationals.
- Targeted interviews of **enforcement authorities** and **social partners** in five EU Member States (Finland, France, the Netherlands, Poland, Sweden) and written contributions by **enforcement authorities** in four EU Member States (Belgium, Germany, Italy and Spain).

- Targeted interviews with **social partners**, notably the European Trade Union Confederation (ETUC) and the Platform for International Cooperation on Undocumented Migrants (PICUM).
- By relying on this method, the report helps to **shed light on a series of key questions** in relation to migration and undeclared work, and the propensity of third-country nationals to be more vulnerable to labour exploitation:
  - Undeclared work of third-country nationals – what are the different irregularities?
  - How do migrants enter undeclared work and labour exploitation?
  - How to counteract undeclared work and labour exploitation of third-country nationals?

### **Undeclared work of migrants – what are the different irregularities?**

The very first question is how do undeclared work, illegal employment and labour exploitation coincide? Illegal employment and undeclared work are both informal economic activities that do not comply with legislation and thus remain 'invisible' from the authorities. While illegal employment is a breach of migration (because of a missing or no longer valid residency status) or labour law (with no or a limited work authorisation), undeclared work is a paid activity not, or only partly, registered with the authorities and can be performed by third-country nationals and the native population. With a few exceptions, irregularly staying migrants or those without a right to work often have no choice but to work informally. They are therefore at a particularly high risk of labour exploitation because of their dependency that undeclared work and illegal employment create on their employer.

Compared to undeclared work and illegal employment, **labour exploitation** is the non-compliance with a wider set of employers' obligations, such as health and safety or equal treatment regulations, including also the declaration of work to authorities. While substantial research by the European Union Agency for Fundamental Rights (FRA) (FRA, 2015; FRA, 2018, FRA, 2019) considers forms of severe labour exploitation in criminal law, this report looks at labour exploitation as a continuum, characterised by distinctive forms and degrees of immobility, devaluation and coercion. While undeclared work can be an intentional strategy of employers and regularly staying migrants, labour exploitation is driven by various employers' strategies to exercise control over the worker (FRA, 2015; FRA, 2018, FRA, 2019). Undeclared work can also be one form of labour exploitation (e.g. if the employer refuses to register the worker) and reinforces the exclusion from formal employment and subsequently increases the risk of further exploitation.

**Third-country nationals enter undeclared work** and illegal employment under different circumstances. For example: regularly staying refugees or seasonal workers working undeclared or underdeclared, non-EU nationals working more time than their employment contract states or in a second - undeclared - job or fraudulently posted third-country nationals. Instances when third-country nationals work more time than their work authorisation allows or workers overstay their temporary visa are primarily classified as illegal employment (whilst this economic activity is also often likely not to be declared to the authorities).

Non-EU nationals therefore face **different situations** due to their country entry (regular or irregular), residency (regularly versus irregularly staying), work status (work authorisation with significant limitations, expired, non-valid or non-existing work authorisation) and form of employment (formal, undeclared or underdeclared). Hence, it is often not possible to fully distinguish between undeclared work (which is mostly covered by labour law interventions), illegal employment (covered by migration, labour and criminal law) and labour exploitation covered in national labour and criminal laws, as they interlink and reinforce each other.

While existing research focuses mainly on the vulnerability of irregularly staying migrants to labour exploitation, this report also considers regularly staying non-EU nationals who

work undeclared and their exposure to labour exploitation. In order to explore the relationship between undeclared work and labour exploitation, the report differentiates between **three groups** of third-country nationals:

- **Legally residing third-country nationals with a fully flexible work authorisation.** This group includes people who for example gained long-term residency, or have been granted international protection. In theory, this group faces the same risk of entering undeclared, underdeclared work or bogus self-employment as EU nationals. However, while it is unclear if they enter undeclared work intentionally or are driven into it by employers, their risk of labour exploitation is heightened compared to EU workers. Employers may take advantage of their marginalised status – in particular of low-skilled workers who face challenges, such as language barriers, limitations of qualification recognition and skills validation, cultural differences and discrimination.
- **Legally residing third-country nationals with a restricted work authorisation.** This can include a limitation of working time, for example, for students or au pairs, a set number of professions or sectors to work in or can be linked to a single employer. A breach of these conditions of their work authorisation results in irregular employment and potentially invalidation of their residence and work permit, so that the person is pulled into irregular residence. This increases their dependency on their employer and, in turn, the risk of labour exploitation. Specific schemes that worsen this situation are work authorisations that are linked to a specific employer and posting arrangement which allow companies to post legally staying third-country workers with a work authorisation for a restricted amount of time to another Member State. Under fraudulent posting arrangements, migrants are hired under fraudulent schemes and employed as posted workers under contracts from countries where neither employer nor worker has any real connection.
- **Legally residing third-country nationals without a right to work** (their status may not grant them access to the labour market or they have not/cannot apply for a work authorisation) **and irregularly staying third-country nationals.** This group is most at risk of labour exploitation due to their irregular status. People staying regularly but without a work authorisation are those who entered the EU on a tourist visa (in exploitative cases, arranged by the employer and with the intention of working full-time), as asylum seekers who are not yet authorised to work.<sup>1</sup> Cases of irregular residency and employment concern those third-country nationals who are not entitled to stay in the territory of the Member State (for instance because they entered the country irregularly, continued to reside following the expiration or invalidation of their visa, residence and/or work authorisation, or had their asylum application rejected).<sup>2</sup>

### How do migrants enter undeclared work and labour exploitation?

Although the data on undeclared work amongst third-country nationals is scarce, insights from Platform members and literature reveal that most non-EU workers taking part in undeclared work come **from countries** with lower wages and restricted job opportunities, and often with a higher share of undeclared work. Their risk of engaging in labour exploitation increases if they are working illegally, and/or are low-skilled workers, and/or lack adequate language skills.

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<sup>1</sup> According to EU Reception Directive asylum seekers must be granted access to the labour market no later than nine months from the date when the application for international protection was lodged, if a first instance decision by the competent authority has not been taken. Member States can decide to grant earlier access to the labour market. However, before this period, it may be likely that asylum seekers work to gain income while they wait for their decision enabling unscrupulous employers to fill low-paid jobs.

<sup>2</sup> Article 3(3) of the Employers Sanctions Directive (Directive 2009/52/EC) states that 'A Member State may decide not to apply the prohibition [of the employment of illegally staying third-country nationals] to illegally staying third-country nationals whose removal has been postponed and who are allowed to work in accordance with national law'.

They mostly work **in sectors** with high demand for a flexible workforce in labour-intensive jobs, such as in agriculture, construction, domestic work and transport. Enforcement authorities have also noted undeclared and illegal work in services in the hospitality industry, such as hotels, restaurants and beauty salons. Another aspect are small-scale, unregistered businesses (street vendors, car washes), where workers work 'self-employed' and earn their undeclared income in cash. Many of these sectors are difficult to monitor, given the frequently changing or hidden workplace settings and subcontracting chains. Some sectors are highly gendered, with construction and international transport mostly male and the domestic sector primarily female, creating different discrimination and exploitation risks for women and men.

Furthermore, third-country nationals are **recruited** into undeclared work primarily via private contacts and informal networks, fraudulent temporary work agencies, online recruitment and pick-up spots. Especially fraudulent agencies, gangmasters<sup>3</sup> and some private networks, such as groups from the same ethnic background or wider family members who systematically isolate workers, often lead to exploitative conditions.

### **How to counteract undeclared work and labour exploitation?**

In most Member States, labour inspectorates **detect** illegal, undeclared work and exploitation of foreign nationals. Other authorities involved are tax and social security authorities, health and safety regulators, the police, customs and migration authorities, and employment services. In addition, **NGOs and social partners** play a key role in providing insight on-the-ground, informing workers of their rights, establishing trust with workers and channelling complaints.

However, **policy approaches** to address undeclared work and consequential labour exploitation of migrants remain often limited because of insufficient cooperation between responsible institutions, scarce resources in enforcement bodies and an often limited capacity to detect labour exploitation.

Enforcement authorities have, to some extent, adapted some **measures** to tackle undeclared work to the specifics of third-country nationals. Much like their general approach, there is a stronger focus on **deterrence** than prevention measures targeted at irregularities related to the employment of third-country nationals. Inspections are typically used to monitor these irregularities, often focusing on high-risk sectors and cooperating with other authorities, mostly the police to address criminal infringements. While sanctions are an important deterrent for employers, their effect depends heavily on the likelihood of detection and enforcement. This is often undermined by non-EU workers' inadequate knowledge of their rights and available support mechanisms, or their fear of fines or deportation if they complain.

The report outlines **promising practices**, as case studies, based on the existing policy approaches of enforcement authorities, social partners. These include the development of well-defined cooperation procedures between different authorities, specialised teams, training of inspectors and working with social partners.

In order to detect and investigate cases better, confidential reporting mechanisms help to encourage complaints and cooperation by third-country nationals. Moreover, monitoring recruitment channels, such as online advertisements or 'pick-up' spots supports authorities to intervene earlier. When it comes to labour exploitation, specific indicators, trained inspectors, information tools to inform about rights during inspections and cooperation with NGOs and social partners can support exploited workers.

**Preventative measures** are important to provide targeted information, as it is often unclear if third-country nationals and at times their employers are aware of regulations. Equally, communication activities, such as campaigns, can change behaviour by increasing trust in the authorities. Preventative measures take the specific situation of third-country nationals into account, for instance, via multilingual information tools or outreach (for

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<sup>3</sup> This is usually a person who employs manual workers, often undeclared and under exploitive working conditions.

example 'cultural mediators'). In addition, enforcement authorities and social partners also reach out to employers via advice services and transparent rules about hiring and the regulation of recruitment of third-country nationals in specific sectors and an emphasis on chain liability.

Finally, with the recent **COVID-19** outbreak, regularisation schemes have been widely debated, offering a chance to transfer undeclared work into declared work and provide access for irregularly staying migrants to support services whilst lifting them out of undeclared and/or exploitative work. They need to be carefully designed in terms of their frequency, universality and eligibility rules (e.g. language requirements and setting conditions for future compliance).

# 1 INTRODUCTION

Undeclared work of third-country nationals is a serious concern for fair competition, decent employment relations, and social and fundamental rights of these workers. Although the data are scarce, the recent 2019 Eurobarometer survey and other evidence suggests that third-country nationals engage in undeclared work – and are consequently exposed to exploitative working conditions. Especially irregularly staying third-country nationals are at high risk, as they have limited or no access to social protection or welfare services and often find themselves in employment relations in violation of human, social and workers' rights. In the most severe cases, they cannot exercise their fundamental rights, such as the right to free movement or privacy. From an economic perspective, undeclared and illegal work of third-country nationals threatens the fiscal sustainability of tax and social protection systems, together with fair competition, while possibility for illegal employment may also work as a pull factor for irregular immigration.

Undeclared work by non-EU nationals is also a sensitive political issue with recent discussions around migration control and unfair competition. During the financial crisis in 2008, many migrant workers lost their jobs and either returned to their home countries or engaged in undeclared work (Organisation for Economic Co-operation and Development (OECD), 2018). In addition, the migration influx in 2015-2016 generated debate around security and integration, with increased illegal entry into the EU via the Eastern Mediterranean, Central Mediterranean and Western Balkan migratory routes. Around half of all asylum applications were rejected, leading to questions about return and possible illegal employment (OECD, 2018).

In the current COVID-19 pandemic and expected economic recession, non-EU workers are again at significant risk of drifting into illegal and undeclared work, either because they might lose their jobs, and especially if their residency depends on their job. Moreover, the pandemic lockdown measures and subsequent job losses in lower income countries can lead to increased migration to Europe, whilst some receiving countries argue for stricter migration control. Moreover, increasing unemployment and falling prices in EU Member States may result in cuts to labour costs, often through exploitative conditions. The lack of access to social protection for illegally working migrants is likely to accelerate, as is limited or no access to public health services or social distancing measures. In addition, third-country nationals' jobs in professions that became essential during this health crisis, such as jobs in agriculture, cleaning or transport, are at higher risk to continue working without relevant hygiene standards and social distancing measures expected during the pandemic time.

In addition, workforce supply and demand in the above-mentioned sectors becomes vulnerable, as some workers may decide to return home or not to travel to Europe. This in turn has reinforced discussions around regularisation schemes to bring previously undeclared workers and businesses into the declared economy.

Tackling undeclared work amongst third-country nationals is essential to economic, migration and social policy objectives, especially with the most recent consequences of the COVID-19 pandemic. This raises important issues for enforcement authorities addressing undeclared work, who detect undeclared and illegal employment on the ground and aim to ensure fair and decent work.

## 1.1 Purpose of the report

The aim of the report is twofold. Firstly, it explores different ways how non-EU nationals engage in undeclared work, linking this to labour exploitation. Secondly, it identifies labour, tax and/or social security authorities and social partners' measures to tackle undeclared work and labour exploitation of third-country nationals, ranging from prevention to detection and responses. This review allows to single out promising practices to address the complex issues of undeclared work of third-country nationals.

Tackling these issues by the approaches in this report ultimately contributes to safeguarding the rights of migrant workers. Especially vulnerable groups are often unable to assert their rights, including the rights to fair pay and living and working conditions.

The report explores the relationship between undeclared work and labour exploitation, based on the following definitions:

### **Definitions of undeclared work, illegal employment and labour exploitation**

This report uses the working definition for undeclared work used by the European Commission: 'any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory system of Member States'. As this activity-based definition excludes sections of the undeclared economy that are illegal or unpaid, such activities do not form part of this report. This includes different types of undeclared work, including: under-declared employment, unregistered employment, undeclared self-employment, labour infringements through the use of umbrella companies, etc. related to labour, social security and tax laws and regulations.

Illegal employment is defined as an 'economic activity carried out in violation of provisions set by legislation regulating the employment of third-country nationals (European Migration Network (EMN), 2018). In the EU context, this covers both the illegal employment of a third-country national who is irregularly staying on the territory of an EU Member State and of a legally resident third-country national working outside the conditions of the residence permit and/or without a work authorisation. Thus, illegal employment of third-country nationals is either the result of irregular residency or the missing/restricted right to work.

Labour exploitation lacks an official EU-wide legal definition and varies in degrees of severity, with most international definitions pointing towards its more severe forms, such as forced labour and slavery. In this report it is understood based on the definition by the European Union Agency for Fundamental Rights (FRA): 'work situations that deviate significantly from standard working conditions as defined by legislation or other binding legal regulations, concerning in particular remuneration, working hours, leave entitlements, health and safety standards and decent treatment' (FRA, 2015).

In order to present the relation between undeclared work and labour exploitation of third-country nationals, the report discusses three groups who face challenges in accessing formal employment<sup>4</sup> and a higher risk of labour exploitation. While research focuses mainly on the vulnerability of irregularly staying migrants to labour exploitation, this report considers also regularly staying non-EU nationals who work undeclared and their exposure to labour exploitation:

- Legally residing third-country nationals with a fully flexible work authorisation. This group includes people who gained long-term residency or have been granted international protection. In theory, this group faces the same risk of entering undeclared, underdeclared work or bogus self-employment as EU nationals. However, while it is unclear if they enter undeclared work intentionally or are driven into it by employers, their risk of labour exploitation is heightened compared to EU workers. Employers may take advantage of their more marginalised status – in particular of low-skilled workers – or may blackmail them to work undeclared or in atypical jobs in order to maintain their work and residency status.
- Legally residing third-country nationals with a restricted work authorisation. This can include a limitation of working time, for example for au pairs or students, a set number of professions or sectors to work in or can be linked to a single employer. A breach of these conditions of their work authorisation results in illegal and undeclared work. This

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<sup>4</sup> For employment to be considered formal (rather than informal), it must consider the International Labour Organisation (ILO), EU and national standards of decent work (workers' rights in respect of minimum wage, legal deductions, hours worked, and health and safety standards).

increases their dependency on their employer and, in turn, the risk of labour exploitation. Specific schemes that enhance this situation are work authorisations that are linked to a specific employer and posting arrangement which allow companies to post legally staying third-country workers with a work authorisation for a restricted amount of time to another Member State. In fraudulent posting arrangements, migrants are hired under fraudulent schemes and employed as posted workers under contracts from countries where neither employer nor worker has any real connection.

- Legally residing third-country nationals without a right to work (their status may not grant them access to the labour market or they have not/cannot apply for a work authorisation) and irregularly staying third-country nationals. This group is most at risk of labour exploitation due to their irregular status. People staying regularly but without a work authorisation are those who entered the EU on a tourist visa (in exploitative cases, arranged by the employer and with the intention of working full-time), as asylum seekers who are not yet authorised to work,<sup>5</sup> or under family reunification rules when the partner is not allowed to work. Cases of irregular residency and employment concern those third-country nationals who are not entitled to stay in the territory of the Member State (for instance because they entered the country irregularly, overstayed their visa or had their asylum application rejected).<sup>6</sup>

## 1.2 Method

Reliable estimates of the situation of undeclared work among third-country nationals are scarce and the report is therefore based primarily on the following qualitative evidence:

- Desk research of the key qualitative and quantitative sources in the field of third-country nationals' migration, undeclared work and labour exploitation in the EU/European Economic Area (EEA). The literature review covers legal, socioeconomic and policy aspects.
- Targeted interviews of enforcement authorities and social partners in five EU Member States (Finland, France, the Netherlands, Poland, Sweden) and written contributions by enforcement authorities in four EU Member States (Belgium, Germany, Italy and Spain).
- Targeted interviews with the European Trade Union Confederation (ETUC) and the Platform for International Cooperation on Undocumented Migrants (PICUM).
- In Section 6 and 7, promising practices are presented by labour, tax and/or social security authorities and social partners to tackle undeclared work and labour exploitation among third-country nationals.

Following this introduction, Section 2 presents the scale of migration in the EU, followed by an overview of EU and national legal frameworks pertaining to employment and migration policies (Section 3). Section 4 explains how undeclared work and labour exploitation coincide along the three groups of workers from non-EU countries considered in this report. Section 5 discusses how, and in which sectors, these groups enter undeclared work and potential labour exploitation. Section 6 analyses roles and cooperation between the different actors tackling undeclared work, illegal employment and labour exploitation. Section 7 presents concrete measures taken by enforcement authorities, such as labour inspectorates, tax and social security authorities, as well as social partners and NGOs, to address undeclared work and labour exploitation of third-country nationals, pointing to

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<sup>5</sup> According to EU Reception Directive asylum seekers must be granted access to the labour market no later than nine months from the date when the application for international protection was lodged, if a first instance decision by the competent authority has not been taken. Member States can decide to grant earlier access to the labour market.

<sup>6</sup> Article 3(3) of the Employers Sanctions Directive (Directive 2009/52/EC) states that 'A Member State may decide not to apply the prohibition [of the employment of illegally staying third-country nationals] to illegally staying third-country nationals whose removal has been postponed and who are allowed to work in accordance with national law'.

further promising practice in case studies. This is followed by Section 8 focused on how Member States and authorities can support routes out of undeclared work and exploitation. Finally, Section 9 closes the report with conclusions and observations for future action.

## 2 AN OVERVIEW ON LEGAL MIGRATION AND IRREGULARLY STAYING THIRD-COUNTRY NATIONALS

This Section presents available data on legal migration flows and irregularly staying third-country nationals. This can help us to shed some light on the issue of undeclared work of migrants across the EU. These developments do not provide the full picture, as illegal and undeclared work are mainly under-reported while methods used for detection differ, which makes investigation challenging.

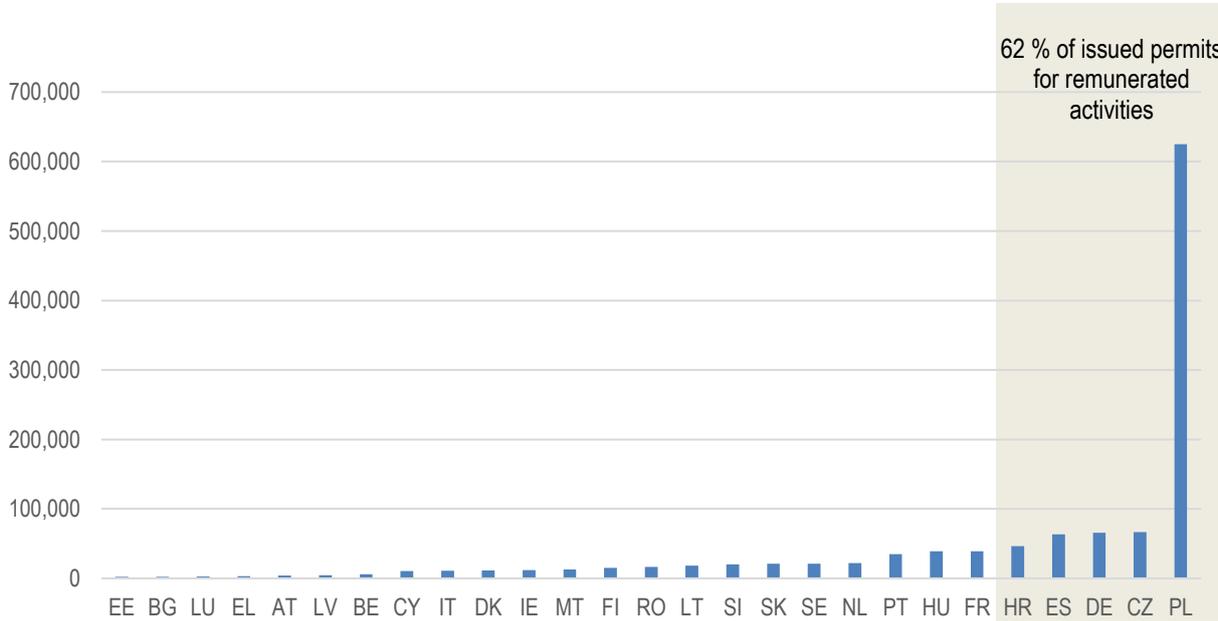
### Legal migration

At the beginning of 2019, third-country nationals accounted for 4.9 % of the total population in the European Union (EU-27); specifically, 21.8 million non-EU citizens were legally living in the EU-27, most of them in Germany (10.1 million), Italy (5.3 million), France (4.9 million) and Spain (4.8 million) (Eurostat, 2019).

First residence permits continued to increase between 2015 and 2018. In 2018, 3.2 million first residence permits were issued in the EU to non-EU citizens. The main reason for a first residence permit was for family reasons (28 %), followed by employment reasons (27 %), education (20 %) and other reasons, including international protection and asylum (24 %) (Eurostat, 2018).

In terms of permits for employment/remunerated activities, Figure 1 shows the most common destination countries were Poland, Czechia, Germany and Spain.<sup>7</sup>

**Figure 1. Residence permit for employment-related reasons, 2019**



<sup>7</sup> This is data for the EU-28 in 2019. The United Kingdom is not considered in this report, as no longer a EU Member State. However, Brexit will change internal cross-border mobility labour patterns within the EU-27 and migration arrangements between the EU and United Kingdom remain unclear at the moment of drafting this report.

*Source: Eurostat, First permits by reason, length of validity and citizenship [migr\_resfirst].  
Extracted from Eurostat on 26/10/202.*

Countries like Poland or Czechia have introduced recent visa schemes and bilateral agreements with Eastern neighbour countries to address new workforce demand since joining the EU. These allow for short-time employment without a work authorisation. Annex 3 provides an overview of the top three countries whose citizens received first residence permits for remunerated activities. This shows that Czechia, Poland, Hungary and Slovakia most people came from Ukraine and other Eastern neighbour states. Permits in other countries varied more in terms of geographic distribution: such as citizens from India, Bosnia and Herzegovina and Serbia who came to Germany and people from Morocco, Honduras and Colombia arriving in Spain. For the EU-27 as a whole, 44 % of first residence permits for remunerated activities were issued to Ukrainians, followed by 6 % Indians and 4 % Bosnians.

Another relevant aspect to look at is the latest statistics on asylum applications. In 2015, 612 700 first-time asylum seekers applied for international protection in the EU.<sup>8</sup> Approximately 38 % of those first instance asylum decisions resulted in a refugee or subsidiary protection status or an authorisation to stay for humanitarian reasons. More than half of those positive decisions (53 %) granted the refugee status in line with the 1958 Geneva Convention. In 2019, the number of new asylum seekers was lower, with 142 400 asylum applications, Germany accounted for 23.3 % of all first-time applicants in the EU-27, followed by France (119 900, or 19.6 %), Spain (115 200, or 18.8 %), Greece (74 900, or 12.2 %) and Italy (35 000, or 5.7 %).

### **Irregular migration**

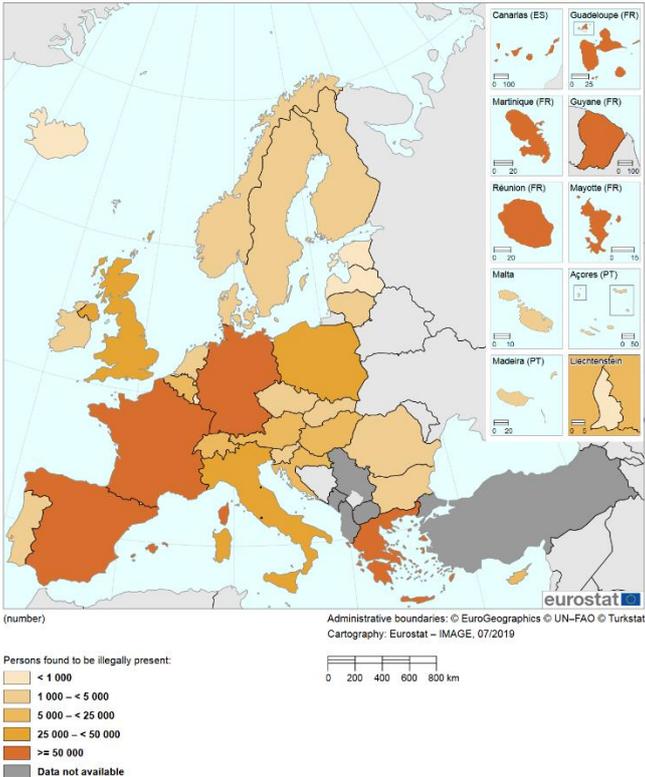
Irregular migration is difficult to measure and compare between countries, as those without residence and work permits are not included in any formal statistics. Globally, it is estimated that 10–15 % of all migrants were in an irregular situation in 2010 (IOM, 2010). In 2008, this number was estimated at between 1.9 million and 3.8 million in 27 EU Member States (PICUM, 2020). There are some national methods to assess the scale of the irregular migration, such as in Denmark, where 10 000 people were estimated to work illegally in 2013. In the Netherlands, there were an estimated 35 000 undocumented migrants between 2012 and 2013 (van der Heijden et al., 2015), while between 20 000 and 26 000 lived in Ireland in 2014 (Migrant Rights Centre Ireland (MRCI), 2014).

The available data on the enforcement of immigration legislation gives an estimates of migrants who were identified as irregular. Numbers of migrants entering the EU irregularly reached the highest level in 2015, with 2 154 700 persons found to be irregularly present, then falling to 983 900 (rounded to the nearest 100) in 2016 and to 601 500 in 2018 – 68.4 % of them were found in four Member States together (Germany: 134 100, France: 105 900, Greece: 93 400, Spain: 78 300) (Eurostat, 2018).

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<sup>8</sup> Asylum and first-time asylum applicants by citizenship, age and sex [migr\_asyappctza]. Extracted from Eurostat on 25/05/2020.

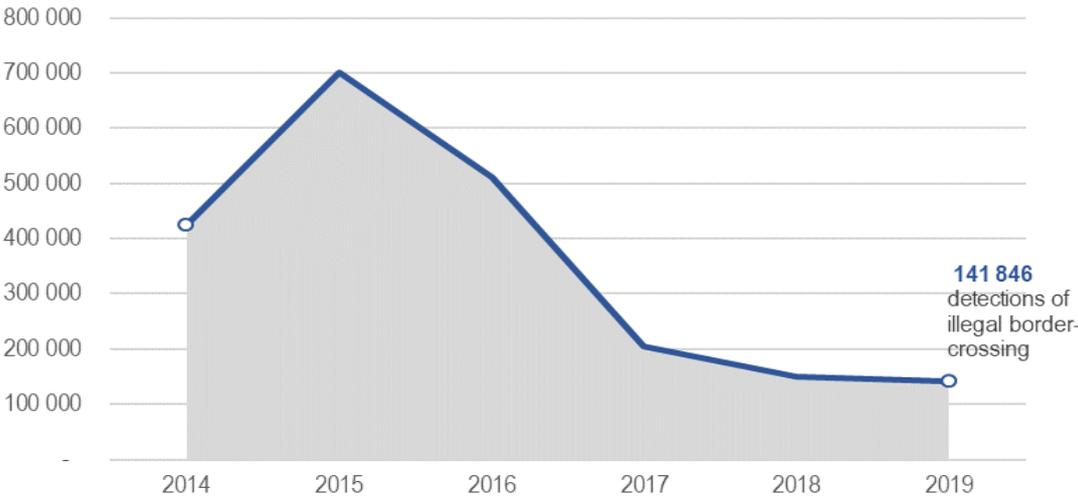
**Figure 2. Non-EU citizens found to be illegally present in the EU Member States and EFTA countries, 2018**



Source: Eurostat (migr\_eipre).

The peak in 2015 translates also into detections of illegal border crossings of the EU’s external borders by national border control authorities. In 2015, 1 800 000 were detected, before declining to 511 000 in 2016 and 205 000 in 2017, and a total of 141 846 in 2019 (Frontex, 2020).

**Figure 3. Detections of illegal border crossings at the external borders of the Member States**



Source: Frontex Risk Analysis Reports 2015 to 2020.

A caveat of this approach of measurement could be the issue of double reporting and inflation of numbers due to border crossings of multiple Members States. The three key migratory routes for irregularly entering third-country nationals into the EU, have been the

Eastern Mediterranean (crossing of the Aegean Sea from Turkey towards Greece), the Central Mediterranean (flow from Libya and Tunisia towards Italy) and the Western Balkans (primarily from Serbia and Bosnia and Herzegovina towards Croatia and Hungary) route (CSD, 2018). Illegal EU border crossings happen mostly through migrant smuggling and trafficking of human beings (CSD, 2018).

### Third-country nationals and undeclared work

The Eurobarometer survey from 2019 (Special Eurobarometer No. 498 conducted in 2019 with 26 514 respondents) shows that those with working experience outside of the EU and those with working experience in another EU Member State are more likely to engage in undeclared, under-declared employment and bogus self-employment. However, these data should be interpreted with caution.<sup>9</sup>

4 % of respondents who have previously worked in a non-EU country took part in under-declared employment in the EU (compared with 3 % of all employees surveyed) and 12 % of self-employed with previous working experience outside of the EU were bogus self-employment in the EU (compared with 10 % of all self-employed surveyed). However, the number of respondents with work experience in a non-EU country and in undeclared employment in the EU is the same as for all people surveyed: 4 % (Williams et al., 2020).

