

P I C U M

PLATFORM FOR INTERNATIONAL COOPERATION ON
UNDOCUMENTED MIGRANTS

Launch EMN Report
Irregular Employment of Third
Country Nationals

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Terminology

- Choice of term “**illegal**” to describe employment of third-country nationals is **discriminatory**.
- Undeclared work is defined by the ILO as work “which does not comply with the requirements of national laws, regulations and practice” (R.169).




Terminology has an **impact on policy and public perception** : society accepts that people should be punished


Analysis of the main measures to address irregular work (I)

- Trade unions & NGOs - reduce exploitation in irregular employment through empowering undocumented workers:
 - Provide information, legal services
 - Assist with applications for permits and regularization of status
 - Advocate for the necessary reforms of the legal and policy framework
 - Other measures, as sanctions on employers, show limited or negative impact without these reforms.
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Analysis of the main measures to address irregular work (II)

- European Commission: implementation of **Employers' Sanction Directive** (2014) :
 - Sanctions diverse amounts & use – not clear how effective, proportionate or persuasive
 - Much needs to be done for inspections to be adequate and effective & protective elements
 - PICUM's monitoring:
 - Almost no implementation of rights in line with the Directive
 - Complaints mechanisms are inadequate, inaccessible and ineffective
 - Most problematic issue: link between labour authorities & immigration enforcement:
 - If an undocumented worker is detected in an inspection or files a complaint, their status will be communicated to the immigration authorities (or joint inspections carried out)
 - Undocumented workers face likely arrest, detention, deportation, loss of job
 - Rarely able to access to unpaid wages & compensation
-  This enables labour exploitation and undeclared work to continue

Firewall

- **ILO: Labour Inspection Convention**
 - Art. 3: Labour inspectors' duties are the enforcement of regulations on working conditions and protection of workers - Other duties shall not interfere
 - Art. 15: The source of any complaints is absolutely confidential
 - **ILO non-binding General principles and operational guidelines for fair recruitment**
 - Other bodies which call for a “firewall” between labour & immigration authorities:
 - **UN Special Rapporteur on Migrants, Report 2035 Agenda**
 - **European Commission Against Racism and Intolerance, ECRI General Policy Recommendation 16**
 - **FRA, Apprehension of migrants in an irregular situation – fundamental rights**
-  Must go in the Global Compact on Safe, Orderly and Regular Migration

Effective complaints mechanisms

- EU level: complaints mechanism for undocumented migrants required by Employers Sanctions Directive, and useful for Anti-Trafficking Directive & Victims' Directive
- Specific implementation measures needed for irregular workers

5 key components to make complaints mechanisms *effective* for all:

1. **Firewall:** clear separation between labour/social authorities and immigration authorities (inspections, authorities, courts)
2. **Complaints body** with sufficient **power and resources**
3. **Fair legal proceedings:** right to participate, be supported by a third party, and have legal representation, right to appeal
4. **Residence status** for the undocumented worker and family for duration of the procedure at least, with possibility to extend/ change type of status/ permit
5. **Mechanism** to ensure **compensation actually received** (inc. if worker no longer in country)

Thank you for your attention



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