



ILLEGAL EMPLOYMENT OF THIRD COUNTRY NATIONALS IN BELGIUM

STUDY OF THE BELGIAN CONTACT POINT
OF THE EUROPEAN MIGRATION NETWORK (EMN)

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The Belgian National Contact Point (NCP) of the European Migration Network (EMN) is a multi-institutional entity composed of experts from the Immigration Office, the Office of the Commissioner General for Refugees and Stateless Persons (CGRS), Myria - the Federal Migration Centre and the Federal Agency for the Reception of Asylum Seekers (Fedasil). It is coordinated by the Federal Public Service Home Affairs. The Belgian NCP is financed both by the European Union and the Belgian Government.

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Belgian report and EU comparative report

Belgian report: This is the Belgian contribution to the EMN focused study on illegal employment of third-country nationals. This national report was drafted by M. Philippe Vanden Broeck (Social inspector/Director at the Labour Inspectorate of the Federal Public Service Employment, Labour and Social Dialogue), in cooperation with the Belgian Contact Point of the EMN. Other EMN National Contact Points (NCPs) produced a national report on the same topic for their (Member) State.

Common template and Synthesis Report: The different national reports were prepared on the basis of a common template with study specifications to ensure, to the extent possible, comparability. On the basis of all national contributions, a Synthesis Report is produced by the EMN Service Provider, in collaboration with the European Commission and the EMN NCPs. The Synthesis Report gives an overview of the topic in all (Member) States.

Aim: The overall aim of the study is to inform the target audience (e.g. policy makers and practitioners at EU and national level, as well as academic researchers and the general public) about national policies and practices in place at (Member) State level to prevent, identify and sanction the illegal employment of third-country nationals, and about the outcomes for the third-country nationals involved.

Scope of the study: This study focusses on the illegal (either totally or partially undeclared) employment of the following categories:

- Third-country nationals regularly residing on the territory of the (Member) State working illegally (e.g. without right to access the labour market or who contravene restrictions on their access to the labour market).
- Irregularly residing third-country nationals, i.e. persons who do not, or do no longer, meet the conditions to stay in the (Member) State. These include third-country nationals who arrived outside the legal channels of migration and third-country nationals who overstayed after their permit or visa expired.

The illegal employment of third-country nationals carrying out self-employment and posted-work activities is not covered by this study.

Available on the website: The Belgian report, the Synthesis Report and the links to the national reports of the other (Member) States and the Common Template are available on the website of the Belgian Contact Point of the EMN: www.emnbelgium.be

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FACTSHEET

This national EMN study focuses on the **illegal employment of regularly and irregularly staying third country nationals in Belgium**. It focuses more particularly on the prevention measures and incentives in place targeting employers and employees to avoid illegal employment; on the policies and practices regarding the identification of illegal employment and the different authorities involved; on the sanctions for employers who illegally hire irregularly or regularly staying third-country nationals; and on the outcomes for the third-country nationals involved, as well as on the protective measures in place. The study also identifies good practices and challenges in this area.

This national contribution was drafted by **M. Philippe Vanden Broeck** - social inspector/director at the Labour Inspectorate of the Federal Public Service Employment, Labour and Social Dialogue – in cooperation with the Belgian Contact Point of the EMN. It is mostly based on desk analysis of existing legislation and policy documents, reports, academic literature, news articles, as well as information provided by public authorities and NGOs, and - last but not least - inspection reports and practice.

Social fraud and illegal employment

Art. 1, §1 of the Belgian Social Criminal Code broadly defines **social fraud and illegal work** as every infringement of a social law which falls under the competence of the federal government. More specifically, social fraud refers to a complex set of infringements which have an impact on the social security system. It includes abuses linked to social security benefits, undeclared work – commonly known as “black” work (e.g. no declaration or partial declaration to the social security office of a labour relationship, etc.), as well as illegal work by foreign workers. Illegal work relates to all kinds of infringements of social law, which are often but not always linked to social fraud (for example, the case of a third-country national regularly staying in Belgium and working without a work permit would be considered as illegal work, but not necessarily as social fraud).

Social fraud can have many **negative consequences**, such as the disturbance of the (regular) labour market, the disturbance of the economy (e.g. dishonest competition), damage to the credibility and the financing of the authorities, harm to the social security system and harm to the human dignity of individuals (e.g. in case of exploitation of workers). In Belgium, various actors are active on the level of policy making as well as on the operational level to prevent and combat this phenomenon.

Extent of the phenomenon of social fraud and illegal employment (of third-country nationals) in Belgium

It is difficult to estimate **the extent of the phenomenon** of social fraud in Belgium, as it is a hidden and complex phenomenon. Different research projects – adopting different approaches – have led to various estimates, most of which do not make a distinction between third country nationals and Belgian and EU citizens. For example, when considering the phenomenon of social

fraud on the basis of the findings of the social inspection services, J. Pacolet has calculated (in a 2003 study) that social fraud reached at least 6.8% of paid employment in Belgium in 1995. Regarding the illegal employment of third-country nationals more specifically, the extent of the issue is also difficult to estimate. There are no precise estimates of the number of third-country nationals who are regularly staying in Belgium but working illegally, or of the number of irregularly staying third-country nationals who work illegally. According to certain estimates, between 40,000 and 140,000 persons are irregularly staying in Belgium (Kaizen & Nonneman). The Clandestino project estimated that between 88,000 and 132,000 migrants were irregularly staying in Belgium in 2008. The number of them who work illegally is unknown. As illegal employment of third-country nationals is strongly linked to social fraud and undeclared work, some consider that a reference to the rate of undeclared work in Belgium could shed a light on the size of illegal employment of third-country nationals in Belgium.

The experience of the Belgian labour inspection services has shown that third-country nationals are often employed illegally in labour situations that usually do not require a high **level of qualification**. Affected **sectors** include, for example: car-washes, restaurants, night shops, cleaning services, services in private households, second-hand clothing businesses, meat transformation businesses, renovation works, sex work, etc. They are mostly found in **very small scale undertakings**, often working for an employer who is himself a foreign national or of foreign origin.

Considering the above mentioned issues, social fraud and the illegal employment (of third-country nationals) are **high on the political agenda** in Belgium. Many actions have been undertaken over the last decades to combat social fraud and illegal employment. The introduction of the **Social Criminal Code** in 2010 has had the merit, on the level of regulation, to centralize the fragmented legislation of social criminal law. On the level of enforcement of social criminal law, there are numerous **policy organs, collaborative connections and supervising services**, who aspire to a common vision and a coordinated approach to combat social fraud.

Prevention measures regarding the illegal employment of third-country nationals

Different information and prevention measures on social fraud targeting employers and/or employees are implemented by public authorities in Belgium, although they do generally not specifically focus on the illegal employment of third-country nationals. For **employers**, these measures include information campaigns (on combating social fraud in general); information support (e.g. general information on the legal obligations linked to residence and employment of third-country nationals in Belgium published by public bodies on their websites); protocols of cooperation and plans for fair competition signed with the social partners; or the obligation for the employer to notify the authorities when employing a third-country national. For **employees**, these measures include information campaigns (mostly ad hoc and targeted) and information support (e.g. brochure developed for asylum seekers wishing to work). Furthermore, many information and prevention activities in Belgium targeting the illegal employment of third-country nationals are carried out at the initiative of **NGOs**, organisations which defend the rights of victims of trafficking in human beings (the centres Payoke, Surya or Pag-asa), or **trade unions**.

Employers and employees thus have access to **various sources of information** on their rights and obligations in Belgium. Through the preventive actions set up, employers are often well aware of the risks and the sanctions associated with illegally employing a third-country national, which could have a dissuasive effect. What's more, the **protocols of cooperation** with representatives from certain professional sectors as well as the **plans for fair competition** ensure a better dissemination of information about legal rights and obligations; encourage a better understanding of the social fraud phenomenon and help the partners develop appropriate measures to deal with it.

However, it is worth noting that the information provided by public authorities mostly focuses on work/residence conditions, and less on the **rights of the foreign workers**. What's more, the issue of illegal employment of (irregularly staying) third-country nationals is somewhat overshadowed by the phenomenon of posted workers, which gains most attention from policy makers, in the press and in public opinion.

Identification of illegal employment of third-country nationals

Different public authorities are involved in the identification of illegal employment in Belgium, at the federal and regional level. **Four federal inspection services** are primary responsible for the identification of illegal employment (including of third-country nationals): the Labour Inspectorate of the Federal Public Service Employment, Labour and Social Dialogue; the Social Inspection of the Federal Public Service Social Security; the Inspectorate of the National Social Security Office; and the Inspectorate of the National Employment Office. Each of these inspection services has its own mission and legal competences, but they also share common competences regarding social fraud. Furthermore, the **Regional inspection services** (Brussels-Capital Region, Walloon Region, and Flemish Region) are competent for the regionalized social laws, which include legislation on work permits delivered to third-country nationals. They are thus specifically competent for the identification of illegal work of third-country nationals – who are either regularly or irregularly residing in Belgium. The federal and regional bodies regularly cooperate for controls in this regard. Beside the inspection services, the federal and local police forces are also involved in the identification of illegal employment.

The **cooperation between the different authorities** involved in the identification of illegal employment is regulated by the Social Criminal Code and is managed and steered by the (federal) coordination body, the **Social Information and Investigation Service** on the fight against social fraud and illegal employment (SIOD/SIRS). The SIOD/SIRS prepares annual national action plans for combating social fraud and social dumping, which are approved by the government. Furthermore, the federal inspection services¹ work together at the local level, in the so-called **provincial district cells**. These cells are composed of the four federal inspections services (as well as representatives from other relevant bodies) and mainly aim at organizing and coordinating inspection controls in all domains and all targeted sectors. Overall, the activities of the inspection services are characterized by a **high level of cooperation**, which includes the sharing of findings,

1 Sometimes assisted by the regional inspection services.

strong communication channels, joint inspections, shared action plans for controls and access to common databases, as well as the use of a common inspections platform.

High risk sectors for social fraud (including illegal employment of third-country nationals) are identified on the basis of **risk assessments** (using – inter alia - analysis of databases containing the results of previous inspections; datamining techniques, etc.) and are subject to well-targeted controls.

Inspection services mostly find infringements (including the illegal employment of third-country nationals) by doing **inspections in the field**. Most of the time, these inspections are performed jointly by several inspectorates, and mostly in the framework of regional action plans set out by the provincial districts cells under the supervision of the local labour prosecutor and with the backing of the Social Information and Investigation Service (SIOD/SIRS). Furthermore, labour inspectors are sometimes called to assist **special police controls** or execute special missions **on demand of a prosecutor or a judge** charged with a penal enquiry. **Complaints and denunciations** (from the general public, from a third-country national, etc.) can also lead to the identification of illegal employment of third-country nationals. A single contact – the “Point of Contact for Fair Competition” – was set up in 2015 in order to better streamline and follow-up on the complaints and denunciations received.

Inspectors may carry out controls in **several places** (i.e. on sight, at a company’s headquarters, at private homes with the prior authorization of a judge, etc.) and use different **tools and methods**, such as common checklists or standard interrogation forms.

All ingredients are thus available for a **successful detection** of social fraud and illegal employment. There is a good structural framework in place with clear objectives, and the cooperation and communication between all stakeholders is efficient. However, the identification of illegally working third-country nationals remains somewhat **under exploited**. This is linked to several factors, including the difficulty to prove the labour relationship between the employer and the third-country nationals; the fact that the use of datamining techniques of the so-called “big data”⁽²⁾ as a possible source for targeting control actions cannot be used for the illegal employment of third-country nationals as third-country nationals are not registered in the databases; or the fact that an emphasis is currently put on the monitoring of posted workers - which mobilizes a lot of the control efforts. The number of identified cases of illegally working third-country nationals (irregularly and regularly staying) is still inferior to the number of infringements found regarding posted workers.

Sanctions for employers

All the infringements of social law, their descriptions, the possible sanctions and the modalities of the sanctions process are set out in detail in the Social Criminal Code. The Code provides for

2 “Big data” refers to all the available data files safeguarded in all databases of public authorities and the National Social Security Office, and which concern personal data of natural persons, legal persons, data regarding labour relations and social security rights and obligations.

four different levels of violations of employment and social security provisions, each **with a corresponding sanction** (from an administrative fine to a prison sentence and/or a criminal fine). Employers found to be illegally employing third-country nationals face a sanction level 3 or 4.

The **sanctions system in the area of social law is dual**. Infringements by employers are brought to the attention of the Labour Prosecutor and the Federal Public Service Employment, Labour and Social Dialogue by the competent inspection service. The Labour Prosecutor has the possibility to prosecute before a criminal court. When the prosecutor decides not to bring criminal proceedings against the employer, the case is further dealt with by the Federal Public Service Employment, Labour and Social Dialogue. The latter can impose an administrative fine. In practice, the Labour Prosecutors prosecute the most serious social infringements (among which the employment of a group of irregularly staying migrant workers) and the Federal Public Service handles the other or less serious infringements. Cases with one or two irregularly staying migrant workers are rarely prosecuted.

The prosecution policy of the public prosecutors is thus streamlined and **targets the most serious forms of fraud** and exploitation of employees, among which third-country nationals. The **criminal sanctions** that employers face are high and should have a dissuasive effect. Sanctions are imposed and they hurt offenders also in their illegally obtained profits, hence compromising their business model. In practice, confiscations of goods, bank accounts, etc. are also pronounced.

Nonetheless, it is worth noting that criminal procedures dealing with illegal employment often take place over **long periods of time** because many investigative acts are needed. As a result, the illegal employment can rapidly change form (e.g. changes in status, firm, etc.) which means that the final sanction can be overshadowed by the continuation of criminal activities in a different form. Furthermore, **infringements by certain offenders keep occurring** as the mere risk of financial sanctions is overshadowed by potential profits. Despite heavy sentences, the repressive approach does not always have the deterring effect wanted on certain groups of offenders.

Outcomes for illegally working third-country nationals and the protection of their rights

The Immigration Office can take **different measures** when third-country nationals who are **irregularly staying** in Belgium are found to be illegally working (e.g. order to leave the territory, possible detention in view of a forced return, entry ban). No regularisations are possible: usually, neither a residence permit nor a work permit can be granted. The situation is however different for third-country nationals who are found to be the **victims of trafficking in human beings**. Under certain conditions, they can be granted a residence permit and a work permit (a specific procedure exists in this regard). When **regularly staying third-country nationals** are found to be working illegally, the Immigration Office does not automatically withdraw their residence rights. This is examined on a case by case basis. As long as the third-country national regularly resides on the territory, no return decisions or detention measures are taken. There are also some possibilities for the regularisation of their labour situation. Furthermore, since 2016, workers (including third-country nationals) can be imposed an **administrative fine** for undeclared work - under certain conditions.

Employers may have to pay the outstanding wages to third country nationals (staying either regularly or irregularly) who are illegally employed in the framework of a labour contract. Employers also have to pay the **taxes and social security contributions** to the State. Irregularly staying third-country nationals found illegally working in Belgium in the framework of a labour contract are presumed to have worked for at least three months (unless proven otherwise). They are thus entitled to the **payment of a salary of (at least) three months** from their (former) employers. It is also worth mentioning that there are several regimes of **several liability regarding wages** in Belgium, which means that principals, contractors and subcontractors may be severally liable for the payment of wages due by their commercial partners. Employers of irregularly staying third-country nationals may also have to cover the **costs of the third-country nationals' forced return**, as well as a daily sum for the costs linked to accommodation, living and health.