Moreover, the survey finds that those with recent work experience abroad (EU and non-EU) – in the last 12 months – are also more likely to engage in undeclared work in the last 12 months. This could be in their host country or after returning to their country of origin (Williams et al., 2020).

## 3 POLICY FRAMEWORK ADDRESSING UNDECLARED WORK AND LABOUR EXPLOITATION

This Section looks at EU employment and migration policy relevant for undeclared work amongst third-country nationals, as well as labour market and migration policies that might influence employment of third-country nationals over time.

### Key findings

- EU and national policies set out various ways for legal migration. However, legal pathways for low-skilled third-country nationals are limited in many countries. Consequently, this is the group most likely to be working in precarious or undeclared employment, especially in sectors with high workforce demand, such as agriculture or domestic work.
- With more recent asylum applications, some countries have focused on a quicker and more efficient integration of asylum seekers and refugees, notably in sectors with workforce demand.

### 3.1 EU framework relevant in addressing undeclared work amongst third-country nationals

Together with international labour law standards and core principles of universal human rights, the EU legislative *acquis* on employment and migration policy is relevant to the phenomenon of undeclared work among third-country nationals. Indeed, regulations determine the implementation at national level, and enforcement carried out by public authorities.

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<sup>9</sup> Only 9 % of all survey respondents have worked abroad and less than 2 % surveyed were migrants. For the 2013 Eurobarometer survey on undeclared work in the European Union, 1 % were from non-EU countries and the survey stresses the difficulty to include insight from irregularly staying third-country nationals.

## **A common layer of protection for all workers, irrespective of forms and types of employment**

At EU level, the Council Directive 2000/78/EC, Employment Equality Framework Directive, and the Race Equality Directive 2000/43/EC safeguard equal treatment during recruitment and at work for all, covering working conditions including pay and social security benefits, and access to union representation, irrespective of racial or ethnic background.

In the area of employment, legislation also regulates working conditions for every worker – regardless of their nationality and their migration status – such as the Working Time Directive, which sets out a limit for working hours, rest breaks and annual leave and other European Directives on safety and health at work. Traditionally, the regulation of working time focussed on health and safety; increasingly, flexible working hours were addressed in this regulation.

### **EU Regulation on flexible forms of work**

The need to better regulate flexible forms of work is increasingly important, notably to avoid undeclared work by non-standard workers with irregular working hours. While legislation applies to native, EU and third-country workers, employment of the third-country nationals is very much impacted by regulations of flexible, non-standard forms of work. Third-country nationals work more often in temporary employment and earn lower wages (Fasani, et al, 2020). Two EU Directives determine further minimum standards and rights for employees. In order to ensure greater predictability of working hours for both workers and employees, the 2019 Directive 2019/1152 on Transparent and Predictable Working Conditions sets out the obligation to inform workers and employees on guaranteed paid hours, payment for additional work, and reference to work schedules. In addition, the 2019 Work-Life Balance Directive (Directive 2019/1158) gives the right to paternity leave, carers' leave and flexible working arrangements (reduced working hours, flexible working hours and workplace settings) to all working parents of children up to at least 8 years old, and all carers.

Three Directives regulate non-standard forms of work ensuring the equal treatment of atypical workers with standard workers. The Temporary Agency Work Directive (2008/104/EC) guarantees the protection of temporary agency workers, ensuring equal treatment (on basic working and employment conditions) and by recognising temporary work agencies as employers. Furthermore, the Part-time Work Directive 97/81/EC and the Fixed-term Work Directive 99/70/EC determine minimum standards for atypical workers and equal treatment to permanent staff.

Conditions for posted workers (Posted Workers Directive (96/71/EC)) carrying out work in another Member State than where they normally work for a limited period of time aim to address workers' rights and decent working conditions across the EU, regardless of their residence status. The revised Posted Workers Directive (2018/957) and the Enforcement Directive (2014/67/EU) stem from the freedom to provide services (Article 56 TFEU) and free cross-border movement of services within the internal market. With the revised Directive (2018/957), the terms and conditions of employment for posted workers now cover among others 'remuneration' instead of 'minimum rates of pay'. The new rules will apply to temporary agency workers and workers in chain posting.

### **Various migration pathways covered in various regulations**

Migration is a shared competence between the EU and the Member States, which in practice means that the EU has regulated the conditions and rights associated with labour market access of some groups of third-country nationals in several Directives, whilst Member States may have specific national instruments and schemes in place too. Even when EU legislation applies, some instruments allow Member States to restrict access to the labour market or put in place additional conditions and restrictions, which may have the unintended effect of leading to undeclared work and labour exploitation (see Section 5.2 below).

Full equal treatment with respect to working conditions and rights is ensured for third-country nationals with legal residence status. Their residency and employment may be regulated by the Long-Term Residence Directive (2003/109/EC),<sup>10</sup> the Single Permit Directive (2011/98/EU), which applies to all third-country nationals authorised to work, and the EU Blue Card (Directive 2009/50/EC), which covers highly qualified third-country nationals. For the latter, third-country nationals are required to possess a job providing a 'salary at least 1.5 times the average gross annual salary in the EU country concerned'. In addition, the Blue Card can be restricted to a single employer.

The Seasonal Workers Directive (2014/36/EU) 'determines the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers and defines the rights of seasonal workers' (Article 1). This only covers third-country nationals with residence outside the territory of the Member States (Article 2(1)). Seasonal workers can only be employed for 'specific activities dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that Member State'. The Directive generally refers to employment in sectors such as agriculture and tourism, and Member States should, in consultation with social partners, determine sectors that are seasonal. This Directive is particularly pertinent in the context of this report, given the seasonal / sectoral dimensions outlined in relation to migration in further Sections of this report.

The Intra-Corporate Transferees Directive (2014/66/EU) regulates intra-corporate transferees permits and guarantees equal (employment) treatment with posted workers. Intra-corporate transferees are bound to one employer and can stay and work in the Member State for a maximum of three years.

The Students and Researchers Directive ((EU) 2016/801) applies to those who apply to be admitted or who have been admitted to the territory of a Member State for the purpose of research, studies, training, voluntary service, pupil exchange schemes, educational projects and au pairing or voluntary service in the European Voluntary Service (EVS). While it is not a 'labour migration' instrument as such, the Directive allows students to work or to be self-employed outside of their student hours, with working time restrictions in most countries. Member States may, exceptionally, introduce additional restrictions based on their specific labour market situation. After completing their research or studies, these third-country nationals permit holders are allowed to remain in the Member State to seek employment or set up a business for a period of at least nine months.

The Family Reunification Directive (2003/86/EC) determines that a family member is entitled 'in the same way as the sponsor' to access employment and self-employed activity. However, even when family members can access the labour market, Member States are still allowed to introduce additional conditions and restrictions.

In the area of international protection, the Qualification Directive (2013/32/EU) and the Temporary Protection Directive (2001/55/EC) allow beneficiaries of international and temporary protection to access employment, without imposing any specific conditions. Under the Reception Conditions Directive (Council Directive 2013/33/EU), Member States must ensure that asylum seekers who have applied for international protection have access to the labour market no later than nine months from the date of their application. They are, nevertheless, allowed to introduce conditions, including giving priority to nationals, EU and EEA citizens.

Finally, the Employers Sanctions Directive (2009/52/EC) provides sanctions against employers for the employment of irregularly staying third-country nationals. The Directive provides measures that counter undeclared work and exploitation and criminalises the employers who employ 'a significant number of irregularly staying third-country nationals', under 'particularly exploitative working conditions' or for the 'work or services exacted from

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<sup>10</sup> With restrictions on employment in the defence sector of the Member State.

an irregularly staying third- country national with the knowledge that he or she is a victim of trafficking in human beings or a minor’.

The Directive sets out measures to protect illegally employed third-country nationals. For example, the Directive requires Member States to set up mechanisms through which third-country nationals can claim outstanding remuneration payments and lodge complaints against their employers, either directly or through designated third parties such as trade unions or NGOs. Article 6 of the Directive also includes an obligation for employers to pay back payments. A 2014 European Commission report on the application of the Directive found that some of the protective measures were not implemented by some Member States and stressed the need to improve reporting systems. However, only a few Member States (Austria, Germany, Greece, Hungary, Italy, Luxembourg, Slovakia, Slovenia, Spain, Sweden) allow third-country nationals in an irregular situation who are victims of severe labour exploitation to stay until they receive back payments (European Commission, 2014). This is a possibility under Article 13(4) of the Directive, but not an obligation on Member States.

### 3.2 Policies affecting the situation of third-country workers

Formal employment and decent work for third-country nationals are primarily determined by social, migration and labour market national policies, and related national legislation. Undeclared work by third-country nationals is determined by several factors: the regulation of labour markets, access (or lack of access) to legal pathways to work in specific sectors (especially those with a high labour demand such as agriculture, construction or domestic work), regulations applicable to and market dynamics of particular sectors, the likeliness of enforcement of labour and migration legislation, as well as existing social norms to compliance in a country.

While EU legislation featured above, as well as national law provide equal treatment of regularly staying workers with national workers, there are also specific rules at national level stressing the rights of irregularly staying workers. For example, the French Labour Code provides for the equal treatment of non-EU workers working illegally or undeclared with regular workers (both from the EU and third countries) with regard to issues like working conditions, health and safety at work and remuneration (PICUM, 2020).

Europe’s labour markets are rapidly changing with increasing forms of non-standard work and self-employment. More and more people work outside the ‘typical’ employment relationship (a full-time employee for one employer). New forms of work vary from self-employment, stable own account workers, small traders and farmers to workers in precarious working arrangements that often do not guarantee steady work or salaries, such as zero-hours contracts, voucher-based work or platform work. Next to job and income insecurity, these arrangements often have limited or no access to social protection (Spasova et al., 2017).

EU and national employment policies try to balance the protection of workers with flexibility for employers. Over- or under-regulation of labour markets can impact on the gap between workers with regular status and permanent contracts and those in more precarious situations. Labour markets where employers require a flexible workforce but have limited options to obtain this flexibility may see them tempted to illegally hire the most flexible, unprotected group, especially in sectors characterised by labour shortages, such as agriculture, manufacturing or construction. Moreover, temporary agency work, subcontracting and outsourcing and platform work contribute to an uneven worker protection and bargaining power, avoidance of employer responsibility, circumvention of applicable labour and social legislation and collective agreements, and inadequate information of rights and obligations, which is vital for third-country nationals. In addition, they can provide a fertile ground for undeclared work or bogus self-employment, as it is hard for public authorities to determine the employment relationship, and specifically in

the case of the emerging 'gig' economy<sup>11</sup> to differentiate between commercial and personal activities (*Federatie Nederlandse Vakbeweging (FNV)*, 2019).

Since the 2008 global financial and economic crisis, European immigration policies have increasingly been characterised by a contrast between high-skilled and low-skilled migration policies. The immigration of lower skilled migrants from poorer countries is typically perceived as needing to be monitored. The European Commission recognised the absence of various legal pathways for labour migration, its impact on irregular migration and employment, and related undeclared work and labour exploitation. The 'Political roadmap for a sustainable migration policy' (European Commission, 2017a) promotes legal migration, particularly in the context of tackling migrant smuggling and irregular migration. The roadmap emphasised schemes targeting highly qualified workers, yet legal pathways for the migration of low-skilled workers remain limited. While most European countries have implemented policies to attract skilled and high-skilled migrants (academics, medical personnel, engineers), there are fewer legal migration schemes for low-skilled sectors with high workforce demand, despite it being a factor potentially contributing to irregular migration (Newland et al., 2018; OECD, 2018).

Low to medium-skilled workers are in demand in sectors such as agriculture, construction, domestic work, care and cleaning, which have been characterised as having high levels of undeclared work in the EU/EEA (European Platform tackling undeclared work, 2017c; Williams et al., 2018; Williams, 2020). In light of the COVID-19 pandemic, the 2020 '[Guidelines to ensure the protection of seasonal workers in the EU](#)' calls on Member States, national authorities, labour inspectorates, and social partners to guarantee the rights of seasonal EU and non-EU workers, the health and safety of seasonal workers, especially with regard to appropriate housing, hygiene and social distancing measures. In addition, Commission plans additional actions, such as research, surveys and awareness raising efforts to further protect seasonal workers' rights.

Undeclared work in these sectors depends on the possibility for third-country nationals to enter employment on a regular basis, as well as possible conditions tied to the residency and work permit, as well as the regulation of the sector. For example, the situation of foreign domestic workers is influenced by the labour immigration policies to address workforce demand in this sector, the definition and recognition of employment relations in the domestic sphere and the wider organisation of care services and measures to promote female employment (Triandafyllidou, 2013). Some countries have domestic work visas/permits, like in Italy. In others, the residency of domestic workers is more blurred – for example, a domestic worker may enter on an au pair visa/permit. This gap in appropriate legal pathways for the employment of low-skilled third-country nationals contributes to recurring irregular migration and undeclared work among third-country nationals.

Ambiguities exist also in the design of schemes for legal migration. The lack of transparent and clear application of procedures can create or exacerbate gaps. In agriculture, for example, where workforce is often required on a flexible and *ad hoc* basis, the process of issuing authorisations under the Seasonal Workers Directive might be too burdensome or time-consuming.

However, there have been some national efforts to enhance the formal labour market integration of third-country nationals, following the peak of asylum applications in 2015. Sweden's 'work permit exemption' allows asylum seekers to start working immediately after their arrival, while they await a decision on their asylum application.<sup>12</sup> After four months' employment, they can apply for a work permit if their asylum application has been rejected, provided that they can present an offer of extended employment and the monthly salary is at least SEK 13 000 (c. EUR 1 365) before tax. The social partners, employment

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<sup>11</sup> The 'gig economy' is characterised by temporary, short-term positions, workers are considered contractors and freelancers instead of full-time employees.

<sup>12</sup> If they can identify themselves, are over 16 years old, their asylum application is to be processed in Sweden (and not according to the Dublin Regulation) and is well-founded.

services and other authorities have established so-called 'fast-track' processes for professions with high workforce demand. These often combine measures such as on-the-job training, language classes and skills validation. Germany has provided earlier access to integration measures for asylum seekers from countries with good prospects of staying and the 3+2 rule<sup>13</sup> that allows asylum seekers to complete their apprenticeship even if their application is rejected (Konle-Seidl, 2018).

## 4 LABOUR EXPLOITATION AND DIFFERENT FORMS OF IRREGULARITY

Third-country nationals work undeclared under different circumstances. This Section describes various irregular practices of workers from non-EU countries, deriving from illegal or legal country entry, irregular or regular residency, work authorisation (or lack thereof) and form of employment (formal, undeclared or underdeclared). This allows for a differentiation between illegal employment and undeclared work and the potential risk of labour exploitation in order to design adequate policy responses.

### Key findings

- Undeclared work can be one form of labour exploitation and increases the risk of labour exploitation, as the worker is 'hidden' from enforcement authorities.
- In particular, irregularly staying third-country nationals and those without a work authorisation often have no other chance than to work undeclared and to accept other exploitive working conditions. The risk of undeclared work and labour exploitation is also higher amongst non-EU nationals who stay and work regularly in comparison to EU nationals in other Member States, specifically for those whose work authorisations are linked to a single employer, as well as those involved in fraudulent posting schemes.
- Legally staying migrants with a marginalised status on the labour market (limited language skills, low-skilled) also face a higher risk of undeclared work and subsequent labour exploitation.

### 4.1 Framing the understanding of labour exploitation in this report

According to FRA's definition, labour exploitation occurs when workers are treated below minimum standards, deviating significantly from decent work. In this report, exploitation is also understood as a continuum ranging from mild inconsistencies with the principles of decent work to severe exploitation, characterised by distinctive forms and degrees of immobility, devaluation, and coercion (Skrivankova, 2010). Please, see below below.

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<sup>13</sup> "3+2" as apprenticeships usually take three years and two years is how long the person will have the right to remain and work in Germany.

**Figure 4. Labour exploitation as a continuum**



Source: ICF.

As with undeclared work, labour exploitation is defined differently in national labour and criminal laws. It is clear that the continuum requires a closer integration of labour law and criminal justice and cooperation between responsible authorities (see Section 6) and to increase monitoring of workplaces, proactive investigations and encourage victims to report in order to reduce impunity of exploitive work practices (see Section 7).

Severe labour exploitation refers to forms of exploitation that are criminal under the legislation of the EU Member State in which they occur, so the police and the judicial system are responsible. In extreme cases of exploitation, workers have been completely deprived of their freedom of movement, leading to slavery, servitude, forced or compulsory labour and trafficking (Article 5 of the Charter of Fundamental Rights of the European Union ('the Charter')).

FRA has carried out substantial research on forms of severe labour exploitation of EU nationals working in another Member State and third-country nationals. While the Agency's work focuses on forms of severe labour exploitation that fall under criminal law, this report focuses on labour exploitation within the framework of an employment relationship in the area of labour law interventions, so in the realm of labour and social inspectorates or social insurance agencies, also responsible for addressing undeclared work.

#### **Forms of labour exploitation considered in this report**

Compared with undeclared work, labour exploitation undermines a wider set of obligations by employers and to fair and decent work, in relation to:

- Undeclared work, which can be one form of labour exploitation. For example, if the employer refuses to register a worker or simply tells him or her he has done so. In turn, undeclared work increases the risk of exploitation, because the worker is 'hidden' from authorities and the employer can threaten a non-EU national to report him or her.
- Payment, such as infrequent, low or below minimum wage payment, the deduction of (random) fees from income, or no social security benefits.
- Working time; according to the European Trade Union Confederation (ETUC), there are reports of excessive working hours (often without remuneration), the denial of breaks or leave.
- Health and safety regulations, such as hazardous working conditions, no access to protective equipment, or inadequate or inappropriate housing.

- No access to other basic rights, such as no written contracts, lacking information by the employer or no collective labour rights and/or the access to trade unions.
- Pressuring the worker to work as self-employed or in atypical work relations, which are less 'protected' and shift social security contributions to the worker.

Whilst some employers and workers intentionally decide not to declare work or to work without a work authorisation, labour exploitation results from dependency on the employer who exercise their power over the worker to cut costs. Employers develop strategies to control workers (such as threats, isolation, or debt-bondage further described below) to undermine decent work in order to save costs. Here, employers target groups at risk of exclusion from the labour market and wider society: low-skilled workers, unemployed and/or migrants.

### **Strategies of employers to exercise control**

Research by FRA (FRA, 2019; FRA, 2018; FRA, 2015) as well as insights from interviews done for the purpose of this report point towards the following strategies to increase employers' control over the worker:

- Employers' strategies create a fearful and intimidating environment. They can be threats (e.g. dismissal or to report the worker), psychological and verbal violence, and degrading treatment used to intimidate workers and prevent them from reporting the exploitation to the authorities.
- The spatial and social isolation of many exploited workers, especially in domestic and agricultural settings, is often enhanced by employers' actions to prevent any communication with the outside world and thus the possibility of seeking help. Confiscation of personal documents is another strategy that exploitative employers use to prevent workers from seeking help or having the option to return home.
- Another control element is accommodation, including improper housing, living at the workplace or at the employer's home, so that the employer determines not only work but also access to food and transport. The ETUC states that, in the transport sector, workers have been forced to sleep in their trucks for months, without any access to weekly rest periods.
- Specific strategies are adopted to minimise the risk of detection during labour inspections, including requesting workers to hide or absent themselves during inspections, lie about real work conditions or pretend not to understand the language that labour inspectors speak.
- The problems become even more critical when income is not sufficient to pay obligatory housing fees for accommodation arranged by the employer. As a result, some workers even become indebted to their employer, so called 'debt-bondage'.

The following subsections set out different irregularities of third-country nationals related to their residence and work status, describing factors that can lead to undeclared work and labour exploitation. Out of the three groups of third-country nationals, presented at the beginning of the report, greater attention is paid to profiles 2 and 3 (see below), as they are at a higher risk of being engaged in undeclared work and labour exploitation.

#### **4.2 Different ways of engaging in undeclared work amongst non-EU national and their relation to labour exploitation**

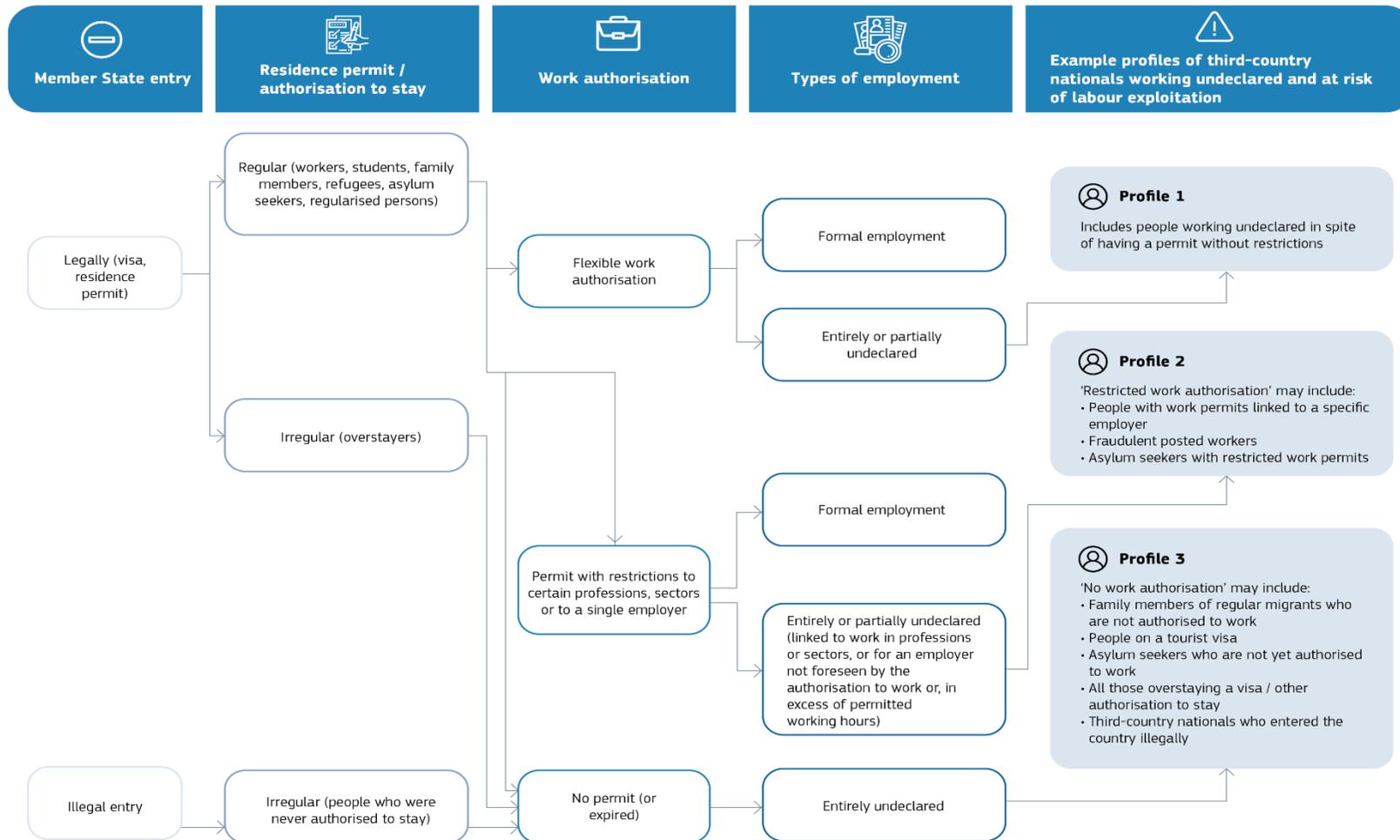
While there is evidence that non-EU nationals often engage in undeclared work in their host nations (Kindler et al., 2013, Shahid et al., 2019; Williams, forthcoming), their intention to work undeclared and their risk of being exposed to labour exploitation is determined by their residency (regularly/irregularly staying) and work status (work authorisation with significant limitations, expired, non-valid or non-existent right to work). For those groups, different types of irregularities and risks apply with regard to undeclared

work and labour exploitation, so this report differentiates between three groups of third-country nationals:

- Legally residing third-country nationals with a fully flexible work authorisation;
- Legally residing third-country nationals with a restricted work authorisation; and
- Legally residing third-country nationals without a right to work (their status may not grant them access to the labour market, they may need to apply for a work authorisation separately, or their work authorisation has expired) and irregularly staying third-country nationals.

below presents the different irregularities in terms of entry, residence, work and form of employment, showing how these groups could enter illegal employment and undeclared work. It provides sample 'profiles' of third-country nationals in each case, which are then discussed in this report.

**Figure 5. Irregularities in EU entry, residence, work authorisation and form of employment**



Source: Adapted from OECD, 2018, Migration Outlook.

Migrants in the first profile enter the EU legally, have a valid residence permit/visa and authorisation to work that grants them full access to the labour market. They however face a slightly higher risk of working undeclared and under exploitative conditions than nationals and other EU citizens, as they lag behind socio-economically (e.g. lower employment levels).

Third-country nationals whose work authorisation has restrictions may be somewhat more likely to work undeclared. For example, it is because they need more money than they can earn with the limited hours allowed, or because they find better opportunities in sectors/with employers not permitted by their status. They are also more vulnerable, as breach of the conditions of their status may lead to withdrawal or non-renewal of their authorisation to stay and work, and – ultimately – deportation. They may thus be reluctant to complain about working conditions, even when their employment is entirely regular.

The third group, i.e. all those who are in an entirely irregular situation or without a right to work, so those working illegally, have no choice but to work undeclared (with the exception of overstayers whose employer may not (yet) be aware that their authorisation to stay and work has expired<sup>14</sup>). They, too, actively seek to avoid any contact with authorities, significantly increasing their risk of labour exploitation. That risk is higher than for the other two groups, with irregularly staying workers more reluctant to report labour rights violations and/or exploitation to law enforcement authorities, often combined with the belief that authorities cannot help (FRA, 2019). As a result, irregularly staying third-country nationals or those without a work authorisation are likely to make up a good share of those engaged in undeclared work.

#### 4.3 Profile 1: Regularly staying third-country nationals with fully flexible work authorisations

Some third-country nationals who entered the EU legally possess regular residence and work permits that allow them to access any formal employment. As in the wider population, undeclared work can take different forms amongst this group. One or several additional jobs can be undeclared, or a person can work partially undeclared if they work overtime without declaring this additional income, if they received envelope wages, are bogus self-employed, or receive salaries below the levels of collective agreements or statutory minimum wages.

However, even if there are no restrictions on their work authorisation, many third-country nationals still face significant challenges in the labour market that can drive them into undeclared work.

Socio-economic barriers are particularly reflected in the employment rate gap between EU nationals and third-country nationals. In 2019, the EU-27 employment rate for people aged 20 to 64 years was 64.4 % for third-country nationals, compared to 75.3 % for EU nationals residing in another Member State and 73.9 % for the native-born population (Eurostat, 2019). In addition, migrant workers often earn less than their native-born peers, which can only partly be explained by differences in work experience, education or occupation (ILO, 2015).

The main barriers for third-country nationals are lack of language skills, limitations of qualification recognition and skills validation, cultural differences, and discrimination (EMN, 2019). Refugees often face additional barriers, including health issues or mental health problems caused by traumatic experiences. Member States are obliged to provide employment-related education, vocational training and other steps necessary to refugees' integration into the labour market. However, integration approaches differ between Member States, with those with high numbers of asylum applicants more likely to have invested in such measures. Especially income declaration requires good language skills,

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<sup>14</sup> There is little information on illegal employment in declared work. The literature mentions that there are cases where irregular immigrants are illegally employed but pay taxes and social security contributions in countries where legal employment status and nature of employment are not systematically cross-checked (OECD, 2018; Kahler, 2009).

knowledge of responsible authorities and often digital literacy and navigating quite complex rules and support is often inaccessible, especially for low-skilled workers.

This marginalised status of third-country nationals can lead to undeclared work because especially low-skilled or migrants who do not know the local language, might not be aware about certain rules. In addition, undeclared work can be one form of labour exploitation. According to the ETUC, employers sometimes fail to declare an otherwise legally working and residing third-country national, either due to lack of knowledge of existing regulations or because the employer has simply lied to them and told them that they were declared. In other cases, workers can be pressured into undeclared work by their employer.

Next to labour market exclusion there can be other motivations to engage in undeclared work, such as economic benefit, socially embedded obligations and beliefs that are not in line with the existing regulations (Shahid et al., 2017; Williams, forthcoming). One Platform member noted that some migrants have little trust in public institutions, which is consistent with research findings that non-EU nationals have lower confidence in public institutions than mobile EU-nationals or the native population (Williams et al., 2020).

However, even if a regularly staying non-EU national and his or her employer decide to engage in undeclared work, the worker is still at greater risk of labour exploitation. An employer can put more pressure on the worker to work more under exploitative conditions by threatening to report violations (e.g. evasion of social security and tax payments), which may lead to a loss of the right of residency for the third-country national.

#### 4.4 Profile 2: Third-country nationals with a restricted work authorisation

Some third country nationals with a regular residency status are allowed to work, but face certain restrictions. Those limitations may encourage certain employers to pressure them into undeclared work and other exploitive conditions. Once they breach conditions of their work permit, dependence on the employer increases, as this threatens their right to stay in the country.

Regularly staying migrants with certain restrictions in their authorisation to work are at higher risk of engaging in undeclared work and potential subsequent exploitation in the following cases:

- Work authorisation is linked to a specific post or employer;
- Misuse of posting regulations (here, the restriction is time-bond, as companies can post regularly staying third-country nationals with a work and residence permit in one EU Member State where they normally work, to another Member State only for a limited amount of time); and
- Third-country nationals with restricted access to the labour market, including asylum seekers, students, spouses who are being united with their family, etc.

Some Member States have tied their national work authorisations to a specific job and employer,<sup>15</sup> something which also applies to EU Blue Card holders. Here, employers can develop strategies to exploit the situation of third-country nationals whose residency permit is tied to the employer. Workers risk losing their income and their right to stay if they wish to change employer. Many workers may need to repay debts for travelling to the country and/or their families may rely on their income, thus they often tolerate undeclared work and other precarious conditions in order to stay in employment and keep their regular status. The Seasonal Workers Directive explicitly regulates the change of employer in order 'to reduce the risk of abuse that seasonal workers may face if tied to a single employer'.

