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Illegal employment of third-country nationals in Belgium: 2017-2022 situation analysis

Belgian contribution to the EMN Study

February 2025

The present was conducted by the National Contact Point (NCP) Belgium to the EMN within the framework of the EMN 2023-2025 Work Programme. The study follows a common study template with a predefined set of questions developed by the EMN. The Belgian responses to the study template can be found below.

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National Contribution to the EMN study

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

For more information on the background and rationale for the study, its aims, objectives and scope, the EU legal and policy context, as well as definitions of key terms used throughout, please consult the EMN study.¹

TOP-LINE FACTSHEET

The prevention of illegal employment of third-country nationals is a national priority in Belgium, as demonstrated by the current Strategic Plan 2022-2025 to tackle social fraud and social dumping. As part of its renewed efforts to detect illegal employment practices, the Belgian labour inspection services are tasked to conduct a minimum of 400 investigations per year specifically targeting the detection of posted third-country nationals in illegal employment.

The phenomenon of illegal employment is a recurrent subject of debate in Parliament, especially in the discussions of the newly established Special parliamentary commission on the evaluation of the legal and policy framework on human trafficking. The issue has also been frequently picked up by Belgian media, especially in the past year with the tragic 'Borealis case' in Antwerp, in which 174 victims came forward with claims of labour exploitation at a construction site. In the past years, the phenomenon of 'Brazilian networks', through which money derived from criminal activity, such as drug trafficking, is laundered through companies to pay workers who are employed illegally. The use of complex subcontracting chains makes the detection of illegal practices increasingly challenging for inspection services.

The main legal framework governing the illegal employment of third-country nationals in Belgium is the Law of 11 February 2013, which transposes the EU Sanctions Directive. In 2022, a Royal Decree was signed designating 3 additional non-for-profit organisations with the ability to take legal action to recover unpaid wages of workers in irregular stay. A revision of the Belgian Social criminal code is planned, with a series of non-binding recommendations having been issued recently by the above-mentioned Special parliamentary commission on human trafficking.

The Social Information and Investigation Service (SIIS) is in charge of the fight against social fraud, including illegal employment, in Belgium. It monitors the results of labour inspections and adjusts its policies accordingly, to target high-risk sectors where illegal employment is prevalent. In recent years, the employment of foreign labor without a valid residence permit predominantly involves low-skilled workers engaged in manual tasks in high-risk sectors such as retail, garages and car washes, Horeca, and construction. To prevent third-country nationals from becoming illegally employed, the SIIS has developed targeted brochures in multiple languages and conducts 'flash' inspection waves that target a specific sector over a defined period.

¹ The EMN Study can be found at the following link: <https://emnbelgium.be/publication/illegal-employment-third-country-nationals-2017-2022-situation-analysis>

When situations of illegal employment are detected, the outcomes for the workers depend on their residence and work permits. In theory, third-country nationals who lodge complaints against their employer generally benefit from a certain level of protection against detention, but they can still be issued with removal orders. In all cases, they retain the right to claim uncovered wages. There are various procedures through which third-country nationals can lodge complaints, either through the labour inspection services directly (for instance, during an inspection), or through civil society organisations such as Fairwork Belgium. In practice however, there are many barriers that prevent such complaint mechanisms from being used effectively, such as the lack of information available, language barriers, and the general lack of incentives to do so (the only real compensation for the worker being the recovery of unpaid wages). The creation of a safe desk to centralize information and complaints, which is one of the recent recommendations of the special parliamentary commission on human trafficking, would be a promising step forward, but so far it remains to be seen whether it will be put into law.

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

1. Is the prevention of illegal employment of third-country nationals a national priority in Belgium?

Yes. On 4 February 2022, the Council of Ministers approved a Strategic Plan 2022-2025 to tackle social fraud and social dumping. In the framework of this Strategic Plan, an operational 2023-2024 Action Plan against social fraud and social dumping was drawn up by the Social Information and Investigation Service (SIIS). This Action Plan sets forth that Belgian Inspection Services are mandated to conduct a minimum of 400 investigations annually specifically focused on the posting of third-country nationals in order to detect cases of illegal employment.