Regarding access to justice and the facilitation of complaints, illegally working third-country nationals can **lodge a complaint** against their employers. The Labour Inspectorate of the Federal Public Service Employment, Labour and Social Dialogue has created a **national contact point** especially for foreign workers, which they can use to lodge their complaints. The confidentiality of the complaint is legally guaranteed. Third-country nationals can **defend their rights before a court (civil and penal)**, and they are entitled to **legal assistance**. Furthermore, regarding irregularly staying third-country nationals in particular, certain **third parties** (such as Myria-the Federal Migration Centre and some trade unions and employers' federations) may act in legal proceedings on their behalf, even without the authorisation of the worker in question, and even when the worker no longer resides in Belgium.

However, NGOs have underlined that third-country nationals illegally working in Belgium are **not always aware of their rights**, or have an easy access to information on said rights. There are various sources of information, but there is no single point of contact. Several NGOs expressed the need for the creation of a central contact point focussed on the defence of the labour rights of third-country nationals, which would safeguard their confidence and take appropriate actions. In practice, illegally working third-country nationals **seldom file a complaint** to the Labour Inspectorate, which is mostly linked to the fact that they are not aware of their rights or are afraid of the possible repercussions (e.g. in terms of their residence status). Furthermore, NGOs have underlined that **access to the legal remedies** to recover unpaid wages (or other labour rights) can be challenging in practice. The issue of **proof of the existence of the labour relation** between the employer and employee is also a recurring problem. Employers caught for illegal work often try to avoid any sanctions and minimize their responsibilities, and the third-country national workers themselves can be reluctant to cooperate with police forces or inspection services.

Contextual overview of the general situation regarding illegal employment in Belgium

1.1. Social fraud and illegal employment

Article 1, §1 of the Belgian Social Criminal Code⁽³⁾ broadly defines social fraud and illegal work as every infringement of a social law which falls under the competence of the federal government.

Social fraud refers to a complex set of infringements which have an impact on the social security system. It includes abuses linked to social security benefits, undeclared work – commonly known as “black” work (e.g. no declaration or partial declaration to Social Security of a labour relationship, wages, volume of hours worked, etc.), as well as illegal work by foreign workers.

Illegal work relates to all kinds of infringements of social law, which are often but not always linked to social fraud (for example, the case of a third-country national regularly staying in Belgium and working without a work permit – but whose work is declared to the Social Security – would be considered as illegal work, but not as social fraud). In practice, illegal work carried out by irregularly staying foreign workers is always a situation of illegal work and of social fraud.

The **main types of fraud** linked to illegal work are undeclared work carried out by foreign workers irregularly staying in Belgium; undeclared work carried out by Belgian nationals or by foreign workers regularly staying in Belgium; undeclared work carried out by Belgian nationals or foreign workers regularly staying in Belgium and who receive social benefits (e.g. social integration income or social aid); partially undeclared work that is carried out by Belgian nationals or foreign workers regularly staying in Belgium (e.g. actual working hours superior than mentioned in the work contract, etc.); or undeclared work carried out by Belgian nationals or foreign workers regularly staying in Belgium, but under a false status (e.g. bogus self-employed people, false interns, etc.)⁽⁴⁾.

This study focuses on **third country nationals – either regularly or irregularly staying in Belgium – and who work illegally as employees**. Third-country nationals carrying out self-employment and posted workers are not covered.

3 [Social Criminal Code of 6 June 2010](#), Belgian Official Gazette, 1 July 2010.

4 http://www.emploi.belgique.be/detailA_Z.aspx?id=932

1.2. Extent of the grey and informal economy in Belgium

It is difficult to estimate the extent of the phenomenon of social fraud in Belgium. Different approaches can be adopted in this regard.

When considering the question of the extent of social fraud in Belgium in terms of **its impact on the gross value added, the national product and the national accounts**, very divergent figures are mentioned, in the order of 3-4% to 20% of the gross national product. These figures are generally the result of extrapolations made at specific moments and certainly cannot explain the factors that are at the origin of the phenomenon and even less the evolutionary perspectives of the situation in time, improvement or, on the contrary, deterioration⁽⁵⁾. According to a 2010 analysis of the National Bank of Belgium⁽⁶⁾, the turnover connected to the activities of the “black” economy amounts to 12.9 billion euros, which is 3.8 % of the gross national product (GNP).

When considering the phenomenon of social fraud **on the basis of the findings of the social inspection services**, Professor Jozef Pacolet has calculated (in a 2003 study)⁽⁷⁾ that social fraud reached at least 6.8% of paid employment in Belgium in 1995, of which 0.8% were regularized during controls.

Regarding the **illegal employment of third-country nationals more specifically**, it is also very difficult to estimate the extent of the issue. There are no precise estimates of the number of third-country nationals who are regularly staying but working illegally or of the number of third-country nationals irregularly staying in Belgium and working illegally. Until now, it has been impossible to map irregular immigration to Belgium and the number of persons who are staying irregularly in Belgium, as there are no databases that contain relevant information about this. Furthermore, scientific research about illegal employment of persons who are staying irregularly in the country is practically inexistent. According to certain estimates, between 40,000 and 140,000 persons are staying irregularly in Belgium⁽⁸⁾. The Clandestino project estimated that between 88,000 and 132,000 migrants were irregularly staying in Belgium in 2008⁽⁹⁾. The number of them who work illegally is unknown.

(Section 1 – Q.1a of the EMN Questionnaire)

5 See P. Vanden Broeck, Les services d’inspection sociale et la lutte contre le travail non déclaré, Rapport sur le Royaume de Belgique, International Labour Organisation, 2013.

6 National Bank of Belgium, De zwarte economie in de Belgische nationale rekeningen, September 2010.

7 Jozef Pacolet & An Marchal, « Travail au noir et fraude: une menace pour l’Etat- providence en Belgique et en Europe », *La Revue Belge de Sécurité Sociale*, nr. 865, 2003.

8 Kaizen & Nonneman, “Irregular Migration in Belgium and Organized Crime: an overview”, *International Migration*, Vol. 45, Issue 2, June 2007.

9 European Union Agency for Fundamental Rights (FRA), Fundamental Rights of Migrants in an Irregular Situation in the European Union, 2011.

1.3. The fight against social fraud and illegal employment: a political priority

1.3.1. Social fraud and illegal employment on the political agenda

Fighting social fraud and illegal employment is high on the agenda of the Belgian Government, the judicial authorities, the labour inspections and all other actors who play a role in this domain. This is demonstrated by the numerous measures and actions that have been taken over the last decades in terms of combating social fraud.

Several public bodies are involved in the fight against social fraud and illegal employment, each on their level and with their specific competences. Efforts have been made since the early 1990's to ensure the **effective collaboration** of these bodies and to base the implementation of the policies on the fight against fraud on **specific plans**. In 1993, the different federal inspection services adopted a protocol creating a steering committee, an executive committee and district cells. In 2003, the Federal Council on the fight against illegal work and social fraud and the Federal Coordination Committee on the fight against illegal employment and social fraud were created. In 2006, the Social Information and Investigation Service on the fight against social fraud (SIOD/SIRS) was set up, and the annual strategic and operational plans were introduced. The 2006 reform was consolidated in the Social Criminal Code in 2010⁽¹⁰⁾.

Furthermore, the fight against social fraud and illegal employment is regularly put forward by the Government as a political priority. The **Federal Government Coalition Agreement of 2014** stipulates that the fight against social fraud must be strengthened, as it has an impact on the means of the social security system, and infringes on the principle of solidarity. In this framework, a particular focus is put on social dumping, fraud related to social security contributions, benefits fraud and cross-border fraud. The Government intends to continue to implement its commitments and to adopt new measures to combat this phenomenon, including the adoption of an annual plan of action on the fight against social fraud, with a particular focus on social dumping. Furthermore, the Agreement indicates that the social inspection services will be supported and – if necessary – reinforced, in order to reach their objectives in terms of controls in risk sectors. The coordination between the different services will be continued and reinforced⁽¹¹⁾.

The issue of social fraud is also mentioned in the recent **general policy statements of the Ministers involved** in this issue, that is to say the Ministers competent for labour, social security, self-employed people and the State Secretary for the fight against social fraud. In his General Policy Note of 2 June 2016, the State Secretary for the fight against social fraud indicates that he will focus his actions – in the coming three years – on several areas, including the development and the implementation of a sector specific approach (based on the collaboration between the

10 Court of Audit, Plan de lutte contre la fraude sociale et le dumping social: Rapport de la Cour des Comptes transmis à la Chambre des Représentants, March 2017.

11 Government Coalition Agreement of 11 October 2014, pp. 53-54.

government, employers, social inspection services and trade unions); the fight against social dumping (linked to posted workers and self-employed people); the fight against fraud related to social security contributions (such as undeclared work); use of technology (such as datamining and data-matching) to fight against social fraud; and a reform of the social inspection services⁽¹²⁾.

The issue of the fight against social fraud and illegal employment is also mentioned in the injunction circular letters of the attorney generals, the annual strategic action plan of the Social Information and Investigation Service on the fight against social fraud (SIOD/SIRS), as well as in the yearly objectives of most of the labour inspection services. It is also part of some tripartite collaboration agreements with social partners.

(Section 1 – Q.1b of the EMN Questionnaire)

1.3.2. Public and policy debates regarding illegal employment

Social fraud and illegal work (not only but also linked to third-country nationals) are the subject of many **government measures**⁽¹³⁾, **parliamentary questions** on a variety of issues (e.g. on statistics and results of recent control operations⁽¹⁴⁾; on recent measures introduced to fight social fraud; on fraud in specific sectors such as the food serving business⁽¹⁵⁾, on the inspection services⁽¹⁶⁾, etc.), various **seminars**, etc. The topic is also regularly mentioned in the **media**. For example, various news articles report on the results of control actions, including on third-country nationals working illegally in Belgium⁽¹⁷⁾.

12 Belgian House of Representatives, General Policy Note of the State Secretary for the fight against social fraud, the protection of privacy and the North Sea, 2 June 2016, DOC 54 0020/063, pp.6-21.

13 See for example: <http://marchespublics.cfwb.be/fr/informations-generales/pratiques-de-marche/achats-publics-du-rables/vous-souhaitez-lutter-contre-le-dumping-social-a-travers-vos-marches-de-travaux.html> ; http://www.claey-sengels.be/fr-be/news-events/news_events/a/newsflash/plan-dactions-2016-pour-lutter-contre-la-fraude-sociale-priorites-pour-linspection-sociale/

14 See for example: Question from the MP David Geerts to the State Secretary for the fight against social fraud on “flash controls” in the cleaning sector, 2017 (<http://www.lachambre.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=54&dossierID=54-B107-960-0300-2016201714430.xml>) or the Question of MP Nahima Lanjri to the State Secretary for the fight against social fraud on the results of the targeted social controls (2017), <http://www.lachambre.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=54&dossierID=54-Bo88-960-0251-2015201611495.xml>.

15 See for example: Question of MP Werner Janssen to the State Secretary for the fight against social fraud on social inspections in the food serving business (2016), <http://www.lachambre.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=54&dossierID=54-Bo80-960-0229-2015201609897.xml>.

16 See for example the question of MP Stéphanie Thoron to the State Secretary for the fight against social fraud on the hiring of additional inspectors in the framework of the fight against social fraud (2016), <http://www.lachambre.be/kvvcr/showpage.cfm?section=qrva&language=fr&cfm=qrvaXml.cfm?legislat=54&dossierID=54-Bo78-960-0218-2015201609393.xml>.

17 See for example: “La chasse aux fraudeurs porte ses fruits: plus de 130 000 travailleurs irréguliers découverts en 2014”, RTL Info, 31 August 2015, <http://www.rtl.be/info/belgique/economie/la-chasse-aux-fraudeurs-porte-ses-fruits-plus-de-130-000-travailleurs-irreguliers-decouverts-en-2014-750420.aspx> ; or “Travail au noir: une hausse des infractions de 18,5%”, Le Soir, 7 March 2016, <http://www.lesoir.be/1142342/article/actualite/regions/hainaut/2016-03-07/travail-au-noir-une-hausse-des-infractions-185> ; or “Zwartwerk in België: check hoeveel fraude er is in jouw sector”, Het Laatste Nieuws, 17 March 2015, <http://www.hln.be/hln/nl/957/Binnenland/article/detail/2254599/2015/03/17/Zwartwerk-in-Belgie-check-hoeveel-fraude-er-is-in-jouw-sector.dhtml>

Generally speaking, **issues that are regularly mentioned** in relation to social fraud and illegal employment in Belgium include: recent measures and actions to combat social fraud; the abuse of social benefits; fraud related to the place of residence; actions to fight against all forms of unfair competition amongst employers; as well as illegal work by third-country nationals. Moreover, social dumping, a phenomenon rather linked to intrinsic legal work performed by posted workers, has been an important point of attention over the last years.

(Section 1 – Q.1c of the EMN Questionnaire)

1.4. The illegal employment of third-country nationals

1.4.1. Extent of the issue

For decades, Belgium has been an attractive country for third-country national workers, and their illegal employment and economical exploitation has been an issue for a long time.

As mentioned above, it is very **difficult to precisely estimate the extent of the issue**. It is not possible to properly estimate the number of irregular migrants in Belgium, or the number of (ir) regularly staying third-country nationals who illegally work in the country (see section 1.2 of this report).

1.4.2. Industries, sectors and employers concerned

The experience of the Belgian labour inspection services has shown that third-country nationals – irregularly or regularly staying – are often employed illegally in labour situations that usually **do not require a high level of qualification**. Affected sectors include, inter alia: car-washes, restaurants, night shops, cleaning services, services in private households, second-hand clothing businesses, meat transformation businesses, renovation works, sex work, etc.

Third-country nationals are mostly found in **very small scale undertakings**, often working for an employer who is himself a foreign national or of foreign origin. For example, illegal work of third-country nationals is often present in private households in large cities as well as renovation works on private buildings. For bigger scale undertakings, illegal work of third-country nationals can – inter alia – be found in the hotel sector (e.g. cleaning services).

Labour inspectorates also find illegally working third-country nationals at the lowest scale of **chains of subcontractors**, and sometimes even in jobs carried out in the framework of public procurement contracts.

Inspections have also brought to light **criminal intermediaries**, especially in the larger Belgian cities, who focus on irregularly staying migrants in order to employ them in the clandestine circuit. Some criminal organisations base their business model on the exploitation of third-country nationals.

1.4.3 Profiles of illegally working third-country nationals

The routes to an illegal employment situation may be multiple by nature. Third-country nationals can end up in illegal employment in **several ways**: starting as a tourist, a student, an economic migrant overstaying his permit, a refugee, a victim of human trafficking or smuggling, a bogus self-employed person, a migrant with a long term residence permit in another Member State, etc. Exact research statistics are not available.

A **wide array of profiles** of illegally working third-country nationals thus exists. It remains challenging to define specific profiles of third-country nationals working illegally on the basis of gender, age or nationality, as these criteria are often missing in the databases of the enforcement authorities.

However, based on the statistics from the SIOD/SIRS, some information on the **main nationalities** of third-country nationals working illegally in Belgium is available. The main nationalities of identified irregularly staying and illegally employed third-country nationals in 2015 were: Morocco, Brazil, Pakistan, Angola, Macedonia, Cape Verde, Guinea-Bissau and Sao Tome. The main nationalities of identified regularly staying and illegally employed third-country nationals in 2015 were: Pakistan, Brazil, Morocco, Algeria, Turkey and Cape Verde. Regarding EU and EEA nationals, the main nationalities of identified foreign nationals working illegally in Belgium in 2015 were Bulgaria and Romania (see the Statistical Annex of this report).