In addition, if a migrant loses their job, the limited time they have to find other employment may force workers into situations where they might accept undeclared work or labour exploitation. In Slovakia, for example, non-EU workers who lose their job must find other

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<sup>15</sup> Such as in Estonian, Latvia, Lithuania, Poland and Sweden (EMN, 2013).

employment within 60 days or their temporary residence permit becomes invalid and they are obliged to leave (Chudžíková et al., 2018). FRA recommends that residence permits of third-country workers should not be automatically terminated if they lose their job (FRA, 2015).

Another increased risk of undeclared work and other forms of labour exploitation of regularly staying migrants with a work authorisation is the use of fraudulent posting schemes. In this specific case, work is not only restricted to a certain time frame in the country the worker is posted to, but also requires the worker to be habitually employed in the sending Member State, so that the posting qualifies as genuine.

### **Example: Fraudulent posting of third-country nationals**

According to several Platform members interviewed in this report, more liberal practices with issuing work authorisations combined with fraudulent posting of third-country nationals is a growing challenge for enforcement authorities. Generally, the admission of a third-country national to the labour market is nationally determined; however, the Directives regulating the posting of workers in the framework of the provision of services<sup>16</sup> allow companies to post legally staying and habitually working third-country nationals with a work and residence permit between different countries for a temporary provision of service under the same conditions as EU nationals. No work authorisation is allowed to be requested in the country where the posting takes place, although some countries require the employer of the posted worker to make a declaration before starting work and some Member States also ask copies of work and residence permits.

In the area of social security coordination, legally staying and working third-country nationals can be posted under the same conditions as EU nationals. A1 forms indicate the social security system that applies to a worker who works in more than one EU Member State. However, information on nationality is not a formal requirement to issue an A1 form, thus there are no data on the numbers of third-country nationals actually posted to a second Member State.

There are several reported cases where third-country nationals have been posted from one Member State – one with lower wages and social security contributions, which serves as a 'transit' country – to a Member State with higher wages and social security contributions. According to the interview with ETUC, this is linked to an increase in issued permits in countries that relaxed their labour market restrictions to allow third-country nationals to work in several professions, in some cases through bi-lateral arrangements between countries. These workers are then posted from one EU Member State to another Member State, sometimes without any prior employment in the sending Member State.

For example, the Polish '*Declarations of intention to entrust work to a foreigner*' is a temporary permit for citizens from the Eastern partnership (Ukraine, Armenia, Belarus, Georgia, Moldova, Russia) and grants, on the basis of a written confirmation by an employer, a Polish visa or a Schengen visa for a maximum of six months during a 12-month period. There are also reports about longer posting arrangements from Poland to the Netherlands. In 2020, the *Het Financieele Dagblad* (*Het Financieele Dagblad*, 2020) reports that Dutch employment agencies hire workers from Poland in the Netherlands via so called A1-payrolling for a maximum of two years. Ukrainians, Uzbeks or other third-country nationals with Polish visas are also working under these arrangements, which fall under Polish social security.

Slovenia provides further insight into the use of posting as a transit mechanism for third-country nationals. A country with only two million inhabitants, Slovenia is ranked third-highest sending Member State, with 163 000 A1 forms issued in 2017, 6 out of 10 of which were within the construction sector (Eurofound, 2020). According to ETUC, a

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<sup>16</sup> Posting of workers directive 96/71 as amended by Directive 2018/957 and its Enforcement Directive 2014/67.

considerable part of posted workers from Slovenia to other Member States have been third-country nationals from the Balkans.

In receiving Member States such as Belgium, the number of posted third-country nationals now outnumbers posted EU citizens. According to the Belgian LIMOSA<sup>17</sup> database, 90 % of these third-country nationals are in fact posted through another EU Member State (Dutch Trade Union Confederation (FNV), 2019). In the Belgian construction sector, posted workers (EU-nationals and non-EU nationals from Eastern European countries) are generally subcontracted by smaller companies and employed in large construction companies (European Platform tackling undeclared work, 2019).

Posting is often facilitated by official agencies or informal intermediaries who arrange visas and the posting arrangement. For example, Ukrainian intermediaries advertise jobs in Czechia with a Polish visa and posting arrangement. This is also due to lower employer social security contributions in Poland or to omit social security payment in Poland via fake or no A1 forms (Trčka et al., 2018).

Fraudulent posting practices include no habitual employment in the sending country, not registering the posted worker in the receiving country, overstaying the restricted time of posting, or violations of working conditions and minimum pay. Fraudulent temporary work agencies, letterbox companies and company branches and subsidiaries are used in countries where obtaining a permit may be easier and cheaper wage regulations apply. Migrants are then hired under these schemes and employed as posted workers under contracts from countries with which neither the employer nor worker has any real connection. Labour inspectors in sending countries confirm that it often becomes clear during inspections that workers have never worked in the sending Member State and were in reality directly recruited to work in the host country.

One example concerns third-country nationals from the Philippines, who were recruited to work for a Dutch transport company in Belgium but asked to sign a contract with a Slovak company so that they could work for Slovak-level wages (FRA, 2019). Another case of fraudulent posting relates to Polish companies that sent Ukrainian workers holding a Polish visa to work unregistered and for an unlimited time to the Czech construction and hotel sectors, where workers face very high workloads under exploitative working conditions (Trčka et al., 2018). These arrangements increase employers' influence over workers, as they arrange not only their employment but often their travel and accommodation.

Fraudulent posting seems to frequently involve migrant workers in seasonal work in agriculture, construction, transport and tourism (Eurofound, 2016). Sectors where subcontracting schemes using fraudulent posting are especially difficult for enforcement authorities to detect and can involve letterbox companies which 'disappear' during investigations (European Platform tackling undeclared work, 2017b). In Czechia, for example, the labour inspectorate often struggles to identify the enterprise liable for contracting workers for a company in the country (Trčka et al., 2018).

Restrictions of work authorisations of asylum seekers increase the likelihood that they will engage in undeclared work and under exploitative conditions (Karantinos, 2016). As mentioned above, according to the Reception Conditions Directive, Member States shall ensure that asylum seekers who have applied for international protection have access to the labour market no later than nine months from the date of their application. Before this, it may be likely that asylum seekers work more than allowed to gain income while they wait for their decision enabling unscrupulous employers to fill low-paid jobs.

With regard to family reunification, while around half of the Member States provide unrestricted access to the labour market, others apply a labour market test before family

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<sup>17</sup> Posted workers need to file a Limosa declaration in Belgium. Non-compliance with this obligation may give rise to criminal or administrative sanctions.

members are authorised to work or require them to apply for a specific work authorisation (EMN, 2016), which may make undeclared work an option to gain additional income.

#### 4.5 Profile 3 Irregularly residing third-country nationals and third-country nationals without a right to work

Many people across Europe live in an irregular situation because of their irregular residency and/or non-existent right to work. It is likely that most of them enter the labour market irregularly and undeclared. Whilst there are also migrants in this group who work undeclared without any exposure to labour exploitation, their residence and employment status forces them to remain hidden (Willen, 2007), making them in many cases particularly vulnerable to undeclared work and exploitative working conditions (Wills et al., 2010.).

##### **Legally staying third-country nationals without a right to work**

Third-country nationals regularly staying on the territory of a Member State but without the right to access the labour market may have entered the EU on a tourist visa, as asylum seekers (the first nine months and several Member States provide earlier access), or under the Family Reunification Directive (if the sponsor is not authorised to work either, or if the Member State opts to introduce limitations on access to the labour market).

Temporary visas/permits that are not designed for work, such as tourist visas, are time limited and their holders are not allowed to work (or may work only a limited amount of hours, see profile 2 above). However, there are cases where third-country workers arrive on a tourist visa arranged by their employer (Chudžíková et al., 2018; FRA, 2019) but, in reality, they work in full-time jobs that breach the conditions of their visa. Third-country nationals who possess tourist visas and engage in work can be considered to enter the labour market irregularly, are likely to work undeclared and to face exploitative conditions.

Another issue are people who arrived for the purposes of family reunification, one of the main legal migration routes into the EU. The literature raises the question of spouse-dependent residence permits that are linked to the residence and work permit of a partner but do not include a work permit. This often makes women dependent on their partner and/or leads to them enter illegal employment (van Walsum, 2011; Triandafyllidou, 2013).

Finally, asylum seekers (in the first nine month of their stay or those without nationally regulated access to the labour market) and rejected asylum applicants are not allowed to work. While most asylum seekers wish to take up work as soon as possible, some may opt to work informally, while others do not engage in work at all, in order not to jeopardise their status (Bertelsmann Stiftung, 2016). Therefore, asylum seekers who are not allowed to work or people with 'tolerated' status often have no other choice than to generate income via undeclared work, resulting in a higher risk of labour exploitation (Triandafyllidou, 2020).

##### **Irregularly staying third-country nationals**

Across the EU, the main possible source of income for people in an irregular situation is undeclared or illegal employment, which places them at a very high risk of exploitation.

Whilst there are no definite numbers on irregularly staying migrants, many people<sup>18</sup> became irregular in different ways. Some entered the EU irregularly, through entry outside of the regulations of sending, transit and receiving countries (IOM, 2011). The most severe forms of such illegal entry and related labour exploitation typically occur where third-country nationals are smuggled or trafficked across borders.

Trajectories of labour market entry and legal status are important in understanding shifts in and out of undeclared work and illegal employment (OECD, 2018). People may have entered the country legally on a temporary status, such as a tourist visa, and start working

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<sup>18</sup> See Section 2: Globally, an estimated 10-15 % of all migrants are in an irregular situation (IOM, 2010). In 2008, the number was estimated at between 1.9 million and 3.8 million in EU-27 (PICUM, 2020).

without an authorisation to work and may also stay and work in the country beyond its validity. An example are Vietnamese women who entered Poland on a tourist visa, resulting in irregular status and undeclared work (Kindler et al., 2013). Others are allowed to work without a work authorisation, but end up working in conditions that do not fully correspond to the applicable regulations. For instance, Ukrainians entered Poland via a simplified procedure known as the 'Declaration of intent to employ foreigners' (*Oświadczenia o zamiarze powierzenia wykonywania pracy cudzoziemcowi*), allowing Polish companies to employ citizens of the EU Eastern Partnership countries (Ukraine, Armenia, Belarus, Georgia, Moldova and Russia) for up to six months in a 12-month period without a work permit. Most of these workers use intermediaries to arrange country entry and employment, who often apply various strategies to prevent regular employment or to arrange fraudulent posting, as described above (Keryk, 2018). Others have a residence or work authorisation that expires or becomes invalidated (because they lose their job or leave it because their employer is not respecting their labour rights). Thus, they have regular residence status at the time of their recruitment, which then leads to an irregular status and possible dependence on a specific employer.

For most people in an irregular situation, work constitutes their only form of income. This dependency makes irregularly staying third-country nationals particularly vulnerable to working below minimum standards, often with little or no remuneration and being undeclared. Hence, undeclared work is often one form of exploitative conditions they face, next to poor living conditions or long working hours, to more severe forms of exploitation, such as trafficking for forced labour. Moreover, third-country nationals with an irregular residence status face fundamental barriers to access justice and to improve their situation (Platform for International Cooperation on Undocumented Migrants (PICUM), 2020).

Even in countries where regularisation schemes exist,<sup>19</sup> employers may be reluctant to offer a work contract allowing third-country national workers to apply for residence (PICUM, 2020). It is often the case that those who stay in a country irregularly have to leave the country if they wish to apply for a regular permit, which is often impossible.

An example of a situation of third-country nationals and their difficulties when experiencing labour exploitation is described below.

#### **Example: Construction workers in Germany<sup>20</sup>**

In June 2019, the German Financial Control of Undeclared Work<sup>21</sup> Unit (*Finanzkontrolle Schwarzarbeit – FKS*), together with the NGO, Berlin Counselling Centre for Migration and Decent Work (BEMA), part of the nationwide counselling services '*Arbeit und Leben*', investigated suspected trafficking in human beings and labour exploitation of around 120 workers from Serbia, Kosovo and Albania in a major construction company.

The workers had entered the country on short-term student visas and were likely to lose their work and their work-related accommodation as a result of the investigation. Their employer was accused of forging documents to obtain the student visas, paying below minimum wage, and imposing working hours that exceeded student visa regulations.

Initially, the state attorney viewed all of the workers as victims of human trafficking and granted a reflection period (under Directive 2011/36/EU) entitling them to a short-term residence permit, accommodation and social benefits while they decided whether or not to testify against their employer.

However, workers were denied this reflection period, as the migration authorities did not accept the state attorney's decision to issue a residence permit. Instead, all of the

<sup>19</sup> The possibility of irregularly staying worker to obtain the residency in the country and regularise their situation, see Section 8.3.

<sup>20</sup> Based on interview with ETUC.

<sup>21</sup> See also Section 6.4. The 2019 'Act to combat Illegal Employment' stipulates also cooperation with specialised NGOs.

workers detained during the inspection were accused of working illegally and entering the country irregularly. Their passports were confiscated, and they were given individual appointments at the foreigners' registration office to retrieve their documents – in some cases, six weeks later. As the workers were not granted victim status, the migration authorities had no legal basis for accommodating them, although they maintained arrangements for several days to avoid approximately 130 becoming homeless overnight. Most of the workers wanted to leave Germany but had to wait to reclaim their documents. They each received a two-year ban on entering the Schengen area, based on the assumption that they had allegedly worked more hours than permitted by their short-term visas.

## 5 DIFFERENT PATHWAYS INTO UNDECLARED WORK AND LABOUR EXPLOITATION

This Section outlines risk groups of third-country national workers involved in undeclared work, the methods used to recruit them, the link between labour exploitation and recruitment method, and the sectors in which undeclared work is most prevalent.

### Key findings

- Undeclared migrant workers in high-risk economic sectors seem to be primarily from countries with lower standards of living than in the EU (often also with higher levels of undeclared work) according to inspectors and social partners.
- The risk of engaging in undeclared work and experiencing labour exploitation is highest among those who cannot enter legal employment and/or low-skilled workers and those who do not know the host language.
- Recruitment into undeclared work differs between economic sectors. Recruitment intermediaries facilitate employment in agriculture, housework or transport, while pick-up spots or social contacts were used in smaller-scale operations, house renovation or gardening, often based on non-declared cash-payments. Recruitment via private contacts was frequently observed in the hospitality sector.
- Fraudulent work agencies and social networks isolated from the host society seem to be most connected to exploitative working conditions. They have developed specific strategies to increase control over workers, such as debt-bondage or isolating workers.
- Undeclared work of third-country nationals is prominent in sectors with a high demand for a flexible workforce in labour-intensive jobs, often in workplaces that are less visible to the public and authorities. Some sectors are highly gendered.

### 5.1 Third-country nationals at greatest risk

While there are no statistical data on third-country nationals engaging in undeclared work, the highest risk group of those engaging in undeclared work and exposure to labour exploitation are those who cannot enter regular employment, as discussed above. According to FRA (2018), those who lived in poverty at home, as well as low-skilled workers and those without language skills in the country of work might face a higher risk of exploitation.

#### Low-skilled workers and those with missing language skills are at high risk

Language skills are viewed as a key condition and predictor for migrants to be socially and economically integrated in the host Member State (Barbulescu, R., 2019; Adsera et al., 2016; Goodman et al., 2015; Goodman, S.W., 2014). Knowledge of the host language has a significant influence on third-country nationals' prospects of finding employment and engaging in decent work. Strong language skills are associated with better occupational

status, both for EU and for non-EU migrants. In most Member States, the ability to communicate in the host country's official language is a closely linked to obtain a residence permit. For example, in Germany refugees have the right to a language and civic orientation course.

Without sufficient language skills, third-country nationals are at higher risk of entering undeclared work and exploitative working conditions. Language barriers can also lead to accidental non-compliance with labour or migration law (OECD, 2018), preventing them from understanding their rights and the terms and conditions of their employment (FRA, 2019; Chudžíková et al., 2018). According to the 2013 Adult Education Survey (AES), 6 % of third-country nationals did not know any of the official languages of the EU Member States (with differences varying from 0-60 % between the different Member States) and those with limited language skills were more likely to be unemployed (Gazzola, 2017).

The AES also indicates that third-country nationals are overall less educated than EU nationals or mobile EU citizens. Within this group, there is also evidence that irregularly residing migrants are lower educated than regularly staying foreign workers (OECD, 2018).

Even if non-EU nationals are qualified, they often work below their qualifications. Despite the establishment of the Professional Qualifications Directive (Directive 2005/36/ EC) and its revisions in 2013 (2013/55/EU), for a smooth recognition system within the EU, validation of skills and qualifications is uneven across countries (Kondle-Seidl, 2017). This challenge may apply particularly to beneficiaries of international protection, who often have difficulty providing the documentation certifying their qualifications and skills. They are moreover keen to work for their societal integration and/or to send money home, so barriers to deploy their skills and qualifications may lead to the acceptance of low-skilled, precarious and/or undeclared work.

Those challenges, limited language skills and being hindered from attaining or validating their educational or vocational qualifications – and often combined with limited social networks – limit migrants' chances of knowing their rights and obligations, as well as the benefits of declared work. This challenge is exacerbated for those staying irregularly, as they cannot access integration measures and have restricted access to justice.

### **Third-country nationals at risk mostly come from countries with lower living standards**

Better economic opportunities and higher standards of living in the EU are significant pull factors of immigration. Groups of migrants mentioned by Platform members interviewed in this study come mostly from North and Central Africa, Asia, the Western Balkans and the Eastern Partnership countries.

Estimates suggest that these countries are characterised by some of the largest shares of the informal economy globally (ILO, 2018). In other words, it is more likely that third-country nationals from these regions have already been exposed to or engaged in undeclared work in their home countries. According to Williams et al. (2020), third-country nationals who engage in undeclared work in their country of origin tend to engage in undeclared work abroad. However, there is no empirical evidence that the majority of third-country nationals from these countries and regions are engaged in undeclared work within the EU. Nor do the interviews suggest that third-country nationals in situations of informality and exploitation tend to be from any particular country. There are, nevertheless, similarities in the sectors that most third-country nationals work in and that are monitored by enforcement authorities (see Table 1 below).

**Table 1. Undeclared work, illegal employment and labour exploitation: main sectors and nationalities**

Sectors and nationalities	
Belgium	<p>Statistics from the SIOD/SIRS<sup>22</sup> suggest that irregularly staying and illegally employed third-country nationals are mainly from Morocco, Brazil, Angola, Macedonia, Cape Verde and Guinea-Bissau. Regularly staying and illegally employed third-country nationals are mainly from Pakistan, Brazil, Morocco, Algeria, Turkey and Cape Verde.</p> <p>Affected sectors include: car washes, restaurants, night shops, cleaning services, services in private households, second-hand clothing businesses, meat processing businesses, renovation works.</p> <p>According to the experience of the Belgian labour inspection services, third-country nationals are mostly found in very small-scale undertakings, in many cases working for an employer who is themselves a foreign national or of foreign origin (EMN, 2017).</p>
Finland	<p>Many third-country nationals engaged in undeclared work and/or illegal employment are working in restaurants, which often have migrant owners. Third-country nationals are mainly from Asia (China, Vietnam, Thailand) or the Middle East (Afghanistan, Iran) and, to some extent, from the Western Balkans (Kosovo), who have valid residence permits, but engage in undeclared work. Specifically, since 2015, there are many asylum seekers working in restaurants without a valid work permit.</p> <p>Construction is the second largest sector for third-country nationals, with increasing numbers from former Soviet Republics (such as Uzbekistan), engaged in undeclared work.</p> <p>The third largest sector where undeclared work of third-country nationals occurs, is the cleaning sector. These are mostly people from Africa who have a student visa but work full-time. Other third-country nationals are from Afghanistan (asylum seekers), Sri Lanka and Russia. In 2019, 62 inspections in southern Finland showed that two-thirds of asylum seekers inspected were engaged in illegal work in the cleaning sector.</p>
France	<p>Third-country nationals working illegally and/or undeclared are mostly from North Africa, Sub-Saharan Africa, Central Africa, Eastern Partnership (Ukraine and Moldova were mentioned by interviewees), China, and Bangladesh. The trade union organisation, CGT, observed that Sub-Saharan workers tend to be more 'organised' with a support network. They work in conditions that are often exploitative but, in general, know their rights. Asian workers also have strong networks but it is difficult for trade unions to reach out or intervene, as there is usually a strong dependency on the employer and it is challenging for the employee to denounce their employer, who usually operates in the same social network. Workers from Eastern Partnership countries tend to be women.</p> <p>Undeclared workers are often active in the hospitality sector (e.g. dishwashers, kitchen helpers etc.), construction, waste collection,</p>

<sup>22</sup> Social information and investigation service, Belgium.

## Sectors and nationalities

domestic services, and the preparation and delivery of parcels. Workers in these sectors frequently have false papers or a residence permit belonging to someone else, giving the appearance of legality. In addition, there are cases of systemic ethnic discrimination in the construction sector, with tasks and a place in the work hierarchy assigned by nationality (e.g, certain nationalities obtain specific positions).

Agriculture is another sector with illegal employment, poor working conditions and some cases of human trafficking. Workers are often unaware of their rights and are vulnerable. It is not uncommon for employers to retain a portion of the salary for accommodation (with extremely low standards) and meals. This is often accompanied by violence and intimidation.

Germany

Illegal employment and undeclared work of third-country nationals is most common in labour-intensive sectors with a high fluctuation of personnel and flexible workplaces, such as construction, hotel, the restaurant and catering trade, transport, industrial cleaning businesses, domestic cleaning and care, agriculture and the meat industry (EMN, 2017). Undeclared work and illegal employment are also prevalent in the private security industry, another sector with changing workplaces and demand for a flexible workforce.

The German Institute for Human Rights raised concerns that third-country nationals from Pakistan, Palestine, Syria, Argentina, Ecuador or Peru are exposed to undeclared work and labour exploitation (German Institute for Human Rights, 2018). In addition, there have been concerns about refugees from countries like Syria, Iraq, Turkey or Iran to work undeclared and under insufficient working conditions, with low pay (NDR, 2016).

Italy

Concerns about illegal and undeclared work, linked to labour exploitation of third-country nationals from the EU's Eastern Neighbourhood, Africa, southeast Asia and Latin America have been raised (Gertel et al., 2014; Corrado et al., 2016; Nori, 2017).

North African workers are commonly found in the south Italian agriculture sector, recruited mainly through '*capolarato*' (see Section 5.3.4).

Poland

2019 inspections on illegal employment by the National Labour Inspectorate found 84 % Ukrainians, 7 % Belarusians, and the remainder from Vietnam, China, Cambodia, Georgia and the Philippines. Most worked illegally in construction, for temporary work agencies, in manufacturing, transport and hospitality.

Spain

Third-country nationals (often from Morocco and Latin America) who engage in undeclared work often perform low-skilled jobs-

The *contratacion en origen* (contracting in countries of origin) mechanism recruits mostly women from Morocco to work in agriculture, often under exploitive conditions (European Parliament's Committee on Women's Rights and Gender Equality (FEMM), 2018).

## Sectors and nationalities

Sweden	<p>Illegal employment, undeclared work and labour exploitation of third-country nationals is a serious issue in the construction sector, mostly with people from Uzbekistan, Georgia, Ukraine and Armenia. During inspections, illegal work is discovered, often arranged via subcontracting chains.</p> <p>There are also signs of undeclared work in the beauty business and berry picking (Thai and Vietnamese women), transportation, restaurants (Chinese and Bangladeshi) and car washes.</p> <p>About 40% of asylum applications are rejected which poses a challenge in terms of undeclared and illegal employment. Moreover, many non-EU Eastern Europeans such as Ukrainian workers are employed on zero-hour contracts (<i>behovsanställning</i>), which often leaves them without a steady monthly salary (Palumbo et al, 2020).</p>
Netherlands	<p>Main areas of concern raised by the inspectorate are fraudulent internships for Chinese nationals (EMN, 2017), domestic workers, mostly from Brazil who come on au pair visas, women from Vietnam working in nail bars (possibly victims of human trafficking). Other high-risk sectors are horticulture, cleaning, temporary employment agencies, the hospitality industry, construction, meat processing and transport.</p>

Source: Based on interviews and written input from Platform members, CGT (France), EMN (Germany) and European Parliament's Committee on Women's Rights and Gender Equality (FEMM), 2018) (Spain).

### Younger migrants are more likely to engage in undeclared work

An analysis of the age structure of the EU population in 2018 shows that, for the EU-27 as a whole, the non-EU population was younger than the host population,<sup>23</sup> at 36 years and 44 years, respectively. In addition, 15-24 year olds of the whole population are in general more likely to be engaged in undeclared work (Eurobarometer, 2020). Data from regularisation schemes in France, Italy, Spain and Portugal from 1997-2205 show a majority of young men in those schemes (OECD, 2018). Therefore, the share of younger age groups of third-country nationals engaged in undeclared work is likely higher than among older migrants.

### Some sectors are highly gendered

Migrant women and men are often divided into different sectors of the economy in the EU/EEA (Kofman et al., 2013). This is likely driven by gender-based stereotyping, which attributes certain skills and capacities to each gender (see Section 6.3.1 on domestic work).

Women primarily work in sectors such as domestic care work and cleaning, which is particularly evident in Southern countries with less public provision of care services, such as Spain and Italy. In instances of irregular employment, gender-based discrimination provides an economic incentive to exploit the vulnerabilities of workers. For example, men and women working in agriculture are often segregated into separate living quarters, a more efficient use of housing space that cuts the cost of housing irregular workers (ILO, 2016). Women are more vulnerable to exploitation and abuse, as there is a greater risk of gender-based violence, sexual abuse, coercive recruitment and greater risk of human

<sup>23</sup> Eurostat (2018). Age structure of the national and non-national populations, EU-28, 1 January 2018 (%) Eurostat (migr\_pop2ctz).

trafficking (European Parliament, 2018). This is worsened by the fact they often hold jobs in highly gender segregated sectors.

## 5.2 Recruitment into undeclared work and labour exploitation differs between sectors

Employers who set up undeclared jobs for regularly or irregularly staying third-country national workers have developed different ways of finding their workforce. Recruitment into such jobs is primarily found in sectors that require a flexible and often low-skilled workforce.

Recent research by FRA (2019), based on interviews with exploited EU nationals and third-country nationals staying regularly or irregularly, and interviews with Platform members, identified several recruitment approaches:

- Fraudulent temporary work agencies;
- Private contacts and networks;
- Online recruitment, often related to platform work; and
- Pick-up spots.

There are differences in recruitment methods between sectors. For agriculture and domestic work, most workers were recruited in their country of origin, while, in other sectors, employment was found once in the country, e.g. pick-up spots for construction, house renovation or gardening, or via social contacts. Recruitment in home countries suggests active recruitment agencies for agriculture, domestic work and transport (FRA, 2019).

### **Example: the role of social networks in undeclared work and labour exploitation**

Migration studies extensively discuss the role of social networks in the migration of third-country nationals. Social networks are characterised by common nationalities, employers or intermediaries (typically simultaneously), a shared language and cultural background, as well as private links, such as family or friends (Koser et al., 2008).

Networks of migrants provide physical, social and cultural protection for third-country nationals. This is particularly important for migrant groups that face prejudice or social stigma by the host population (DeVerteuil, 2011). They also provide contact with a shared culture, language and traditions and become a trusted source of information for newly arrived third-country nationals. In addition, they are economically advantageous spaces for migrants who can navigate without much language or knowledge of the host country (Wilson et al., 1980; Zhou, 1998).

In some cases, such networks provide jobs, which could lead to undeclared work. This often occurs in labour-intensive businesses, typically owned by people from the same nationality, culture or social network, for example in restaurants, agriculture, street food vendors, beauty salons and cleaning (Schrover et al., 2007; Jones et al., 2006; McGregor, 2007). While these private connections provide employment opportunities, they can also create isolation, making it more difficult for migrant workers to acquire competence and comfort with the host language and culture (Sanders et al., 1987). Especially third-country nationals with irregular residence status use their own social networks with fellow nationals to find employment. While men usually use non-kin-related networks, migrant women often find jobs (particular in domestic work or childcare) via kin-related networks (Schrover et al., 2007).

Such businesses are therefore also seen as high-risk spots for labour exploitation of newly arriving workers (Li, 2015). Some employers take advantage of the situation of newly arrived third-country nationals and their trust, exploiting them to work with low salaries, undeclared, in lack of sanitary conditions and overtime (without additional payment). The fact that the employer and the employee are from the same migrant network and/or ethnic background puts additional pressure on the workers, as this is

often his or her only contact and close family or social network bonds limit the likelihood of reporting to the authorities.

Recruitment via private contacts was frequently observed in the hospitality sector. Restaurant workers in Finland for example, claimed during inspections that they were visiting friends. In Sweden, contact is often made with workers in their home country, offering them a better position in an EU country. Workers then enter Sweden on a permit arranged by this contact person, or on a tourist visa. In Finland and Sweden, asylum seekers find illegal work or undeclared via private networks to gain additional income and to feel a sense of inclusion during the wait for their asylum decision.

Enforcement authorities face challenges in accessing these networks because of the close private links between employers and intermediaries.

While the FRA research could not establish a clear link between the different means of recruitment and the severity of the labour exploitation, it nevertheless points to a strong link between recruitment via fraudulent agencies and labour exploitation (FRA, 2019). As these agencies organise journeys, country entry, accommodation and jobs, workers are often completely dependent on them (FRA, 2019; Drbohlav et al., 2009, European Platform tackling undeclared work, upcoming). Agencies are frequently established in the home countries or have branches/mediators there who speak the same language, creating greater trust than with the authorities in the host country. Recruitment agencies who link workers to exploitative employment often charge high fees to the worker or promise non-existent jobs/working conditions. Intermediaries may also act as employers, such as in the case of Ukrainians in Slovakia, who receive cash payments and the agency keeps part of their wages (Chudžíková et al., 2018).

Temporary work agencies, both in the EU and in third countries, proactively recruit third-country nationals and promote their employment for the EU labour market. Temporary employment agencies (*'Empresas de trabajo temporal'*) are prominent in agricultural regions, like Valencia or Murcia (European Parliament, 2018).

Gangmasters<sup>24</sup> also play a role, such as the south Italian *'caporalato'*, 'an informal system of labour mediation in agriculture, where the intermediary (the *caporale*) retains a part of the worker's salary' (European Platform tackling undeclared work, 2019a; Perotta, 2015; Williams et al., 2018). *Caporale* can also be friends, relatives and members of the same ethnic enclave or network of workers with connections to agricultural employers (Corrado, 2017). This recruitment system is primarily used to hire third-country nationals from North Africa. The Spanish domestic sector has also seen incidents of gangmasters recruiting third-country nationals (European Trade Union Institute for Research (ETUI), 2018), or established migrants act as gangmasters (*'manijeros'*).