The posting of third-country nationals to Belgium through illegal schemes is a trend that was already observed in 2022 and continues to be prevalent in 2023. For this reason, efforts in this area are intensified, and specific targets are set to ensure that a minimum number of investigations are carried out into such phenomena.

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

Yes. Due to its highly protective social security system, Belgium is particularly susceptible to social dumping and stands as a primary destination for illegally posted workers, including third-country nationals. Economic operators often resort to the illegal posting of third-country nationals to circumvent the high labour costs and social security contributions.

Consequently, this issue is a recurrent subject of debate in Parliament, where members of the Senate frequently question Ministers about the illegal employment of third-country nationals and the policy measures taken in response to this challenge. The Social Information and Investigation Service (SIIS) collects and provides data for these discussions. For instance, they were called upon twice (in 2018 and 2019) to provide information on the number of infringements related to the specific charge of illegally employing third-country nationals (Article 175, §1er, 1, of the social criminal code). The

questions and answers are publicly available on the website of the Senate (https://www.senate.be/www/?MIval=/index_senate&LANG=fr&MENUID=23132), under references 6-1673 (dd. 02/02/2018) and 7-203 (dd. 28/11/2019). In particular, they provide the total number of infringements as well as the number of several sub-types of infringements, e.g., employer omitted to verify the validity of the residence permit, employer does not keep a copy of the residence permit, or employer did not declare the entry and leave of service of a TCN. In particular, we provide the total number of infringements as well as the number of several sub-types of infringements, e.g., employer omitted to verify the validity of the residence permit, employer does not keep a copy of the residence permit, or employer did not declare the entry and leave of service of a TCN.

In addition, illegal employment of third-country nationals is also debated in conjunction with parliamentary discussions about human trafficking. In this regard, extensive discussions took place before the newly established Special parliamentary commission on the evaluation of the legal and policy framework on human trafficking. Its report of 12 June 2023 shows that illegal employment of TCN is a major subject of public and policy debate: <https://www.lachambre.be/FLWB/PDF/55/2530/55K2530002.pdf>

Finally, the issue has also been frequently picked up by Belgian media. In May 2022, one of the biggest cases of human trafficking and economic exploitation in Europe was uncovered in Belgium, in the highly mediatised 'Borealis' case. In the port of Antwerp, 174 victims came forward with claims of labour exploitation at a construction site of the chemical company 'Borealis'. This case was also discussed in an extraordinary parliamentary commission. Other examples of cases of illegal employment of TCN covered in the media include:

- In 2022, a Turkish bakery in Kortrijk was seized following a labour inspection that found 2 employees living in appalling conditions inside the bakery (https://www.nieuwsblad.be/cnt/dmf20221019_94291805)
- The illegal posting of Brazilian workers through companies registered in Portugal, mostly in the construction sector: <https://medor.coop/nos-series/mon-travail-mon-enfer/filiere-bresilienne/15000-travailleurs-illegaux-made-in-bresil/?full=1>. The designation 'Brazilian networkers' refers to companies serving as transit platforms designed for money laundering purposes. Such clearing companies are typically active in construction or industrial cleaning. They can be understood as a kind of crossroads combining different types of criminal activity. Funds from various criminal activities, such as drug trafficking, for example, are deposited into the accounts of these companies. Subsequently, the money is withdrawn in cash with the aim of paying workers who are employed illegally. In this way, dirty money is laundered, and workers are paid off the record. To put it another way, money derived from other forms of criminal activity is laundered through social fraud. Brazilian networks typically involve multiple companies acting in a network, recently established and used for a limited period. This makes the work of the inspectorates all the more challenging in this regard.
- In 2021, the collapse of a construction site of a school in Antwerp caused the death of 5 foreign nationals who were posted workers from Portugal and Romania. The case shed light on the number of foreign construction workers present in the country, raising the question of workplace conditions and compensations in such incidents: <https://www.hln.be/binnenland/dit-weten-we-over-de-slachtoffers-na-instorting-school-pas-getrouwde-vrouw-die-kindje-had-verloren-was-in-antwerpen-om-haar-man-te-bezoeken-portugal-rouwt-om-slachtoffers~a7994f19/>