Furthermore, based on the experience and comments of the SIOD/SIRS, it appears that **male** third-country nationals are found working more often in the so-called “hard” sectors (e.g. the meat sector or construction works), while **female** third-country nationals are found more often in households (e.g. domestic work).

(Section 1 – Q.1d, Q.1e, Q.1h and Q.1g of the EMN Questionnaire)

1.4.4. Other issues affecting the extent of illegal employment in Belgium

Trafficking in human beings and labour exploitation contrary to the human dignity is a phenomenon⁽¹⁸⁾ that grabs the attention of all competent enforcement services in Belgium.

The **strategic action plan**⁽¹⁹⁾ of the SIOD/SIRS and the restructuration of inspection services in the domain of social security pay attention to this risk. The 2015 Strategic Action Plan of the SIOD/SIRS indicates that in the framework of joint actions by the inspection services (i.e. actions to fight social fraud carried out by at least two inspection services), the fight against undeclared work (which includes economic exploitation and trafficking in human beings) must be pursued. Furthermore, the Plan stipulates that in the framework of specific actions (e.g. for which one

¹⁸ See Myria- the Federal Migration Centre, *Annual Report on Smuggling and Trafficking in Human Beings 2016*, 2016.

¹⁹ For more information on this Action Plan, see : <http://www.presscenter.org/fr/pressrelease/20150403/plan-d-action-2015-de-lutte-contre-la-fraude-sociale-et-le-dumping-social?setlang=1>

inspection service is competent), the Social Inspection of the Federal Public Service Social Security will carry out actions focussed on the fight against trafficking in human beings (e.g. the specialized units of the Social Inspection will carry out 200 targeted controls).

(Section 1 – Q.1i of the EMN Questionnaire)

1.5. Recent legislative changes in the field of illegal employment

The main recent changes in law or practice in the field of illegal employment are as follows:

Since 1 August 2016, competences for legislative initiatives, sanctions and enforcement were reorganized as a result of the **sixth state reform**. Although the Regions (Flanders, Brussels-Capital and Wallonia) have full normative competence now, the enforcement competence is still shared with the federal labour inspection services. In practice, some legal and organisational issues have been nearly solved, but small additional legislative amendments are still ongoing. However, some legal uncertainties still exist in the minds of inspectors following this transfer of competences and this could have a temporary slightly restraining effect on controls.

Another important change is the fact that – since 1 May 2016 – **a worker can be sanctioned with an administrative fine** (level 1) for undeclared employment, when he/she carried out the employment knowingly and intentionally and was aware that his/her employment was not being declared to the social security, and when his/her employer is the subject of a penal report for this infringement⁽²⁰⁾. This also applies to third-country nationals.

Another change worth mentioning is the fact that **payments of wages in cash** are no longer allowed since 1 October 2016⁽²¹⁾ (as a general principle) which has an impact on the issue of back-payments of wages to the benefit of third-country nationals.

(Section 1 – Q.1f of the EMN Questionnaire)

20 Article 183/1 of the Social Criminal Code, which was introduced by the Law of 29 February 2016 complementing and modifying the Social Criminal Code and containing various provisions of social criminal law, Belgian Official Gazette, 21 April 2016.

21 Law of 23 August 2015 on the protection of the salaries of workers regarding the payment of the salaries, Belgian Official Gazette, 1 October 2015.

Preventive measures and risk assessments

2.1. Preventive measures and incentives for employers

2.1.1. Information campaigns targeted at employers

No real structured information campaigns launched by public authorities and focused specifically on the illegal employment of third-country nationals have been carried out. Information campaigns do exist, but they focus on **combating social fraud and social dumping in general**.

Different actions in the field of social fraud and illegal employment have been carried out. This includes the organisation of **so-called “flash” controls** by inspection services everywhere in the country – and specifically in some risk sectors – in order to draw the attention of employers to infringements related to social law (including the illegal employment of third-country nationals) that have to be rectified as soon as possible⁽²²⁾.

Furthermore, the inspection services (or the judicial authority) sometimes use **press announcements** to highlight some of their recent activities, such as recent controls, or important cases of condemnations by the penal court regarding illegal employment (of third-country nationals)⁽²³⁾. This information is available to the general public – including employers.

Some inspection services also organize **information and prevention actions when new rules and regulations** regarding social law enter into force – targeting either a specific sector or the larger public. For example, the inspection service of the National Social Security Office organized “road shows” in Belgium when the “Dimona” and “Limosa” systems (i.e. declarations to social security) were introduced.

What’s more, all inspection services dealing with the illegal employment of third-country nationals participate on a regular basis in **seminars, congress events, and others**, focused on illegal work. This ensures that the inspectors are well trained and have up-to-date information on key issues.

22 See for example: Social Information and Investigation Service, Contrôles flash dans le secteur de la construction et de l’Horeca le 30 mai 2017, <http://www.sirs.belgique.be/siodsirs/defaultNews.aspx?id=46001>

23 See for example: “La Belgique veut lutter contre la fraude sociale dans les secteurs verts”, 7 sur 7, 17 February 2017, <http://www.7sur7.be/7s7/fr/1502/Belgique/article/detail/3083733/2017/02/17/La-Belgique-veut-lutter-contre-la-fraude-sociale-dans-les-secteurs-verts.dhtml>

Furthermore, it is also worth mentioning that in the framework of the recent important inflow of asylum seekers in the country, specific tools with **information on the employment of asylum seekers or beneficiaries of international protection** were launched. For example, the Flemish public employment service (“Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding” - VDAB), set up an action via its website to provide information to employers wishing to employ refugees: “What should I know, what should I do if I want to hire a refugee?”⁽²⁴⁾. The Forem, the counterpart in the Walloon Region of the VDAB, has set up a similar project: “What do I have to do and what should I know if I want to hire a foreign national?”⁽²⁵⁾.

(Section 2 – Q.2a1 of the EMN Questionnaire)

2.1.2. Information support for employers

All authorities competent in the field of employment at the federal and regional level explain clearly on **their websites** what the possibilities for **legal employment** are (including of third-country nationals) and under which conditions. These official websites target third-country nationals wanting to work in all sectors, as well as their potential employers. Different public authorities also provide specific information on **residence conditions** in Belgium (residence permits, etc.).

These websites include - inter alia:

- The Belgian contact point website provides guidance to foreign nationals and their employers and explains which formalities to fulfil for “Coming to work in Belgium”⁽²⁶⁾. This includes information on the formalities before leaving, formalities for residence in Belgium, the residence documents needed, the procedures, etc. A reference is also made to the Belgian embassies as a source of information.
- The website of the Federal Public Service Employment, Labour and Social Dialogue informs all interested parties - including employers - on all labour related issues concerning the employment of foreign workers⁽²⁷⁾.
- The Social Information and Investigation Service (SIOD/SIRS), an official government body regulated by the Social Criminal Code, explains on its website what social fraud is (including the illegal employment of third-country nationals) and what the risks are for employers and workers⁽²⁸⁾.
- The National Social Security Office hosts a website for posted workers and their employers, where they can find all necessary information on foreign workers in Belgium (e.g. information on residency documents, employment authorisations and work permits,

24 <https://www.vdab.be/werkgevers/vluchtelingen/weten>.

25 <https://www.leforem.be/entreprises/recruter-ressortissant-etrananger-infos.html>

26 www.belgium.be/en/work/coming_to_work_in_belgium

27 www.emploi.belgique.be/defaultTab.aspx?id=4888#

28 www.sirs.belgique.be/siodsirs/default.aspx?id=19896 and www.sirs.belgique.be/siodsirs/default.aspx?id=19894.

social security obligations, etc.)⁽²⁹⁾.

- Regarding residence of third-country nationals in Belgium, the reference is the website of the Immigration Office (which falls under the Federal Public Service Home Affairs)⁽³⁰⁾.
- The Office of the Commissioner General for Refugees and Stateless Persons targets asylum seekers and beneficiaries of international protection, and provides information on asylum procedures⁽³¹⁾.
- Myria, the Belgian Federal Migration Centre, is an independent public body. It analyses migration, defends the rights of foreigners and combats human smuggling and trafficking. Myria also provides information and legal advice - mostly to foreign nationals - on various topics⁽³²⁾.

At the regional level, the **websites of the Regional authorities** – who are competent to issue work permits to third-country nationals – also provide information on the employment of foreign workers (e.g. on work permits), accessible to third-country nationals and employers⁽³³⁾.

Other regional bodies also provide information on the residence status and employment of third-country nationals in Belgium. For example, the website of the Flemish Agency for integration and civic integration (an official agency of the Flanders Region) provides information on a wide variety of topics, including on the illegal employment of third-country nationals⁽³⁴⁾.

In addition to these official websites, **other forms of support** for employers are available. For example, in the framework of Diplobel, the Federal Public Service Foreign Affairs, together with the National Social Security Office and the labour inspectorates of the Federal Public Service Employment, Labour and Social Dialogue and the Federal Public Service Social Security, set up a “Commission of good practices” in 2013, acting as a contact point for foreign staff and household workers in the sector of embassies, international bodies, etc. The Commission mediates in disputes between employers and employees, acts as a facilitator for regularisation and developed standard models for labour contracts, work rules and the like⁽³⁵⁾.

Besides public authorities, **various organisations and NGOs** in Belgium also provide information to employers and employees via their websites and via other activities or publications. For example, the NGO OR.C.A (Organisation for Undocumented Workers) aims at informing undocumented migrants about their rights and assisting them by means of a helpdesk⁽³⁶⁾. Another example is

29 www.international.socialsecurity.be/working_in_belgium/en/first-visit.html

30 <https://dofi.ibz.be/sites/dvzoe/NL/Pages/home.aspx>

31 <http://www.cgrs.be/en>

32 www.myria.be/en

33 See for example: <http://emploi.wallonie.be/home/travailleurs-etranagers.html> (Walloon Region), or <http://werk-economie-emploi.brussels/permis-de-travail> (Brussels-Capital Region) or <https://www.vlaanderen.be/nl/werk/werk-zoek-en/als-buitenlander-vlaanderen-komen-werken> (Flemish Region).

34 Information in Dutch: <http://www.kruispuntmi.be/thema/vreemdelingenrecht-internationaal-privaatrecht/arbeidskaarten-beroepskaart-illegale-tewerkstelling-en-zwartwerk>

35 For more information, see for example: <http://www.emploi.belgique.be/defaultNews.aspx?id=39861#>

36 The Organisation for Undocumented Workers (OR.C.A) is an NGO created in 2003 that mainly aims at informing undocumented workers (and those who assist them) about their rights, and assist them whenever they want to enforce their

the NGO Ciré, which deals with all matters of interest in the framework of foreigners and their rights, refugees, undocumented workers, etc⁽³⁷⁾.

(Section 2 – Q.2a2 of the EMN Questionnaire)

2.1.3. Partnership agreements with social partners

In order to address specific issues in certain sectors, the State Secretary for combating social fraud organized roundtables in 2015 and 2016 with:

- The social partners;
- The labour inspection services;
- The Social Information and Investigation Service (SIOD/SIRS) ;
- The Federal Public Service Social Security ;
- And other stakeholders.

These round tables led to the signing of:

1 / **Protocols of cooperation** between the aforementioned partners, which contain commitments for social partners and for inspection services. For example, the latter are asked for controls on social fraud, social dumping and illegally working third-country nationals (although there is no specific focus on irregularly staying third-country nationals). The partners in those tripartite bodies also share knowledge about infringements in their sectors and the best way to tackle them.

2 / **Plans for fair competition**, with a view to combating illegal work, social fraud and social dumping in specific sectors have also been concluded between social partners, the inspection services and the government. In this context, social dumping is defined as follows: “Social dumping and social fraud in the xxx sector needs to be understood here as a set of actions which by means of non-compliance with the applicable national, European and international rules prejudiced the rights of the employee or self-employed person in question so that the client or conveyor enjoys an unfair competitive advantage obtained that he could not have obtained without the violation of the rules and allowing the government lost revenue this way.”

Such protocols of cooperation and/or plans for fair competition are already signed for **several sectors**, including construction, meat transformation, transport, taxis, cleaning services, and surveillance. Plans for other sectors are a work in progress.

rights. See: www.orcasite.be/

37 Coordination et Initiatives Pour Réfugiés et Etrangers (Ciré) is an NGO which defends the rights of asylum seekers, refugees and foreigners in Belgium through multiple activities, such as political action, awareness raising of decisions makers and of the general public. The NGO is also present in the field. See: www.cire.be

Those tripartite agreements and plans for fair competition deal with all kind of infringements related to social fraud and social dumping, as well as any form of most severe labour exploitation.

In the framework of the plans for fair competition, administrative guidelines for employers (what should and what should not be done) as well as a checklist have already been developed and published on the SIOD/SIRS website for the transport sector. The same tools targeting the construction sector are being developed.

(Section 2 – Q.2a3 of the EMN Questionnaire)

2.1.4. Notification obligations of the employer

There is a **legal obligation** for employers to notify the authorities when they employ a third-country national.

Article 175 § 1/1 of the Social Criminal Code⁽³⁸⁾ stipulates that the employer, his appointee or proxy, may be imposed a sanction level 4, when he has not carried out the following actions when employing a third-country national: (i) verify in advance whether said third-country national possesses a valid residence permit or other residence authorisation; (ii) keep either the information on or a copy of said third-country national's residence permit or other residence authorisation available to the competent inspection services and at least for the duration of the employment; (iii) make a declaration of the start or of the end of said third-country national's employment to the social security (i.e. to the social security application "Dimona" for employees or the application "Limosa" for posted workers). See sections 4.1.1 and 4.1.2 of this report.

(Section 2 – Q.2a4 of the EMN Questionnaire)

2.1.5. Other measures and incentives for employers

On the level of the **legislative and procedural framework for public procurement**, a recent law⁽³⁹⁾ introduced "social clauses" in said public procurement procedures as well as measures against social dumping. These changes should contribute to a stronger monitoring of compliance with social law by public authorities in the context of contracts of which they are the clients or of which they are responsible. Recent collaboration amongst contracting authorities and labour inspectorates also ensures a better follow-up of compliance with these social clauses in the executing process of the public procurement, thus lowering the risks of social dumping and labour exploitation.

38 [Social Criminal Code of 6 June 2010](#), Belgian Official Gazette, 1 July 2010.

39 [Law of 17 June 2016 on public procurement](#), Belgian Official Gazette, 14 July 2016.

Furthermore, **sanctions** can be imposed on employers when they illegally employ third-country nationals, which can have a dissuasive effect (see sections 4.1.1 and 4.1.2 of this report).

(Section 2 – Q.2a5 of the EMN Questionnaire)

2.2. Preventive measures and incentives for employees from third countries

2.2.1. Information campaigns targeted at employees

No **structured and sustained information campaigns** specifically targeted at third-country national employees **in Belgium** have been carried out by public bodies. Information campaigns are sometimes carried out, often on a temporary basis or addressing specific local communities. For example, a campaign was implemented in Belgium in 2009 by a set of partners (including the Immigration Office, the Federal Police and the Social Inspection Services), which aimed at informing Brazilian migrants residing in Brussels about their rights in case they were residing in an irregular situation and/or possibly exploited economically and/or potential victims of trafficking in human beings. Information campaigns are also carried out by **NGOs** in Belgium⁽⁴⁰⁾.