Once the employment relationship is arranged, employers and intermediaries find various ways to create dependency, such as peer pressure not to report the people who helped to recruit within their private network, threats, debt bondage and overpricing accommodation or providing insufficient accommodation (often used by fraudulent agencies and intermediaries), confiscation of passports, denial of free time and social contact, and isolation.

### 5.3 Sectors with a high share of undeclared work and illegal employment

Migration pressures in recent years, the economic and fiscal crisis in Europe, and the economic impact of globalisation in sectors like agriculture or for small businesses have led to strategies to cut costs, including relying on undeclared work, often via cheaper labour by third-country nationals. At the same time, Europe's ageing population means that workforce shortages are becoming a more pressing problem. The COVID-19 pandemic has highlighted the dependence on foreign workers in key, low-skilled sectors, such as agriculture or domestic care services.

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<sup>24</sup> Usually a person who employs manual workers, often undeclared and under exploitive working conditions.

At sectoral level, undeclared work and labour exploitation of third-country nationals is likely to be concentrated in sectors characterised by demand for a flexible, low-paid and low-skilled workforce. This often falls under the ILO categorisation of 'dangerous, dirty and demeaning' jobs, hidden and undesired by the native population. Within the EU, certain sectors have anecdotal evidence of undeclared work and labour exploitation of third-country nationals. The series of interviews conducted with national experts and social partners from different Member States for this report (see Table 1) all pointed towards five sectors as having the greatest risk of undeclared work and labour exploitation of third-country nationals: agriculture, construction, hospitality, domestic work, and transport. These sectors require low-skilled labour, knowledge of the local language is not always necessary, and all have particular characteristics which create challenges for inspections or other measures by the national authorities (geographical distance, multiple subcontracting chains for recruiting workers, significant obstacles for exploited workers to contact the authorities).

Sectors are presented below in order of the sectors in which undeclared work was most often stated (Eurobarometer, 2019), although this does not provide a picture of migrants engaging in undeclared work. The Section also includes two case studies on agriculture and domestic work, two sectors that have been stressed in literature to have a high share of non-EU workers.

### **Personal services: a female workforce**

Undeclared work is widespread in the provision of personal services across Europe (Eurobarometer, 2019). The survey suggests that around 34 % of all undeclared work undertaken in the EU in 2019 was in personal and household services.<sup>25</sup> Those services are often considered unattractive by the host population, as it is demanding, low-paid work, with little or no career progression. However, workforce demand is likely to grow in response to Europe's ageing societies and increasing labour market participation of women.

Most of these services are performed by women. Women from third countries often seek employment in households because jobs are relatively accessible, often requiring no recognised qualifications or language skills. In countries with lower access and availability of childcare or long-term care services, those type of services are often performed by foreign employees.

In addition to domestic service portrayed below, there is anecdotal evidence that non-EU female workers have jobs in industrial cleaning. A high share of non-EU workers was observed in Sweden and Finland. The Swedish Tax Agency risk assessed reported salaries in cleaning companies. The agency found that more than 60 companies paid an average salary of below SEK 13 000 (c. EUR 1 228) per month – this is below the monthly salary required by the Swedish Migration Agency for a residence and work permit. Of these, nearly 60 % staff had coordination numbers, i.e. they are not permanently registered in Sweden, so this means that their employers declared higher salaries to the migration authority than they actually paid out in order to get a permit, which is an indication of labour exploitation.

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<sup>25</sup> However, it should be noted that, by nature, the survey tends to focus on the private provision of undeclared work.

### **Example: Domestic workers**

In Europe, there were around 2.2 million migrant domestic workers in 2016 (ILO, 2016). However, this number does not include undeclared work, illegal employment by irregularly staying third-country nationals and people who perform domestic tasks but are registered differently, for example as care workers.

Tasks range from household services, like cooking, cleaning, gardening, often combined with care for children or older people. The sector is characterised by the intimate setting of work in households, the personal relationship between employee and employer and the prevailing perception of 'women's work' (Anderson, B., 2007, Cyrus, N., 2008, Lutz, 2008). Care services, particularly, require trust and continuity for employer and employee.

In addition, the organisation of care services across Europe influences care arrangements performed by third-country nationals, with southern European countries relying on foreign workforce in private settings while migrants work in formal care services in the Netherlands, Sweden or Norway (Triandafyllidou A. et al., 2020). The share of migrant workers is particularly high in Italy - 75 % - and in Spain - 60 % of all domestic workers (Lebrun et al., 2019). This also causes an accompanying 'care drain' in their respective native countries.

### **Living situations of domestic workers**

The living situation of third-country domestic workers varies. Many live in their employers' household – so-called 'live-in migrants' – while others provide services to one or multiple households. They can be directly employed by the household, by a private agency or self-employed, linked to the rise of platform work. 'Live-in migrants' are at particular risk of undeclared work with exploitive labour conditions because of their invisibility and lack of representation.

The situation of foreign and native domestic workers depends on working time and conditions regulations, taking into account the specifics of the work, such as a predominantly female workforce and the situation of 'live-in' workers. While most Member States have specific laws and/or collective bargaining agreements for domestic work, the sector is only regulated by general labour law in some countries. For example, in Poland, domestic work can be based on 'civil law' contracts, which do not provide access to labour rights (Kindler et al., 2016). Few countries have collective bargaining arrangements (Austria, Belgium, France, Germany, Italy, Sweden) (Marchetti et al., 2015).

### **Pathways into the sector**

Very few countries recognise the demand for workforce in the sector and allow migrant workers to obtain a permit for domestic work or impose labour market test requirements. This might lead to the misuse of au pair schemes, bogus self-employment or illegal employment (European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT), 2015; ILO, 2016; Sargeant, 2014).

Some Member States allow the legal entry of third-country nationals as au pairs with residence tied to their host family. Such schemes can be misused for domestic workers, as au pairs are not considered employees and thus do not have the same protection. This is complicated by the fact that if the person experiences abuse, it is difficult for

The ILO Domestic Workers Convention 2011 (No. 189) promotes decent hiring, working, and living conditions for all domestic workers, including migrants. It defines domestic work as an employment relation set in one or more households. It advocates information about employment terms, the use of written contracts, sufficient social security protection and mechanisms to against abuse.

The convention has been ratified by Belgium, Finland, Germany, Ireland, Italy, Portugal and Sweden.

them to change job, as their residence permit is linked to their employer. A report by the European Parliament recommends protecting the rights of third-country au pairs (now regulated in an optional way by the Students and Researchers Directive) by registering au pairs and households and increasing inspections and support (European Parliament's Committee on Women's Rights and Gender Equality (FEMM), 2011).

Some domestic workers enter the country on a specific permit to provide services in a diplomatic household. There is a risk that an employer can act with impunity, which may lead to undeclared work or labour exploitation (EFFAT, 2015).

Other cases where illegal employment and undeclared work coincide include permits of the spouse (often the husband), which allow their partner the right to residence but not to work (or only on a limited basis). The privacy and informality of domestic work is attractive to women in this situation, increases the dependency on income from domestic work, and forces the person to remain in the relationship (Triandafyllidou, 2013).

Third-country nationals find employment in the domestic sector via three main avenues: direct recruitment by households; private contacts; or private employment agencies. The latter can be crucial in informing domestic workers about their rights but can also lead to illegal, undeclared and exploitative working conditions. In Greece, for example, employment agencies organised travel, accommodation and visas for African workers, who travelled alone and were instructed to contact an intermediary in Greece. They then worked as 'live-in carers', with long working hours and (often) little compensation (Angeli, 2017).

### **Working conditions**

Limited possibilities for legal migration and generally poor working conditions in the sector enhance undeclared work and labour exploitation with long and/or atypical working hours, little or no remuneration, little privacy and time off, as well as more severe cases of exploitation, such as verbal or physical abuse, forced labour or servitude (EFFAT, 2015; ILO, 2013). These issues are intensified for 'live-in' migrants (FRA, 2017). Occupational accident rates are about twice as high for migrant domestic workers as for native workers in Europe, and often third-country nationals – especially those staying irregularly – do not seek medical consultation (Sargeant, 2014).

Third-country nationals lack awareness of their rights and may struggle to organise themselves, often exacerbated by language and cultural barriers, and the fear of losing their job or being deported. In addition, migrant workers face isolation due to their workplaces and stereotypes of their nationality and gender. Examples of stereotypes in the sector are that Filipino women are considered 'ideal providers of care and household services' or migrant men face difficulties finding work in domestic work (van Walsum, 2011).

### **Construction – a sector with a high number of subcontracting chains**

The construction sector is also a sector with high workforce demand. Moreover, it is location-specific and requires a flexible workforce with a diverse range of (mostly manual) skills. Migrant workers are often more flexible in their readiness to move from site to site, acceptable levels of payment and working conditions.

Around one in five undeclared jobs in the EU-28 is performed in the construction sector<sup>26</sup> (Williams et al, 2020b, based on 2019 Eurobarometer survey results) and there is anecdotal evidence that third-country workers 'number in the thousands', including nationals from Bosnia and Herzegovina, Mongolia, the Philippines, Ukraine and Vietnam,

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<sup>26</sup> However, it should be noted that by their nature, Eurobarometer surveys tend to over-focus on the private supply of undeclared work and under-emphasise business-to-business undeclared work.

entering the EU through various Central and Eastern European countries (CEECs) (European Federation of Building and Woodworkers (EFBWW), 2019).

A recent Eurobarometer survey suggests that undeclared work in the sector has increased over time with a higher share in Central Europe and Southern Europe than in the Nordic countries (Eurobarometer, 2020). The sector is highly volatile, and during the last recession many workers (particularly men) from third countries lost their jobs, resulting in lower wages and more undeclared work. Moreover, the number of third-country nationals in the sector has increased, often arriving through Central and Eastern European countries and recruited by intermediary agencies (European Federation of Building and Woodworkers, 2019).

Another reason for the higher occurrence of undeclared work and labour exploitation is the practice of long and complex subcontracting chains, where workers on one construction site have different employers, reducing the ultimate responsibility of the employer for the workers on site (European Platform tackling undeclared work, 2017c, 2017d).

There can be declared or undeclared (including irregularly staying third-country nationals) workers, each subject to different working conditions, ranging from decent work to labour exploitation. Irregularly staying migrants often have no access to declared employment and work in the sector out of necessity (European Construction Industry Federation, 2006; European Platform tackling undeclared work, 2017c). However, in comparison with the other sectors in this Section, union representation is higher in construction (Trčka et al., 2018).

Observed labour exploitation in the sector includes the non-payment of wages, the deduction of fees from salaries, overtime, no social protection, no health and safety protection for workers, poor accommodation and social isolation. Moreover, workers from third countries earn often less than native workers (European Federation of Building and Woodworkers, 2019).

The EU funded TUVIC (Tackling undeclared work in the construction industry) project involves construction trade unions, employer federations and enforcement authorities from seven Member States to review policy initiatives in the sector. The project started in 2018 and ran until 2020 and included project activities in Belgium, France, Austria, Italy, Romania, Bulgaria, Spain. Project activities are a European campaign on prevention/awareness of undeclared work in the construction industry, national toolkits and/or organising national tripartite meetings with representatives of the national labour inspectorates, representatives of workers and businesses, possibly also including politicians and experts can also participate, as well as the organisation of a final conference (Williams et al, 2020b).

### **The hospitality sector – a sector under pressure for profit**

As the other sectors presented in this Section, this sector also experiences high price competition, less visible workplaces and seasonal changes of profit margins. Similar to personal services, it can offer more job-security to some extent, as work is not project-based (as for example in construction). 16 % of the workforce employed in tourism are foreign citizens (of which 9 % are from other EU Member States and 7 % are from non-EU countries). In the services sector as a whole, the proportion of foreign citizens employed is 11 %, and in the total non-financial business economy it is 9 %. Foreign workers are 8 % of the workforce in air transport and 10 % in travel agencies or tour operators, but 18% of the workforce in accommodation. In addition, 14 % of all employees in accommodation and food services are in unregistered employment (compared with 5 % of employees in the EU economy overall) (European Platform tackling undeclared work, 2020c).

It is a sector with a high share of varying working hours, atypical employment relations and high staff turnover (EFFAT, 2018; European Platform tackling undeclared work, 2020). Tasks undertaken by third-country nationals in hotels are often cleaning services and laundry, mostly performed by women. In hotels, there are reports of exploitative working conditions with long hours and little breaks combined with a high workload, no safety

instructions and inappropriate accommodation. For example, Ukrainian workers holding Polish visas working in Czech hotels reported pressured workloads with payments by the speed of cleaning (Trčka et al., 2018).

In restaurants, literature points towards undeclared work arranged by social networks (see Section 5.2). In restaurants and bars, undeclared work is often driven by high competition, regulation and the need for flexible workforce. As observed in some restaurants, the owners often belong to the same nationality and ethnic group, and transactions are cash-based. Haircare and nail salons employ high numbers of third-country nationals, often from Asian countries. For example, the Dutch inspectorate reported cases of Vietnamese women working in nail bars under exploitive conditions.

### **Agriculture – migrant workers as an essential workforce**

Agricultural work is place-specific, subject to seasonal change and experiences chronic shortage of labour. Labour costs continue to dominate cost structures for companies in agriculture, in particular in more labour-intensive segments, such as vegetable and fruit-picking. It is estimated that around one-third of the total EU agricultural workforce are not declared and it is likely that a high proportion comes from third countries (European Platform tackling undeclared work, 2019a). EFFAT estimate that 40 % of agricultural workers are EU citizens from other Member States or third-country migrants, out of which it is assumed that one fifth are from third countries (European Platform tackling undeclared work 2019a).

Increased industrialisation and the transition towards service sector jobs means that work in the agricultural sector has become less desirable for EU/EEA nationals and is thus more reliant on the supply of workers from third countries.

Cost-cutting through the employment of temporary seasonal workers from non-EU Member States has become the norm in EU/EEA agriculture (European Platform tackling undeclared work 2019a; Williams et al. 2018). The high share of non-nationals in agriculture is associated with a significant risk of undeclared work and labour exploitation (OECD, 2012). The working conditions in agriculture are particularly exploitative, as comparatively less aspects of this sector could be automated, requiring physical labour, often over longer working hours concentrated in specific seasons and with high injury rates (ILO, 2016).

#### **Example: undeclared work and labour exploitation among third-country nationals in the agriculture sector in Italy and Spain**

Demand for cheap, flexible labour in agriculture has been particularly high in some southern EU countries, such as Italy, Spain and Greece, where agriculture is a relevant part of the economy. The rapid rise in the influx of refugees in these countries in 2015-2016 led to their engagement in agriculture, most often involving young and mostly male workers from sub-Saharan and North Africa in undeclared work and/or exploitative conditions (Triandafyllidou et al., 2020).

In both Italy and Spain, there are examples of third-country nationals on a spectrum of exploitative and dehumanising conditions, with instances of modern slavery and forced labour, frequently intertwined with patterns of trafficking for labour exploitation (Gertel, Jet al, 2014; European Parliament's Committee on Women's Rights and Gender Equality (FEMM), 2018). Cases of labour trafficking accounted for roughly 10-20 % of all registered victims of trafficking, and institutions acknowledge the difficulties in distinguishing trafficking cases from the widespread common violations of labour rights (CSD, 2020). In Italy, undeclared workers in this sector frequently work for 10 to 12 hours a day, are exposed to toxic pesticides, and endure extreme summer and winter weather conditions for pay that is considerably below the legal minimum wage. Third-country nationals are also exposed to living in degrading and unsanitary conditions, in isolated outbuildings on farms, in unheated tents or urban slums, many miles from the fields where they work (Corrado, 2017).

## Italy

The Italian agricultural sector has long been characterised by the systematic abuse of the rights of workers and labour regulations, especially third-country nationals from the EU's Eastern Neighbourhood, Africa, southeast Asia and Latin America (Gertel et al., 2014; Corrado et al., 2016; Nori, 2017).

Expert opinions suggest that Italy's southern regions (such as Calabria, Sicily, Campania, Apulia, and Basilicata) are the primary locations for undeclared and illegal work of third-country nationals in the agriculture sector. The sector in southern Italy is labour-intensive and seasonal by nature, as this is one of the key exporting regions for fruits and vegetables to the rest of the EU (Corrado, 2017).

South Italian rural areas offer degrees of non-visibility and informality that enhance irregularities. In agriculture, like the general economy, the labour market in southern Italy is characterised by informality in contractual relationships. In regions such as Calabria, the urban-rural income gap has further stimulated 'brain drain', as younger workers move towards vibrant urban economies rather working in the agriculture sector. These trends deplete the available local workforce for this sector, pressuring farmers to seek third-country nationals as a substitute. The void is filled by many migrants from Africa who often choose Italy as an entry country to the EU/EEA. This intensified between 2015 and 2017, when Italy was the second Member State in the EU for asylum applications (123 000 and 129 000, respectively) (Eurostat, 2020). Compared to previous years, Italy has experienced exponential growth in asylum applicants (over 12-fold increase compared to 2010).

The scale of undeclared and illegal work carried out by third-country nationals in the agricultural sector in Italy is difficult to establish. Estimates by *Consiglio per la ricerca in agricoltura e l'analisi dell'economia agraria* (CREA, 2020) suggest that a high share of labour input in the sector is not regular: in 2017 the irregularity rate in agriculture was 18.4% (FTE equivalent), compared to 15.5% recorded in the economy as a whole. The share of non-Italian workers in the Italian agriculture has continued to rise reaching close to a fifth of the almost 900,000 employed in 2018 (CREA, 2020). CREA (2020) further notes that immigrant workers are mostly employed in lower-skilled and low-paying positions, with the consequent high incidence of relative poverty, which among those born abroad is 38.2% against 18.5% of those born in Italy. The Annual Report of the Italian National Labour Inspectorate for 2019 (Italian National Labour Inspectorate, 2020) noted that of the 5 806 inspections carried out in the Italian agriculture during that year, around 59.3% found irregularities, more than 4 percentage points higher than in 2018 (54.8%). Of the 5,340 workers who were subject of the uncovered violations, 2 719 (51%) were working undeclared or completely unregistered. Out of them 229 were non-EU citizens without a residence permit.

The recruitment system of the '*caporali*' (see Section 5.2) is to hire workers – usually third-country nationals from North Africa – for a short period of time without declaring their work. Eastern European workers are primarily recruited through landless co-operatives or temporary work agencies registered in other EU Member States. In 2011 and again in 2016, Italy introduced legal measures against *caporalato*, with 'illicit brokerage and exploitation of work' introduced into the Criminal Code (Law 138/2011). The law foresees penalties from five to eight years' imprisonment (12 in aggravating circumstances) for the *caporali* and fines from EUR 1 000 to 2 000 for each worker involved. Law 199/2016 on countering undeclared work and labour exploitation in agriculture subsequently extended the scope of measures, particularly in instances of labour exploitation. In addition, in February 2020, an Action Plan Against *caporalato* was adopted, developing a national strategy to combat labour exploitation and gangmasters in agriculture. However, the COVID-19 related lockdown measures then further increased the harvesting done by irregularly staying third-country nationals, as the labour inspectorate could not investigate and this group of workforce was used to offset EU worker who did not travel to Italy (Palumbo, L., et al, 2020).

## Spain

In Spain, cases of undeclared and illegal work by third-country nationals have been detected in various regions, since agriculture is an important sector in nearly all regions of the country. On many occasions third-country nationals change location depending on season throughout the year. This indicates that third-country nationals working undeclared often are not migrating in and out of the EU, but are, rather, transferred from one employer to another and between different agricultural regions. Such arrangements reduce the likelihood of detection within a single Member State.

Experts have indicated that the movement of third-country national workers within or across agricultural actors of the EU is often organised through a network of intermediaries. While in Italy third-country nationals are typically organised by nationality (due to the specific recruitment pattern), inspections in Spain also detect many EU nationals (mainly from Romania, Bulgaria and Portugal) in agricultural fields.

According to the annual report for 2019, the Labour and Social Security Inspectorate carried out 9 739 inspection visits in the agriculture and farming sector. Almost 6 800 labour infringements were detected (with more than 460 third-country nationals without a work authorisation). The infringements involved more than 28 700 workers and sanctions for employers reached more than 21 million EUR.

### **Meat processing – a sector with many migrant workers**

Particular sub-sectors of the food processing sector (e.g. meat processing) are also prone to using undeclared workers in exploitative working conditions (Schöll-Mazurek et al., 2016) and operating complex subcontracting chains, including also extensive use of temporary work and placement agencies (Germany and the Netherlands for example). In 2013, the European Parliament reported on Bulgarian, Romanian and Ukrainian undeclared workers in the German meat-processing sector. Those workers were subject to longer working hours, for less than the legal minimum wage and without receiving social security benefits (European Parliament, 2013). Recently, outbreaks of COVID-19 in German meat-processing companies point to such exploitative working conditions with insufficient health and safety enforcement and inappropriate housing, although the workers seem to be mostly EU workers from South Eastern Europe (European Federation of Food, Agriculture and Tourism Trade Unions (2020b).

### **Posted workers in the transport sector**

Like other sectors described earlier, the international road transport sector is also affected by workforce shortage and job insecurity.

Transport necessitates a mobile workforce, with shares of under- and undeclared work and bogus self-employment higher than in other sectors, as well as fraudulent posting arrangements (European Platform tackling undeclared work, 2018a). An additional difficulty is determining the country where the work is habitually carried out and thus the tax and social security schemes that apply, but also to monitor to which Member States transport workers should be considered posted, when they move across Europe, as this may also have a significant impact on applicable legislation and collective agreements, including on working conditions and pay. According to European case-law, the country of employment is the country from which the work is organised and orders are received. However, there are complex schemes under which third-country nationals are recruited and then posted from countries where labour costs are usually lower.

In many cases, non-EU nationals have invested in coming to the country and do not know their employment situation and rights well (FNV, 2018). For example, investigations by the Swedish Tax Agency found that illegal schemes are often used by Swedish hauliers to avoid taxation. In 2019, the Swedish Migration Agency noted several cases in the food delivery business where the employer could not present the agency with the documents needed to make residence permit decisions. It is not clear if the cases concern entirely false employment contracts or real employment with hidden clauses (underdeclared work). The

people behind such applications usually have a position as long-term residents in other EU countries. The Swedish Migration Agency also understands that many individuals who are in Sweden on study permits work undeclared in the food delivery industry.

## 6 COOPERATION OF ACTORS TACKLING UNDECLARED WORK AND LABOUR EXPLOITATION

This Section describes how undeclared work, illegal employment and labour exploitation is tackled by enforcement authorities, such as labour inspectorates, the police, migration, tax and social security organisations, highlighting the need for cooperation between authorities, social partners and trade unions.

### Key findings

- Third-country nationals enter undeclared work under different circumstances. This requires cooperation between all relevant enforcement authorities, such as labour inspectorates, the police, migration, tax and social security organisations.

The development of well-defined joint cooperation procedures is necessary, as illustrated by the Regional Agency Collaboration between several Swedish public authorities developing methods for cross-agency data exchange, indicators and inspections to combat fraud, violations and crime in working life.

- However, joint working is often made difficult by limitations to data sharing and cooperation between relevant authorities as well as capacity constraints in enforcement. Relevant legislation and political will, capacity building and an increase in resources for enforcement authorities can help developing collaboration approaches.
- Finally, working with social partners and NGOs is key to approach the complex issue of undeclared work holistically, ensuring that the rights of workers are promoted and guaranteed.

### 6.1 A central role of enforcement authorities in addressing undeclared work, illegal employment and labour exploitation

As described above, a wide set of labour and migration policies are relevant in the fight against undeclared work and labour exploitation of migrant workers. Legal frameworks determine the definitions and institutional responsibilities for undeclared and illegal work, as well as the labour rights and protection of workers. Several actors are therefore involved in preventing, detecting and deterring these phenomena.

In most Member States, labour inspectorates identify undeclared work, illegal employment and labour exploitation as they monitor risks and carry out workplace inspections to check irregular employment and to impose possible sanctions on the employer. Labour inspectorates are primarily responsible for checking compliance with labour law, such as employment relations, working conditions, health and safety norms and/or wage requirements. The social security and tax authorities monitor and follow non-payments in their respective fields of competence.

Responsibilities across authorities are linked to the level of undeclared work in a labour market. In Sweden, the labour inspectorate monitors working conditions and cooperates with the Swedish Tax Agency, which focuses on undeclared employment, undeclared income or tax avoidance. In other countries, promoting declared work is part of a wider strategy to address irregularities in the labour market, and labour inspectorates have a more prominent role in tackling undeclared work and illegal employment (ILO, 2010). In Germany the German Financial Control of Undeclared Work Unit (*Finanzkontrolle Schwarzarbeit – FKS*) under the Ministry of Finance enforces the Act to Combat Unlawful Employment and Benefit Fraud. In the Netherlands, the labour inspectorate (SZW)

monitors the Foreign Nationals Employment Act, but also the Minimum Wage and Minimum Holiday Allowance Act, the Working Hours Act, and the Placement of Personnel by Intermediaries Act. For the Italian labour inspectorate, undeclared work and labour exploitation are among the most important issues in annual planning.

In terms of illegal employment, most labour inspectors check whether a worker is authorised to work.<sup>27</sup> During inspections, work and residence permits of third-country nationals are checked in Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, the Netherlands, Slovakia, Slovenia and Spain (EMN, 2017; interviews with Platform members). In Austria and Germany, the labour inspectorate and the German *Länder*/accident insurance institutions respectively concentrate on compliance with working conditions, while illegal employment is monitored by the Financial Police in Austria and by the German FKS under the Ministry of Finance.

Often, several authorities have the competence to check illegal employment: in France, it is the labour inspectorate, the police and custom offices; in Finland, the Occupational Health and Safety Authorities work together with the police, the border guard, the tax authorities and customs; in Poland, labour inspectors who detect third-country nationals with an irregular status need to inform the border guards (FRA, 2018).

However, scarce resources limit the authorities' scope to fight undeclared work and illegal employment, especially when it comes to complex fraud schemes used by employers to gain profit. Several labour inspectorates reported capacity problems when dealing with complex cases of undeclared work and third-country nationals. The labour inspectorate in Poland noted the need to address increasing numbers of requests in the Internal Market Information System in relation to posting irregularities from Belgium, Germany and France (see also European Platform tackling undeclared work, 2019b). The French trade union CGT noted that, despite good collaboration, the French inspectorate has resource issues. The fact that labour inspectorates check work conditions and illegal employment at the same time during an inspection hinders their mandate to guarantee workers' rights, and diverts resources from informing workers of their rights and referring them to support services (FRA, 2018).

## 6.2 A strong need for cooperation between public authorities to address undeclared work amongst third-country nationals

Instances of undeclared work, illegal work and labour exploitation fall under the responsibility of different authorities, with infringements regulated under either labour or criminal law. Cooperation between different authorities is therefore necessary to exchange information (especially to assess and inform one another of risks concerning irregularly staying migrants, on whom there is no data) and to detect and prosecute infringements.<sup>28</sup>

Relevant authorities exchange information to identify irregularities, for example by cross-checking tax, social security and employment data. In Belgium, Estonia and Slovakia, data on taxes, social security and employment status is cross-checked in common databases (EMN, 2017). In Finland, labour inspectors receive information on suspicious permit applications from the Finnish Immigration Services, while the public employment service (PES) redirects cases where applications are contradictory or otherwise suspicious. In Sweden, the tax administration and the police and border control authorities send every relevant inspection report to the labour inspectorate.

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<sup>27</sup> Labour inspection aims to protect 'the rights and interest of all workers, and to improve working conditions, rather than to enforce immigration law, and therefore any cooperation between the labour inspectorate and immigration authorities should be carried out cautiously.' (ILO, 2016). Hence separation between labour authorities and immigration enforcement has also been strongly recommended by the UN Special Rapporteur on Migrants, the Council of Europe, the European Parliament and FRA (PICUM, 2020). See more on page 69.

<sup>28</sup> Here, data sharing needs to comply with data protection regulations, hence the purpose, and type of data in the exchange needs to be well-defined.

## Cooperation between labour inspectorates and the police

Depending on the suspected violation, tax authorities, labour inspectors, the police and migration authorities can organise joint inspections in cases of suspected undeclared work, illegal employment or labour exploitation. According to research by the European Union Agency for Fundamental Rights (FRA, 2018), labour or social inspectorates and the police most often seem to cooperate in inspections, an example of which is outlined below. Well-defined cooperation with the police and labour inspectorates specialised on labour exploitation can be effective in addressing labour exploitation and ensuring access to justice (FRA, 2018).

In Germany the 2019 'Act to Combat Unlawful Employment and Benefit Fraud' provides for intensified cooperation and data-sharing between the German Financial Control of Undeclared Work Unit (*Finanzkontrolle Schwarzarbeit – FKS*) and police authorities. Based on the Code for Criminal Procedure (*Strafprozessordnung*) the FKS officials act as investigators for the public prosecution service – so similar to police powers. Under the above legislation, the FKS can proceed with criminal proceedings independently in cases involving the withholding and misappropriation of wages. Next to cooperation with the police the act also foresees the collaboration with support services regarding human trafficking and labour. An example of inter-agency cooperation is outlined below.

### **Example: Joint inspection in the construction industry in Germany**

In August 2019, the German Customs Authority led a major investigation into suspected social security contributions fraud, minimum wage violations, labour exploitation and trafficking of human beings in the construction industry. Around 1 900 members of all 41 main customs offices visited several sites, supported by the Criminal Investigation Office, the Migration Department and the Federal Police. Staff from the Berlin Migration and Good Work Counselling Centre provided advice on labour and residence law to affected employees, as well as providing accommodation and meals.

In the course of a single day, the authorities inspected construction sites, office and business premises, apartments and collective accommodation for employees at over 80 locations. In the process, evidence was secured and 186 interviews were conducted. The amount of damage caused by the various offences identified was estimated at EUR 1.7 million. This operation is being followed by extensive checks of the seized documents by the German unit for monitoring undeclared work.

Source: [https://www.zoll.de/SharedDocs/Pressemitteilungen/DE/Schwarzarbeitsbekaempfung/2019/y53\\_grosseinsatz\\_b.html](https://www.zoll.de/SharedDocs/Pressemitteilungen/DE/Schwarzarbeitsbekaempfung/2019/y53_grosseinsatz_b.html)

As in the German example above, cooperation and data sharing are set out in legislation in other countries. For example, in the Netherlands, data sharing is regulated by legislation: the labour inspectorate and the police share data based on the 'Police Data Act', as well as on articles in specific legislation, such as the 'Foreign National Employment Act'. The Dutch Inspectorate also cooperates with a EUROPOL liaison officer, who concentrates on increasing awareness of the Inspectorate among national and international investigative services.