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

a) Law

The Sanctions Directive (2009/52/EC) was transposed into Belgian law on 11 February 2013 (Loi du 11 février 2013 portant sanctions et mesures à l'encontre des employeurs de ressortissants de pays tiers en séjour irrégulier). Since 2017, the only legal development concerns the adoption of a Royal Decree on 22 July 2022, designating 3 non-for-profit organisations who have the right to take legal action to recover unpaid wages of workers in irregular stay: Ciré asbl (Coordination et Initiatives pour Réfugiés et Etrangers), Foyer Brussel vzw (Regionaal Integratiecentrum), and Fairwork Belgium asbl. The latter organisation has pointed out that this newly acquired competence is a positive development but is difficult to implement in practice, as no additional funding was appointed to support it.

b) Policy

Increase the number of investigations: since the illegal employment of TCNs was identified as an important source of social dumping, social investigation services have been given the mission to carry out specific target numbers of inspections on the matter (see Q1 and Q2).

c) Practice

Facilitate the procedure to report illegal employment: the form that the police use to contact the Immigration Office (for instance, when the case of illegal employment concerns a migrant in irregular stay) was modified to include a section to report victims of crimes other than human trafficking (there was already a separate section to report cases of human trafficking). When the "victim" box is ticked on the form, the Immigration Office can still issue a return decision, but in principle the person is protected from being detained (unless there are other elements to the case such as threats to public order).

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

A revision of the Belgian Social criminal code is planned regarding illegal employment of third-country nationals in Belgium. After 10 years of implementation, its effects have been evaluated and it is set to undergo adaptations to further enhance the fight against social fraud. More specifically with regard to illegal employment of third country nationals, one major new provision is the possibility of imprisonment when a promise to seek or offer employment to a foreign national is accompanied by remuneration. This proposed amendment aims to enhance and complement Article 175 of the Social criminal code, which encompasses the offense of illegally employing third-country nationals.

The most recent report of the Special parliamentary commission on the evaluation of the legal and policy framework on human trafficking (12 June 2023, see also Q2) includes 13 recommendations specifically targeted at tackling economic exploitation. These recommendations include:

- Strengthening cooperation between actors (police, inspection services, etc.) (Recommendation 60);

- Creating a new type of offense for “serious economic exploitation” and including it at the highest (fifth) level of sanction foreseen by the Social Criminal Code (Recommendation 61). This would lead to increased criminal and administrative fines to make the penalties more deterrent. All serious offenses affecting the health, safety, and well-being of workers will be subject to imprisonment as a last resort. Social dumping will be incorporated into the fifth level of sanctions applicable to serious social offenses.
- Improving access to information for victims, including the setting up of a single first-line contact point (safe desk) where potential victims who are in an irregular situation can put forward complaints of economic exploitation safely and anonymously (Recommendation 64).
- Revising employment regulations to reduce dependency of the employee on the employer (Recommendation 65);
- Increase labour inspections, particularly to detect cases of posted workers in the construction sector (Recommendation 66).

Finally, Recommendation 14.1 has to do with the transposition of Article 13§4 of the Sanctions Directive, i.e. the conditions under which permits may be granted to victims of economic exploitation. These recommendations are non-binding.

SECTION 2: PREVENTION MEASURES INTRODUCED

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

Yes. On a quarterly basis, the Social Information and Investigation Service (SIIS) collects the results of inspections carried out by various social inspection services. According to sector-specific investigation statistics, it has been observed that the employment of foreign labor without a valid residence permit predominantly involves low-skilled workers engaged in manual tasks in high-risk sectors such as retail, garages and car washes, Horeca, and construction.

Numerical inspection targets are set every two years in these high-risk sectors. Although these inspections do not specifically target the illegal employment of third-country nationals, the increased inspections in high-risk sectors contribute to strengthening the prevention of this phenomenon.

The selection of sectors for inspection is facilitated in Belgium by the digitization of public databases. For instance, using the digital tool for the declaration of posted workers (Limosa*), it can be demonstrated that the construction sector is one of the main sectors employing posted third country nationals (together with (road freight) transport and agriculture.