Furthermore, it is also worth mentioning that in the framework of the recent important inflow of asylum seekers in the country, specific tools with **information on the employment of asylum seekers or beneficiaries of international protection** were launched. For example, a brochure was developed by different bodies – at the initiative of the Federal Public Service Justice - entitled « You have applied for asylum and you want to work? »⁽⁴¹⁾.

Information and prevention campaigns have also been carried out **in third countries**. These campaigns usually do not focus specifically on employees. They focus mostly on the risks related to irregular migration (e.g. trafficking, labour exploitation, etc.), and they can also include information on the possibilities for legal migration to Belgium (e.g. employment). For example, an information campaign was implemented in Albania in 2015 by the Belgian Immigration Office in cooperation with the International Organisation for Migration, which focused on the abuse of the Belgian asylum system, on respecting travelling conditions to Belgium, on the consequences of irregular migration (e.g. human trafficking, smuggling and exploitation) and also on regular migration opportunities.

(Section 2 – Q.2b2 of the EMN Questionnaire)

40 See for example: <https://www.cire.be/thematiques/sejour-et-regroupement-familial/regularisation-des-sans-papiers>

41 Available at: <https://dofi.ibz.be/sites/dvzoe/EN/Documents/0204-SPFIUS-TEH-EN-def.pdf>

2.2.2. Information support for employees

Public authorities at the federal and regional level - dealing with residence, labour and employment and inspections - provide information on a variety of topics to employers and employees alike. This is done – inter alia – through their websites or other actions and publications (see section 2.1.2 of this report).

Furthermore, the Labour Inspection of the Federal Public Service Employment, Labour and Social Dialogue has set up a **contact point for foreign workers**, where they can request information and file a complaint against their employers. This is done via the following email address: SPOC.labourinspection@employment.fgov.belgium.be and COMPLAINTS.LabourInspection@employment.belgium.be

Trade unions and **NGOs** who defend the rights of workers also disseminate information for third-country nationals wishing to work or already working in Belgium. These NGOs often function as a contact point for third-country nationals to obtain information (e.g. OR.C.A provides information to irregularly staying workers or provides support to third-country nationals who were victims of labour accidents). They often provide very practical information to third-country nationals. For instance, a booklet entitled “Undocumented workers: A guide to rights” was published in 6 languages⁽⁴²⁾. This booklet was published with the support of – inter alia - trade unions (ACV-CSC, FGTB) and NGOs (OR.C.A, CIRÉ).

The recognized shelters and counselling centres (NGOs) for victims of trafficking and victims of **human trafficking** with aggravating circumstances (i.e. PAG-ASA, PAYOKE and Sürya) are also important actors. Their aim is not to provide information to all foreign workers, but specifically to support the rights of victims of human trafficking and to provide them with legal/administrative and psycho-social assistance⁽⁴³⁾.

(Section 2 – Q.2b3 of the EMN Questionnaire)

2.2.3. Financial incentives for employees

There are no measures known at the moment that specifically aim at providing financial incentives to employees to work legally in Belgium. However, it is worth noting that third-country nationals can only access all the social benefits if their work is declared and the social security contributions are paid. This can be seen as an incentive for regular work.

(Section 2 – Q.2b1 of the EMN Questionnaire)

⁴² [Undocumented workers, a guide to rights](#), 2014.

⁴³ See: www.pag-asa.be ; www.payoke.be; and www.asblsurya.org/

2.3. Risk assessments

2.3.1. National authorities involved in drawing up risk assessments

The following authorities are involved in drawing up risk assessments used in the framework of the fight against social fraud: the Labour inspectorates, the Social Information and Investigation Service (SIOD/SIRS), the Police forces, the judicial authorities, the Cabinets of the relevant ministers, as well as the social partners to a lesser extent.

(Section 2 – Q.3b of the EMN Questionnaire)

2.3.2. Methods and tools for the risk assessments

No risk assessments specifically identify the sectors of activity in which the illegal employment of third-country nationals is most concentrated. But the techniques used to identify risk sectors for social fraud are also applicable and useful to identify the sectors where the phenomenon of illegal employment of irregularly staying third-country nationals is present (as, per definition, these third-country nationals cannot be legally integrated in the regular labour market).

The risk sectors are identified on the basis of different elements (e.g. experience and knowledge of the situation in the field based on the controls carried out; analysis of databases containing the results of the inspections carried out; exchange of information in the framework of partnership agreements with social partners in certain sectors; “datamining” or the results from cross-using the data of different databases, etc.).

Regarding datamining, a lot of datamining techniques are available to the inspection services, with the aid of several databases at their disposal, and under the umbrella of the National Social Security Office. **Datamining techniques** refer to the use of software to determine risk profiles of employers, in order to better anticipate the possible infringements to social law and to carry out more targeted controls. The software looks for statistical links within different databases, analysing events and evolutions (e.g. important increase or decrease of revenues, the sudden hiring or firing of an important number of employees, etc.) and putting these behavioural patterns in relation with the results of the controls carried out. The employers who present a specific combination of characteristics are given a high risk factor by the system⁽⁴⁴⁾. However, these datamining techniques are only useful for applications where data on all third-country nationals as private persons in a labour relation context are available and registered and where the key factor « nationality » might be selected as one of the parameters. As the combination of both elements is lacking, it is not possible to develop actual datamining activities specifically for illegally working third-country nationals. This contrasts sharply with the use of datamining

44 See: <https://socialsecurity.belgium.be/fr/datamining>

techniques for detecting social fraud, social benefits, posted workers and so on, as sufficient data is available for those categories.

Some inspection services developed their own applied datamining for risk profiling. For example, the Social Inspection of the Federal Public Service Social Security developed a **“Miningwatch” tool**⁽⁴⁵⁾, which links the datamining team to the inspectors carrying out the controls in the field. The tool provides the results of the datamining, such as lists with high risk employers. This “Miningwatch”⁽⁴⁶⁾ system does not contain third-country national risk parameters, for the same reasons as mentioned above. But testing of this system in the field showed a strong correlation with other risk models for undeclared work. For example, in the framework of the analysis of illegal employment of foreign workers, the table below⁽⁴⁷⁾ shows the results of a crossing of different parameters from different sources (partly data extracted from the official social security databases, partly from the infringements found by the labour inspectorates) and shows an indicative ranking of the possible success rate of controls based on the parameters used in this datamining exercise, in a specific sector (in this case, the construction sector).

Foreign workers - Act 30/04/1999
1/a Lack of labour permit – Illegal residence
→ No specific risk model at this moment
→ Strong correlation with risk model for undeclared employment

Backtesting 2009 - 2014 Construction Industry	
Risk classes for undeclared employment	Percentage of investigations for illegal employment with infringement(s)
TOP	64%
HIGH RISKS	38%
AVERAGE RISKS	14%
LOW	0%
ALL	37%

Furthermore, it is also worth pointing out that based on the **experience and knowledge of the inspection services**, illegal employment of third-country nationals in Belgium is linked to sectors where labour inspectors found them (empirically) most at work; where labour prosecutors launched penal proceedings; where social partners indicated the existence of the phenomenon of undeclared work and exploitation; and where the local district (fraud) cells performed their monthly anti-fraud actions. As a further consequence, those sectors are also a priority target in the yearly strategic anti-fraud action plans approved by the government.

Finally, it is worth mentioning that FRA (the European Union Agency for Fundamental Rights) identified the **top three economic sectors in which workers are at risk of labour exploitation** in several EU Member States⁽⁴⁸⁾. For Belgium, the three sectors were: construction, accommodation

45 This Miningwatch tool has been put at the disposal of all social inspectors at the beginning of 2015.
46 Excerpt of an internal scenario script.
47 Source: Federal Public Service Social Security.
48 European Union Agency for Fundamental Rights, Severe labour exploitation: workers moving within or into the European Union, 2015.

and food service activities, and administrative and support service activities (including cleaning services). These sectors only represent a part of the high risk sectors.

(Section 2 – Q.3a of the EMN Questionnaire)

2.3.3. Use of the results of the risk assessments

The results of the risk assessments used in the framework of the fight against social fraud in general offer **priority guidelines** for all actors. They are used by inspectors for the selection of workplaces to inspect; by district fraud cells for the planning of their actions; for developing the objectives for the annual action plan on the fight against social fraud; and by labour prosecutors to define priorities for bringing cases to penal courts (acting upon circular letters of general attorneys).

(Section 2 – Q.3c of the EMN Questionnaire)

2.4. Strengths and weaknesses of preventive measures and risk assessments

On the basis of information obtained from the Immigration Office, Labour Inspectorates, NGOs, as well as desktop research, inspections reports, and annual reports from relevant bodies (e.g. Labour Inspectorates, NGOs, etc.), some strengths and weaknesses of the prevention measures carried out in Belgium could be identified.

First of all, employers and employees have access to a **wide range of sources of information** on their rights and obligations (i.e. residence and employment) in Belgium. These sources of information include public authorities, but also trade unions, NGOs and other organisations.

Some **good collaboration** has sporadically been developed amongst public authorities (including inspectorates) and with NGOs or trade unions for creating leaflets and brochures aiming at providing information on the rights of foreign workers, which could be done in a more structural and permanent way with regular updates. Recent collaboration amongst **labour inspectorates and some NGOs** (such as OR.C.A.) have also been levelled up in order to better develop common methods for the defence of third-country nationals' labour rights (e.g. organisation of trainings for labour inspections to ensure a better follow-up of complaints of third-country nationals).

Furthermore, a certain number of **preventive actions** have been set up. The fact that convictions related to illegal employment (including of regular or irregularly staying third-country nationals) often receive attention in the press – and the fact that systematic (well known) control actions are carried out in risk sectors – means that employers are often well aware of the risks and

the sanctions associated with illegally employing a third-country national, which can have a preventive effect.

In addition, **the risks of being caught** as well as the high level of the **possible sanctions** applied in case of illegal employment of third-country nationals are well known by employers active in the risk sectors that signed a tripartite cooperation agreement. This could thus also have a dissuasive effect. The existence of a regime for **several liability** regarding the payment of salaries (see section 5.3.3 of this report) in case of subcontracting and other contractors in the chain, in particular for certain risk sectors involved⁽⁴⁹⁾, can also have a deterrent effect.

What's more, certain public bodies have developed a sector specific approach, and concluded **protocols of cooperation with representatives from certain professional sectors** in order to efficiently fight against social fraud and illegal employment. These protocols have received a legal and structural framework with the creation of the Partnership Commission (which prepares the agreements between the competent ministers and the social partners). Through these agreements, the social partners are involved in the prevention, detection and the repression of illegal employment. Furthermore, **plans for fair competition** have also been adopted in specific sectors. This sectoral approach was described as successful in the General Policy Note of the State Secretary on the Fight against Social Fraud⁽⁵⁰⁾. It ensures better dissemination of information about legal rights and obligations among the social partners (the do's and don'ts); the sharing of knowledge about the fraud phenomenon encourages a better understanding and helps the partners develop appropriate measures to deal with it. In this framework, a good practice is the development – by the Labour Inspections and the social partners – of guidelines for the transport sector⁽⁵¹⁾.

Regarding the identification of risk sectors or high risk employers regarding social fraud, the inspection services have developed **useful techniques and tools** (e.g. datamining and miningwatch tool).

However, despite the numerous sources of information, it is worth noting that there are less sources of information **focused on private persons and households** in particular (with the exception of some brochures made by NGOs and models for labour contracts - and other information - for staff of the diplomatic community). The information provided by public authorities – mostly through their official websites - also mostly focuses on work permits and working conditions, and less on **foreign workers' rights**. What's more, the abundance of sources could also lead to some confusion, as there is not one central contact point specifically targeted at either employers or third-country nationals on the employment of foreign workers in Belgium.

49 Concerning the nine sectors subject to a system of joint several liability for wages, having been involved in the decision making process.

50 Belgian House of Representatives, General Policy Note of the State Secretary for the fight against social fraud, the protection of privacy and the North Sea, 2 June 2016, DOC 54 0020/063, p. 6.

51 See: <http://www.sirs.belgique.be/WorkArea/DownloadAsset.aspx?id=45660>

Finally, the issues associated with the illegal employment of (ir)regularly staying third-country nationals are somewhat overshadowed in Belgium by the **phenomenon of posted workers**, which gains most attention in the press and from policy makers. Inspection plans are strongly guided and inspired by the strategic action plan of SIOD/SIRS (approved by the Government) and focussed on posted workers and unfair competition by foreign employers who post them to Belgium. This explains why there are more prevention campaigns and press attention focused on posted workers, and why this is much less the case regarding the issue of the illegal employment of (irregularly staying) third-country nationals.

(Section 2 – Q.4a and Q.4b of the EMN Questionnaire)

3

Identification of illegal employment of third-country nationals

3.1. National authorities involved in the identification of illegally employed third country nationals

3.1.1. National authorities responsible at the federal and regional levels

In Belgium, different authorities are involved in the identification of illegal employment – including of third-country nationals - both at the national and regional level⁽⁵²⁾.

Competent federal authorities:

Four federal inspection services are primarily responsible for the identification of illegal employment:

- Social Inspectorate of the Federal Public Service Social Security;
- Labour Inspectorate of the Federal Public Service Employment, Labour, and Social Dialogue;
- Inspectorate of the National Social Security Office;
- Inspectorate of the National Employment Office.

Each of these inspectorates has its own mission and legal competences, but they all **share competences** for some regulations that specifically aim at dealing with social fraud (i.e. the “Dimona” declaration that has to be done prior to the start of the labour relationship to the office of the Social Security; the “Limosa” declaration to the Social Security for posted workers; regulations concerning part-time workers; regulations concerning foreign workers, etc.).

Besides these inspection services, the federal and **local police forces** are also involved in the identification of illegal employment. According to article 22 of the Social Criminal Code⁽⁵³⁾, inspectors can request the assistance of the police in the framework of their activities. In large Belgian cities, some local cooperation exists between labour inspection services and specific police units specialized in fraud detection, trafficking in human beings and illegal work of foreigners.

52 Based on several Royal Decrees and Decrees of the Regions, as well as decisions executing the Law of 30 April 1999 regarding the occupation of foreign workers.

53 Social Criminal Code of 6 June 2010, Belgian Official Gazette, 1 July 2010

It is also worth mentioning that **the Immigration Office** (which falls under the Federal Public Service Home Affairs) is competent regarding the residence rights of third-country nationals.

Competent regional authorities:

First of all, it is worth mentioning that the administrations of the regional authorities and the German speaking Community are competent to issue work permits to third-country nationals.

The **Regional Inspection authorities** (Brussels-Capital Region, Walloon Region, Flemish Region) are competent for regionalized social laws, including the legislation on work permits for third-country nationals. These Regional inspection authorities are thus specifically competent for identifying the irregular work of third-country nationals who are regularly staying as well as irregularly staying in Belgium. They regularly participate⁽⁵⁴⁾ in the control actions carried out by the federal inspection services in order to control the third-country nationals working in Belgium, and in certain actions of the provincial district cells.

(Section 3 – Q.5a of the EMN Questionnaire)

3.1.2. Competence for all sectors

All sectors fall under the competence of the Belgian inspection services. Specialized inspection divisions are also operational for rather exceptional complex cases, like the ones falling under the Maritime Labour Convention (seafarers on ships under Belgian flags or vessels under foreign flags in Belgian ports) or intra-European road haulage.

(Section 3 – Q.5b of the EMN Questionnaire)

3.1.3. Specific departments dealing with the detection of illegal employment of third-country nationals

Some Belgian inspection services do have specialized divisions dealing with the illegal employment of foreign nationals (including third-country nationals).