In Spain the 'Law on the System of Labour and Social Security Inspection' from 2015 foresees that police forces provide assistance and collaboration to the Labour and Social Security Inspectorate. The inspectorate is responsible for checking work authorisations, social security registration, salaries and contract conditions, Occupational Safety and Health regulations and equality between women and men, in the performance of its functions. Cooperation is further specified by agreements between the Labour and Social Security Inspectorate and police forces that foresee joint investigations in the field of undeclared work, third country nationals' work, labour exploitation and trafficking in human beings for labour purposes, among other aims. The labour inspectorate and the police routinely perform inspections together (almost 20 000 joint visits were organised in 2019).

As in the labour inspectorates, there are also examples of a focus on labour exploitation in the police authorities. Police in Italy (the *carabinieri*) and the national labour inspectorate act jointly to address the exploitation of EU and third-country nationals. In Belgium, inspectors can request assistance from federal and local police units specialised in fraud detection, trafficking in human beings and illegal work of foreigners. In addition, specialised police units have been tasked with investigating risks of labour exploitation. They conduct monthly inspections of high-risk sectors, which are led by an auditor or public prosecutor, with the support of other organisations (such as labour and social inspectorates, and victim support organisations) (FRA, 2018).

### **Interagency- work approaches**

A multi-agency approach allows multiple authorities work on a single case. The need for more effective cooperation that builds on the tools of each enforcement authority was similarly stressed in the literature (OECD, 2018, ILO, 2010), as well as cooperation between police and labour inspectorates to fight labour exploitation (FRA, 2019). A promising practice is Sweden's Regional Agency Collaboration (RAC), which received a government mandate to develop concrete cooperation methods for information sharing and joint inspections.

#### **Example: Regional Agency Collaboration (RAC) in Sweden**

The RAC in Sweden combines the efforts of eight agencies to tackle irregularities at the workplace, with particular attention to third-country nationals. The authorities involved are: the police operative units of the Economic Crime Authority, the Work Environment Authority, the Gender Equality Agency, the Migration Agency, the Tax Agency, the public employment service and the Social Insurance Agency.

The Swedish Migration Agency, which issues residence permits and work authorisation, checks certain permit applications in high-risk areas and newly established businesses in labour-intensive sectors and shares intelligence with the other authorities so that they can plan inspections. Joint inspections are carried out by the Swedish Work Environment Authority, the Swedish Tax Agency and the police. The Swedish Gender Equality Agency acts as a coordinator for the social workers who can be contacted in case of suspected cases of labour exploitation.

Several joint inspections took place in 2019 in beauty salons, construction sites and restaurants. The agencies participated in Europol-led inspections of nail bars, discovering one case of human exploitation, breaches of working conditions and under-reporting of tax. Targeted cross-agency inspections were also carried out in 75 construction sites, uncovering undeclared income, fraudulent posting and illegal employment of foreign construction workers. Inspections of over 200 restaurants found 21 undocumented workers, often with salaries far below the statutory wage.

The RAC established a joint reporting system in 2019, listing all measures from the respective agencies, showing more than 2 000 inspected companies, control and sanction fees totalling SEK 10 000 000 (EUR 944 367) and 250 immediate business freezes (until irregularities are corrected).

In addition, the agencies shared information on suspected cases over 100 times, increasing targeted inspections of industries and workplaces. However, personal data protection rules presented barriers in some cases.

*For further information please refer to Annex 5*

Another recent example is the Dutch interdepartmental 'boosting' teams established in 2020, involving seven Ministries working together with stakeholders, including social partners, at the local and sectoral level. This is focused upon the working conditions of migrant and EU workers, an important topic on the political agenda in the Dutch parliament during the COVID-19 crisis. The concerns related to migrant workers have resulted in interviews by inspectors at the residences of migrant workers, collaboration with other

authorities to collate information and resultant visits to companies where problems are expected, including distribution centres, construction industry firms, slaughterhouses and meat processing industries where many migrant workers are employed.

At the same time, challenges were raised by inspectorates in Finland and Spain during interviews for this report, who outlined that stronger cooperation was needed, ideally at the start of a specific case in order to save time and resources. The Norwegian joint work-crime centre model was noted as an example of a well-working common approach, where the tax administration, the police and labour authorities work together to decide on a specific procedure on a case-by-case basis.

The lack of a common understanding of what constitutes labour exploitation was highlighted in some countries as an obstacle. Where it coincides with illegal employment, labour exploitation is often not clearly defined. Slovakia, for example, has no legal definition of forced labour, labour exploitation, or particularly exploitative conditions. There is only a distinction between 'lawful' and 'unlawful' activities, which does not cover exploitation in regular work (Chudžíková et al., 2018). A number of countries are now paying greater attention to labour exploitation, such as Germany or the Netherlands (see Section 7.2.2).

### 6.3 Social partners and NGOs provide crucial links to migrants

Cooperation between public authorities, social partners and NGOs helps to address the different situations of third-country nationals in undeclared work in a more holistic way. While enforcement authorities monitor, detect and sanction infringements, NGOs and trade unions raise public awareness, are familiar with the situations of third-country nationals and workplaces, and inform workers of their rights and obligations. In addition to prevention and detection, trade unions and NGOs support third-country national victims of labour exploitation in pressing charges against their employer.

NGOs build trust with non-EU workers, complaints about undeclared work and labour exploitation are often channelled via these bodies to labour inspectorates. This is most effective when an exploited worker can trust that he or she will not face detention and has a good chance of getting compensation for unpaid wages. For instance, the Belgian Labour Inspectorate of the Federal Public Service Employment, Labour, and Social Dialogue receives complaints by third-country nationals from the NGO the FAIRWORK Belgium and the Federal Centre for Migration (Myria), particularly on the non-payment of wages to irregularly staying third-country nationals. In Belgium, if an undocumented worker files a complaint to the labour inspection, the labour inspection does not share personal data with immigration authorities for enforcement purposes. This policy does not apply if the worker is identified during an inspection. Nonetheless, there is an informal agreement between the labour inspection service for Control of Social Laws, the migration office, Myria and FAIRWORK Belgium that if a worker files a complaint with the assistance of Myria or FAIRWORK Belgium, and as a result of this complaint, there is an inspection on the work floor, the worker will receive an order to leave the territory, but will not be placed in detention (PICUM, 2020).

Trade unions have direct contact with workers, enabling them to identify undeclared work, hazardous working conditions and labour exploitation and flag this with enforcement authorities. The ETUC note that trade unions can identify victims of human trafficking and create trust, but enforcement authorities should increase awareness of these issues among trade unions, as it is outside their traditional field of expertise. Platform members point out that this collaboration helps to gain further insight into cases of labour exploitation.

#### **Strategic partnerships**

Strategic partnerships between enforcement authorities and social partners are key to increasing the outreach of measures and promoting rights of third-country nationals. This organisation in turn supports non-EU workers to know and claim their rights as workers. Belgium, France and Germany have cooperation agreements between social partners, labour inspection services and other public authorities in high-risk sectors. Another

example is cooperation between the Latvian Free Trade Union Confederation (LBAS) and the labour inspectorate to exchange information, prevent and investigate violations of labour rights, including violations of migrant workers' labour rights (ILO, 2018). The French trade union, CGT reports on good working relations with the labour inspectorate, although resource issues persist in the inspectorate. CGT also stated that cooperation with the police is more challenging because they tend to focus on the migration status of the worker.

In Italy, the new Commission to tackle the '*caporalato*' system and labour exploitation in agriculture has been chaired since 2019 by the Minister of Labour, in cooperation with other Ministries (Interior, Justice, Agriculture and Transport), regions, municipalities, the national labour inspectorate and the National Institute of Social Security. This includes joint actions against labour exploitation, working side-by-side with NGOs and social partners. Trade unions provide insights from workplaces, while employer associations provide information on the complex supply chain in agriculture. The aim of this cooperation is to set up management and information systems, strengthening the implementation and monitoring capacity of national and local institutions. It then seeks to set up a national referral system for the identification, assistance, protection and socioeconomic inclusion of victims through decent work opportunities, as well as transparent recruitment in agriculture.

### **Efforts to step up union representation amongst third-country nationals**

Third-country nationals are often unaware of their rights or the potential support offered by trade unions (Keryk, 2018). Their work in sectors, such as construction, transport, agriculture or domestic work, has no strong union presence. Moreover, their fears about losing their residence and work status, possible cultural and language barriers, and time constraints because of high workloads and low pay often makes it hard for migrant workers to self-organise. Irregular workers have explained that opportunities to regularise their residence status, assistance with job search and claiming back payments, access to criminal justice, and easily accessible information on workers' rights and social services would help to address their situation. (FRA, 2019) Accordingly, efforts have been made to increase the representation of migrant workers from third countries.

In Belgium, the Confederation of Christian Trade Unions (CSC) supports and advises migrant workers, raises awareness of rights and informs migrants how to record evidence of exploitation and mistreatment by employers. The Italian General Confederation of Labour (CGIL) is organising peer support for seasonal agriculture workers, often from African or Eastern European countries.<sup>29</sup>

Domestic work is particularly underrepresented, as it takes place in a private setting. In the Netherlands, third-country nationals engaged in domestic work are organised in the 'United Migrant Domestic Workers' group of the FNV (EMN, 2017). The importance of outreach via personal networks, the community and social media, as well as trust-building, advice and personal counselling, were highlighted in Sweden, Switzerland and Spain's initiatives to gain third-country nationals as union members.

An example of a newly created trade union in Poland facilitating higher joining rates of workers from third countries illustrates how union representation reduces the scale of illegal employment of Ukrainian citizens in Poland.

#### **Example: Trade Union of Ukrainian Workers, Poland**

The Trade Union of Ukrainian Workers combats undeclared work and labour exploitation of Ukrainian workers on the Polish labour market through advocacy activity, awareness-raising and legal support.

In early 2019, the Trade Union for Ukrainian Workers reported over 1 000 members (MPUPP, n.d.). It is involved in advocacy work and consults the government on important issues for migrant workers. Due to lack of funding, the legal support is provided on a

<sup>29</sup> See for more information here: <https://www.fondazionemetes.it/raise-up> and Section 8

small scale and only in the Warsaw district. Nevertheless, such support is provided to all migrant workers, regardless of their union membership.

The number of complaints by foreign workers to the NLI tripled between 2016-2017, reaching 1 473 in 2017 (PLI, 2018). Between 2016 and 2018, the number of Ukrainian workers reported to national insurance doubled, to 425 670 (ZUS, 2019). Union and NLI activities contributed to increased awareness of their rights among Ukrainian workers.

In 2019, the Commissioner for Human Rights nominated Jurij Kariagin (Chair of the Trade Union of Ukrainian Workers) for the award of NLI. The award is granted for outstanding achievements in the field of supervision and control of compliance with labour law and prevention of occupational hazards. In their nomination, the Commissioner for Human Rights argued that Jurij Kariagin's activity significantly reduced the scale of violations of law with respect to the legality of employment of Ukrainian citizens in Poland.

The success of the Trade Union for Ukrainian Workers is its autonomy from OPZZ and independence in developing its programme. This empowers migrant workers and allows them to focus on issues pertinent to them.

With limited financial resources, the union builds on cooperation with NGOs and the media to provide support in the most extreme cases of exploitation and expose companies that offer poor working conditions for migrant workers.

*For further information please refer to Annex 5*

## 7 COMMON MEASURES BY ENFORCEMENT AUTHORITIES, NGOS AND SOCIAL PARTNERS TO ADDRESS UNDECLARED WORK AND LABOUR EXPLOITATION

This Section discusses concrete measures taken by enforcement authorities, such as labour inspectorates, tax and social security authorities, as well as social partners, to address undeclared work and labour exploitation of third-country nationals. The measures presented here were referenced in the reviewed literature and/or mentioned by Platform members.

### Key findings

- Some measures by enforcement authorities are specifically targeted at third-country nationals. Within these authorities, such measures are driven by a specialisation of staff members in dedicated units, programmes or teams working with migrants, for example the Finnish Foreign Workers Unit or the Dutch programme on labour exploitation.
- Preventative measures promote information about rights and obligations to non-EU nationals, especially those with low skills or/and language barriers. Research points out that multi-lingual advice should be offered. Here, an innovative example is the 'cultural mediators' in Italy and the Netherlands who can help to overcome cultural barriers, specifically in closed community networks described in Section 5. For employers, preventative approaches include support to register non-EU national workers, certifications and websites facilitating job matching, as well as a focus on chain liability. Finally, awareness raising specifically targeted at third-country nationals can increase trust in institutions and declared work.
- Although inspections are the main measure to tackle undeclared work of third-country nationals, they are often not as frequent and effective as authorities would like these to be, which in turn increases impunity of employers. Promising practices to improve inspections include: effective cooperation between several enforcement authorities; measures to address capacity issues in labour inspectorates; specialised teams;

effective complaints mechanisms; and providing support and advice during and after inspections.

- Compared to undeclared and illegal employment, labour exploitation is harder to detect. Training inspectors or specialised teams, indicators in risk assessments and communication to build up trust during inspections are ways to identify cases. However, the intervention in more moderate cases of labour exploitation remains limited.
- Sanctions for employers depend on the scale and nature of the sanction and the likelihood of such sanctions being enforced, while migrants are afraid to report exploitative employers because they fear the consequences of being found in illegal employment, including losing their income and their residence permit.

Illegal employment or undeclared work and labour exploitation frequently go hand in hand, and enforcement authorities responsible for monitoring labour law are often first to identify irregularities on the ground. Undeclared work may be 'easier' to detect during inspections, as a lack of documentation, such as employment contracts and salary slips, is an important indicator. Labour exploitation however is more difficult to recognise, because it may not be instantly visible especially to the untrained eye. Moreover, less severe cases (those that do not fall under criminal law) are more difficult to prove. According to observations by ETUC, whilst labour inspectors or the police check work authorisations, they do not always engage with the worker on their working conditions. However, in cases of labour exploitation, taking the time to build up trust is important to inform the workers about their rights and to identify exploitive working conditions.

Enforcement authorities have, to some extent, adapted their approaches to identify and address undeclared work of third-country nationals, and possible cases of labour exploitation.

In Sweden, for example, the government introduced criminal liability for crimes less severe than human trafficking, such as exploitation in the workplace. This allows to sanction labour exploitation without having to refer to the more difficult-to-prove crime of human trafficking. In the Netherlands, the 'Programme for investigating labour exploitation' in the Dutch inspectorate (see Section 7.2.2), takes over identified cases of labour exploitation. The 'Act to combat unlawful employment and benefit fraud' provides new responsibilities and increased resources to the German FKS. The legislative change enables the authority to intervene earlier to prevent labour exploitation and illegal employment, to prosecute cases and exchange data with other authorities.

Undeclared work and labour exploitation require training of labour inspectors addressing language barriers, discrimination and cultural context, cooperation and enforcement of legislation, such as chain liability (ILO, 2017; FRA, 2018). Research on labour exploitation notes the need for specialist training (FRA, 2018), especially in order to identify severe cases, such as human trafficking. This is done in most labour inspectorates, for example in Poland, where inspectors receive a two-day training course on identification of human trafficking, run in cooperation with an NGO. The training covers also the existing legal framework and the role of various authorities: the Police, the Border Guard, the National Labour Inspectorate in combating and preventing this crime, but also the role of various NGOs (e.g. La Strada Poland) in providing guidance and assistance to the victims.

As with EU citizens, labour inspectorates can address fraudulent posting by increasing their capacity for cross-border cooperation. In Belgium – a receiving country of high numbers of posted workers – the inspectorate created specialised 'Network teams' in 2006 to improve the detection and tackling of violations on posting conditions, via training, data-mining, guidance material, advice and increased outreach to European partners. The Finnish Occupational Safety and Health Units have specialised inspectors, with a focus on EU/EEA citizens, as well as third-country nationals (EMN, 2017; ILO, 2018).

### **Example: Inspection unit for foreign labour (including EU and third-country nationals), Finland**

The foreign labour inspection unit within the Regional State Administrative Agency for Southern Finland/Division of Occupational Health and Safety aims to prevent undeclared work and labour exploitation of foreign labour, including third-country nationals. The main tool are inspections, which have uncovered issues predominantly in three sectors: construction, restaurant and cleaning. Specifically, within the group of third-country nationals, since 2017 the unit has encountered more asylum seekers engaging in undeclared work.

Cooperation between the authorities allows information to be shared. There are established joint inspections with the tax authorities and the pension centre at construction sites, and results identify further inspection areas. In 2019, the unit conducted over 840 inspections in southern Finland, more than 440 of which related to undeclared work. Official statistics are available mainly for 2018 and show that over 1 000 inspections were carried out: 38 % in the hospitality sector; 21 % in construction; 11 % in cleaning; and the remaining 30 % in a variety of sectors.

If underpayments are discovered, the issued guidance is not legally binding. Without legal measures, there is little incentive for companies to comply. One way is to put more public pressure by making inspection reports available online – this is currently under discussion.

*For further information please refer to Annex 5*

## **7.1 Preventative measures targeted at third-country nationals and their employers**

Traditionally, there has been a stronger focus on deterrence methods than on preventative approaches, and evidence on prevention efforts is scarce (Williams, 2018; Eurofound, 2010). This is also reflected in measures concerning the employment situation of third-country nationals: inspections are typically used to detect irregularities in the work of non-EU nationals, often focusing on high-risk sectors, in cooperation with other authorities.

Although preventative approaches are used to a lesser extent than inspections, a balanced approach between prevention and deterrence is needed to tackle potential employment irregularities among third-country nationals (OECD, 2018; ILO, 2009). There is increasing awareness, however, that preventative approaches are also important, as it is often unclear if third-country nationals are unaware of regulations or simply forced not to comply.

Currently, several Member States have put in place measures to create incentives and raise awareness of the benefits of declared work, targeted at migrant workers and their employers, which can be broken down into three categories:

- Supply-side incentives, to make it easier and more beneficial for migrant workers and their employers to engage in declared work before undeclared work occurs;
- Demand-side incentives, which reward purchasers for buying declared goods and services; and
- Awareness-raising campaigns.

Each of these are discussed in more detail below.

### **Information support for foreign workers to address multiple barriers**

Language, economic or cultural barriers and complex regulations can lead to non-compliance by third-country nationals and their employers. Non-EU nationals are often not aware of their rights and obligations, nor of the avenues to report infringements (European Commission, 2019; FRA, 2019). For those migrant workers and employers who unintentionally do not comply with legislation, information and support, such as advice services, simplification procedures and training can all support a shift to formal work.

In most countries, supply-side measures targeting employees exist to help foreign workers to understand their rights and obligations. These can consist of websites (such as the Work in Finland website, providing information on regulations), multilingual information material, communication via social media and/or counselling services. For example, in Germany, 'Arbeit und Leben' is a free, confidential, multilingual counselling service on labour law and employment relations for workers from other EU and third countries. It was set up in 2010 by local authorities and labour inspectorates (European Platform tackling undeclared work, 2017c).

Some measures are sector-specific; for example, a phone hotline in the Danish fishing industry or for the Finnish agriculture sector, where third-country nationals can check the conditions of the job and the company. Advice services often distribute information tools that support third-country nationals to comply with regulations, while also increasing their awareness of possible exploitation. Examples are multilingual working time calendars to track their working time, tax calculators or information sheets. Another simple outreach measure is the app 'Agriworker' by the German Industrial Union for Building, Agriculture and Environment (*Industriegewerkschaft Bauen-AgrarUmwelt, IG BAU*), informing workers about their rights.

**Figure 6. infoFinland website**



Source: Screenshot from infoFinland - Work in Finland. <https://www.welcomeguide.fi/>

An innovative outreach practice is the use of 'cultural mediators' in Italy and the Netherlands, which make use of people with a similar cultural background to inform and advise third-country nationals about their rights. This addresses linguistic barriers and cultural obstacles (e.g. many workers are illiterate and come from countries where relationships with institutions are far from positive). In the Netherlands, this is funded by the Ministry of Social Affairs and Employment and run by the FairWork Foundation (EMN, 2017).

### Information on obligations for employers

For employers, measures have focused on clarifying and facilitating procedures and raising general awareness about employing third-country nationals. In accordance with the Employers Sanctions Directive, employers need to verify the validity of residence permits or other authorisations of stay of third-country nationals, keep at least for the duration of the employment a copy or record of such document(s) for possible inspection by competent

authorities of Member States, and notify authorities about their employment. Under Article 4 (2) the Directive states the Member States may provide for a simplified procedure for notification where the employers are natural persons and the employment is for their private purposes.

This encourages compliance and makes it more difficult for them to deny any wrongdoing. In Bulgaria, third-country nationals need to be registered with the employment agency in case of early termination of employment and changes in the employment relation need to be reported. In Sweden, employers need to notify the Swedish Tax Authority in order to employ third-country nationals (EMN, 2017). Migration authorities or employment services provide guidelines on the types of residence and work permits and the obligations to register third-country nationals or to notify employment changes. In Germany, employers are informed about the consequences of hiring third-country nationals illegally and partnerships between the tax authorities and social partners exist to communicate issues on a sectoral basis (OECD, 2018; EMN, 2017). Some countries have online verification systems where employers can check residence permit and work authorisation online, for example in the voluntary self-assessment tool for employers in the Netherlands.

### **Incentives for employers to recruit for fair and declared work**

The recruitment of migrant workers is regulated in specific sectors to ensure formal employment of migrant workers and to prevent undeclared work and labour exploitation. For example, cooperation between the Migration Board and the Kommunal trade union in the Swedish berry-picking sector focuses on fair pay and working conditions. Kommunal checks that the employer meets working and salary conditions before the Swedish Migration board grants residence and work permits to third-country nationals. Kommunal is also responsible for labour inspections, including working conditions, pay and safety regulations.

In Italy, the 'control room' (*Cabina di regia*) of the 'Agricultural Decent Work Network' (*Rete Agricola di Qualità in Foggia*), run by the labour inspectorate, the National Institute of Social Security and social partners, focuses on transparent hiring of workers, as well as arranging decent transport and accommodation via a database. This includes a list of companies registered with the National Institute of Social Security who comply with labour, social security, income and value added tax (VAT) legislation. The network also monitors undertakings not included on the list and provides a guide for customers (how to choose their supplier) (Williams et al, 2018). In Hungary, seasonal workers can be registered via a mobile app. In turn, this data also provides better insight to plan inspections and to detect infringements (European Platform tackling undeclared work, 2019).

A similar initiative is a social label initiative in Belgium. The mushroom growing sector in Belgium was experiencing difficulties due to low prices. Together with social partners, a plan for the sector's future was put in place. Employers sign up (i.e., they must sign a declaration each year) to respect Belgium's social legislation and not to resort to systems involving posting abuses and bogus self-employment. They also agree to keep the number of permanent workers at 2011 levels. In return, they can hire seasonal workers for up to 100 days per seasonal worker per year instead of the usual 65 days. The social partners have been responsible for drawing up the list of companies eligible to make use of this expanded regime. The Minister for Social Affairs approves the list of 'social label' companies. The social label system has also increased the number of companies in the mushroom growing sector.

### **Joint and several liability to address complex supply chains**

Some countries use chain liability, requirements of transparency along the chain, due diligence obligations, or a maximum length of the chain as another employer-focused measure, especially in sectors with high employment of third-country workers. Enforcement authorities face challenges in monitoring complex subcontracting chains, particular in sectors with a high number of irregularly staying non-EU workers. Many countries have increased joint liability in subcontracting. For instance, Czechia and the Netherlands increased severe sanctions in supply chains (EMN, 2017), while global

companies in France are legally required to monitor and choose subcontractors carefully (European Platform tackling undeclared work, 2017c). The Swedish 'Nacka project' (see box below) from 2015 targets labour exploitation by checking companies for public contracts.

#### **Example: Nacka Project, Sweden**

The Nacka project aims to prevent tax evasion and labour exploitation in public contracts for construction companies. A thorough check of possible criminal connections ensures that tax evasion or labour exploitation of third-country nationals are prevented. All contractors must meet several background checks:

- Registered with the company register, tax register, social security and no debts, checked by municipal services;
- No criminal record with the police;
- Workers must have a valid authorisation card on the construction site, and all contractors must keep daily records of persons working at the site; and
- Tax records must be sent to tax authorities for every employee by the contractor and sub-contractor. This way, tax authorities can check whether a person who is registered as an employee working at a specific construction site actually works there.

The project facilitated better cooperation between government partners and private parties, and the project can be transferred to other sectors.

*Source: <https://www.teamwork-against-trafficking-for-labour-exploitation.nl/examples/screening-subcontractors-sweden>*

#### **Demand-driven measures to increase declared work of third-country nationals**

Demand-driven measures aim to incentivise customers to buy declared services rather than undeclared services. A prominent example is the voucher system for domestic or household services that formalises employment relations by prompting households to register domestic workers and pay social security contributions via simple registrations and tax rebates that make undeclared work more expensive for the purchaser. Such vouchers exist in Austria, Belgium, France and Sweden. The long-standing Belgian scheme has been successful in reducing undeclared work in the sector (see Platform tackling Undeclared Work Plenary meeting, 2018; Williams, 2018). In the private household setting, where inspections are difficult, vouchers are good practice to formalise services and establish a direct employment relationship between a private individual and a household.

Vouchers are only available for migrants with work and residence permits (one exception is the Swiss Canton of Geneva, where third-country nationals without residence and work permit can be employed with service vouchers and thus pay social security). While it is understandable (and legitimate) that only workers with a permit are allowed to benefit from the schemes, few countries have legal migration schemes for domestic work, meaning that vouchers can only be used by regular migrants and not by the (potentially high number of) irregularly staying third-country nationals.

Regularly staying migrants also face certain limitations, such as a lack of awareness of the schemes among migrant domestic workers (European Federation of Food, Agriculture and Tourism Trade Unions, 2015) or restrictions in the design of the schemes. For instance, the Austrian voucher scheme does not allow workers to exceed monthly earnings of EUR 500, which makes the scheme more attractive to native workers providing such services as a top-up activity, but not for migrants who wish to engage in this work full-time. In addition, regularly staying third-country nationals also stress the limited professionalisation of their jobs, an aim intended to be addressed by the voucher system (Pérez et al., 2016).

## Awareness-raising campaigns to increase knowledge about decent work

Undeclared work is not undertaken solely for economic benefit, and awareness-raising activities seek to promote the benefits of declared work by changing behaviours and norms (Williams, 2018). Workers and employers may engage in undeclared work because they have little trust in public authorities, or limited awareness of what taxes and social security contributions offer. For third-country nationals, this may be linked to low public trust and acceptance of taxes or social security contributions in their countries of origin.<sup>30</sup> Another coinciding issue is that of stereotypes or discrimination towards migrants among employers, the public and institutions, for example that migrants work predominantly in jobs that are 'dangerous, dirty and demeaning'.

Awareness-raising campaigns and education about undeclared work and labour exploitation of migrants can address the wider causes of the issue and make employers, workers and the public more aware of the benefit of formalising work for workers from third countries. Most countries have campaigns to raise awareness of the risks and costs of undeclared work in order to change the behaviour of employers or targeting employees (Williams, 2018). Campaigns often include different types of information tools, mostly leaflets or websites, and are often run in cooperation with NGOs and social partners. In Belgium and France, press releases inform the public about undeclared work and illegal employment by migrants (EMN, 2017). In Belgium, they are released by the labour inspectorate and inform the public about recent cases of illegal employment of third-country nationals. In France, the Prefects communicate via local press on social fraud and illegal employment cases. A recent example is a personal statement by a politician in Italy: In light of the 'relaunch bill' launch (see also Section 9.3), the Italian Minister of Agriculture described her own experience as an agricultural worker when she was young. This increased awareness of the conditions in the agricultural sector and counteracted the negative public discourse over migration in Italy.

Information efforts are limited in their reach and do not always explicitly target the employment of third-country nationals (OECD, 2018; EMN, 2017). There are a few examples of targeted information efforts, such as the 2009 campaign to prevent the economic exploitation of Brazilian migrants in Belgium (EMN, 2017). In Czechia, trade unions organised an awareness campaign 'The end of cheap labour' in 2015 (Trčka et al., 2018).

There is potential for cross-border cooperation to target people within their country of origin. In Italy, for example, the 'Back in the Field' awareness-raising campaign by the Federation of Farming Industry Workers General Italian Labour Confederation (FLAI CGIL) aims to meet workers at their workplace to inform them of their rights. The campaign is particularly directed against the '*caporalato*' recruitment system in agriculture. In 2019, the joint [European project 'RAISE UP'](#) continued the campaign in Italy, involving other trade unions, employer organisations and institutions from Bulgaria, North Macedonia, Romania and Serbia in order to develop responsive measures in the countries of origin.

Another approach is to target workers from third countries in campaigns targeting the whole population. From 2017 to 2019, the Polish inspectorate carried out a three-year campaign 'I work legally', which aimed to raise awareness of legal and formal employment among employers and workers, including foreigners and Ukrainian nationals in particular. This was implemented together with the social partners. The campaign included radio features, press releases, adverts in public transport and online content.

Materials on the benefits of legal work and risks resulting from illegal employment were published in Polish, Ukrainian and English. In addition, personal 'story-telling' videos were produced, with two Ukrainian women telling the story of their employment in Poland. The

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<sup>30</sup> As pointed out in Section 5.3, a lack of trust in institutions or beliefs that are not in line with the existing regulations can also exist in Member States.

videos were created in two language versions – with Polish and Ukrainian subtitles and shown in public transport in the 20 biggest cities in Poland.

**Figure 7. Infographic in Ukrainian from the Polish 'I work legally' campaign**



Source: Infographic in Ukrainian from the 'I work legally' campaign provided by National Labour Inspectorate.

## 7.2 Main measures of enforcement authorities to deter undeclared work by migrants

Labour inspectorates are primarily responsible for detecting illegal and undeclared work. They plan and carry out inspections that are based on risk assessments. Complex irregularities caused by undeclared work, illegal employment and labour exploitation can be better identified through targeted reporting tools and specific indicators on labour exploitation.

Despite being the main instrument of enforcement authorities to address illegal and undeclared work of non-EU nationals, the number of inspections is often insufficient (FRA, 2018). Practices that have helped to improve detection include coordinated inspections with other enforcement authorities, improving the capacity of inspectorates to identify labour exploitation, and developing complaints mechanisms and other reporting tools for migrants.