**Limosa is a declaration to be filled in by employers before the start of employment if they employ people sent to work on a temporary or parttime basis in Belgium. It is also required for self-employed workers who come to Belgium to pursue a temporary or partial self-employed activity in a high-risk sector. The declaration contains data on the employer and worker, such as identification details of the employer and of the employee, nature of the services, the place where the work is performed, the anticipated start and end date, etc.*

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

Yes. The Social Information and Investigation Service uses a risk-oriented approach by regularly selecting specific targets to investigate emerging trends, especially related to social dumping and the illegal employment of third-country nationals and so-called "Brazilian networks" (see Q2).

The insights gained from these inspections help refine our methods, enhance data analysis, improve inspection results, and increase the rate of detecting violations. Social inspectors also play a key role in fine-tuning the targets and support needed for inspections in the field. Given the limited number of social inspectors, a strategic plan is developed every 4 years to focus on priority fraud phenomena.

With the aim to provide the inspectors better targets for inspections with results, the national social security office uses datamining and -matching. By using risk assessment, in over than 80% of the cases a result was mentioned by the inspectors.

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

Data is not collected on the size of enterprise.

The main sectors where illegal employment schemes are found are retail, garages and car washes, Horeca, and construction (see Q5).

8. What measures and/or incentives are in place to:

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

Illegal employment of third-country nationals constitutes a criminal offense in Belgium. Strengthening sanctions and the perceived risk of being penalized, achieved through an increase in the number of inspectors and more targeted controls, are objectives pursued by inspection services to prevent the illegal employment of third-country nationals. Hence, increasing the likelihood of detection and enhancing the effectiveness of sanctions are strategic goals outlined in the Strategic Plan for 2022-2025 established by the SIIS.

In addition to this strictly punitive aspect, consideration must also be given to the preventive role played by "flash" inspection waves. These inspections, targeting a specific sector over a defined period, are communicated to social partners and announced on the SIIS website. Their preventive nature is part of the array of interventions employed by inspection services.

b) prevent third-country nationals from becoming illegally employed

Following the war in Ukraine and the resulting influx of refugees, a 'Ukraine' working group was established, which undertook several initiatives to protect refugees from potentially problematic employment situations. Social inspectors who participated in preventive spot checks were explicitly instructed to be more attentive to the rights of third-country nationals, including Ukrainians, without singling them out (i.e., without exclusive checks based solely on nationality). In this context, a brochure was developed by the SIIS in collaboration with social inspection services, the Immigration Office, and ELA, outlining the rights of this target group. This increased focus is also necessary in the context of future spot checks.

To this end, brochures for other sectors (Horeca and green sectors) have been written in 10 languages. In coordination with relevant federal and regional inspection services, it was decided to organize a number of additional "proactive" actions within the framework of district units' activities. Specifically, an extra action per district unit was requested on a monthly basis. These checks are centered on prevention and control, emphasizing the applicable working and social security conditions for the employment of third-country nationals, with a central focus on the issue of Ukrainian refugees. The objective of this additional action is to monitor the employment situation of Ukrainian refugees and other third-country nationals. These checks were to be organized on a monthly basis until the end of December 2022.

To facilitate these checks, the ONSS provided listings based on Limosa/Dimona data. However, practical experience shows that detecting third-country nationals/Ukrainians based on these lists is challenging. The actual detection of presences based on these listings remains limited.

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

Good practices:

Risk-assessment: in 2020 and 2021, the SIIS conducted a risk analysis of various social inspection services and stakeholders (CNT, CGG, Council of Independent Entrepreneurs and SMEs, Auditors' Council, and social partners) to prepare the Action Plan for 2021 and 2022. This revealed a number of new trends in the field of social dumping, including an increased reliance on third-country nationals. They observed a rise in the number of posted workers from outside the EU illegally posted in Belgium through malicious constructions.

International cooperation: due to the transnational nature of the illegal employment of third-country nationals, Belgium has, in recent years, placed increased emphasis on international collaboration with organizations and inspection services from other countries (staff-exchanges, workshops under ELA's supervision or its Platform Undeclared Work).

Within ELA, attention is also given to specific issues related to third-country nationals. In the context of the Platform Undeclared Work, which is an integral part of ELA, a separate sub-working group was established for this purpose: Subgroup on tackling undeclared work among third-country nationals. Belgium is a major contributor to the activities of the subgroup. Bart Stalpaert (director of the SIIS) was appointed chair of the subgroup in 2022.