This is the case of the Social Inspectorate of the Federal Public Service Social Security, which has units focused on **posted workers and cross border labour** (these units regularly cooperate with the specialized units of the FPS Employment, Labour and Social Dialogue) and a unit focused on **trafficking in human beings** (there are about 35 social inspectors specialized in the field of trafficking in human beings).

54 Although they are not official members of the provincial district cells.

The Labour Inspectorate of the Federal Public Service Employment, Labour and Social Dialogue, also has a unit focused on **posted workers and cross border labour**.

(Section 3 –Q.5c of the EMN Questionnaire)

3.1.4. Number of inspectors

For the **four main federal inspectorates** put together (i.e. the Social Inspectorate of the Federal Public Service Social Security; the Labour Inspectorate of the Federal Public Service Employment, Labour and Social Dialogue; the Inspectorate of the National Social Security Office; the Inspectorate of the National Employment Office) – nearly **1,000 inspectors** were countable in 2015. These inspectors are not specifically dedicated to identifying the illegal employment of third-country nationals, but they do deal with this issue in the framework of their general activities.

The estimated increase in the number of inspectors in 2017 (to 1,100) is the result of additional recruitments decided by the government and takes place in the framework of a partial reform amongst some of these services - which is ongoing. However, not all of these inspectors will be operational in the field. One may estimate that about 900 of them will be active in the field, while the others will have support functions.

(Section 3 –Q.5e of the EMN Questionnaire)

3.2. Cooperation of the different authorities

The cooperation between the different authorities involved in the identification of illegal employment (of third-country nationals) is regulated by the **Social Criminal Code** (chapter II, articles 3 to 15)⁽⁵⁵⁾.

This cooperation is managed and steered by the (federal) coordination body, the **Social Information and Investigation Service** on the fight against social fraud and illegal employment (“Sociale Inlichtingen en Opsporingsdienst”, SIOD/ “Service d’Information et de Recherche Sociale”, SIRS). The SIOD/SIRS was set up by the Programme-Law of 27 December 2006 and consolidated in the aforementioned Social Criminal Code in 2010. It is a specific service falling under the Ministers for Employment, Social Affairs and Justice. All federal inspectorates are represented in the board of the SIOD/SIRS.

The SIOD/SIRS does not carry out inspections itself, but it provides support to the inspection services and the provincial district cells. It sets out national action plans for combating social fraud

55 Social Criminal Code of 6 June 2010, Belgian Official Gazette, 1 July 2010.

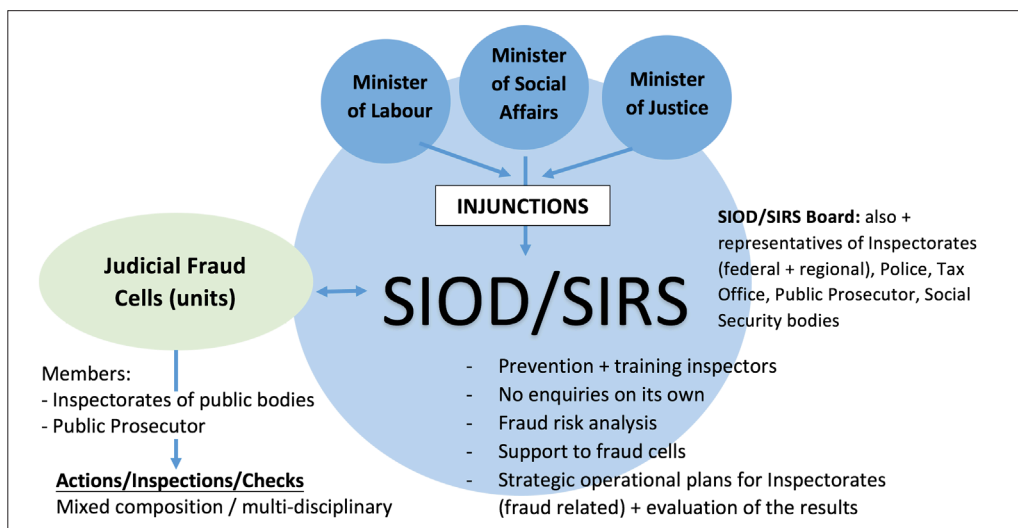
and social dumping. Each year those plans are approved by the government under the guidance of the State Secretary for combating social fraud. The SIOD/SIRS also sets up prevention actions and training actions; and it prepares collaboration protocols between the federal authorities and the Regions in order to organize the fight against illegal employment and social fraud.

Furthermore, the federal inspection services work together at the local level, in the so-called **provincial district cells** ("Arrondissementscellen", "Cellules d'arrondissement"). A provincial district cell exists in each judicial district, under the presidency of the local labour prosecutor. The provincial district cells are composed of representatives of the four federal inspection services, as well as representatives from other relevant bodies (the National Pensions Office; the National Institute for Health and Disability Insurance; the National Office for Child Benefit for Employees; the FPS Finance; a member of the Federal Orientation Bureau; a member of the department of the public prosecutor; a member of the Federal Police; a cell secretary; a representative of the regional inspection service competent for labour law (at his/her request); and any other competent person for the preparation and implementation of the proposed actions).

The main aim of the provincial district cells is to organize and coordinate inspection controls in all domains and in all targeted sectors. Controls aiming at verifying compliance with regulations dealing with foreign workers (third-country nationals) are part of those collective inspection programmes. At least two inspection days are organized per month, during which controls are carried out in order to verify compliance with legislation regarding illegal work and social fraud. These controls form part of the implementation of the strategic and operational plans of the SIOD/SIRS.

Monthly meetings are organized by the cells in order to exchange information, plan the inspection controls, etc.

The structure of SIOD/SIRS – and the relation with the district cells - is clarified by the following graph:



Source: Labour Inspectorate of the FPS Employment, Labour and Social Dialogue.

Furthermore, the coordination between the different services is also ensured through clear communication channels. The Social Criminal Code establishes the stable legal foundation for **full and (quasi) unlimited communication amongst the competent inspection services** (Articles 54 to 57 and article 67 of the Social Criminal Code⁽⁵⁶⁾).

Regarding the communication of information by the social inspectors to other administrations, the Social Criminal Code stipulates that – if they deem it necessary – the social inspectors shall communicate the information which they have gathered during their inspection to the public and collaborating institutions of social security, to the social inspectors of other inspection services, as well as to all civil servants charged with the supervision of another legislation or with the implementation of another legislation to the extent that this information could be of interest to the latter in the exercise of the supervision which they are in charge of or for the implementation of another legislation. This information must be communicated if the public institutions of social security, the social inspectors of the other inspection services or the other civil servants in charge of the supervision or the implementation of legislation request this. Nevertheless, information obtained during the exercise of tasks prescribed by the judicial authority may only be communicated subject to the express permission from the latter. Information regarding medical data of a personal nature may only be communicated or used in accordance with the obligation of medical confidentiality (article 54).

Furthermore, regarding the communication of information by other administrations to the social inspectors, the Social Criminal Code indicates that all services of the State, including the Prosecutor's offices and the registries of the courts of appeal and of all courts, the provinces, the municipalities, the associations which they are part of, the public institutions that depend on them, as well as all public and collaborating institutions of social security, shall be obliged to provide the social inspectors, at their request, with all information deemed useful for the supervision of the compliance with the legislation they are in charge of, as well as to submit any data carriers for inspection and to provide copies of these in any form. Each service stated above shall be obliged to provide this information and these copies free of charge (article 55).

The public and collaborating institutions of social security, the social inspectors, the social inspectors of other inspection services, as well as all civil servants charged with the supervision of another legislation may use the information obtained (as described above) for the exercise of all tasks regarding the supervision with which they are charged (article 56). Furthermore, the factual findings by the social inspectors of an inspection service in a Pro Justitia report stating an infringement may be used with their probative force by the social inspectors of the same service, by the social inspectors of other inspection services or by the civil servants who are in charge of supervising the compliance with another legislation (article 67).

What's more, the access of all the inspection services to **common databases** (e.g. Crossroad Bank for Social Security) and the sharing of the findings of their controls via an online platform ("Dolsis") also favour good cooperation between the different actors involved.

56 Social Criminal Code of 6 June 2010, Belgian Official Gazette, 1 July 2010

In addition, a **cooperation agreement was concluded between the Federal State and the Belgian Regions and Communities**⁽⁵⁷⁾. The aim of this agreement is to strengthen the cooperation between the inspection services at the federal, regional and community level, particularly on inspections regarding the illegal employment of third-country nationals. On the basis of this agreement, all findings of federal and regional inspectorates can be shared amongst them. It also provides a legal basis for joint inspections.

Finally, regarding the issue of **trafficking in human beings**, an elaborate cooperation mechanism amongst inspectorates and stakeholders competent in this field was defined by the Royal Decree of 29 April 2008⁽⁵⁸⁾.

(Section 3 – Q.5d of the EMN Questionnaire)

3.3. Identification measures

3.3.1. Types of identification measures used

Labour inspection services mostly find infringements (i.e. illegal employment of third-country nationals) by doing **inspections in the field**.

Most of the time, these inspections are performed jointly by several inspectorates, sometimes with the assistance of police forces depending on the sector and nature of the controls, and mostly in the framework of regional action plans set out by the provincial districts cells under the supervision of the local labour prosecutor and with the backing of the Social Information and Investigation Service (SIOD/SIRS). However, sometimes, these controls are also performed by only one of these inspection services, for instance in case of a complaint and in small scale situations. In general, every common control of premises which is part of the daily job of inspectors (whatever the aim or origin of the visit may be), may include controlling labour situations of foreign workers if they are found at work.

Sometimes labour inspectors are called to assist special **police controls** or execute special missions **on demand of a prosecutor or a judge** charged with a penal enquiry.

Complaints and denunciations (from all kinds or all origins) – mostly from the general public – can also lead to the identification of illegal employment of third-country nationals. In order to better streamline and for a better follow-up of these numerous complaints and denunciations, mostly in the context of undeclared work, the State Secretary for the fight against social fraud set up a unique single contact point in 2015, the “Point of Contact for Fair Competition” . Through this

57 Law of 1 March 2013 approving the cooperation agreement of 1 June 2011 between the Federal State and the Regions and Communities on the coordination of the controls regarding illegal work and social fraud, Belgian Official Gazette, 21 March 2013.

58 Royal Decree of 29 April 2008 on the creation of a College on the fight against social and fiscal fraud, Belgian Official Gazette, 8 May 2008.

central contact point, any citizen, company or organization can file a complaint if they suspect that a citizen or a company is committing social fraud⁽⁵⁹⁾ (see section 3.3.3. of this report). Third-country nationals also have the possibility to file a complaint against their employer – with the assistance of certain organisations (such as Myria or O.R.ca) – which can also lead to the detection of cases of illegal employment.

Furthermore, calls or encounters at the **specialized reception centres for victims of human trafficking** (PAG-ASA, PAYOKE, and Sürya) could also lead to the identification of situations of exploitation.

(Section 3 – Q.6 of the EMN Questionnaire)

3.3.2. The planning of inspections

Besides specific complaints or special judiciary missions, a lot of inspections are planned and organized on the basis of different factors (also see section 3.3.4. of this report).

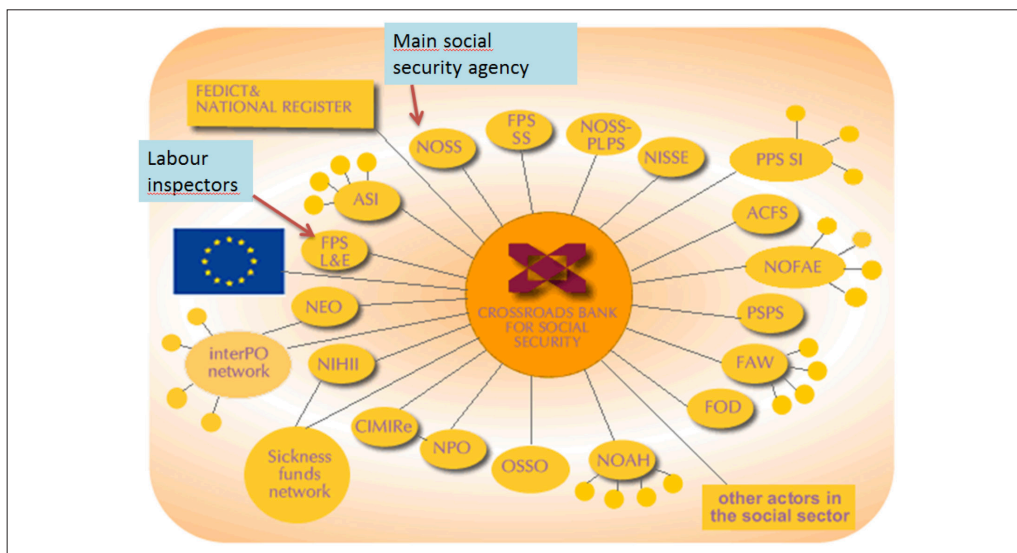
First of all, the inspections are mostly planned on the basis of a **social fraud oriented risk analysis** (carried out by SIOD/SIRS in collaboration with the labour inspectorates), which helps identify possible targets. Several parameters are used in this framework:

- Statistics of the Labour Inspectorate on the most important infringements in the most vulnerable (high risk) sectors;
- Documents concerning some specific sectors (including checklists with labour related obligations in these sectors (e.g. <http://www.employment.belgium.be/defaultTab.aspx?id=38256>);
- Datamining information provided by the National Social Security Office;
- Sectoral tripartite action plans for fair competition and tripartite collaboration agreements with social partners in certain sectors (e.g. construction, transport, cleaning, meat transformation, surveillance, etc.);
- Annual national action plans for combating social dumping (integrated in the general action plan on the fight against social fraud), approved by the Government and executed under the surveillance of the SIOD/SIRS;
- Point of Contact for Fair Competition (complaints and denunciations);
- And last but not least, the general circular letter (i.e. a set of instructions) of the highest College of prosecutors (with a priority list for prosecution of the most severe infringements). Labour exploitation of a group of irregularly staying third-country nationals is one of these top priorities.

59 See: <https://www.meldpuntsocialefraude.belgie.be/en/index.html>

The selection of target employers to be inspected can be done in an **individual** as well as **national/collective manner**.

Furthermore, individual inspectors all have a secure access to a **whole set of databases** of the Crossroad Bank for Social Security (“Kruispuntbank van de Sociale Zekerheid”, KSZ/ “Banque Carrefour de la Sécurité Sociale”, BCSS), which connects all players of the social sector (see graph below). Inspectors also have access to a common platform for sharing the findings of their enquiries (called “Dolsis”, formerly known as “Genesis”) and a shared platform for electronic penal reports (“e-PV”). Verifications in these databases may take place via internet from anywhere, at any time, and provides a lot of information before, during or after any inspection. All information regarding employees and employers can be found by making queries in databases linked to the Social Security databases, the crossroad bank for enterprises, the “Ginaa” database for infringements and electronic penal reports, the database for national persons, and the databases for the enquiries shared by inspectorates.



Source: Crossroad Bank for Social Security

(Section 3 – Q.7a and Q.7b of the EMN Questionnaire)

3.3.3. Triggering of inspections following reports by the general public and illegally employed third country nationals

Inspections can potentially be triggered by reports received from the general public or illegally employed third-country nationals. Such reports can be made through different means in Belgium.