Finally, while sanctions for employers are important to curb illegal employment and undeclared work, much depends on the enforcement and severity of a sanction. On the contrary, sanctions for irregularly staying third-country nationals can prevent them from reporting.

### Detecting irregularities whilst protecting workers

Enforcement authorities use the results of risk assessments to plan inspections in high-risk sectors: construction or manufacturing with highly complex supply chains, sectors with changing workforces and settings, such as transport, agriculture and private security.<sup>31</sup> The risks of illegal employment and potential labour exploitation are generally assessed by

<sup>31</sup> The Communication on the Employers Sanctions Directive also outlines that inspections should be informed by statistical techniques to identify risk sectors and develop strategies to address them.

combining results from previous inspections, complaints or whistleblowing, the number of permits in a sector, or data from social security or tax.

However, third-country nationals often do not report non-compliance with labour law or criminal law. They may be afraid of the potential negative outcomes for themselves, such as losing the right to residency or their income, risking deportation, etc., and be reluctant to press charges against their employer, especially when they are dependent on them and/or have the same private/social network. As a consequence, research by the European Union Agency for Fundamental Rights (FRA, 2019) points out that fewer than half of the interviewed exploited workers report labour exploitation to the police. Amongst those who reported to the police, those who reported a positive experience had often support by trade unions or lawyers, while those without support stated that they did not feel taken seriously or perceived as the perpetrator instead of the victim (FRA, 2019).

In addition, despite the recent introduction of EU-wide standards to protect whistleblowers,<sup>32</sup> reporting procedures depend on national implementation. So far, there have been varying definitions of whistleblowing across Member States, and barriers to effective reporting are the stigmatisation of whistleblowers and/or a lack of evidence about the effects of whistleblower protection (European Commission, 2019).

Enforcement authorities need to be aware of this reluctance if they are to successfully detect undeclared work and exploitive employers. Platform for International Cooperation on Undocumented Migrants (PICUM) guidelines for developing complaints mechanisms for undocumented migrant workers, for example, highlight that labour and social inspection authorities' complaints mechanisms should not involve police or migration authorities, who would act on irregularities regarding a worker's residence or work authorisation. In Belgium, the Federal Public Service Employment, Labour and Social Dialogue (FPS) has created a national contact point to lodge complaints against their employers. The labour inspectorate guarantees anonymity and confidentiality of the complaint and works with NGOs to detect cases and subsequently undertake inspections.

#### **Example: Point of contact for fair competition, Belgium**

The Social Information and Investigation Service of the Federal Public Service Employment, Labour and Social Dialogue (FPS) has created a national contact point for complaints about unfair competition, social dumping, labour conditions, undeclared work and benefit fraud. Anonymity and confidentiality of the complaint are guaranteed and may lead to inspections. When a complaint is issued, the contact point first assures the individual that full anonymity is guaranteed (Article 59 of the Social Penal Code), even in court, and that they are not authorised to inform an employer or their representative that an investigation has been triggered. However, in some cases, action can only be taken when the anonymity is lifted.

The contact point has shown that NGOs and social partners play a key role in bringing forward cases of third-country nationals in undeclared work or subject to exploitation.

In terms of outcomes for third-country nationals, as a result of inspections carried out on the basis of complaints lodged with the contact point, employers have been obliged to pay due wages (different between wage received and the minimum wage) and salaries, as well as tax and social security contributions. A legal presumption that undocumented workers worked at least three months was introduced in line with EU law, unless there is evidence to the contrary, as it is generally very difficult to prove the working relationship and its duration. Where there is insufficient information to oblige the employer to pay the outstanding wage(s), the FPS draws up a criminal report for the public prosecutor. A criminal report is also filed for illegal employment of an irregular third-country national towards the employer. The argument that paying the wages might

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<sup>32</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

influence the outcome of that penal procedure sometimes prompts payment of the wages owed.

*For further information please refer to Annex 5*

Labour exploitation is especially hard to detect. The Netherlands' 'Programme for investigating labour exploitation' (see below) and other inspectorates use indicators to help inspectors to identify cases during inspections.

#### **Example: Specific indicators to identify labour exploitation**

- Reports on work accidents or workers show injuries during inspections on-site, as there is a connection between undeclared work and labour exploitation and poor occupational and health conditions;
- False or no documents, as those documents are being held by someone else;
- Isolation; workers seem like they were instructed to act a certain way or do not know the language, cannot leave their workplace, or/and seem anxious;
- Long working days;
- Underpayment; no payment; no access to their earnings; no bank account
- Reports of 'debt-bondage', such as fines for transport and accommodation reported by the workers, or charged for services they do not need;
- Poor housing conditions; such as living on-site or in inadequate housing
- Reported threats and violence.

In the construction sector, tools to increase detection chiefly target larger sites than home or maintenance, linked to the more exploitative tendencies of these places (European Platform tackling undeclared work, 2017c). Measures often simplify the identification of workers, such as ID cards in Belgium, Sweden and Finland (European Platform tackling undeclared work, 2017c). In Sweden, the ID06 project requires all workers at construction sites to register and carry identity cards (ILO, 2009). In Finland, tax numbers simplify recognition of employees and ensure that the appropriate taxes are paid, which is user-friendly for the employer. The system could potentially be transferred to other sectors (EMN, 2017). In the Belgian construction sector, every subcontractor needs to register their workers via Checkin@Work (European Platform tackling undeclared work, 2017c). In Germany, obligatory IDs were extended to the private security sector in 2019.

#### **Act to combat unlawful employment and benefit fraud, Germany**

The 2019 'Act to combat unlawful employment and benefit fraud' provides new responsibilities and increased resources to the German unit for monitoring undeclared work, the FKS. Several measures aim to address undeclared work, illegal employment and the misuse of government benefits more consistently and effectively. It therefore seeks to better protect employees from minimum wage and social security violation and against labour exploitation in general.

While the legislation targets national workers, EU citizens and third-country nationals, it provides the FKS with new investigate powers that can prevent recruitment practices that are often used before third-country nationals start working undeclared, often under exploitive working conditions. For example, the FKS is now investigates recruitment in public 'pick up spots', reviews online and print recruitment and checks suitable accommodation agreed in a collective agreement (e.g. in the construction sector) by entering housing to inspect its suitability.

*For further information please refer to Annex 5*

## Increased and specialised inspections as the main deterrence instrument

In most Member States, enforcement authorities carry out inspections to tackle undeclared work and illegal employment. Good practices to solve current shortcomings of inspections include joint inspections between several enforcement authorities; a specialisation to identify aspects of labour exploitation; building up trust with potentially exploited third-country workers and providing legal and language support and advice during and after inspections.

Key challenges to address undeclared work and labour exploitation of third-country nationals are the insufficient number of inspections and poor coordination among the police, immigration authorities, tax and customs administration and labour inspectorates (FRA, 2018; ILO, 2009). In other cases, the scope of the investigation is inefficient, for example the Finnish Regional State Administrative Agency for Southern Finland/Division of Occupational Health and Safety noted that it is required to meet a certain number of inspections set by the Finnish government, which prevents detailed investigations. In Sweden, the 2019 status report of the RAC (see Section 6.2) concludes that 'foreign workers feature in all risk environments, where the State's possibilities of inspecting and managing any undocumented workers are limited. Obstacles to the enforcement of entry refusal and deportation, and the challenges concerning lack of border controls, mean that workplace inspections as a method of keeping undocumented labour in check in some cases are ineffective'. Another example are inspections in Czechia, where the capacity of the labour inspectorate is challenged by the time-consuming detection of fraudulent posting arrangements of Ukrainian workers who arrive on a Polish visa (Trčka et al., 2018).

### Tensions of labour inspectors checking illegal employment

In the context of undeclared work, illegal employment and labour exploitation, labour inspectorates are often challenged to balance their mandate to ensure fair work for all workers while addressing illegal employment in an EU with increasing cross-border mobility of services and workers which also results in cross-border mobility of third-country nationals (ILO, 2009). Labour inspection does not only aim to enforce legislation but promotes equality in the labour market and prevents xenophobia and racism (ILO, 2018). However, there are concerns that a focus on residence and work permits may divert resources from monitoring working conditions and increase migrants' reluctance to complain to a labour inspector (who then needs to report irregularities to migration authorities or the police) (ILO, 2018).

ILO standards note that cooperation between labour inspectorates and immigration authorities need to focus on rights and decent working conditions of all workers. The Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129) stress *'the primary duty of labour inspectors is to protect workers and not to enforce immigration law. It has further emphasised that duties additional to enforcing laws on working conditions and the protection of workers, such as enforcement of immigration laws, may be assigned to labour inspectors only in so far as they do not interfere with their primary duties.'* In order to ensure that sufficient resources are allocated to monitoring fair working conditions, a clear division of tasks between enforcement authorities is recommended by the ILO, for example that migration authorities focus on illegal employment and inspectorates on work conditions during inspections. However, labour inspectorate services are often specifically mandated to monitor the employment of migrant workers or aspects of immigration law. For example, in Czechia, the State Labour Inspection Office enforces the Employment Act which covers both undeclared and illegal employment. In the Netherlands, the Inspectorate SZW supervises compliance the Foreign Nationals Employment Act (amongst other regulations).

PICUM and ETUC call for the establishment of a 'firewall' between labour inspectorates and social security authorities on the one side and immigration authorities on the other,

so that irregularly staying migrants do not face deportation when they wish to access essential services or report abuse or exploitation. In Austria, for example, labour inspectors are exempt from monitoring illegal employment and undeclared work (ILO, 2010), which are addressed by the Financial Police. In France, labour inspectors check permits of third-country nationals during inspections and they are, next to the police and the general border directorate,<sup>33</sup> responsible for identifying offences relating to the employment of foreigners. They have however 'a strong organisational culture not to share information for immigration enforcement purposes' and plan procedures allowing irregularly staying third-country nationals to first start their regularisation procedures. Thus, most irregularly staying third-country nationals are not obliged to leave the country after an inspection (PICUM, 2020).

Inspections often target high-risk sectors, based on available information in risk assessments, combined with broader, random controls. Workplaces in agriculture, small construction sites, domestic or maintenance services are difficult to inspect. Subcontracting schemes using fraudulent posting are also difficult to detect and can involve letterbox companies and fraudulent temporary work agencies who supply labour and 'disappear' during investigations (European Platform tackling undeclared work, 2017b).

For labour exploitation, in particular, the scaling-up of detection and deterrence measures, in the form of better targeted workplace inspections and a mixture of announced and unannounced inspections (some employers intentionally hide irregular migrants) can increase their effectiveness.

### **Recommendations: Improvement measures during inspections**

The report 'Protecting migrant workers from exploitation in the EU: boosting workplace inspections' (FRA, 2018) identified the following improvement measures:

- Unannounced inspections;
- Regularly changing the inspectors who visit sites;
- Having inspectors, not the employer, choose the workers to question;
- Not questioning workers in the presence of employers and co-workers;
- Asking different questions during consecutive inspections;
- Building trust with irregularly staying workers;
- Ensuring that labour inspectors are trained to identify the signs of abuse and to cross-check evidence, and that they are prepared to defend the rights of workers;
- More extensive controls to encompass specific sub-sectors of the economy that are insufficiently inspected, such as: meat processing companies, kebab restaurants and hotels providing spa services (mentioned by research participants of the FRA study in Poland);
- Inspectors should not limit themselves to checking documents but should also check working conditions and speak with the workers.

Belgium, France, Italy, the Netherlands and Poland were recommended to increase the frequency of inspections, while Italy and Poland were advised to improve the efficiency and thoroughness of their inspections (FRA, 2018).

During inspections, the staff of enforcement authorities and supporting advice services are pivotal to explain workers' rights. For example, the Italian labour inspectorate stated that labour inspectors always inform third-country nationals about their rights in relation to remuneration and social security contributions, working conditions and the principles of

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<sup>33</sup> Article L.8271-17 of the Labour Code. The Social Security Code also allows enforcement authorities to share data investigating offences relating to illegal employment to investigate fraud generated by undeclared work.

non-discrimination and protection of minors and working mothers, irrespective of their residence and work permit status. Another example is the inspection in Section 7 that involved the Migration and Good Work Counselling Centre in Germany to provide advice on labour and residence law to affected employees, as well as providing accommodation and meals.

Language skills are strongly linked to the knowledge of workers' rights and especially vulnerable groups might not be aware of their rights. During inspections, relevant information is hence ideally translated into an understandable language for the third-country national, and a possible referral to support services during inspections and advice on how to file a complaint or gain compensation support the protections of rights of these workers (FRA, 2018; Chudžíková et al., 2018).

In Finland, inspectors use interview guidance in 20 languages when interviewing foreign workers. If the foreign workers cannot communicate in Finnish, English (or another language spoken by the inspector), they are given the guidance notes to complete. Another example is Ireland (see below), which combines preventative measures and inspections, using multilingual material and specific guidance for inspectors on domestic work cases, a sector that is traditionally difficult to inspect.

### **Example: Domestic inspections in Ireland**

In Ireland, the Migrant Rights Centre Ireland and the Workplace Relations Commission (WRC) campaigned to improve work conditions for migrant au pairs who often worked undeclared in exchange for 'pocket money' and lodgings. The WRC raised concerns about possible cases of exploitation (European Platform tackling undeclared work, 2018b).

The WRC organised themed campaigns involving multilingual brochures and adverts on online recruitment sites, advising on minimum wage entitlements for domestic workers.

Most inspections are prompted by official sources, i.e. tax returns where the employer was classed as a domestic work employer. There is thus the limitation that some employers (especially of au pairs) are not registered officially. Domestic workers can also file a complaint online via the information and customer services of the inspectorate, which may lead to inspections in (but not exclusively) private homes.

Inspectors first check if the employer is registered as an employer. They then contact the household to request a visit, using a standard appointment letter that includes a Code of Practice on employment in other people's homes and a domestic work leaflet, along with the right to refusal. Those who refuse (reportedly about one-third) must attend an interview and provide relevant documentation.

In private homes, inspectors follow the usual inspection routine except with a single inspector (in most cases). The inspector meets separately with the domestic worker and is particularly vigilant about protecting the source of the inspection. Inspectors explain the legislation to the employer and the employee, with multilingual leaflets and interpretation if needed. For non-EEA domestic workers with a work authorisation (this is uncommon, as permits are not generally issued for domestic work), work permit conditions are checked. Inspectors are aware of indicators of human trafficking.

From 2011 to 2016, around 77 % of inspections took place in private homes and 11 % in accountants'/solicitors' offices, following a refusal of a domestic inspection. 61 % of the workers were Irish and 18 % were Filipino, and 20 % of cases were recorded as 'live-in' workers. 61 % of employers had breached the Organisation of Working Time Act, 8 % did not provide payslips, 5 % did not have written terms and conditions of employment, and 3 % had issues with minimum wage (resulting in the recovery of EUR 9 000 in wage arrears) (European Platform tackling undeclared work, 2018b).

The WRC has been successful in a number of au pair cases in securing wages from employers. Irish law does not have a definition for au pairs and many come to Ireland on student visas and then start working in the sector (Smith, 2015), and the unclear employment relation makes them vulnerable for labour exploitation and undeclared

work. Due to the domestic inspections, the inspections proved an eligible employment relation which entitled the au pairs to all employment rights under Irish law. This also allowed the Irish statutory bodies responsible for dealing with employee complaints made substantial awards to au pairs who did not receive employment rights.

In 2016/2017, the WRC also investigated 97 entities advertising as au pair agencies. Of these, 17 subsequently obtained licences, 40 ceased trading and 23 never traded (the rest did not require licences or were connected to other agencies).

Labour inspectors need training and guidance to identify (often complex) cases of labour exploitation during workplace inspections. Some countries have specialised guidance material for inspections, inspection scripts for suspected cases of illegal employment, labour exploitation/undeclared work or checklists for high-risk sectors. In Belgium, labour inspectorates use the '[Toolkit to combat trafficking in persons](#)', where there are suspected cases of trafficking in human beings.

A special programme with a focus on labour exploitation and/or trafficking in human beings exists in the Netherlands, which places significant focus on ensuring that victims of labour exploitation are treated well, and on the need for inspectors to build trust with migrant workers.

#### **Example: Programme for investigating labour, the Netherlands**

In the 'Programme for investigating labour exploitation', the Dutch Inspectorate (SZW) deploys a mix of tools to tackle labour exploitation of third-country nationals. Targeted risk analysis, specialised joint inspections, and cooperation with partners aim to prevent impunity of employers and support victims of labour exploitation.

The 'Programme for investigating labour exploitation' has identified labour exploitation successfully via building up trust with workers. Almost all third-country nationals who were victims of labour exploitation and interviewed in FRA research felt they had been treated well by the police or labour inspectorate during inspections that involved the 'Programme for investigating labour exploitation' (FRA, 2018). They felt informed about their rights, as well as about the aim of the inspection, they were encouraged to report abuse and were advised about the next steps after the inspection. In some cases, the police or labour inspectors provided an opportunity for the workers to get their belongings or they were referred to support organisations.

*For further information please refer to Annex 5*

Finally, the legislative framework of labour exploitation and their mandate to intervene is an issue for some inspectors. In Finland, the occupational safety and health authorities pointed out that the existing legislation is not sufficient to intervene against exploitation. Underpayment of wages, for example, is not a criminal offence, and the authorities can only give advice to the employer. In the Netherlands, labour exploitation as defined in criminal law is difficult to prove and the inspectorate has less leeway to intervene in more moderate cases of labour exploitation.

#### **Penalties have different outcomes for employers and migrant workers**

Undeclared work is primarily penalised through administrative sanctions (some countries also have criminal sanctions), often taken forward by labour inspectorates. However, undeclared work is defined differently in national legislation, thus the responsible authorities also differ (ILO, 2010). Illegal employment can result in administrative and criminal sanctions, with the penalty increasing with the severity of the irregularity in some countries. Labour exploitation can constitute an infringement of both criminal and labour law. In cases that fall under criminal law, labour inspectorates are often involved in detection (e.g. via workplace inspections), which are then forwarded to the police and judicial authorities. In some countries, inspectorates also have the power to prosecute, e.g. in Italy, labour exploitation under the '*caporalato*' recruitment system is a specific criminal offence and labour inspectors act as 'Judicial Police Officials' on behalf of the public

prosecutor. In Germany, new legislation introduced in 2019 (see section 6.4) gives FKS officials the power to conduct and conclude criminal proceedings independently in simple cases involving withholding and misappropriation of wages.

Detected irregularities can lead to different sanctions and recovery procedures: labour inspectorates typically impose fines for all different types of labour law violations and illegal employment (in some countries) and more moderate cases of labour exploitation that fall under labour law. Health and safety authorities enforce sanctions for health and safety regulations, while social security authorities follow the evasion and recovery of unpaid social contributions, and tax/revenue administrations are responsible for tax non-compliance sanctions. Migration authorities and the police investigate illegal employment under criminal law or under administrative law if there are only administrative sanctions.

### **Sanctions for employers**

Sanctions for employers include fines and criminal penalties. Employers are also, if appropriate, subject to other measures: the exclusion from entitlement to some or all public benefits, aid or subsidies for up to five years, the exclusion from participation in a public contract, the recovery of some or all public benefits, aid or subsidies for up to 12 months preceding the detection of illegal employment, and temporary or permanent closure of establishments or temporary or permanent withdrawal of a license to conduct the business activity. For employers, administrative and criminal sanctions depend on how national law regulates non-compliance and the severity of infringements. For labour law violations, employers generally face administrative fines, with the amount often linked to the severity of the case and whether or not the offence is repeated. It can increase to criminal sanctions if fines are not paid. In migration law, the Employers Sanctions Directive mandates the imposition of sanctions on employers who hire workers from third countries who are not legally residing. Prison sentences for employers of irregularly staying third-country nationals are applied in 17 Member States, while 13 Member States also include it as an option for employers of regularly staying third-country nationals (EMN, 2017).

The effectiveness of sanctions in deterring employers from engaging people in undeclared work and illegal employment depends significantly on the scale and nature of the sanction and the likelihood of such sanctions being enforced. When it comes to illegal employment, irregularly staying migrants, in particular, are afraid to report exploitative employers, which in turn increases the impunity of employers. The levels of fines vary between Member States, and low amounts might not suffice to deter employers from undeclared work (OECD, 2018; ILO, 2009; PICUM, 2015). Despite the efforts of the Employers Sanctions Directive to call for appropriate sanctions for employers of irregularly staying and illegally working third-country nationals, fines for the employment of irregularly staying nationals range from EUR 210 per worker in Latvia to EUR 10 000 to EUR 100 000 per illegally hired employee in Spain (EMN, 2017). The evidence about the effect on undeclared work by increasing fines in some Member States remains unclear (ILO, 2009). More promising approaches seem to be the combination of fines with possible criminal sanctions, such as imprisonment, 'naming and shaming' lists, and withdrawal from eligibility for public procurement.

### **Sanctions for workers**

As EU nationals, in some countries third-country nationals with a residence and work permit face fines if they engage in undeclared work whilst claiming unduly unemployment benefits.<sup>34</sup> However, the extent to which those fines are coherently imposed remains unclear and enforcement authorities concentrate sanctions on employers (European Platform tackling undeclared work).

Penalties for illegal employment include fines, detention, a loss of their residence and/or work permit, entry ban to the country, or a return decision. Fines can be difficult for low-

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<sup>34</sup> For example, Greece and Poland introduced fines for workers who work undeclared while receiving unemployment benefits. In Poland, workers can be punished for not informing the labour office about taking up employment within seven days.

income workers to pay (particularly where they are without any social net), while many are likely to avoid return or imprisonment at high costs.

The prospect of sanctions is an entirely different one for irregularly staying migrants and those who are not allowed to work, who have, in most cases, no choice other than to work undeclared (PICUM, 2020). Irregularly staying workers most commonly face a return decision, including a period for voluntary departure, while regularly staying migrants face the loss of their right to stay in 15 Member States (EMN, 2017; OECD, 2018)<sup>35</sup> and several countries can also ban them from re-entering the country. Irregular stay and entry are criminal offences, punishable by imprisonment in many countries, and more national guidance is needed to treat migrants in an irregular situation in line with the Return Directive (2008/115/EC) safeguards (FRA, 2014).

## 8 ROUTES OUT OF UNDECLARED WORK AND EXPLOITATION

Once illegal or undeclared work is detected, workers most likely face return and possibly detention, as well as fines. However, irregularly staying migrants or those without a work authorisation face significant challenges in accessing their rights to unclaimed wages or to press legal charges against an exploitative employer. Another possible outcome, available in a few countries, is for third-country nationals to join a regularisation programme that enables them to move from undeclared to declared work. The pros and cons of these programmes are much debated. Research points towards a careful design of the scope and eligibility criteria in regularisation schemes whilst addressing illegal migration routes.

### Key findings

- Third-country nationals, especially those in an irregular situation, face substantial barriers to access their rights, to claim compensation of unpaid wages or to press charges against an exploitive employer.
- Regularisation schemes have been widely debated, also with the recent COVID-19 pandemic. They offer a chance to transfer undeclared work into declared work and provide access for irregularly staying migrants to support services whilst lifting them out of exploitive work. In order to transform undeclared and illegal work into decent work, they need to be carefully designed in terms of their frequency, universality and eligibility rules (e.g. language requirements and setting conditions for future compliance).

### 8.1 Access to justice and repayment of wages

In principle, regularly or irregularly residing third-country nationals who work irregularly or undeclared can claim compensation of unpaid wages in 20 Member States,<sup>36</sup> often with the help of social partners and trade unions (EMN, 2017). The Employers Sanctions Directive set out that Member States the reimbursement of wages of irregularly staying third-country nationals. The Directive also regulates that Member States may, on a case-by-case basis, grant permits of limited duration, linked to the length of the relevant national proceedings.

Most civil courts and labour tribunals do not check residence permits and – in theory – do not report this status to migration authorities (PICUM, 2020). Like the initial identification of cases of undeclared work and labour exploitation, however, migrant workers are often afraid to come forward with their claims because of the possible consequences (FRA, 2018), thus in many cases they are not compensated. It is especially hard for subcontracted

<sup>35</sup> If they are identified as the victim of trafficking of human beings subject to labour exploitation, all Member States reported that they may issue (temporary) residence and work permits.

<sup>36</sup> Those are Austria, Belgium, Bulgaria, Cyprus, Czechia, Germany, Estonia, Spain, Finland, France, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Sweden, Slovakia, Slovenia and the Netherlands.

employees to claim rights, or those employed via a letterbox company. In Germany, for instance, labour court proceedings resulted in a judgment for compensation, but claimants were not paid because the employers disappeared, were insolvent or just did not pay the amount claimed (FRA, 2018).

If it comes to legal charges against the employer, significant challenges are faced by irregularly staying migrants or those whose illegal work activity resulted in the loss of their residency. Often, they have to leave the country before charges can be pursued. If they succeed in progressing legal charges, there are language barriers, costs of court cases, missing evidence (employment contracts, timesheets) or a lack of information about the case by the respective authority (FRA, 2019).

While enforcement authorities inform workers of their rights during inspections, NGOs and the social partners are playing an essential role in providing advice and support with legal procedures, such as claiming unpaid wages or exercising other rights after the detection of cases. For example, the German trade union, *Ver.di*, provides legal advice to workers in an irregular situation, as does the UNDOK centre for migrant workers in an irregular situation, run by the Austrian Confederation of Trade Unions (OGB) (ILO, 2018). Another example is the '*Arbeit und Leben*' counselling service of the German Trade Union Confederation (DGB), which supports workers in claiming outstanding remuneration by establishing direct contact with the employer, sending written assertions or filing lawsuits with the relevant labour court (EMN, 2017). It was also noted that this support also depends highly the availability of support services, which are often only available in urban areas.

## 8.2 Granting protection for victims of labour exploitation

Victims of trafficking in human beings can be granted residence permits under Directive 2004/81/EC. Authorities must inform those concerned of their rights and they are permitted a 'reflection period' during which they may not be expelled, have access to accommodation and treatment, translation and free legal aid, if provided for in national law. The authorities need to evaluate the possible presence of the victim in the investigation, the victim's clear intention to cooperate and whether they have stopped working with the suspected offender. Third-country national victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who cooperate with the competent authorities can receive a residence permit in some countries (Austria, Croatia, France, Germany, Greece, Ireland, Luxembourg, Spain and Sweden), usually on humanitarian grounds.

Whilst the above-mentioned Directive allows for the 'reflection period' for victims of trafficking, some Member States seem to provide this also to victims of other forms of labour exploitation. For example, as soon as Dutch Inspectorate SZW has the slightest indication of labour exploitation, the third-country national is regarded as a victim and offered a reflection period, in which they can recover and carefully consider whether to cooperate with the prosecution. This reflection period is important in providing early protection for victims and is also in the interest of the investigation of the police as the victim remains available to the police.

This approach is similar in Sweden, where the Swedish Gender Equality Agency and Swedish trade unions provide assistance to the third-country nationals. The Swedish Gender Equality Agency uses risk indicators to assess the presence of human trafficking and exploitation. Affected workers have to clearly state that they are victims of human trafficking or labour exploitation. If it finds victims of labour exploitation or trafficking, it supports them when reporting to the police (victims are provided a 30-day 'reflection period', during which they can decide whether to cooperate with the police and avail of six months' temporary residence) and informs them about voluntary return.

There is however a risk that irregular third-country nationals who are exploited are not seen as potential victims of labour exploitation but primarily as irregularly staying migrants, often resulting in return proceedings. Consequently, employer-targeted detection and deterrence measures that do not consider the specific situation of migrants

(who often work illegally and undeclared out of necessity) might not enforce the rights of third-country nationals (FRA, 2018; Chudžíková et al., 2018).

FRA (FRA, 2019) highlights a promising practice for victims of labour exploitation: the 'Reactivation Employment Permit Scheme', whereby third-country nationals who entered Ireland on a valid employment permit but who fell out of the employment permit and immigration system through no fault of their own (e.g. redundancy), or were badly treated or exploited in the workplace, can work legally again. This is available for most occupations, including certain carers but excluding all jobs in a domestic setting. Third-country nationals are often referred to the scheme via NGOs, but there are often long processing times which may cause the individual to fall back into illegal and undeclared work (EMN, 2017).

### 8.3 Regularisation as a way to transfer undeclared work into declared work

Over the last two decades, several countries have introduced schemes to regularise the residence/work status of (certain groups of) third-country nationals (EMN, 2017), thus facilitating their transition into declared work. Regularisation became more widely debated with arguments in favour outlining the economic and social benefits by moving migrants from informal to formal employment and criticism of regularisation as 'encouraging illegal migration and undermining migration control' on the contrary (OECD, 2018). In light of the 2020 COVID-19 pandemic, regularisation schemes are again high on the political agenda in many countries.

Regularisation is a way of granting access to basic rights, decent employment and related welfare services, in particular for marginalised irregularly staying third-country nationals (Kraler, 2018). Several countries offered voluntary disclosure in the past, especially southern European countries because of their high numbers of irregularly staying migrants. In 2001, a voluntary disclosure in Italy targeted employers and workers to formalise either straight away or gradually over a three-year period. This resulted in 1 794 declarations from businesses and 3 854 new declared workers, although there was also a larger 'silent' formalisation in that 385 000 extra declared workers were registered that year during a time of economic stagnation (Meldolesi 2003). In Spanish regularisation campaigns, 11 000 foreigners benefitted from a 1991 regularisation (ILO, 2010). In 2018 in Spain, 36 735 people were documented through the various '*arraigo*' regularisation mechanisms (Observatorio Permanente de la Inmigración, 2019).

Nevertheless, even in the few Member States that have regularisation schemes, the conditions have become stricter in recent years (Chauvin et al., 2014; Boswell, C. and Geddes, A., 2010). In some countries, irregularly staying third-country nationals may be granted an authorisation to stay if they remain a certain amount of time in one job. However, there is a risk of increased dependency on the employer if a possible residence permit is linked to a certain amount of time in one employment relationship, or where it is conditional on the employer signing a contract (FRA, 2019).