Cooperation with the academic sector: the SIIS leverages support from the academic and university community in risk assessments, which are part of the substantiation in developing the Strategic Plan guiding the actions of the inspectorates, including the prevention of the illegal employment of third-country nationals.

Furthermore, to formalize this academic support, the SIIS has created a university chair titled "SIIS Chair: Reducing Social Fraud and Social Dumping." This chair will be established at Ghent University for a period of five academic years. The Royal Decree granting the corresponding subsidy was published on October 6, 2023.

SECTION 3: IDENTIFICATION OF ILLEGAL EMPLOYMENT MEASURES IMPLEMENTED

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

Yes. See Q1: specific targets are set to ensure that a minimum number of investigations are carried out into illegal employment of TCNs.

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

	Number of inspections carried out (across all sectors)	Number of inspections where an offense was detected	Proportion of detection
2020	10.080	4.232	42%
2021	15.174	5.286	35%
2022	14.559	5.407	37%

Across the period 2020-2022, the sectors that have the highest proportion of detection (meaning, where the most offenses are detected proportionally to the number of inspections carried out) are car washes (58%), Horeca (53%), manufacturing industry (47%), cleaning services (45%), beauty institutes (41%), moving services (40%) and garages (37%).

Across the period 2020-2022, the sector where the highest number of inspections are carried out is the construction sector (10.377 inspections), which accounts for 26% of all inspections.

	Number of detected offenses, by type of offense					Total
	Illegal work	Absence of verification of residence permit	Absence of copy of the residence permit	Omission to declare entry and leave of service	Other	
2019	685	37	5	11	6	744
2020	621	28	11	10	16	686
2021	725	19	15	10	9	778
2022	790	33	15	8	20	866

Number of offenses penalized with a fine	
2019	173
2020	129
2021	161
2022	104

Number of offenses that have resulted in criminal proceedings*

**These include all offenses for which a criminal fine has been imposed and all offenses referred to a court during the calendar year, but for which there is no final opinion from the labor auditor during the same calendar year.*

Year	Number
2019	258
2020	269
2021	359
2022	370

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

Effectiveness and adequacy of inspections undergo continuous monitoring. The SIIS systematically gathers inspection data and evaluates whether the actual number of inspections conducted by inspectorates aligns with the predetermined targets outlined in the Action Plan.

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

A Cooperation Agreement was passed between the Immigration Office and the Inspection Services on 8 May 2018.

In 2018, a platform combating serious and/or organized social fraud, named "Platform Justice", was established, consisting of representatives from inspection services and the judiciary. The platform's mission is to reach concrete agreements on the required capacity in terms of inspectors, controllers, and computer applications to perform tasks such as data mining and risk analysis. This facilitates the criminal judicial approach and the legal monitoring carried out by labour auditors or the federal prosecutor.

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

Yes. Belgium actively participates in the workshops and staff exchanges organized by ELA and by its Platform on Undeclared Work. In this context, the SIIS had for example a staff exchange with colleagues from the inspection services of Portugal in 2022 which specifically related to illegal employment of third-country nationals, in particular from Brazil (see the issue of Brazilian networks explained in Q2).

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

Challenges and good practices in the area of the identification of illegal employment of third-country nationals are inherently linked to challenges and best practices in preventing and penalizing such illegal employment. See answers to Q9 and Q17.

SECTION 4: SANCTIONS FOR EMPLOYERS INTRODUCED

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

No. Sanctions against employers for the illegal employment of third-country nationals were already in existence before 2017 and are inherently deterrent. These sanctions encompass hefty fines, professional prohibitions, the closure of establishments, and, in certain instances, imprisonment for employers. There is also a joint and shared liability mechanism within subcontracting contracts which is specifically targeted at illegal employment of TCNs. This empowers our inspectorates to enforce the responsibility on the end-user of illegally employed third-country nationals for the payment of fines and unpaid wages in cases where the subcontractor disappears or turns out to be an empty-shell letterbox company.