First of all, a specific **hotline** has been set up and is functional since 5 October 2015, following a

Government decision: the “**Point of Contact for Fair Competition**”⁽⁶⁰⁾.

Before this hotline was set up, a lot of signals or denunciations were addressed to different authorities in a rather unorganized way, without any structured approach and sometimes leading to double checks and overlaps. This single contact point should help avoid these types of issues.

The Point of Contact for Fair Competition is a central contact point where **a citizen, a company or an organization** can file a report if they suspect that a citizen or a company is committing social fraud (in the broadest meaning of the word, including illegal work, social dumping, etc.). The report is filed through filling out a form **online**. There is also a Contact Centre, which can be contacted **by phone**.

As indicated on the website of the contact point, the kind of reports that can be filed concern the following cases:

- **Unfair competition/social dumping:** A company is paying its staff too little, does not pay social security contributions, is working with bogus self-employed workers or is otherwise exploiting workers. In this way, it can offer unrealistically low prices to its customers.
- **Problems with wages, working hours and annual leave:** The employer is not paying due wages and/or holiday pay correctly or is not paying them at all. Workers are forced to perform a lot of (unpaid) overtime or they have to work on Sundays (without proper compensation), etc.
- **Undeclared work:** A company is employing staff (partly) for undeclared work, including third-country nationals; a person is receiving benefits and is moonlighting without declaring this; a person is working after working hours without declaring this, etc.
- **Cohabitation/moving without declaring this:** A person is receiving benefits and does not declare the fact that they are cohabiting or moving (abroad). If they do not declare this, they continue to receive a (higher) allowance.
- **Child benefits fraud.**

Anonymous reports received through the contact point will not be investigated. The use of a false identity is a crime. Citizens must provide their full name, national identification number, and email address. It is worth noting that this means that the contact point is not easily accessible to irregularly staying third-country nationals, who do not have a regular residence status and therefore no national identification number. Companies are required to enter their enterprise number (CBE) and their email address. Social partners also have access to special screens in order to lodge a complaint or a denunciation.

The Contact Point for Fair Competition is managed by the SIOD/SIRS. The back-office (two SIOD/SIRS staff agents) triggers the files and sends them to the most appropriate enforcement service, keeps up the statistics and follows up on the reports.

60 <https://www.meldpuntsocialefraude.belgie.be/en/index.html>

The labour inspectors **may not disclose the identities of the people** who filed a report – not even in court – unless the person explicitly gave his/her consent. They are not allowed to inform an employer or his representative of the fact that the denunciation was at the basis of their investigation either.

From the day the Contact Point was established on 5 October 2015 until 2 October 2016 (one year of operation), it received **7,788 reports**⁽⁶¹⁾. At the moment of publication of this report the number of 10,000 reports will most likely be exceeded.

Besides this hotline, the Labour Inspection of the Federal Public Service Employment, Labour and Social Dialogue has created a **national contact point for illegally working foreign nationals**, where they can lodge a complaint against their employer. Complaints lodged through this contact point can also lead to the organisation of an inspection.

The Labour Inspectorate of the Federal Public Service Employment, Labour, and Social Dialogue also receives complaints on illegal employment of third-country nationals **from NGOs (such as OR.C.A.) and from Myria - the Federal Centre for Migration**, more particularly concerning the non-payment of wages to irregularly staying third-country nationals⁽⁶²⁾. For these cases, the Labour Inspectorate has concluded a special agreement with an NGO (OR.C.A) for handling the complaints of third-country nationals. The purpose of this cooperation⁽⁶³⁾ is to offer the foreign worker the opportunity to recover his wages before voluntarily returning to his/her country of origin or being removed.

(Section 3 – Q.7c of the EMN Questionnaire)

3.3.4. Authorities (deciding on) carrying out inspections

Authorities deciding on the inspections to be carried out:

Each year, the Federal Government (Council of Ministers) approves **the annual strategic action plan**⁽⁶⁴⁾ ⁽⁶⁵⁾ **on the fight against social fraud** (social dumping plan included). This plan is prepared by the Social Information and Investigation Service (SIOD/SIRS), in cooperation with the management of all the inspection services that are members of SIOD/SIRS. The SIOD/SIRS is also responsible for the implementation and the follow-up of the plan.

This plan sets out the general strategy, scope, priorities and engagements to be fulfilled by the inspection services. For instance, the action plans for 2014, 2015 and 2016 indicate that 9,000

61 Social Information and Investigation Service, Point de contact pour une concurrence loyale – 2015-2016- Rapport Annuel.

62 OR.ca also provides support to victims of labour accidents.

63 Based on a gentlemen's agreement.

64 See for example the action plan for 2015: <http://www.sirs.belgique.be/siodsirs/publicationDefault.aspx?id=43619>

65 An obligation laid down in article 2 of the Social Criminal Code.

controls should be performed in 10 to 11 high risk sectors, by means of joint actions in the framework of the provincial district fraud cells. The plan also mentions in detail the repartition of the controls amongst the provincial district fraud cells.

Furthermore, the modalities of the inspections are often defined in the action plan. For instance, the action plan for 2017 indicates that in 2017, at least 2,000 controls should be performed in the construction sector, of which 20% of the workplaces should be selected by datamining and at least 10% of these controls should take place in the evening or on a Saturday. Also, in each district cell, at least two big building sites should be inspected that are the subject of public procurement contracts of public authorities⁽⁶⁶⁾.

The strategic action plan also indicates what the high risk sectors are, where the most vulnerable workers are to be found, including third-country nationals (such as cleaning sector, food and meat industry, car-washes, night shops, exotic restaurants, horticulture, etc.).

The **labour prosecutors** have an import role to play in the strategic action plan. They are the chairs of the provincial district fraud cells in their respective jurisdictions and as such, they discuss with the local heads of the inspection units the effective planning of the controls, the problems encountered, and the special additional enquiries that are needed as a follow-up. They also prosecute the most serious infringements and follow the guidance provided by their superiors, that is to say the College of the highest attorneys general, who gives instructions for prosecutions by means of circular letters. Such instruction sets exist for the prosecution policy in social law in general, for social dumping, for trafficking of human beings, etc.

In some big cities in Belgium, the **police departments** also have special units for special controls in the field of social fraud. In this framework, they closely cooperate with the labour inspections whose assistance is called upon, but they act in these cases as the initiators of the inspections.

The Inspectorate of the Federal Public Service Social Security also prepares **Strategic Regional Action Plans** each year (since 2004). These plans reflect the Government's strategic objectives regarding the fight against Social Fraud (number of controls in different sectors) and add specific focus areas according to the characteristics of the Region.

Inspection services carrying out the inspections:

In Belgium, the **four federal inspection services** are primarily responsible for carrying out the inspections. The **Regional Inspection authorities** also carry out inspections (see section 3.1.1 of this report).

(Section 3 – Q.7d of the EMN Questionnaire)

66 Social Information and Investigation Service, Action Plan 2017: the fight against social fraud and social dumping.

3.3.5. Elements checked during an inspection

Two kinds of elements are **systematically checked** during inspections: those concerning the **workers** (not only their identity and residence status, but also their working conditions, work volume, working roster, salary, status toward the social security, work permits, etc.); and those regarding the **employers** (contracts, invoices, etc.).

The Social Criminal Code stipulates in its articles 28 and 29 what **kind of information the inspectors are entitled to request** during an inspection.

The social inspectors may request **all information carriers**⁽⁶⁷⁾ which are available at the workplaces or at other places which are subject to their control, provided that these information carriers:

1° either include **social data** (i.e. which has a very wide scope, as it is defined in article 16, 5° as all data required for the purposes of the legislation regarding labour law and social security law);

2° or include **any other data which, under the legislation**, must be drawn up, kept up to date or stored, even if the social inspectors are not in charge of the supervision of this legislation.

The social inspectors may be granted access to the information carriers which are accessible from the places they are inspecting through a computer system or through any other electronic device.

The social inspectors may make a copy of the above mentioned information carriers. They may search the computer or the information carriers. They may also seize these information carriers.

In addition, the social inspectors may request to receive, without displacement, all information carriers which contain **any other data**, if they deem this necessary for the completion of their tasks, and examine them. Other data may include – inter alia - invoices, company e-mails, company reports, etc. Inspectors may also copy these information carriers, but they are not allowed to carry out a physical search nor a search in the computer system.

Furthermore, the federal labour inspectorates use **common checklists**, applicable for different situations and enquiries (e.g. for some sectors like transport, construction, or for enquiries regarding human trafficking). Regarding trafficking in human beings, the **detection tool of the UNODC**⁽⁶⁸⁾ is used in the detection methodology of inspectors.

67 “Information carriers” are defined in the Social Criminal Code (article 16) as all information carriers in any form, such as books, registers, documents, digital information carriers, disks, tracks, including those that are accessible via a computer system or any other electronic device.

68 UNODC, Toolkit to Combat Trafficking in Persons, <https://www.unodc.org/unodc/en/human-trafficking/2008/electronic-toolkit/electronic-toolkit-to-combat-trafficking-in-persons---index.html>

Example: extract from the UNODC tool “Indicators of trafficking – labour exploitation”.

People who have been trafficked for the purpose of labour exploitation are typically made to work in sectors such as the following: agriculture, construction, entertainment, service industry and manufacturing (in sweatshops).

People who have been trafficked for labour exploitation may:

- *Live in groups in the same place where they work and leave those premises infrequently, if at all;*
- *Live in degraded, unsuitable places, such as in agricultural or industrial buildings;*
- *Not be dressed adequately for the work they do: for example, they may lack protective equipment or warm clothing;*
- *Be given only leftovers to eat;*
- *Have no access to their earnings;*
- *Have no labour contract;*
- *Work excessively long hours;*
- *(...)⁽⁶⁹⁾*

The labour inspectors also use **standard uniform interrogation forms** for interviews with all persons on the workplace during the inspections, which were approved by the public prosecutors.

(Section 3 – Q.7e and Q.8 of the EMN Questionnaire)

3.3.6. Entry and search powers of inspectorates

Regarding the **search powers of inspectors**, see section 3.3.5. of this report.

Regarding the **powers of entry of inspectors**, the Social Criminal Code⁽⁷⁰⁾ entitles them to freely access the premises of an employer at any time of the day or the night, without prior announcement. They may enter all workplaces or other places subject to their supervision or of which they suspect with reason that persons are working there who are subject to the provisions of the legislation they supervise. There is an exception to this rule that occurs frequently: gaining access to privately occupied premises (private households) against the will of the user requires a prior authorization granted by the examining judge. This has an impact on controls of domestic personnel in private households.

69 These examples are indicators for trafficking in human beings, and are not specific to the sectors.

70 Social Criminal Code of 6 June 2010, Belgian Official Gazette, 1 July 2010

When exercising their competences, the labour inspectors can request **police assistance**. This often happens in cases of high risk controls (i.e. if there is an issue for the safety of inspectors or if serious infringements are to be expected). The role of police officers in assisting labour inspectors is also further clarified in circular notes of the attorney-generals. These notes indicate when the police have to intervene actively and participate in the control and when their presence is rather a matter of safeguarding public order. Especially in the case of irregularly staying third-country nationals found at the workplace, it is the task of the police force to contact the Immigration Office and to wait for instructions about the status and measures to be taken towards the third-country national. The labour inspectors are not competent in this regard from that moment onwards. In fact, when they find irregularly staying third-country nationals at the workplace, they have to ask for the intervention of the police (which happens in most of the cases) or at least inform the Immigration Office and wait for further instructions.

(Section 3 – Q.7f of the EMN Questionnaire)

3.3.7. Frequency of inspections

On the one hand, inspections may be carried out randomly **at any time** by individual inspectors. On the other hand, collective and arranged actions **are planned at regular intervals**. This is decided by the provincial district fraud cells (in accordance with the annual strategic action plan for the fight against social fraud). In most districts, at least two common days of collective joint inspections take place each month. During certain periods of time (e.g. in case of seasonal work in agriculture or horticulture) and in some areas, more collective actions are organized from time to time depending on the need and the increase of work (e.g. the harvest of apples).

(Section 3 – Q.7g of the EMN Questionnaire)

3.3.8. Location of inspections

In Belgium, inspections may take place in **several places**: on-sight; at a company's seat; at private premises/homes (with the prior authorisation of a judge); on vessels; on construction sites; on plantations; at the office of lawyers or counting social secretariats; and even in the office of the inspectors themselves (e.g. for interviews).

Sometimes – in some complex cases requiring a thorough enquiry - controls can take place at the premises of clients of the employer: for instance, in case of fraud and bogus companies, organized fraudulent illegal occupation of third-country nationals, etc.

(Section 3 – Q.7h of the EMN Questionnaire)

3.4. Strengths and weaknesses of identification measures

On the basis of desk research, interviews with SIOD/SIRS, prosecutors, inspection reports and analyses of case-law, a certain number of strengths and weakness of the Belgian system could be identified.

Investigation and detection of illegally employed third-country nationals are well developed within a **good structural framework with clear objectives**, directed by clear strategic action plans of the government (in the framework of the SIOD/SIRS). High risk sectors are well identified and are subject to well-targeted controls.

There is a **good cooperation between all stakeholders** at the federal and regional level (justice, social partners, labour inspection services, social security organizations, etc.). The cooperation and the communication between the inspection services (and other stakeholders) have a legal basis in the Social Criminal Code, and is facilitated by the access of the inspectors to various common databases (e.g. Crossroad Bank of Social Security) and tools (e.g. “Dolsis”). The functioning of the provincial district cells under the guidance of the Social Information and Investigation Service (SIOD/SIRS) is efficient.

A potential success factor that can be mentioned is the **“Point of Contact for Fair Competition”**: in order to better streamline and better follow-up on the numerous complaints and denunciations that are lodged by workers, private persons, and others, the State Secretary for the fight against social fraud set up this single contact point in 2015. This contact point is in fact a central point where any citizen, company or organization can file a report if they suspect that a citizen or a company is committing social fraud. A year after it was set up, 7,788 reports had already been received. It is however worth noting that this contact point is not easily accessible to irregularly staying third-country nationals.

Despite the above mentioned strengths, the identification of illegally working third-country nationals remains somewhat **under exploited**. This is partly due to the problem of the burden of proof of the existence of the labour relationship between the employer and the third-country national. Another factor is the fact that the use of data mining of the so-called “big data”⁽⁷¹⁾ as a possible source for targeting control actions is not possible as third-country nationals are not registered in these databases. Furthermore, an emphasis is also currently put on the monitoring of posted workers - which mobilizes a lot of the control efforts - as a consequence of mandatory engagements for inspectorates laid down in sectorial “action plans for fair competition”. Although a good judicial system exists in Belgium, with legislative instruments and severe sanctions for employers as well as good detection practices of the enforcement services, the number of identified cases of illegally working irregularly and regularly staying third-country national employees is still far inferior to the number of infringements found regarding posted workers

71 “Big data” refers to all the available data files safeguarded in all databases of public authorities and the National Social Security Office, and which concern personal data of natural persons, legal persons, data regarding labour relations and social security rights and obligations.

(who by nature are more visible – declaring the posted workers via the tool called ‘Limosa’ prior to the employment being mandatory).

Furthermore, there are also challenges associated with the **possibility for third-country nationals to make reports or complaints** on illegal employment (which can be a way to identify cases of illegal employment, exploitative working conditions, etc.). As NGOs have pointed out, irregularly staying third-country nationals are often reluctant to address a report or a complaint to the enforcement authorities, such as the inspection services, as they are afraid of the possible consequences they will face once they have been identified (e.g. in terms of their residence status). They can contact **different organisations and NGOs (such as OR.C.A)**, who treat their complaints in full confidentiality and try to defend their rights, for example through mediation with the employer (in some cases by calling the help of a labour inspector).