In light of the recent COVID-19 pandemic, several social partner organisations stressed the critical moment to ensure efforts to regularise the status of migrants to reduce labour exploitation and social exclusion of irregular migrant workers (European Federation of Food, Agriculture and Tourism Trade Unions, 2020; European Trade Union Confederation (ETUC), 2020). Regularisation schemes based on voluntary disclosure can take various forms; they include or do not include a sanction for non-compliance, can be targeted at specific sectors or specific groups (such as Spain's recent focus on teenagers to prevent them becoming undocumented). In addition, they can include financial incentives such as temporary financial support for employers and/or workers (including also additional incentives to employ a declared worker long-term) (Williams et al, 2020c). Several countries have expanded regularisation schemes, recognising that huge numbers of third-country nationals simply will not return and need access to legal and social protection (Camilli et al., 2020)

Portugal was one of the first countries to implement a limited regularisation scheme responding to the COVID-19 pandemic, deciding to grant temporary residency rights that allow access to services to people with a pending application for regularisation until 1 July

2020 (now extended until 31 March 2021). An employment contract is a common way to request residency. Moreover, third-country nationals can also request residence if the work relation is proven by a union, a migrant community representative or the Platform member, or the Authority for Working Conditions, as long as the entry to the country happened through regular means and the person is authorised to work. However, there are concerns about the time it takes the public administration to process these claims (Statewatch, 2020).

As part of the 'Relaunch' bill in Italy, which aims to reform the sectors agriculture, domestic work and social care more widely in order to tackle undeclared work by natives and migrant workers, the Minister of Agriculture announced that from 1 June to 15 July 2020, requests for regularisation may be submitted for agricultural workers, and domestic workers and carers. An employment contract mentioning the duration and remuneration of the employed workers, along with the relevant national collective labour agreement, is required. At the same time, third-country nationals working in both sectors whose residency permit expired by 31 October 2019 can apply for a temporary 6-month permit to look for work that will allow them to apply for a permit or, if they are already working undeclared, their employer can apply to regularise their contract. The same applies to Italian nationals with an undeclared job. Applicants should not have left Italy since at least 8 March (European Platform tackling undeclared work, 2020). A web site and helpline support with the progress. Workers can apply until 15 July 2020 with a passport or similar ID document,<sup>37</sup> for the procedure, they also receive compensation of EUR 500.

Italy's strategy includes a target of 200 000 regularisations between June and August 15, 2020, which seems now unlikely (24 Italia, 10 June 2020). Since 1 June, 32 000 requests have been made by employers, 91 % of them in domestic work. The trade union '*Unione italiana lavoratori agroalimentari*' states that many agricultural companies profit from tax evasion and are therefore not interested in regularising and residency permits do not guarantee regular contracts (Radiopopolare, 16 June 2020). Here, job matching in cooperation with social partners, investment into reception infrastructures in rural areas and transport could help to address wider issues in the sector.

In Spain, third-country workers whose permit was about to expire and those regularly staying aged between 18 and 21 could get a permit. In May 2020, residence and work permit were extended for two years (with a possible renewal of two more years) to young third-country nationals with an employment contract in the agricultural sector. For regularly staying migrants, permits were extended for 6 months following the expiry date of all temporary work, residence and study permits, that expired during the public health crisis or 90 days before its declaration. Moreover, most detention centres have been closed under the COVID-19 outbreak, so people held there have been released and are now in the reception system (Statewatch, 2020; Camilli et al., 2020). Spain also introduced activities to prevent migrant workers to become irregular, such as easier and less conditional procedures to obtain family reunification and/or the renewal of their residency (Palumbo, L., et al, 2020).

While the above measures signal certain short-term relief, there have been concerns about the target group of these schemes, as the measures in Italy and Spain do not address everyone staying irregularly as they do not cover all sectors (Statewatch, 2020). The Italian approach was also criticised for suspending ongoing criminal and administrative proceedings against employers, and passing on the cost of regularising an employment relationship to the worker (Palumbo, L., et al, 2020).

Research suggests that Member States need to carefully consider how regularisation interacts with other measures on irregular migration and legal migration policies (Kraler et al., 2009; Finotelli et al., 2006), if they are targeted at certain sectors or the whole economy, how frequent they will be deployed and how to set eligibility rules (e.g. language requirements and setting conditions for future compliance). In order to transfer undeclared

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<sup>37</sup> The deadline of 15 July 2020 and the need to present identification have been criticised by NGOs and social partners, as to early and many asylum seekers have no identification.

work into declared work, schemes should be voluntary without penalty for past non-compliance,<sup>38</sup> but with guarantees of future compliance (Williams, 2014). In addition, the combination of temporary financial support with the schemes can further incentivise employers and workers.

It has also been underlined that regularisation schemes, often short term, should be part of a wider approach of policy measures to protect workers' rights, welfare services and minimising fraud in sub-contracting (Palumbo, L., et al, 2020).

## 9 CONCLUSIONS AND RECOMMENDATIONS

Migrants engage in undeclared work and illegal employment under different circumstances, caused by their residency (regularly versus irregularly staying), work status (work authorisation with significant limitations, expired, non-valid or non-existing right to work) status or/and their more marginalised position on the labour market. Where labour exploitation is concerned, some employers have developed strategies to take advantage of the residency and work status and /or their marginalised position to exercise their power over the worker in order to cut costs. Hence, undeclared work can be one aspect of labour exploitation which is the significant deviation of decent work. In turn, undeclared work increases the risk of labour exploitation, as the worker is 'hidden' from enforcement authorities.

While it is often unclear whether regularly staying third-country nationals work undeclared by choice or because they are pressured by their employer, regularly staying non-EU nationals with certain limitations on their work authorisations (e.g. those tied to single employers) or fraudulently posted workers are also more exposed to labour exploitation. The third group – people without a right to work or irregularly staying migrants – typically have no choice other than to work undeclared and their precarious status substantially increases the risk of labour exploitation.

Most cases of work irregularity take place in labour-intensive sectors with a high workforce demand, often in jobs regarded as unattractive by the rest of the population. Those sectors are difficult to monitor, due to workplace settings such as changing sites in construction, agriculture or transport, and widespread use of complex subcontracting chains. Some sectors (domestic work, construction and transport) are highly gendered, leading to different risks for women and men of being discriminated and exploited.

The main push factor for illegal and undeclared work is the hope of better economic opportunities, as most workers come from countries with lower wages and job prospects, and often also with a higher share of undeclared work. In addition to their residence and work status (which determine their risk of undeclared work and exploitation), they also face a higher risk of being exploited if they are low-skilled and do not know the language.

Illegal employment, undeclared work and potential labour exploitation are tackled by different authorities which exchange information and inspect workplaces together. NGOs and social partners play a very important role in providing insights on the ground and in establishing trust with workers.

Most interventions by the labour, tax and social security authorities focus on inspections, although there are some preventive measures targeting migrant workers. However, numerous challenges mean that interventions are insufficient to tackle complex irregularities, such as limited or no data, scarce resources in enforcement authorities, insufficient cooperation between responsible institutions and challenges to detect labour exploitation.

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<sup>38</sup> There were reported incidents when the employer made the employee pay the fine. If this is nevertheless done, employers can be incentivised to hire declared workers for longer by reducing the amount of the penalties the longer the employer commits to employment.

Based on the information collected for this study and the findings presented in individual Sections, the following recommendations can be made at operational, national and EU levels.

At operational level in enforcement authorities:

- **Cooperation between enforcement authorities**, such as inspectorates, tax and social security authorities, the police, migration and health and safety agencies, **needs to be clearly defined**. In Germany, for example, cooperation has been regulated by the government to provide for data sharing and inspection mandates. In Sweden, despite increasingly close cooperation between authorities, stringent professional secrecy rules have prevented the sharing of data on undeclared work under the Regional Agency Collaboration. Yet, a Swedish government assignment on authorities' cooperation against organised crime has developed rules for the exchange of information under certain circumstances. Sharing data or information on suspicious cases helps authorities to address those issues more efficiently, to understand the scale of the problem and to intervene earlier. Joint inspections require a clear division of tasks according to the mandate of each authority. In cases of labour exploitation, there needs to be a clearer division of activities between migration and labour inspectors to allow victims to seek support without fearing arrest, detention and deportation.
- In addition, **collaboration with NGOs and social partners is essential** to identify issues, get on-the-ground expertise and build trust with workers. In some inspections, trade unions and NGOs are present to inform concerned workers of their rights and obligations immediately.
- A more **balanced approach between targeted measures** combining detection and deterrence, through inspections and sanctions on the one hand, and prevention on the other. The latter inform migrant workers on their rights and regulations and build trust in public authorities while communicating the benefits of declared work. On the supply side, employers can be incentivised to comply with migration and labour law through support in recruitment and chain liability. Workers can be informed about compliance through multilingual materials, advisory centres and outreach. On the demand side, personal and household vouchers can formalise employment in sectors traditionally difficult to inspect, e.g. domestic sector.
- **Recruitment agencies and employers in high-risk sectors can be incentivised** for compliance by 'quality licences' that require them to meet criteria (previous compliance, transparency of contracts, appropriate accommodation, etc.). Such systems could also offer employers to register workers from third countries in a simple way. In addition, information about employers complying in this regime could be published on websites where third-country nationals and migrant workers could inform themselves about possible employers via a transparent one-stop shop (e.g. currently in the agriculture sector in Italy or fishing sector in Denmark).
- Many cases of undeclared work bear **signs of exploitation or coercion that are not sufficiently taken into account** by enforcement authorities. This could be addressed by: a clear definition of exploitation; a mandate for the inspection authority to intervene; training; indicators on labour exploitation; specialised teams (such as in the Netherlands); and increased responsibility and/or resources (such as the legislative change in Germany). EU nationals working in low-skilled jobs often face similar risks of undeclared work and possible exploitation because of their marginalised status. They are also often involved in fraudulent posting schemes.
- **Undeclared and illegal work and labour exploitation can be detected** earlier by monitoring recruitment on websites (for serious crime, Europol supports Member States with intelligence about suspicious websites), local 'pick-up' spots or improper housing arrangements.
- **Possibilities to increase reporting by affected workers** are one way to detect cases. Confidentiality should be emphasised, especially for cases of labour exploitation. Where irregularly staying third-country nationals cannot report their cases, NGOs and social partners should be supported to use those tools for them.

- **During inspections, third-country national workers** need to be offered relevant, multilingual information on their rights and access to justice in cases of abuse, for instance by multilingual information sheets or through interpreters. In the case of exploited workers, it is important to gain their trust during inspections, by offering support, speaking to workers separately, or following-up after inspections.
- **In severe forms of undeclared work and labour exploitation**, authorities must make sure that victimised workers are taken care of and supported, particularly accommodation (to take them out of improper housing), health and support services to access justice.
- **To enforce infringements discovered during investigations**, a combination of appropriate fines and other sanctions (such as exclusion from public procurement procedures, or (temporary) business closure) can increase deterrence. Where possible, a restorative approach should be promoted, converting undeclared work into declared work.

At national level:

- Member states could provide **legal migration pathways** for low to middle-skilled workers in sectors with high workforce demand, where they do not exist yet. For example, there are limited legal migration possibilities in sectors such as domestic work, leading to the misuse of au pair schemes.
- **Sector-based residence permits or visas**, rather than single-employer permits, can reduce the risk of undeclared work and labour exploitation. FRA outlines that work and residence permits should not be linked to one employer (especially in precarious sectors) but should, rather, allow a person to change employer and to complain about exploitation without losing their residency (FRA, 2019).
- **Residence permits should not automatically end** when employment is terminated. For instance, if third-country nationals lose their jobs and become irregular as a result of labour exploitation, EU Member States should consider granting them the possibility of applying for a new residence permit with a new employer or granting them sufficient time to look for a new employer.
- **Involving trade unions and workers' organisations** in the design, governance and evaluation of temporary migration programmes in order to provide sector-specific insight and to develop measures to support their labour market integration.
- While illegal employment is clearly defined and more visible to detect, **labour exploitation lacks a common definition, is harder to detect**, and victims of more moderate cases of exploitation are at particular risk of being sanctioned for illegal work, while also facing numerous barriers to access justice as victims of labour exploitation. Labour exploitation therefore needs more focus in terms of a definition and a sufficient mandate and resources of enforcement bodies to intervene.
- **The current COVID-19 pandemic** exacerbates the issue of undeclared and illegal employment and related exploitation, in particular in agriculture and other food processing sectors. This places regularisation high on the political agenda, requires broader research into the outcomes and possibilities of regularisation as part of wider migration policies, as well as a careful design in terms of their frequency, universality and eligibility rules (e.g. language requirements and setting conditions for future compliance).

At EU level:

- Provide **legal migration pathways** for low to middle-skilled workers in sectors with high workforce demand, where they do not exist yet.
- Better **qualitative and quantitative data on the issue of illegal employment, undeclared work and labour exploitation** is needed for evidence-based policy-making and more effective measures for enforcement authorities. Future Eurobarometer surveys could consider a 'booster sample', so an extra set of interviews

with third-country nationals to increase the sample size of this group, to analyse undeclared work among third-country nationals.

- According to enforcement authorities, **many posted third-country nationals arrive in their host country via another Member State**. The European Labour Authority can support information sharing, labour mobility analysis and risk assessments on new trends and suspected cases of fraud and exploitation, expand cooperation opportunities to third countries, and provide practical guidance on fraudulent posting of third-country nationals for joint and concerted cross-border inspections. It should also be recalled that a considerable part of the EU legislation on intra-EU labour mobility which the Authority is competent to enforce also may cover third-country national workers moving within the EU, notably the 96/71 and 2018/957 Directives on Posting of Workers, the 2014/67/EU Enforcement Directive, and in relation to the coordination of social security, Regulations (EC) No 883/2004 and 987/2009, but also with regards to social aspects of international road transport (Regulation (EC) No 561/2006 as amended by Regulation (EU) 2020/1054; Directive 2006/22/EU as revised by Directive (EU) 2020/1057; Directive (EU) 2020/1057; Regulation (EC) No 1071/2009 as revised by Regulation (EU) 2020/1055).
- Undeclared work, especially where it is linked to labour exploitation, is a serious issue that is challenging for enforcement authorities. **The Platform** tackling undeclared work provides the **opportunity to share good practices**, the development of common guidelines and understanding (e.g. inspection guidance, indicators for labour exploitation, fraudulent posting of third-country nationals, staff exchanges with a focus on migrant EU and third-country workers), and exchange of information between countries can increase capacity-building and enhance cross-border cooperation.
- **Further guidance on existing options for data-sharing**, such as information on TWAs or letterbox companies active in several countries, as well as a link to cross-border cooperation with other inspectorates of non-EU sending states to check aspects on non-compliant employers or to confirm the origin of documents of posted workers.
- **EU funding for specific and innovative projects**, for example bilateral awareness campaigns targeting third-country nationals in high risk sectors such as agriculture, making them aware of the benefits of declared work.
- **EU delegations could become more involved** by issuing local language information materials on employment rights and conditions in the EU, targeting third-country nationals and engaging with local trade unions.

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## ANNEX 1: LIST OF CONSULTEES

Organisation	Country
European Trade Union Confederation (ETUC)	EU
Platform for International Cooperation on Undocumented Migrants (PICUM)	EU
Federal Public Service Employment, Labour and Social Dialogue	Belgium
Social Information and Investigation Service (SIOD)	Belgium
Regional State Administrative Agency for Southern Finland/Division of Occupational Health and Safety	Finland
General Confederation of Labour (Confédération Générale du Travail, CGT)	France
German Financial Control of Undeclared Work Unit	Germany
Ministry of Labour and Social Policies	Italy
Inspectorate SZW	Netherlands
Inspectorate SZW	Netherlands
Polish Labour Inspectorate	Poland
Labour and Social Security Inspectorate	Spain
Swedish Tax Agency	Sweden
Swedish Tax Agency	Sweden
Swedish Gender Equality Agency	Sweden
Swedish Work Environment Authority	Sweden
Swedish Work Environment Authority	Sweden

## ANNEX 2: GLOSSARY

**Holistic policy approach:** Where national governments use a whole government approach to tackle undeclared work, by joining-up on the policy and enforcement level of both strategy and operations the fields of labour, tax and social security law, and involve and cooperate with social partners and other stakeholders. This approach involves using the full range of direct and indirect policy measures available to enhance the power of, and trust in, authorities respectively. The objective is to transform undeclared work into declared work in an effective manner (European Platform tackling undeclared work, 2018c).

**Undeclared work:** any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory system of Member States. This includes different types of undeclared work, including: under-declared employment, unregistered employment, undeclared self-employment, labour infringements through the use of umbrella companies, etc. related to labour, social security and tax laws and regulations (European Platform tackling undeclared work, 2018c).

**Illegal employment:** employment of a third-country national who is irregularly staying on the territory of an EU Member State and of a legally resident third-country national working outside the conditions of the residence permit/visa and/or without a work authorisation (EMN, 2018).

**Labour exploitation:** work situations that deviate significantly from standard working conditions as defined by legislation or other binding legal regulations, concerning in particular remuneration, working hours, leave entitlements, health and safety standards and decent treatment (FRA, 2015).

**Employee:** An 'employee' is a party to an employment relationship characterised as a contract of employment (or contract of service) between the employer and employee (Eurofound, 2017)

**Worker:** Under EU law, a person must have had genuine and effective employment, normally of at least 10 hours a week (Eurofound, 2017).

**Non-standard worker:** i Non-standard employment is an umbrella term for different employment arrangements that deviate from standard employment. They include temporary employment; part-time and on-call work; temporary agency work and other multiparty employment relationships; as well as disguised employment and dependent self-employment. The most relevant of possible future developments of non-standard work, whatever their contractual form, are related to digitalisation (Eurofound, 2020).

**Bogus self-employment:** Often referred to as false self-employment or dependent self-employment, this is commonly understood as involving persons/workers registered as self-employed whose conditions of employment are de facto dependent employment. National legislation and/or court decisions determine this status. This employment status is used to circumvent tax and/or social insurance liabilities, or employers' responsibilities (European Platform tackling undeclared work, 2018c).

**Third-country nationals:** not a citizen of the EU. In this report, we use the terms third-country nationals, non-EU nationals, migrants and migration which signify third-country nationals (or non-EU/EEA nationals) (EMN, 2018).

**Temporary Work Agencies:** means any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings (any natural or legal person for whom and under the supervision and direction of whom a temporary agency worker works temporarily) to work there temporarily under their supervision and direction (Directive 2008/104/EC).

### ANNEX 3: TOP THREE NATIONALITIES OF RESIDENCE PERMITS FOR REMUNERATED ACTIVITIES

Austria			Belgium			Bulgaria			Croatia			Cyprus			Czechia		
Persons	% top 3		Persons	% top 3		Persons	% top 3		Persons	% top 3		Persons	% top 3		Persons	% top 3	
<b>Total</b>	<b>3,737</b>	<b>31%</b>	<b>Total</b>	<b>6,073</b>	<b>48%</b>	<b>Total</b>	<b>1,621</b>	<b>57%</b>	<b>Total</b>	<b>23,754</b>	<b>79%</b>	<b>Total</b>	<b>9,771</b>	<b>47%</b>	<b>Total</b>	<b>35,529</b>	<b>60%</b>
United States	454	12%	India	1,642	27%	Russia	420	26%	Bosnia and Herzegovina	12,334	52%	India	1,819	19%	Ukraine	17,674	50%
Bosnia and Herzegovina	405	11%	United States	855	14%	Turkey	306	19%	Serbia	4,588	19%	Philippines	1,488	15%	Russia	1,838	5%
India	318	9%	Japan	388	6%	Ukraine	197	12%	Kosovo	1,898	8%	Nepal	1,329	14%	Mongolia	1,718	5%

Denmark			Estonia			Finland			France			Germany			Greece		
Persons	% top 3		Persons	% top 3		Persons	% top 3		Persons	% top 3		Persons	% top 3		Persons	% top 3	
<b>Total</b>	<b>11,220</b>	<b>57%</b>	<b>Total</b>	<b>1,791</b>	<b>79%</b>	<b>Total</b>	<b>5,705</b>	<b>37%</b>	<b>Total</b>	<b>33,808</b>	<b>38%</b>	<b>Total</b>	<b>68,342</b>	<b>29%</b>	<b>Total</b>	<b>2,861</b>	<b>68%</b>
Ukraine	2,760	25%	Ukraine	1,046	58%	India	985	17%	Tunisia	5,447	16%	India	7,655	11%	Albania	1,635	57%
India	2,403	21%	Russia	251	14%	Russia	572	10%	Morocco	4,812	14%	Bosnia and Herzegovina	6,335	9%	United States	158	6%
Philippines	1,193	11%	Belarus	115	6%	Ukraine	551	10%	India	2,452	7%	Serbia	5,603	8%	Turkey	147	5%

Hungary			Ireland			Italy			Latvia			Lithuania			Luxembourg		
Persons	% top 3		Persons	% top 3		Persons	% top 3		Persons	% top 3		Persons	% top 3		Persons	% top 3	
<b>Total</b>	<b>31,553</b>	<b>80%</b>	<b>Total</b>	<b>9,480</b>	<b>42%</b>	<b>Total</b>	<b>13,877</b>	<b>54%</b>	<b>Total</b>	<b>3,575</b>	<b>76%</b>	<b>Total</b>	<b>9,506</b>	<b>94%</b>	<b>Total</b>	<b>2,142</b>	<b>40%</b>
Ukraine	20,841	66%	India	2,080	22%	United States	3,149	23%	Ukraine	1,853	52%	Ukraine	5,515	58%	India	430	20%
Serbia	3,365	11%	United States	1,077	11%	India	2,672	19%	Belarus	438	12%	Belarus	3,105	33%	China	254	12%
India	960	3%	Brazil	796	8%	Albania	1,675	12%	Russia	421	12%	Russia	300	3%	United States	176	8%

Malta			Netherlands			Poland			Portugal			Romania			Slovakia		
Persons	% top 3		Persons	% top 3		Persons	% top 3		Persons	% top 3		Persons	% top 3		Persons	% top 3	
<b>Total</b>	<b>10,178</b>	<b>52%</b>	<b>Total</b>	<b>20,885</b>	<b>51%</b>	<b>Total</b>	<b>327,605</b>	<b>91%</b>	<b>Total</b>	<b>20,256</b>	<b>72%</b>	<b>Total</b>	<b>6,347</b>	<b>58%</b>	<b>Total</b>	<b>13,989</b>	<b>81%</b>
Serbia	1,927	19%	India	5,812	28%	Ukraine	274,107	84%	Brazil	9,626	48%	Vietnam	2,509	40%	Ukraine	7,675	55%
India	1,776	17%	China	2,654	13%	Belarus	20,799	6%	Nepal	2,463	12%	Turkey	648	10%	Serbia	3,194	23%
Philippines	1,556	15%	United States	2,140	10%	Moldova	3,791	1%	India	2,408	12%	China	531	8%	Vietnam	497	4%

Slovenia			Spain			Sweden			EU-27		
Persons	% top 3		Persons	% top 3		Persons	% top 3		Persons	% top 3	
<b>Total</b>	<b>21,030</b>	<b>90%</b>	<b>Total</b>	<b>58,433</b>	<b>41%</b>	<b>Total</b>	<b>24,448</b>	<b>45%</b>	<b>Total</b>	<b>777,516</b>	<b>54%</b>
Bosnia and Herzegovina	11,811	56%	Morocco	17,385	30%	Thailand	5,128	21%	Ukraine	340,534	44%
Serbia	4,169	20%	Honduras	3,527	6%	India	4,747	19%	India	43,997	6%
Kosovo	2,858	14%	Colombia	3,105	5%	China	1,211	5%	Bosnia and Herzegovina	33,029	4%

Iceland			Norway			United Kingdom		
Persons	% top 3		Persons	% top 3		Persons	% top 3	
<b>Total</b>	<b>463</b>	<b>49%</b>	<b>Total</b>	<b>8,741</b>	<b>43%</b>	<b>Total</b>	<b>108,150</b>	<b>57%</b>
United States	115	25%	India	1,703	19%	India	27,003	25%
Philippines	80	17%	Philippines	1,039	12%	United States	23,933	22%
China	32	7%	Vietnam	1,003	11%	Australia	10,263	9%

Source : Eurostat, First permits by reason, length of validity and citizenship [migr\_resfirst]. Extracted from Eurostat on 26/05/2020.

## ANNEX 4: RESPONSIBLE AUTHORITIES FOR UNDECLARED WORK AND LABOUR EXPLOITATION OF THIRD-COUNTRY NATIONALS

Country	Authority responsible for undeclared work	Authority responsible for illegal employment	Authority responsible for labour exploitation
Belgium	<p>The Labour Inspectorate of the Federal Public Service Employment, Labour, and Social Dialogue</p> <p>The Inspectorate of the National Social Security Office</p> <p>The Inspectorate of the National Employment Office</p>	<p>Regional inspection authorities are competent for regionalised social laws, including legislation on work permits for third-country nationals. They also identify irregular work by regularly and irregularly staying third-country nationals and act as intermediaries in human trafficking cases. Inspectors can request assistance from the police.</p> <p>Federal and local police identify illegal employment</p> <p>Immigration services</p>	<p>The federal and local police focus on trafficking and smuggling of human beings. Inspectors can request assistance by the police.</p>
Finland	<p>Occupational safety and health units of regional state administrative agencies, which operate under the Ministry of Social Affairs and Health. They enforce health and safety at work, check that employees have the right to work, and that employers and contractors fulfil their social obligations. They cooperate with the police, tax authorities and employment services</p>	<p>Occupational safety and health units of regional state administrative agencies, which operate under the Ministry of Social Affairs and Health. They enforce health and safety at work, check that employees have the right to work, and that employers and contractors fulfil their social obligations.</p> <p>Police and border guard</p> <p>Finnish immigration service</p>	<p>Police</p>
France	<p>The labour inspectorate is responsible for checking compliance</p>	<p>The labour Inspectorate, the police and customs offices</p>	<p>The labour inspectorate is responsible for checking compliance with the labour code</p>

Country	Authority responsible for undeclared work	Authority responsible for illegal employment	Authority responsible for labour exploitation
	with the Labour Code and offences of trafficking in human beings, forced labour and servitude.		and offences of trafficking in human beings, forced labour and servitude.  The Central Office for Combating Illegal Work is responsible for combating severe forms of labour exploitation and social security fraud.
Germany	The Financial Control of Undeclared Work (FKS) is responsible for undeclared work, illegal employment and labour exploitation.	The National Employment Agency (approves resident titles of third-country nationals who want to work in Germany)  Local, federal and national police	The Financial Control of Undeclared Work (FKS) is responsible for undeclared work and illegal employment, and labour exploitation.  Police
Italy	The National Labour Inspectorate monitors workers' rights, working conditions, wages, the respect of compulsory working insurance and social legislation, occupational health and safety.	Migration authorities	The police authorities, the <i>carabinieri</i>  At local, level, social partners and NGOs play an important role to identify and support with labour exploitation and support.
Netherlands	The Inspectorate SZW in the Ministry of Social Affairs analyses the risks related to fair, safe and healthy work that are likely to occur in different target groups, and pursues tactical and operational risk analysis based on general trends of criminality.	The police and state border guard.	The Public Prosecution Service
Poland	The National Labour Inspectorate is	The National Labour Inspectorate is	The Border Guard deal with labour exploitation

<b>Country</b>	<b>Authority responsible for undeclared work</b>	<b>Authority responsible for illegal employment</b>	<b>Authority responsible for labour exploitation</b>
	responsible for compliance with labour law (working conditions, time, health and safety, etc.) and irregular employment.	responsible for compliance with labour law (working conditions, time, health and safety, etc.) and irregular employment.	of third country nationals
Spain	Inspectors from the Ministry of Labour and Social Security work with the Ministry of Interior	Police	Police
Sweden	The Swedish Tax Agency focuses on undeclared employment, undeclared income or tax avoidance.  The Swedish Work Environment Authority checks working conditions (illegal employment not a priority but they inform police).	The Migration Agency approves workers and employment.  The Tax Agency, the police and the public employment service	The police is involved in cases of criminal activities, labour exploitation.  Gender Equality Agency

*Adapted from EMN (2017) and OECD (2020).*

## **ANNEX 5: LIST OF PROMISING PRACTICES PRESENTED IN THE REPORT**

<b>Name of practice</b>	
Belgium	Point of contact for fair competition
Finland	Inspection unit for foreign labour
Germany	Act to combat unlawful employment and benefit fraud
Netherlands	Programme for investigating labour exploitation
Poland	Trade Union of Ukrainian Workers
Sweden	Regional Agency Collaboration (RAC)



**Point of contact for fair competition (*Meldpunt voor een Eerlijke Concurrentie/Point de contact pour une concurrence loyale*), Belgium**

The Social Information and Investigation Service of the FPS has created a national contact point for complaints about unfair competition, social dumping, labour conditions, undeclared work and benefit fraud. Anonymity and confidentiality of the complaint are guaranteed and may lead to inspections. Cooperation with social partners is important in the work of the contact point.

<b>Name(s) of authorities/bodies/organisations involved</b>	Federal Public Service Employment, Labour and Social Dialogue (FPS).
<b>Useful sources and websites</b>	<a href="https://www.meldpuntsocialefraude.belgie.be/en/index.html">https://www.meldpuntsocialefraude.belgie.be/en/index.html</a>
<b>Years of implementation</b>	The point of contact for fair competition was launched on 5 October 2015.
<b>Sectors</b>	Affected sectors generally entail low-skilled work and low wages in non-public sectors, such as: construction, transportation, wholesale, retail, cleaning, etc.
<b>Target groups</b>	General public, including regularly staying third-country nationals who work in Belgium, social partners, towns/cities and social welfare centres.
<b>Purpose of measure</b>	<i>Deterrence: improve detection</i>
<b>Background context</b>	<p>Before the Point of Contact was set up, complaints were received throughout different services. Given their different competences, it was not always clear to the worker which service should receive a complaint.</p> <p>The quality of the complaint was often inadequate. Individuals did not always know what information the inspectorates needed to start an investigation.</p>
<b>Key objectives of the measure</b>	<p>The point of contact provides a central point for individuals, companies and organisations to file a report in cases of social fraud.</p> <p>Unless explicit consent is given, it guarantees full anonymity of the person/entity filing the complaint</p> <p>Social partners can also file a complaint and are important partners in the investigation and follow-up of cases.</p>
<b>Main activities</b>	The point of contact for fair competition allows individuals, companies or social partners to file a report about suspected cases of social fraud, including undeclared work and labour exploitation. This is done via tailored online forms, with specific questions in understandable language. In this way,

workers are encouraged to provide relevant information. Those filing a complaint must provide their full name, national registration number and email address, allowing the contact point to follow-up with the individual filing the complaint in case further information or clarification is needed. When a complaint is issued, the contact point first assures the individual that full anonymity is guaranteed (Article 59 of the Social Penal Code), even in court, and that they are not authorised to inform an employer or their representative that an investigation has been triggered. However, in some cases, action can only be taken when the anonymity is lifted.