Since 2017 however, no significant new legislation on sanctions has been introduced (although a planned new provision is mentioned in question 4 above). The consensus is generally that the current level of sanctions is sufficient, but there is a recognized need for a more effective implementation of the social response from all actors in the criminal repression chain—primarily inspectorates, police, and justice. While recent efforts in this regard are commendable, it should be noted that these three sectors are known to be subject of labour shortages.

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

During labour inspections, employers are requested to provide proof of wages for employees for the past 3 months. If there is no proof of payment – and no justification for lack of payment, for instance proof that the employee was on leave –, labour inspectors report the offense as non-payment of the prescribed salary. Labour inspectors grant the employers a certain period of time to regularise the situation, and in many cases payment is made by the employer before the offense is officially recorded.

Once the offense is officially recorded, the labour inspector can also decide, on the basis of the estimated salary deficit, to seize funds or property in proportion to the criminal benefit obtained (= unpaid salary and unpaid contributions). The amount is stored in a government escrow account. As part of an amicable legal settlement, this amount can be used to compensate workers. If the court issues a judgment on the merits after a full legal procedure, it may also decide to declare the amount “confiscated”.

In legal proceedings, the victim is generally invited to become a civil party, but in practice, this rarely happens for undocumented people. If the worker is not represented in the legal proceedings or does not appear in court, the wages will not be claimed. In theory, there are “claim facilitation mechanisms” that can be used to recover unpaid wages, but in practice they are often ineffective (see Q19).

Challenges:

Subcontracting: economic operators often exploit the complexity of subcontracting chains to engage in practices such as underpayment or the imposition of subpar working conditions. They know that control and enforcement are hindered by complex chain structures. Subcontracting chains, including in cases involving illegally posted TCNs, can

create many challenges when it comes to making sure that employers are sanctioned and that each worker's rights are protected. This is due to:

(1) A complex chain structure: subcontracting chains in the context of posted workers can become highly intricate. They often involve multiple layers of companies, making it challenging to discern who bears responsibility for ensuring labor rights compliance.

(2) Dilution of Responsibility: As labor contracts move down the subcontracting chain, the accountability for upholding labor rights becomes fragmented. This fragmentation increases the burden of work for the inspectorates to hold any specific entity accountable for potential violations.

(3) Information Gaps: Vital information pertaining to employment conditions, wages, and working hours are often lost through the various tiers of subcontracting. Workers are therefore less informed, which hinders effective control and enforcement by the inspectorates.

(4) Exploitative Practices: Unscrupulous subcontractors often exploit the complexity of these chains to engage in practices such as underpayment or the imposition of subpar working conditions, they know that our control and enforcement is hindered by complex chain structures.

Letterbox companies: Our inspectorates are having difficulties in assessing whether a foreign company sending posted workers could be considered a letterbox company. As these bogus companies are set up in another country, it is in practice very difficult for us to take action against them.

Good practices:

Increasing the effectiveness of sanctions is one of the strategic objectives that the Federal Government incorporated into its Social Fraud Strategic Plan for 2022-2025.

Actors of the fight against social fraud, including the fight against illegal employment of TCNs, have been implementing several reforms for improving sanctions using digitization of their work processes. Next to the introduction of the ePV (prior to 2017), the law of May 13, 2023, amending the social criminal code to establish the eDossier platform, was published in the Belgian Official Gazette on June 22, 2023. This is a data exchange platform that allows stakeholders to track the progress of a case at any time and ultimately know the outcome of proceedings and sanctions.

At the policy level, the platform enables the creation of statistics covering the entire chain of proceedings and convictions, which is conducive to improving prevention, targeting, and sanctions, including sanction against the illegal employment of third-country nationals.

SECTION 5: OUTCOMES FOR THIRD-COUNTRY NATIONALS

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

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

The work permit is withdrawn automatically when a situation of illegal employment is detected (Art. 35 of the Royal Decree executing the Law of 30 April 1999), and the residence permit ends 90 days after the work permit has been withdrawn (Art. 36 of the Cooperation Agreement of 2 February 2018). The withdrawal of a residence permit leads to the issuance of a removal order and potentially detention in view of removal (placement in a detention facility, so-called 'closed centre').