(Section 3 – Q.9 of the EMN Questionnaire)

4

Sanctions for employers

4.1. Types of sanctions for employers

4.1.1. System of sanctions in social law

All offenses regarding social law, their description, the penalties anticipated, the modalities for sanctioning, the procedure of the administrative fines, etc. are regulated in detail in one codified **Social Criminal Code**⁽⁷²⁾ (which was introduced in 2010).

The Code provides for four different levels of violations (1: slight, 2: moderate, 3: serious and 4: very serious) of employment and social security provisions, each with a corresponding sanction. Article 101 of the Social Criminal Code stipulates that the infringements as provided for in Book 2 shall be punished with a level 1, a level 2, a level 3 or a level 4 sanction. In cases of illegal employment of third country nationals, sanctions level 3 and 4 can be imposed.

- The **level 1** sanction shall be an administrative fine between 10 and 100 euros.
- The **level 2** sanction shall either be a criminal fine between 50 and 500 euros, or an administrative fine between 25 and 250 euros.
- The **level 3** sanction shall either be a criminal fine between 100 and 1000 euros, or an administrative fine between 50 and 500 euros.
- The **level 4** sanction shall either be a prison sentence between six months and three years and a criminal fine between 600 and 6000 euros, or only one of these sanctions, or an administrative fine between 300 and 3000 euros.

A **multiplication coefficient** as provided for in Article 1, first paragraph of the Law of 5 March 1952 should be applied to the amount of these fines. Until 31 December 2016, the multiplication coefficient was 6. From 1 January 2017, the multiplication coefficient is 8.

72 Social Criminal Code of 6 June 2010, Belgian Official Gazette, 1 July 2010.

The levels of sanctions⁽⁷³⁾ as of 1 January 2017 are as follows:

Level of sanctions - with multiplication coefficient	Sanctions		
	Imprisonment	Criminal fine	Administrative fine
Level 1			80 to 800 EUR
Level 2		400 to 4000 EUR	200 to 2000 EUR
Level 3		800 to 8000 EUR	400 to 4000 EUR
Level 4	6 months to 3 years	4800 to 48000 EUR	2400 to 24000 EUR

The amount of the fine is **multiplied by the number of employees**, potential employees, children, trainees, self-employed persons or self-employed trainees involved. This rule applies to both the criminal fine and the administrative fine. The multiplied fine may not amount to more than a hundred times the maximum fine.

The employer is liable under civil law for the payment of the criminal fines to which his appointees or proxies have been sentenced. The administrative fine may only be imposed on the infringer, even if the infringement has been committed by an appointee or a proxy.

The **system of penalties in Belgian social law is dual**. The Public Prosecutor's Office and the Research Service of the Federal Public Service Employment, Labour and Social Dialogue are informed about violations of the law via an electronic Pro Justitia report ('e-pv') by the qualified inspection service. First the Labour Prosecutor (specialized in social law) is mentioned, who has a priority right to prosecute before a criminal court. When the Labour Prosecutor decides not to bring criminal proceedings, he/she informs the Research Service of the Federal Public Service Employment, Labour and Social Dialogue. The latter can then deal with the violation of the law in second line. This last procedure can lead to an administrative fine being imposed (the amount of which is usually half of the amount of the penal fines). In practice both levels work as levelling vessels. The Labour Prosecutors prosecute the most important social offenses (among which the employment of a group of irregularly staying third-country nationals. Cases with one or two irregular migrants are seldom prosecuted).⁽⁷⁴⁾ The other offenses are dealt with by the Research Service of the FPS. The period of time between the determination of the offense and the trial

73 It is worth noting that on the 29th of April 2015, the Minister of Justice has asked the opinion of the Advisory Council of the Social Criminal Law with regard to an evaluation of the sanction levels included in the Social Criminal Code. Specifically, the Minister proposed to the Advisory Council to evaluate the sanction levels, as provided by the Social Criminal Code, for the various offences since the enactment of said Code. The Council is also invited to examine how new autonomous sanctions can be introduced in place of prison sanctions, as provided in level 4, since, in the common criminal law, new autonomous sanctions will be introduced and prison sentences of less than one year will be lifted. Finally, it is proposed that the Advisory Council examines which conducts, foreseen in the Social Criminal Code, can be decriminalized. As part of this ongoing reflection within the Advisory Council, the aim is to find a more effective punishment of employers who are guilty of illegal employment of irregularly staying third-country nationals.

74 COL 12/2012.

before court is long (on average between 1 and 2 years)⁽⁷⁵⁾.

4.1.2. Sanctions for employers of illegally working third-country nationals

Table 1: Sanctions for employers of illegally working (ir)regularly staying third-country nationals in Belgium

Sanctions for employers	Irregularly staying and illegally working third-country nationals	Regularly staying and illegally working third-country nationals
Fines	<p>Fines can be imposed. Article 175 of the Social Criminal Code on foreign workers stipulates that:</p> <p>§ 1. Shall be punished with a level 4 sanction the employer, his appointee or his proxy who, contrary to the Law of 30 April 1999 on the employment of foreign workers, had work performed or let work be performed by a foreign national who is neither allowed nor authorised to stay more than three months in Belgium or to take up residence in Belgium.</p> <p>§ 1/1. Shall be punished with a level 4 sanction the employer, his appointee or his proxy who, when employing a third-country national, contrary to the Act of 30 April 1999 on the employment of foreign employees:</p> <p>1° did not verify in advance whether said third-country national possesses a valid residence permit or other residence authorisation;</p> <p>2° did not hold at the disposal of the inspection services either the information on or a copy of said third-country national's residence permit or other residence authorisation, at least for the duration of the employment;</p> <p>3° did not declare the start or the end of said third-country national's employment in accordance with the statutory and regulatory provisions. In the event that the residence permit or other residence authorisation which said third-country national presents is a forgery, the sanction as provided for in the first sub-paragraph shall apply if the employer is proven to have known that this document was a forgery.</p>	<p>Fines can be imposed. Article 175 of the Social criminal Code on foreign workers stipulates that:</p> <p>§ 2. Shall be punished with a level 3 sanction the employer, his appointee or his proxy who, contrary to the Law of 30 April 1999 on the employment of foreign employees:</p> <p>1° had or let a foreign national perform work without having received an employment authorisation from the competent authority and/or without said national possessing a work permit;</p> <p>2° had or let a foreign national perform work without respecting the limits of said employment authorisation and/or work permit;</p> <p>3° had or let a foreign national perform work for a term which exceeds the term of said employment authorisation or work permit;</p> <p>4° had or let a foreign national perform work after the withdrawal of said employment authorisation or work permit;</p> <p>5° did not return said work permit to the foreign employee or returned it to him in exchange of a payment of a certain sum or remuneration in whatever form.</p>

75 Source: databases of the labour inspections and the Research Service of the Federal Public Service Employment, Labour and Social Dialogue.

<p>Fines</p>	<p>It is worth noting that the above mentioned provisions of article 175 of the Social Criminal Code are replaced by new similar provisions in the legislation of the Belgian Regions⁽⁷⁶⁾, but in fact, those new provisions keep the same level of sanctions for the same infringements.</p> <p>Furthermore, article 175 of the Social Criminal Code also stipulates that:</p> <p>§ 3. Shall be punished with a level 4 sanction any person who, contrary to the Act of 30 April 1999 on the employment of foreign employees:</p> <p>1° had a foreign national enter Belgium to be employed there or who facilitated his entry into the country, save the foreign national who possesses a valid work permit and save the foreign national for whom the employer is able to obtain an employment authorisation after said national's arrival in Belgium for the purpose of his employment there;</p> <p>2° promised a foreign national, on payment of a fee in whatever form, either to search for a job for him, or to find him a job, or to accomplish formalities with a view to his employment in Belgium;</p> <p>3° demanded or accepted a fee in whatever form from a foreign national either to search for a job for him, or to find him a job, or to accomplish formalities with a view to his employment in Belgium;</p> <p>4° acted as an intermediary between a foreign national and an employer or the authorities in charge of the application of the provisions of said Act of 30 April 1999 or its implementing decrees, or furthermore between an employer and said authorities, in a situation where acts were performed possibly misleading either this foreign national, or the employer, or said authorities.</p> <p>Regarding trafficking in human beings, a new law was enacted on 10 August 2005⁽⁷⁷⁾. This law makes a clear distinction between trafficking in human beings, on the one hand, and smuggling in human beings on the other hand, and defines the crimes respectively in the Criminal Code (new article 433quinquies et seq.) and in the law of 15 December 1980 concerning access to the territory, stay, residence and the removal of foreigners (article 77bis et seq.).</p> <p>The criminal offence of human trafficking only requires two constituent elements for article 433quinquies of the Criminal Code:</p> <ul style="list-style-type: none"> • The action: the recruitment, transportation, transfer, harbouring and receipt of persons and taking or transferring control over them; and • The exploitative purpose, namely: sexual exploitation, the exploitation of begging, for the purpose of work or services in circumstances contrary to human dignity, for the removal of organs, or to force that person to commit a crime or an offence against their will. <p>Trafficking and smuggling of human beings are punishable with a fine of 500 to 50,000 euros (to be multiplied with factor 8 as of 1 January 2017 and per number of victims).</p>
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Imprisonment of employers	As stipulated in the Social Criminal Code, the imprisonment of employers is possible in case of a sanction level 4 (article 175 §1, §1/1 and §3). The prison sentence can be between 6 months to 3 years.	As stipulated in the social Criminal Code, no prison sentences can be imposed in the framework of a sanction level 3 or less (article 175 §2).
	Furthermore, article 433quinquies et seq. of the Criminal Code, which deals with human trafficking , stipulates that a prison sentence of 1 to 5 years - and more in cases of aggravating circumstances - can be imposed.	
Confiscation of financial gains	<p>This sanction can be imposed. Article 42 of the Criminal Code stipulates that special confiscation is applied:</p> <ul style="list-style-type: none"> 1° to matters that are the subject of the offence and to those that have served as or were destined to commit the offence, if they are the property of the convicted; 2° to matters arising from the offence; 3° to capital gains derived directly from the offence, on the goods and values laid down in its place and on the income from invested benefits. 	
Ineligibility for public contracts	<p>This sanction can be imposed. The Law of 17 June 2016 on the procurement of government contracts stipulates that candidates and tenderers of whom it was established that they employ irregularly staying third-country nationals, are excluded from government contracts.</p> <p>These employers can be excluded at any stage of the procurement procedure, including in the last phase of the final procurement.</p>	This sanction is facultative in the case of regularly staying third-country nationals.

<p>Temporary or definitive closure of company or worksite</p>	<p>This sanction can be imposed. Article 106 of the Social Criminal Code on operating bans and the closure of companies stipulates that:</p> <p>§ 1. For level 3 and 4 infringements, a judge may prohibit the convicted person to operate, for a term between one month and three years, wholly or partially, himself or through an intermediary, the company or the facility where the infringement was committed, or to be employed there in whatever capacity.</p> <p>A judge may also order the whole or partial closure of the company or of the establishment where the infringements were committed, for a term between one month and three years, provided the judge's decision on the matter is reasoned.</p> <p>The judge may only impose the above mentioned sanctions if they are deemed necessary to end the infringements or to prevent their recurrence, provided the conviction to these sanctions is proportional to the whole of the socio-economic interests concerned.</p> <p>Furthermore, article 107 of the Social Criminal Code on the prohibition to exercise a profession and the closure of companies stipulates that:</p> <p>§ 1. For level 3 and 4 infringements, the judge may, when convicting the person whose profession is to provide advice or help to one or more employers or employees in the exercise of the obligations sanctioned under the Social Criminal Code, either on his own account or as manager, as a member or as a white-collar employee of some company, association, organisation or enterprise, prohibit that person to directly or indirectly exercise said profession in whatever capacity for a term between one month and three years.</p> <p>A judge may also order the whole or partial closure of the company or of the establishments of the company, association, organisation or enterprise of the convicted person or of which the convicted person is the manager, for a term between one month and three years, provided the judge's decision on the matter is reasoned.</p> <p>Regarding human trafficking, article 433novies of the Criminal Code stipulates that without taking into account the capacity of natural or legal person of the operator, owner, lessee or manager, the court may order the temporary or permanent, partial or total closure of the undertaking where the offences were committed.</p>
<p>Confiscation of equipment/property</p>	<p>This sanction can be imposed. Article 42 of the Criminal Code stipulates that special confiscation applies:</p> <p>1° to matters that are the subject of the offence and to those that have served as or were destined to commit the offence, if they are the property of the convicted;</p> <p>2° to matters arising from the offence;</p> <p>3° to capital gains derived directly from the offence, on the goods and values laid down in its place and on the income from invested benefits.</p> <p>Regarding human trafficking, article 433novies of the Criminal Code stipulates that the special confiscation as meant in Article 42, 1°, is applied to those who have committed the offence referred to in Article 433quinquies, even when the matters to which they relate are not owned by the convicted person.</p>

Suspension of activity	<p>This sanction can be imposed. A temporary closure of the company can be pronounced by the judge (see above, articles 106 – 107 of the Social Criminal Code).</p> <p>Furthermore, without a judicial decision, a suspension of activity can also be imposed in the course of an investigation by the labour inspection service. Article 46 of the Social Criminal Code on the order to cease work stipulates that the social inspectors may order to cease any work in a workplace or in another place which is subject to their supervision, if required for the employees' health and safety. This provision can be applied when the safety of the illegally employed third-country nationals is compromised.</p>	
Withdrawal of trading license/ disbarment of activity	<p>This sanction can be imposed in some cases. In the event that the employer is an employment agency, the illegal employment of a third-country national without legal stay can cause the withdrawal of the recognition as an employment agency by the Regional government that delivered the authorization⁽⁷⁸⁾.</p> <p>In the event that the employer is a contractor of real estate activities, the illegal employment of a third-country national without legal stay can lead to the withdrawal of the recognition as a contractor for public works⁽⁷⁹⁾.</p>	<p>This sanction cannot be imposed.</p>
Withdrawal of residence permit if the employer is a third-country national	<p>There is no automatic withdrawal of the residence permit of the employer. The residence permit can be withdrawn if the employer committed serious offences concerning the public order. This is examined on a case-by case basis by the Immigration Office and different elements have to be taken into account (length of stay, which level of penalisation, family, health situation...)⁽⁸⁰⁾.</p>	
Other sanctions	<p>Other sanctions can be imposed.</p> <p>First of all, as stipulated in article 13 of the Law of 30 April 1999⁽⁸¹⁾ (as modified by the Law of 11 February 2013), the employer of a third-country national who irregularly resides in Belgium may have to cover the costs of his/her forced return, as well as a daily sum for the costs linked to accommodation, living and health (see section 5.3.2 of this report).</p> <p>Furthermore, the ability of employers to employ third-country nationals in the future can be restricted. This is examined on a case by case basis by the Regional authorities, who may decide not to deliver a work permit to an employer who has previously illegally employed third-country nationals.</p> <p>What's more, the courts can, against persons that were convicted for an offence under Article 380, §§ 1 to 3 of the Criminal Code, pronounce a ban for one year to three years to operate a drinking-house, an employment agency, a performance company, a business for renting or selling visual media, a hotel, a rental office for furnished rooms or apartments, a travel agency, a dating agency, an institution for adoption, an institution that is entrusted with the detention of minors, a company that transports students and youth groups, a place for leisure or holidays, an institution that provides personal care or psychological counselling, either personally or through an intermediary, or to be employed in these in whatever capacity.</p> <p>Finally, regarding human trafficking, article 433novies of the Criminal Code stipulates that the guilty will, moreover, be sentenced to deprivation of their rights to enter employment in public services.</p>	

(Section 4 – Q.10 of the EMN Questionnaire)

4.1.3. Procedure if the employer did not intentionally hire an irregularly staying worker

Article 175, §1/1 of the Social Criminal Code⁽⁸²⁾ indicates that not only are employers not allowed to employ irregularly staying third-country nationals, they also have to carry out certain verifications for every foreign worker they wish to employ or are employing (failure to do so could lead to a sanction level 4, see above). The employers have the obligation to carry out the following actions:

- They have to determine beforehand if these workers are in the possession of a valid residence permit or any other authorization to stay;
- They have to keep a copy or the data on the third-country national's residence permit and put it at the disposal of the competent inspection services, at least for the duration of the employment;
- They have to make a "Dimona" declaration to the Social Security.