While individuals without a national registration number cannot file an official complaint through the contact point, they can request information about their rights or ask the labour inspectorate via a specific email address to intervene in order to enforce these rights. This is done directly by the individuals or via NGOs, such as the FairWork Foundation. An investigation requires a contact person, unless it is possible to make a *de visu* determination of the employment.<sup>39</sup> For normal wage violations, the complainant can digitally sign an exemption from professional secrecy.

The back office analyses the complaints and distributes them between the competent services. For the inspection services, the contact point provides an initial filter and quality check. If information related to the case is missing – preventing proper investigation – the regional directorate of the labour inspectorate is asked to provide additional information on the company in question and to carry out a risk analysis, often within the provincial control cells.

In all cases of irregular stay and work, the FPS informs the police, which is competent to contact the immigration service deciding on the residence status. If there are sufficient indications of human trafficking by economic exploitation, this is shared with the immigration service, which provides provisional residence in a shelter.

**Funding/organisational resources**

Funding and resources for the contact point is provided by the FPS.

An annual recurring amount of EUR 100 000 is made available for ICT-related adaptations (e.g. recently, a new form for infringements concerning coronavirus measures), maintenance or supporting applications.

The current team consists of a team leader and four social inspectors.

**Outputs, outcomes and lessons learned**

NGOs and social partners play a key role in bringing forward cases of third-country nationals in undeclared work or subject to exploitation.

<sup>39</sup> Employment is determined on site. Such *de visu* findings have particular value as evidence (conclusive force until proven otherwise).

In terms of outcomes for third-country nationals, as a result of inspections carried out on the basis of complaints lodged with the contact point, employers have been obliged to pay three months' wages (among other things). A refutable legal presumption that they worked three months was introduced, as it is generally very difficult to prove the working relationship and its duration. Where there is insufficient information to oblige the employer to pay the outstanding wage(s), the FPS draws up a criminal report for the public prosecutor. A criminal report is also filed for illegal work. The argument that paying the wages might influence the outcome of that penal procedure sometimes prompts payment of the wages owed.

**Recommendations**

(based on input by the interviewee)

At national level:

- Strengthen the back office with more inspectors;
  - Provide rapid response teams of inspectors to respond quickly to urgent complaints within the different regions;
  - Grow into a service where all complaints to services, organisations, etc. are collected and distributed;
  - Allocate a status to complaints whereby the services are obliged to deal with the complaints within a predefined period of time.
- At EU level:
- Development of a European point of contact, e.g. for cross-border fraud reported by local citizens and businesses. Closer cooperation with foreign inspectorates, while respecting guaranteed professional secrecy.



### Inspection unit for foreign labour (including EU and third-country nationals), Finland

The foreign labour inspection unit within the Regional State Administrative Agency for Southern Finland/Division of Occupational Health and Safety aims to prevent undeclared work and labour exploitation of foreign labour, including third-country nationals. The main tool are inspections, which have uncovered issues predominantly in three sectors: construction, restaurant and cleaning. Specifically within the group of third-country nationals, since 2017 the unit has encountered more asylum seekers engaging in undeclared work.

<b>Name(s) of authorities/bodies/organisations involved</b>	<ul style="list-style-type: none"><li>• Regional State Administrative Agency for Southern Finland/Division of Occupational Health and Safety;</li><li>• Finnish Immigration Service;</li><li>• Finnish Centre for Pensions;</li><li>• Finnish Workers' Compensation Centre;</li><li>• Employment Fund;</li><li>• Tax administration;</li><li>• Police; and</li><li>• Public Employment Service.</li></ul>
<b>Useful sources and websites</b>	<a href="https://www.vero.fi/en/grey-economy-crime/">https://www.vero.fi/en/grey-economy-crime/</a>
<b>Years of implementation</b>	2005-ongoing
<b>Sectors:</b>	Generally all sectors, but focus on three sectors most affected: construction, HORECA, cleaning/maintenance.
<b>Target groups</b>	The unit itself does not focus only on third-country nationals but on all foreign nationals in Finland, including EU nationals.
<b>Purpose of measure</b>	Deterrence: improve detection
<b>Background context</b>	<p>The special unit for foreign labour was introduced following the 2004 EU enlargement to Central and Eastern Europe. Politicians changed labour law to create a new unit within the Regional State Administrative Agency for Southern Finland/Division of Occupational Health and Safety.</p> <p>The unit commenced work in spring 2005, with around nine designated posts for foreign labour inspectors in separate parts of Finland, which subsequently developed into more posts for certain regions. While the inspectors do not need to have specific language skills, some speak certain foreign languages, e.g. Estonian or Russian.</p> <p>The unit deals with employment of third-country nationals with no right to work, and to a lesser extent with underpayment and underreporting of working hours, as well</p>

	as fraudulent posting. Employment of third-country nationals with no right to work is prevalent in the construction sector.
<b>Key objectives of the measure</b>	The key objective of this measure is to prevent undeclared work and labour exploitation of foreign labour.
<b>Main activities</b>	<p>The main activities include inspections on-site, i.e. at employers' premises. The approach is as follows:</p> <p>Labour inspectors receive tips from other authorities, such as the Finnish Immigration Services, which redirects suspicious permit applications. The Public Employment Service redirects cases when permit applications are contradictory or otherwise suspicious. There are good practices in respect of cooperation between the tax administration, the police and border guards, who share inspection reports on a case-by-case basis, i.e. while frequent, it is not structurally embedded.</p> <p>The inspectors then follow up directly with the employer. If an issue is found, the employer is informed and given guidance on how to remedy the issue. Some issues, such as underpayment, are not a criminal act in Finland, meaning that inspectors can only issue guidance. In other cases, e.g. when inspectors suspect extortion or other discrimination activities, a police investigation is launched. In cases of possible human trafficking, the potential victims are redirected towards the appropriate support system. Such cases are rare, however, and the inspectors mainly issue guidance letters to employers.</p>
<b>Funding/organisational resources</b>	<p>In southern Finland, there are 12 inspectors focusing on foreign labour.</p> <p>The financial resources are provided by the Ministry of Social Affairs and Health, based on the number of inspections conducted per year. Additional resources include overtime pay for inspections carried out outside of regular working hours and funds for travel.</p> <p>Technical resources include data-sharing tools.</p>
<b>Outputs, outcomes and lessons learned</b>	<p>In general, the issues of undeclared work are very common. In 2019, the unit conducted over 840 inspections in southern Finland, more than 440 of which related to undeclared work. <a href="#">Official statistics</a> are available mainly for 2018 and show that over 1 000 inspections were carried out: 38 % in HORECA; 21 % in construction; 11 % in cleaning; and the remaining 30 % in a variety of sectors.</p> <p>The results are positive, as the inspection team goes to sites where issues have been reported and uncovers undeclared work. Cooperation between the authorities allows information to be shared. There are established joint inspections with the tax authorities and the pension centre at construction sites, and results identify further inspection areas. However, a multi-authority approach (where authorities work together from the beginning of a case) could save time and resources. In Finland, cooperation is often in silos, meaning that all</p>

authorities launch their respective investigations separately and exchange information, where a joint approach would potentially save double work and create more synergies.

If underpayments are discovered, the issued guidance is not legally binding. Without legal measures, there is little incentive for companies to comply. One way is to put more public pressure by making inspection reports available online – this is currently under discussion.

**Recommendations**

(based on input by the interviewee)

- Nationally, a multi-authority approach would be beneficial. The current cooperation is very good at local level but is heavily reliant on personal contacts and should be structurally embedded through a holistic approach under an umbrella authority at the national level.
- At EU level, there could be a regional network of information exchange facilitated by the EU, not only bilateral agreements (e.g. with Estonia). EU projects that foster cooperation might be a good avenue, as these enable the right people to meet, especially for regions with little funding for such measures. Overall the EU can facilitate partnerships but the nationally responsible bodies need to be open to such cooperation.



### **Act to combat unlawful employment and benefit fraud (Gesetz gegen illegale Beschäftigung und Sozialleistungsmissbrauch), Germany**

The 2019 'Act to combat unlawful employment and benefit fraud' provides new responsibilities and increased resources to the German unit for monitoring undeclared work, the FKS. Several measures aim to address undeclared work, illegal employment and the misuse of government benefits more consistently and effectively. It therefore seeks to better protect employees from minimum wage and social security violation and against labour exploitation in general.

While the legislation targets national workers, EU citizens and third-country nationals, it provides the FKS with new investigate powers that can prevent recruitment practices that are often used before third-country nationals work undeclared, often under exploitive working conditions. For example, the FKS investigates recruitment in public 'pick up spots', reviews online and print recruitment and checks suitable accommodation agreed in a collective agreement (e.g. in the construction sector) by entering housing to inspect its suitability.

#### **Name(s) of authorities/bodies/ organisations involved**

Under the 'Act to combat unlawful employment and benefit fraud' (*Schwarzarbeitsbekämpfungsgesetz*), the FKS of the German customs administration inspects and investigates compliance with labour, tax and social security law, as well as with migration law, in close cooperation with other authorities and social partners at national and international level.

#### **Useful sources and websites**

[www.zoll.de](http://www.zoll.de)  
[www.bundesfinanzministerium.de](http://www.bundesfinanzministerium.de)  
[www.deutsche-rentenversicherung.de](http://www.deutsche-rentenversicherung.de)  
[www.knappschaft.de](http://www.knappschaft.de)  
[www.minijob-zentrale.de](http://www.minijob-zentrale.de)  
[www.arbeitsagentur.de](http://www.arbeitsagentur.de)  
[www.bmas.de](http://www.bmas.de)

#### **Years of implementation**

2019-ongoing

#### **Sectors**

Illegal employment and undeclared work of third-country nationals coincide in labour-intensive sectors with a high fluctuation of personnel and often flexible workplaces, such as construction, HORECA, transport, industrial cleaning businesses, domestic cleaning and care, agriculture and the meat industry (EMN, 2017) In addition, undeclared work and illegal employment are prevalent in the private security industry, another sector with changing workplaces and demand for a flexible workforce.

<b>Target groups</b>	The 'Act to combat unlawful employment and benefit fraud' targets national workers, EU citizens and third-country nationals. It regulates the competence of the FKS to address exploitative working conditions and to investigate human trafficking in connection with employment, forced labour and labour exploitation. Third-country and EU Member State nationals from Central and Eastern Europe are at particular risk of labour exploitation (see below).
<b>Purpose of measure</b>	Deterrence: improve detection
<b>Background context</b>	<p>In 2018, the German Institute for Human Rights observed that an increasing number of third-country nationals and EU citizens from Eastern Europe had reported cases of labour exploitation. Complaints concerned wages below the minimum wage, no social security contributions paid by employers, long working hours and unpaid extra-time, as well as poor quality accommodation.</p> <p>Foreign nationals seeking work are often young. Women look for employment in domestic services, while men seek work in construction or transport or in other sectors requiring a flexible workforce without high skill requirements (German Institute for Human Rights, 2018) One recruitment method is the use of 'pick-up-spots' in public places (such as roadsides), where employers seek workers for a limited amount of time in demanding, labour-intensive sectors, such as construction sites or transport, often with wages below the minimum wage. This type of work is mostly undeclared and very likely to coincide with exploitative working conditions. Another fraudulent scheme is bogus self-employment of natives, EU citizens and regularly staying third-country nationals, resulting in inadequate social security contributions.</p> <p>In some cases of labour exploitation, employees who initially took up work voluntarily are often unaware of working conditions and the real nature of the work. Foreign nationals can become very dependent on their employer, as the employment is their only source of income and employers arrange travel, accommodation (often resulting in overcrowded, overpriced, poor quality housing arranged by the employer, or even in homeless shelters) and administrative procedures. In many cases, employers withhold part of the workers' wages, confiscate their identity documents or threaten them.</p>
<b>Key objectives of the measure</b>	The legislation aims to better protect employees from minimum wage and social security fraud and labour exploitation in general, while ensuring fair competition. In addition to tackling economic and organised crime (via the use of fictitious invoices issued by bogus companies and concealing undeclared work) and combating benefit fraud more consistently and effectively, the act aims to ensure fair working conditions. It also safeguards government revenue. Ultimately, it ensures compliance with legislation and fairness in the labour market.

## Main activities

The new legislation gives the FKS responsibility for inspections and investigations to tackle exploitative working conditions and, together with the police, human trafficking, in connection with employment, forced labour and labour exploitation. In order to ensure fair working conditions, the following changes were regulated in 2019:

- The FKS is now able to intervene earlier, during the recruitment stage. Before the legislative change, the FKS could only intervene when workers were already on-site (e.g. on construction sites), but it can now investigate or inspect recruitment in public 'pick up spots'. These 'pick up spots' are identified via information by the public or community support services. It also reviews online and print recruitment in order to track job offers of undeclared work more effectively. To do so, it can ask publishers for the names and addresses of clients (who remain unpublished) in cases where there are indicators of undeclared work or illegal employment.
- The FKS can check suitable accommodation agreed in a collective agreement (e.g. in the construction sector) by entering housing to inspect its suitability. A court order is no longer required to enter accommodation for the purposes of administrative inspections. It may only enter with the consent of the residents, however, or without their consent in the event of an urgent threat to public security and order.
- Certain sectors (e.g. construction, catering, transport) require employees to carry ID cards and the immediate registration of workers with the social insurance system by employers. With the legislative change, such ID cards are now required in the private security industry, as well as stricter rules on documenting working hours. This simplifies data evaluation after questioning workers during inspections.
- In order to address bogus self-employment, the FKS can since 2019 request documents or information – either in writing or in person – from suspected bogus self-employed (previously, bogus self-employment could only be investigated on-site). Employers profiting from bogus self-employment can receive a fine of up to EUR 50 000.

The new legislation expands information-sharing and cooperation between the authorities involved in detecting and combating illegal employment, undeclared work and benefit fraud. For example, there is intensified cooperation and data-sharing between the FKS and the police. The FKS can access databases from employment services, tax authorities and pension providers. In turn, data from the FKS can now be shared with family benefit agencies and social assistance providers, while FKS forwards data to the police in order to prevent and prosecute crimes and administrative offences. Other types of cooperation are also regulated, such as support services for labour exploitation victims.

**Funding/organisational resources**

The FKS has around 7 000 employees who work for 41 main customs offices at 115 locations around the country. The current financial plan earmarks FKS staffing increases to over 10 000 by 2026. Additional staff will be needed to perform the new functions introduced by the legislation, i.e. roughly 3 500 new positions in the FKS and 900 positions in supporting customs administration units (e.g. education and training, pre-deployment training, IT, and deployment support).

**Outputs, outcomes and lessons learned**

As of April 2020, it is too early to report any outcomes of the 2019 'Act to combat unlawful employment and benefit fraud'.



### **Programme for investigating labour exploitation (*Programma Arbeidsuitbuiting*), the Netherlands**

In the 'Programme for investigating labour exploitation', the Dutch Inspectorate (SZW) deploys a mix of tools to tackle labour exploitation of third-country nationals. Quick treatment of notifications, combined with targeted risk analysis, specialised joint inspections, and cooperation with partners aim to prevent impunity of employers and support victims of labour exploitation.

#### **Name(s) of authorities/bodies/organisations involved**

The Inspectorate SZW, in collaboration with:

- Police;
- Municipalities
- The Anti-Trafficking Coordination Centre (*Comensha*)
- Institute for Employee Benefit Schemes (*Uitvoeringsinstituut Werknemersverzekeringen, UWV*); and
- Expertise Centre on smuggling and trafficking (*Expertise Centrum Mensenhandel en Mensensmokkel, EMM*), which provides research and advice to detect smuggling and trafficking.

#### **Years of implementation**

2016-ongoing.

#### **Sectors**

Although labour exploitation can be found in many sectors, risk sectors are horticulture, cleaning, temporary employment agencies, the hospitality industry and building industry (EMN, 2017). A high number of temporary work agencies are active in agriculture, the meat industry, construction, the cleaning industry and transport, which often facilitate illegal employment, undeclared or underdeclared work and bogus self-employment, while simultaneously deducting fees from workers.<sup>40</sup>

#### **Target groups**

Third-country nationals, EU citizens and nationals who are, or are at risk of becoming, victims of labour exploitation and malpractices.

#### **Purpose of measure**

**Deterrence: improve detection**

#### **Background context**

Third-country nationals and EU citizens are often directly recruited via temporary work agencies or other mediators in their native country or in another country where they reside. These companies then facilitate travel, administrative tasks to enter the country, transport,

housing and work placement, which increases the dependency of workers on their employers.

In addition to the supervision of working conditions and the minimum wage, the Inspectorate SZW monitors the Foreign Nationals Employment Act, which requires a valid work authorisation for the employment of third-country nationals, with employers obliged to register foreign employees. The inspectorate also leads the detection of fraud and labour exploitation.

Various programmes tackle fraudulent temporary work agencies, such as the 'Programmed approach to rogue employment agencies' targeting them and the companies that hire them, in a joint approach with the tax authority and UWV, and the 'Action plan to combat bogus schemes', tackling schemes that facilitate fraudulent admission to the Dutch labour market, although the foreign worker does not meet the conditions (EMN, 2017).

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**Key objectives of the measure**

The Programme for investigating labour exploitation aims to combat labour exploitation and malpractices of employers, via inspection and law enforcement. It ensures effective protection of potential victims and vulnerable groups, focusing on preventing impunity of fraudulent employers.

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**Main activities**

The programme uses a set of indicators to recognise labour exploitation: isolation of employees; long working days; underpayment; poor housing; and dependency (e.g. shown via threats and violence). Two indicators discovered during other inspections suffice to transfer the case to the programme.

Employees, NGOs or the public can also file a complaint of suspected exploitation with the Inspectorate SZW (anonymous complaints are investigated if there is a plausible serious threat to the employees or if minimum wage and/or minimum leave violations can be evidenced).

The Inspectorate SZW works with different partners in intervention teams, e.g. the police, the UDW, municipalities and/or the tax and customs administration. Those teams inspect aspects like underpayment, working to many hours per day, illegal employment and undeclared work. Employers face fines of EUR 8 000 for each employee without a valid permit. Sanctions increase in the case of multiple violations.

In cases of labour exploitation, trust is established during inspections via conversations with the worker alone (not in front of the employer or colleagues), explaining that the inspection focuses mainly on the employer, encouraging them to report later, and providing contact details.

After an inspection, victims of labour exploitation receive legal advice and support services.

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<b>Funding/organisational resources</b>	The team consists of 30 trained inspectors who are specialised in detecting detect labour exploitation and building trust during conversations.
<b>Outputs, outcomes and lessons learned</b>	<p>The 'Programme for investigating labour exploitation' has identified labour exploitation successfully via building up trust with workers.</p> <p>Almost all third-country nationals who were victims of labour exploitation and interviewed in FRA research felt they had been treated well by the police or labour inspectorate during inspections that involved the 'Programme for investigating labour exploitation' (FRA, 2018). They felt informed about their rights, as well as about the aim of the inspection, they were encouraged to report abuse and were advised about the next steps after the inspection. In some cases, the police or labour inspectors provided an opportunity for the workers to get their belongings or they were referred to support organisations.</p>
<b>Recommendations</b> (based on input by the interviewee)	Third-country nationals come to the Netherlands often via another EU country, thus exchange of information between countries is important.



## Trade Union of Ukrainian Workers, Poland

The Trade Union of Ukrainian Workers combats undeclared work and labour exploitation of Ukrainian workers on the Polish labour market through advocacy activity, awareness-raising and legal support.

<b>Title of the practice in original language</b>	Inter-Enterprise Trade Union of Ukrainian Workers in Poland ( <i>Międzypodstawowy Związek Zawodowy Pracowników Ukraińskich w Polsce</i> )
<b>Country</b>	Poland
<b>Name(s) of authorities/bodies/organisations involved</b>	Inter-Enterprise Trade Union of Ukrainian Workers in Poland ( <i>Międzypodstawowy Związek Zawodowy Pracowników Ukraińskich w Polsce</i> ) All-Poland Alliance of Trade Unions ( <i>Ogólnopolskie Porozumienie Związków Zawodowych, OPZZ</i> )
<b>Useful sources and websites</b>	Website of Inter-Enterprise Trade Union of Ukrainian Workers: <a href="https://ukrpol-union.com/">https://ukrpol-union.com/</a> (available in Ukrainian)
<b>Years of implementation</b>	May 2016–ongoing
<b>Sectors</b>	All
<b>Target groups</b>	<p>The primary target group are Ukrainian nationals with the right to stay and work in Poland, including those engaged in undeclared work. Legal counselling is provided to all Ukrainian workers, regardless of their union membership.</p> <p>The union is open to cooperation and support for other migrant workers in Poland – Russians, Belarusians and Moldovans (EMN, n.d.).</p> <p>Through its advocacy and awareness-raising activity, the union engages with local, regional and national public bodies (e.g. PES, National Labour Inspectorate (NLI)) and the government).</p> <p>The union cooperates with relevant NGOs to address cases of human trafficking.</p>
<b>Purpose of measure</b>	Changing attitudes: awareness raising
<b>Background context</b>	<p>Ukrainians have been prominent in the Polish labour market since the 1990s. More Ukrainians came to work in Poland as a result of the 2014 Russian-Ukrainian War in the Donbas, which saw deteriorating economic and labour prospects in Ukraine.</p> <p>In 2017, there were around 900 000 Ukrainians in Poland (Chmielewska et al., 2018). This stemmed from two additional factors:</p>

A bilateral agreement allowing Ukrainians to work in Poland for 30 days without a work permit; and

A simple procedure, the 'Declaration of intent to employ foreigners' (*Oświadczenia o zamiarze powierzenia wykonywania pracy cudzoziemcowi*), allowing Polish companies to employ citizens of the EU Eastern Partnership countries (Ukraine, Armenia, Belarus, Georgia, Moldova and Russia) for up to six months in a 12-month period without a work permit. In 2017, public employment services received 1 714 891 such declarations to employ Ukrainian workers (NLI 2018). Most workers employed via this declaration work in agriculture, construction, manufacturing and hotel-restaurant-catering (so-called 'HORECA').

In inspections carried out in 2017, the NLI noted deteriorating compliance with the law regulating working conditions and pay of foreigners. The following types of irregularities were recorded: employment without work or residence permits, work in poor conditions, unpaid overtime, failure to report foreign workers to social insurance, irregularities in the scope of declared information on the amount of remuneration paid affecting the contribution rate and untimely payment of contributions to the Labour Fund. Cases of labour exploitation reported in the media and to the trade union related to overpriced accommodation changes, failure to provide medical assistance at the workplace and fraudulent recruitment agencies (charging fees for work permits and not providing them).

Responding to Ukrainian workers' low awareness of labour law, their rights and the benefits of legal employment, the OPZZ, in collaboration with a major Ukrainian trade union, helped to set up a trade union to represent and defend the rights of Ukrainian workers in Poland. The OPZZ was inspired by similar initiatives taken for Polish workers by the UK and Swiss trade unions after Poland's accession to the EU in 2004. Through its activity, the Trade Union of Ukrainian Workers helps to tackle undeclared work, social dumping and prevalent labour exploitation.

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**Key objectives of the measure**

According to its statute, the trade union's aim is to protect the dignity, rights and interests (material, professional, social and cultural) associated with carrying out paid work. Among its subsidiary aims is protection of the dignity, rights and material, professional, social and civic rights of its members and representation of the union's position to employers, public administration, political, professional and social organisations.

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**Main activities**

The trade union participates in social dialogue with the government and advocates on behalf of Ukrainian workers. For example, in 2017 the union called on the government to provide amnesty for those working illegally in Poland (European Commission, 2017b). Following COVID-19 outbreak the union, called on Polish and Ukrainian governments to organise safe evacuation of workers who

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lost their jobs due to the pandemic and the ensuing obligatory quarantine period.

By organising and participating in conferences, the union raises awareness within the public administration and society of the problems faced by migrant workers on the Polish labour market.

As the union cannot afford to handle lawsuits on behalf of migrant workers, it provides legal advice and, on occasion, mediation with employers. Cases handled related to lack of/delayed payment for work already undertaken, violence or harassment in the workplace, and undeclared work.

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**Funding/organisational resources**

Until it becomes self-sufficient, all activities of the Trade Union of Ukrainian Workers are financed by the OPZZ. Despite this financial dependence, it has autonomous management and independence in terms of developing its programme.

Most of its activities (including legal support) are concentrated around Warsaw. In the longer term, OPZZ would like to increase the number of Ukrainian workers represented in the regional branches of OPZZ.

The officer providing legal support for migrant workers cooperates with [La Strada](#), an NGO focusing on human trafficking. On occasion, the union for Ukrainian workers also cooperates with the PES and NLI in Poland.

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**Outputs, outcomes and lessons learned**

In early 2019, the Trade Union for Ukrainian Workers reported over 1 000 members (MPUPP, n.d.).

It is involved in advocacy work and consults the government on important issues for migrant workers.

Due to lack of funding, the legal support is provided on a small scale and only in the Warsaw district. Nevertheless, such support is provided to all migrant workers, regardless of their union membership.

The number of complaints by foreign workers to the NLI tripled between 2016-2017, reaching 1 473 in 2017 (PLI, 2018). Between 2016 and 2018, the number of Ukrainian workers reported to national insurance doubled, to 425 670 (ZUS, 2019). Union and NLI activities contributed to increased awareness of their rights among Ukrainian workers.

In 2019, the Commissioner for Human Rights nominated Jurij Kariagin (Chair of the Trade Union of Ukrainian Workers) for the award of NLI. The award is granted for outstanding achievements in the field of supervision and control of compliance with labour law and prevention of occupational hazards. In their nomination, the Commissioner for Human Rights argued that Jurij Kariagin's activity significantly reduced the scale of violations of law with respect to the legality of employment of Ukrainian citizens in Poland.

The success of the Trade Union for Ukrainian Workers is its autonomy from OPZZ and independence in developing its

programme. This empowers migrant workers and allows them to focus on issues pertinent to them.

With limited financial resources, the union builds on cooperation with NGOs and the media to provide support in the most extreme cases of exploitation and expose companies that offer poor working conditions for migrant workers.



### Regional Agency Collaboration (RAC), Sweden

The RAC in Sweden combines the efforts of several agencies to tackle irregularities at the workplace, with particular attention to third-country nationals.

**Name(s) of authorities/bodies/organisations involved**

**of** The Swedish government commissioned multiple authorities to establish the RAC in the five regions of the Swedish Work Environment Authority. The Swedish Work Environment Authority coordinates the collaboration and reports to the government.

In addition to the Swedish Economic Crime Authority, the police and the Swedish Work Environment Authority, the RAC includes the Swedish Gender Equality Agency, the Swedish Migration Agency, the Swedish Tax Agency, the PES and the Social Insurance Agency.

The Swedish Migration Agency issues residence and work permits and – together with the police – checks infringements of illegal employment.

The Swedish Gender Equality Authority was set up in 2017. In the context of the RAC, it has been tasked with monitoring and tackling new legislation on human exploitation, including human trafficking and labour exploitation among third-country nationals.

**Useful sources and websites**

**and** <https://www.government.se/government-policy/migration-and-asylum/>

<https://www.migrationsverket.se/>

<https://www.av.se/en/>

<https://www.av.se/arbetsmiljoarbete-och-inspektioner/inspektioner-utredningar-och-kontroller/myndighetsgemensamma-kontroller/>

<https://www.jamstalldhetsmyndigheten.se/en>

**Years implementation**

**of** 2017-ongoing

**Sectors:**

Five sectors are prioritised (Swedish Work Environment Authority, 2020)

Labour-intensive sectors, such as construction, cleaning, agriculture and restaurants, transport;

Sectors where payments are often made in cash, such as restaurants, beauty salons and vehicle workshops;

Domestic services;

Gig economy.

**Target groups**

Third-country nationals

<b>Purpose of measure</b>	Deterrence: improve detection Deterrence: improve detection
<b>Background context</b>	In 2017, the Swedish government commissioned the RAC to pilot a cooperation project from 2018 to 2020. At the time, the authorities had detected an increasing number of cases of undeclared work and labour exploitation of third-country nationals.
<b>Key objectives of the measure</b>	The RAC aims to develop suitable and effective methods for cross-agency data exchange, indicators and inspections to combat fraud, violations and crime in working life. A particular focus point is the employment of third-country nationals.
<b>Main activities</b>	<p>The partner authorities monitor possible infringements that fall under their mandate.</p> <p>The Swedish Migration Agency, which issues residence and work permits, shares intelligence with the other authorities so that they can plan inspections. They check certain permit applications in high-risk areas and newly established businesses in labour-intensive sectors. The Agency assesses an employer's ability to pay wages, if previous permit applications have been denied, or if the employer has an unregistered phone number/PO Box address. It conducts more in-depth checks (regardless of the industry) if the employment offer has not been signed by an authorised representative, if the corporate tax certificate has been revoked, or if they received a large amount of money immediately before. The Agency also checks permit extension applications.</p> <p>Police participation in inspections is often a prerequisite in suspected cases of illegal employment and labour exploitation. Officers gain access to the inspection location, provide order and security for the participating agencies, and check work and residence permits. The Swedish Gender Equality Agency and Swedish trade unions provide assistance to the third-country nationals. The Swedish Gender Equality Agency uses risk indicators to assess the presence of human trafficking and human exploitation. If it finds victims of labour exploitation or trafficking, it supports them when reporting to the police (victims are provided a 30-day 'reflection period'). During this period they can decide if they would like to avail of six months' temporary residence, in which case they need to state they were victims of human trafficking or labour exploitation and agree to cooperate with the police.</p> <p>Several joint inspections took place in 2019 in beauty salons, construction sites and restaurants. The agencies participated in Europol-led inspections of nail bars, discovering one case of human exploitation, breaches of working conditions and under-reporting of tax. Targeted cross-agency inspections were also carried out in 75 construction sites, uncovering undeclared income, fraudulent posting and illegal employment of foreign</p>

construction workers. Inspections of over 200 restaurants found 21 illegal workers, often with salaries far below the statutory wage.

RAC activities were further developed during conferences and workshops, involving the social partners.

**Funding/organisational resources**

The RAC consists of five regional committees and joint supervisory teams from different authorities, coordinated by a national steering group. The RAC relies chiefly on the budgets of the participating agencies, as well as additional government funding. However, there are resource issues, in particular for the police in taking part in inspections, as well as staffing issues (RAC status report, 2019).

**Outputs, outcomes and lessons learned**

The RAC established a joint reporting system in 2019, listing all measures from the respective agencies, showing more than 2 000 inspected companies, control and sanction fees totalling SEK 10 000 000 (EUR 944 367) and 250 immediate business closures.

In addition, the agencies shared information on suspected cases over 100 times, increasing targeted inspections of industries and workplaces. However, personal data protection rules and other secrecy rules presented barriers to effective cooperation in some cases.