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

In most cases, there is no risk of losing their residence permit (but there are exceptions, for instance students who work more than the authorised 20 hours a week can lose their residence permit as students). If the worker also received social benefits while working illegally, they might be asked to pay back these benefits or lose the right to such benefits. This is also the case of Ukrainians with temporary protection status

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

If the case of illegal employment is detected following a labour inspection, the labour inspectors are under obligation to declare undocumented workers to the police. The police will then contact the Immigration Office, who can issue a return decision and can issue a detention decision and place the TCN in a detention centre in view of their removal (so-called 'closed centres'). If the inspection is the result of a complaint made by the worker him or herself (by the police or by the inspection services), if it is reported that the person concerned has an ongoing procedure against their employer and/or it is stated on the inspection report that the person concerned is a victim, the TCN is protected against detention except if there are elements of threat to public order already known by the Immigration Office. However, the TCN can still be issued a return decision. The TCN retains the legal right to claim unpaid wages in all scenarios, but still have to comply with the return decision. In case of detention, the forced return procedure will continue. The TCN in detention will be given the opportunity to contact the relevant authorities for this purpose.

Whatever the (il)legality of the residence and work situation of the TCN in cases a, b and c, the labour rights of the worker must be respected by the employer. If it is not the case, the worker can lodge a complaint against their employer, for instance to claim unpaid wages. Undocumented workers can be assisted by 'claim facilitation mechanisms' (see Q17 and Q19).

Additional note: In cases of employment where there are also indications of human trafficking for the purpose of labour exploitation (the Belgian definition of human trafficking is broader than forced labour and consists in degrading work conditions), workers can obtain the status of victim of human trafficking.

19a. What effective procedures are in place to allow third-country nationals in illegal employment to lodge complaints against their employer? Effective procedures are understood as those used in practice and trusted by migrant workers.

There are multiple procedures through which the TCN can lodge complaints against their employer:

With the labour inspection services during an inspection: when illegal employment is detected during an inspection, the worker can lodge a complaint with the labour inspector, which then protects the worker from being reported to the police and Immigration Office (see Q18(c)). This complaint leads to an investigation into the illegal employment practices, which usually lasts 6 months. If the labour inspection services determine that there is sufficient proof pointing to illegal employment practices, the case is then brought to the labour prosecutor. Upon examination of the case, the prosecutor decides whether a more thorough investigation is necessary, or if the case can be brought to trial.

With the SIIS 'Point of Contact for Fair Competition', a single point of contact where citizens (victims or others) can report undeclared work, economic exploitation and human trafficking. The SIIS receives the reports, complements them with additional information and then forwards them to the competent inspection services for further investigation: <https://www.meldpuntsocialefraude.belgie.be/en/>.

With specialised centres for victims of human trafficking, where direct reports of human trafficking can be made. If there are no indications of human trafficking, the victim is referred to another organisation or inspection services: www.stophumantrafficking.be.

With the assistance of civil society organisations: Fairwork Belgium (www.fairworkbelgium.be) is the main reference organisation active in the field of protection of rights of irregularly-staying third-country nationals. Organisations like Fairwork act as point of contact to provide information on rights and procedures, and to assist third-country nationals in lodging complaints with labour inspection services or tribunals.

In practice, there are barriers that prevent complaint mechanisms from being effectively used, notably:

- Lack of information available to the worker about their labour rights and the existence of such complaint mechanisms (see Recommendation 64 of the Special parliamentary commission to create a safe desk – Q4);
- Language barriers;
- Burden of proof is on the worker (often limited and unorganised proof available);
- Lack of resources within the authorities (labour inspection services and Public Prosecutor) to tend to each case thoroughly (small, difficult cases with little proof are not treated as priority);
- Lack of availability of lawyers specialised in this field and little incentive to work pro bono;
- Lengthiness of investigation and judicial proceedings before the labour court, during which contact with the worker may be lost, especially if they have no legal representation;

- Lack of trust in authorities (labour inspectors, police, Immigration Office) by TCNs, because of the lack of official protection against the issuance of removal orders or detention decisions.

19b. Are there different procedures in place to lodge complaints against employers if the third-country nationals in illegal employment are irregularly staying?

The TCN in irregular stay can file a complaint against his or her employer with the labour inspection services (same as above). Trade unions, employers representatives, Myria (Federal Migration Centre) and 3 additional organisations are assigned by law to assist and represent workers in proceedings and to file complaints against employers specifically to claim unpaid wages of irregularly staying workers.

There are none, unless the case of illegal employment meets the threshold to be considered human trafficking.

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

Trade unions and Myria (Federal Migration Centre) can assist or represent workers in proceedings. Since 2022, 3 additional organisations can provide this administrative and legal support: Ciré asbl (*Coordination et Initiatives pour Réfugiés et Etrangers*), Foyer Brussel vzw (*Regionaal Integratiecentrum*), and Fairwork Belgium asbl. This action is limited to the recovery of unpaid wages, and is limited to workers in an irregular stay, in implementation of the Sanctions Directive (see Q19).

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

There are no specific mechanisms in place. If workers do not have a bank account (as is often the case for undocumented workers), recovered wages can be paid to the governmental Deposit and Consignment Fund, which is a government fund into which funds are deposited and kept by the government until the entitled party claims them (not specific to persons in irregular stay). The recovered wages stay in the fund for 30 years, giving the worker time to find a solution to claim them. In case the employer is insolvent, the worker can rely on the 'Business Closure Fund' (compensation fund for workers who were dismissed following shutting down of businesses).

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

There is no time limit.

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

See answer to Q21.

23. Does Belgium provide information to illegally employed third-country nationals on their rights? Is this information translated? Does the information provided differentiate between regularly and irregularly staying third-country nationals?

Information is provided to workers during labour inspections. The SIIS provides brochures (see Q8) with information on the rights of posted workers in terms of salary, but these are not targeted specifically at situations of illegal employment. These brochures also contain information on human trafficking and on relevant contact organisations and reporting mechanisms.

Other publicly available information is provided by the Ministry of Employment (<https://werk.belgie.be/nl/themas/verloning/loonbescherming/bijzondere-regeling-van-hoofdelijke-aansprakelijkheid-inzake-0>) and the Flemish Agency on Integration (<https://www.agii.be/thema/vreemdelingenrecht-internationaal-privaatrecht/werk/illegale-tewerkstelling-en-zwartwerk/risicos-en-verplichtingen-voor-de-werkgever#:~:text=Wordt%20er%20een%20illegaal%20verblijvende,dan%20drie%20maanden%20heeft%20gewerkt>).

Civil society organisations like Fairwork Belgium (see Q19a) also centralize information for illegally employed third-country nationals, and make this information available in multiple languages (French, Dutch, English, Spanish, Portuguese, Ukrainian).

SECTION 7: CONCLUSIONS

The prevention of illegal employment of third-country nationals is a national priority in Belgium, as demonstrated by the current Strategic Plan 2022-2025 to tackle social fraud and social dumping. As part of its renewed efforts to detect illegal employment practices, the Belgian labour inspection services are tasked to conduct a minimum of 400 investigations per year specifically targeting the detection of posted third-country nationals in illegal employment.

In recent years, the employment of foreign labor without a valid residence permit predominantly involved low-skilled workers engaged in manual tasks in high-risk sectors such as retail, garages and car washes, Horeca, and construction. To prevent third-country nationals from becoming illegally employed, the SIIS has developed targeted brochures in multiple languages and conducts 'flash' inspection waves that target a specific sector over a defined period.

Labour rights can be claimed by third-country nationals regardless of their residence or work status. In theory, third-country nationals who lodge complaints against their

employer generally benefit from a certain level of protection against detention, but they can still be issued with removal orders. There are various procedures through which third-country nationals can lodge complaints, either through the labour inspection services directly (for instance, during an inspection), or through civil society organisations such as Fairwork Belgium. In practice however, there are many barriers that prevent such complaint mechanisms from being used effectively, such as the lack of information available, language barriers, and the general lack of incentives to do so (the only real compensation for the worker being the recovery of unpaid wages). The creation of a safe desk to centralize information and complaints, which is one of the recent recommendations of the special parliamentary commission on human trafficking, would be a promising step forward, but so far it remains to be seen whether it will be put into law.