If the residence permit submitted by the foreign national is a forgery, the penalty only applies when it has been **proven that the employer knew that the document was a forgery**, as an outcome of the investigation of the police forces and the Immigration Office.

There is also a kind of **"due diligence" arrangement** when a Belgian principal or employer or (main) contractor works with subcontractors⁽⁸³⁾. This includes that when a direct subcontractor illegally employs a third-country national, the (main) contractor exposes himself to a sanction of level 4, unless he is in the possession of a declaration of the subcontractor in which he states that he does not or will not employ irregularly staying third-country nationals. However, in all these cases, "due diligence" can be refuted when the (main) contractor was aware that the subcontractor employed irregularly staying third-country nationals (i.e. the labour inspector informed the main contractor, through a signed declaration, that he found proof that third-country nationals are illegally employed by the subcontractor)⁽⁸⁴⁾.

(Section 4 – Q.11a of the EMN Questionnaire)

76 For example: Decree of 23 December 2016 of the Flemish Council, or Decree of 28 April 2016 of the Walloon Region.

77 Law of 10 August 2005 amending various provisions with a view to reinforcing the fight against human trafficking and against the practices of slumlords, Belgian Official Gazette, 2 September 2005.

78 Based, for example, on article 14 of the Decree of 10 December 2010 of the Flemish Region.

79 Article 6 of the Law of 3 February 1947 and article 7 of the Law of 17 June 2016 on public procurement.

80 Law of 15 December 1980 on the access, residence, settlement and removal of foreign nationals, Belgian Official Gazette, 31 December 1980.

81 Article 13 of the Law of 30 April 1999 on the employment of foreign workers, Belgian Official Gazette, 21 May 1999.

82 Social Criminal Code of 6 June 2010, Belgian Official Gazette, 1 July 2010.

83 Articles 175, §3/1 to 3/3 of the Social Criminal Code.

84 This shows the difficulty of the burden of proof for enforcements services (source: internal inspection reports).

4.1.4. Procedure if the residence permit of the employee was revoked

If the residence permit of a third-country national is revoked, the employer can no longer employ this person, because that would mean that he would be employing an irregularly staying worker (risk of highest sanction level 4).

However, as employers are not automatically informed if a residence permit is revoked, they are sometimes not aware that they are illegally employing a third-country national. In this case, sanctions may not be imposed.

(Section 4 – Q.11b of the EMN Questionnaire)

4.1.5. Recent changes in legislation on sanctions for employers

The most important changes in Belgium concern a **transfer of a certain set of competences** from the federal level to the regional level in the framework of the sixth State reform.

The shift has had different consequences: on the one hand, most of the normative competences shifted from the federal level to the Regions (with a complex set of exceptions though), but on the other hand, at the level of enforcement, no major changes occurred as regional and federal inspection services are and stay competent.

(Section 4 – Q.12b of the EMN Questionnaire)

4.2. Criminal sanctions for employers as per Article 9 (1) of the Employers' Sanctions Directive

In Belgium, the illegal employment of irregularly staying third-country nationals can in itself lead to criminal sanctions, with or without the circumstances referred to in article 9.1 of the Employers Sanctions Directive. As stipulated in article 175 of the Social Criminal Code, an employer, his appointee or proxy who had work performed or let be performed by a foreign national who is neither allowed nor authorised to stay more than 3 months in Belgium or to take up residence in Belgium may be sanctioned with a **sanction level 4**.

The circumstances referred to in article 9.1 of the Employers Sanctions Directive may be treated as aggravating circumstances.

Table 2: Criminal sanctions for employers as per article 9(1) of the Employers' Sanctions Directive.

Criminal sanctions for employers	Description
(a) the infringement continues or is persistently repeated	There is no distinction between a "one shot infringement" and a series of continuous occupations of illegally working third-country nationals (Article 75 of the Social Criminal Code ⁽⁸⁵⁾).
(b) the infringement is in respect of the simultaneous employment of a significant number of irregularly staying third-country nationals	<p>This situation has no effect as such on the sanction, except (as a general rule) for the multiplication of the sanction by the number of third-country nationals concerned.</p> <p>It is worth noting that the labour prosecutors generally prosecute the most serious offences, including the employment of a group of irregularly staying third-country nationals. Therefore, if the infringement is in respect of a significant number of irregularly staying third-country nationals, the likelihood that the labour prosecutor will prosecute the case (and that criminal sanctions will be applied) thus increases.</p>
(c) the infringement is accompanied by particularly exploitative working conditions	In most cases of penal prosecution, there is concurrence of infringements of a different nature (article 65 of the Criminal Code). In the assessment of the whole of these several distinct infringements, each one of them possibly leading to a distinct sanction, the most severe sanction amongst them will be applicable.
(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings	This is a separate offence. If a third country national is recognized as a victim of trafficking, the employer can be prosecuted on the basis of article 433quinquies of the Criminal Code.
(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings	In cases where the qualification of trafficking in human beings is applicable, the sanction is more severe when a minor was the victim of the exploitation (article 433septies of the Criminal Code). The sanction can be an imprisonment for 10 to 15 years and a fine from 1,000 euros to 100,000 EUR (to be multiplied by 8 and by the number of victims).

(Section 4 – Q.12a of the EMN Questionnaire)

⁸⁵ Social Criminal Code of 6 June 2010, Belgian Official Gazette, 1 July 2010.

4.3. Strengths and weaknesses in sanctioning employers

On the basis of desk research, interviews with SIOD/SIRS, prosecutors, inspection reports and analyses of case-law, a certain number of strengths and weaknesses of the Belgian system could be identified.

First of all, the prosecution policy of the public prosecutors is streamlined and targets the **worst forms of fraud and exploitation** of employees, among which third-country nationals. The criminal sanctions are sufficiently high and deterring. Sentences are actually pronounced and they hurt offenders also in their illegally obtained profits (unlawful capital benefits), which will compromise their business model. In practice, confiscations of goods, bank accounts etc. are also pronounced (the value of these properties equals the illegal financial gain obtained by committing the crimes).

However, it is also worth noting that criminal proceedings can take place over **long periods of time** because many investigative acts are needed. As a result, the illegal employment - which is the subject of this kind of judicial investigation - can rapidly change form (e.g. changes in status, firm, straw man and method of working, the firm goes into bankruptcy, etc.) which means that the final sanction can be overshadowed by the continuation of criminal activities in a different form.

Furthermore, even with a relatively high risk of being caught and high sentences, infringements keep occurring. Certain employers who **repeatedly breach the law** are aware of the risks, but – on the basis of a cost-benefit analysis - do not necessarily change their “business models” to conform to the law, as the mere risk of financial sanctions is overshadowed by the potential profits. In some cases, if an illegally working third-country national does not claim the payment of his outstanding wages in court, the employer only has to pay a fine and contributions to social security, which means that there can still be a profit for the employer. Despite heavy sentences, the repressive approach does not always have the deterring effect wanted on the criminally inclined people or groups who have made the exploitation of employees their core business. Inspections and judicial reports have shown that these categories of offenders often re-offend.

Finally, regarding cases of **trafficking in human beings**, it is worth noting that there is an added difficulty in regards to providing proof that the criteria required for a case to qualify as a crime of trafficking in human beings are met.

(Section 4 – Q.13 of the EMN Questionnaire)

Outcomes for third-country nationals found to be working illegally

5.1. Outcomes for irregularly staying third country nationals

5.1.1. Return decision, voluntary departure, entry ban and detention

When the police services intercept an irregularly staying third-country national, they send a report to the Immigration Office stating the facts of the apprehension/inspection, which can include illegal employment.

When the Immigration Office receives a report of the police with reference to illegal employment and the concerned migrant is irregularly staying in Belgium, the following decisions can be made by the Immigration Office (according to articles 7 and 74/14 of the Immigration Act of 15 December 1980⁽⁸⁶⁾):

- The irregularly staying third-country national can be issued a **return decision**, that is to say an order to leave the Schengen territory. If the report mentions illegal employment, the order to leave the territory can foresee a 0 day time limit (i.e. no period for voluntary departure).
- In addition to this order to leave the territory, an **entry ban decision** can be issued by the Immigration Office. Entry bans are usually imposed when: the third-country national has breached a previous order to leave the territory, or the order to leave the territory foresees a 0 day time limit (e.g. when there is a risk of absconding, when a measure to prevent absconding was not followed, when there is a risk to the public order or national security, in case of fraud, etc.)⁽⁸⁷⁾.
- Furthermore, the third-country national can also be issued a return decision by the Immigration Office and be **detained**. In this case, the irregularly staying third-country national is placed in a closed detention centre and his/her return is organized by the Immigration Office. In addition to this return decision, an entry ban decision can be issued.

(Section 5 – Q.14a, Q.14b, Q.14c, Q.14e of the EMN Questionnaire)

86 Law of 15 December 1980 on the access, residence, settlement and removal of foreign nationals, Belgian Official Gazette, 31 December 1980.

87 <http://www.kruispuntmi.be/thema/vreemdelingenrecht-internationaal-privaatrecht/verblijfsrecht-uitwijzing-reizen/uitwijzing/inreisverbod>

5.1.2. Fine

In theory, as stipulated in article 183/1 of the Social Criminal Code (as modified by the Law of 29 February 2016⁽⁸⁸⁾), a worker can be fined when **his/her employment is not declared** (through “Dimona”) and thus not in conformity with the social laws. This applies to both regularly and irregularly staying third-country nationals. Two conditions have to be met for this **administrative fine (sanction level 1)** to be imposed:

- The worker carried out the employment knowingly and intentionally knowing that it was undeclared;
- A formal report was issued against the employer for this undeclared work.

However, internal guidelines from the Administrative Fines Service indicate that this fine is often not imposed if the third-country national lodged a complaint to a social inspector against his/her employer himself/herself or if the third-country national is a victim of trafficking in human beings or of exploitation⁽⁸⁹⁾.

(Section 5 – Q.14d of the EMN Questionnaire)

5.1.3. Residence permit and work permit

In case a third-country national is irregularly staying in Belgium, neither a residence permit nor a work permit is granted.

The third-country national irregularly staying in Belgium has to return to his country of origin and has to apply for a work permit and a visa D to be able to work in Belgium.

(Section 5 – Q.14f and Q.14g of the EMN Questionnaire)

5.1.4. Identification as a victim of trafficking in human beings

If a worker is identified as a victim of trafficking in human beings, this person can receive a residence permit and a work permit, under certain conditions. There are different phases following the detection of a victim of trafficking (several internal circular letters of the attorney-general set out additional rules for police and inspection services).

88 Law of 29 February 2016 complementing and modifying the Social Criminal Code and containing various provisions of social criminal law, Belgian Official Gazette, 21 April 2016.

89 See for example: Agentschap Integratie & Inburgering, « Illegale tewerkstelling en zwartwerk : rechten en risico's voor de werknemer », <http://www.agii.be/thema/vreemdelingenrecht-internationaal-privaatrecht/arbeidskaarten-be-roepskaart/illegale-tewerkstelling-en-zwartwerk/rechten-en-risicos-voor-de-werknemer> ; and OR.C.A., “Le travail au noir rendu punissable pour le travailleur – quelles conséquences pour les travailleurs sans papiers?”, <http://orcasite.be/userfiles/file/20160602%20Le%20travail%20au%20noir%20rendu%20punissable%20pour%20le%20travailleur.pdf>.

These phases are described as follows in the brochure “The fight against trafficking and smuggling in human beings – policy and approach”⁽⁹⁰⁾:

1st phase (reflection period): issue of a temporary residence document for a period of 45 days:

This phase is aimed at allowing victims to come to rest and to regain serenity. During this period, the victim can decide if he/she wishes to file a complaint or make a statement or if he/she prefers to return to his/her country of origin. During this period, the victim is entitled to social protection.

A temporary residence document is delivered⁽⁹¹⁾ by the Immigration Office on request of the specialized reception centre.

If the victim immediately lodges a complaint or makes a statement, this phase is redundant.

During this first phase, the presumed victim cannot be expelled. The victim is not authorized to work during this period.

2nd phase: issue of the 3-month registration certificate:

As soon as the victim has filed a complaint or made a statement, he/she is entitled to a three-month certificate of registration. This document is renewable once for three months. In this phase, the victim has to prove his/her identity either by producing a national passport, a valid travel document or a national identity card.

The victim is entitled to social benefits and is authorized to work as soon as he/she is in possession of a work permit type C.

Regarding the granting of the provisional victim status (issue of a proof of registration in the alien’s register, valid for six months – renewable): The magistrate to the Public Prosecutor’s Office is competent for granting the provisional victim status, taking into account the advice from the other partners involved. Before granting this status, the magistrate to the Public Prosecutor’s Office must confirm that:

- the investigation or the legal action is still pending;
- the person involved in this phase is still to be considered as a victim of trafficking in human beings or as a victim of certain more serious kinds of smuggling in human beings;
- the person involved is willing to cooperate within the framework of a legal action;
- the person involved has severed all relations with the presumed perpetrators;

90 https://dofi.ibz.be/sites/dvzoe/FR/Documents/BRO_MH_BELGIE_ENG_2014_def.pdf

91 An order to leave the territory (with 45 days) was previously delivered during this first phase. Based on the [Law of 30 March 2017 modifying article 61/2 of the Immigration Act](#) aimed at replacing the order to leave the territory by a temporary residence document in the context of trafficking in human beings and following the [Royal Decree of 30 March 2017 modifying article 110bis and replacing the annex 15 from the Royal Decree of 8 October 1981](#), potential victims of trafficking are now issued a temporary residence document (annex 15) valid for 45 days.

- the person involved is not considered as a possible threat to public order or national security.

In this phase, the victim is then provided with a proof of registration in the alien's register. This proof is renewable under the same conditions as long as the legal action is pending. The victim is entitled to social benefits and is authorized to work as soon as he/she is in possession of a work permit type C.

Conclusion of the procedure – 3 possibilities:

1) Issue of a permanent residence permit

The competent minister or his deputy may grant a permanent residence permit to the victim through the issue of a proof of registration in the alien's register when:

- the complaint or the statements have resulted in a legal conviction : the perpetrators thus have been convicted (in the first instance) for trafficking in human beings;
- in his prosecution, the magistrate to the Public Prosecutor's Office has withheld the charge for trafficking or smuggling in human beings under aggravating circumstances.

2) Return

In some cases, the victim prefers returning to his/her country of origin. The return will then be organized through the International Organization for Migration (IOM) or through a non-governmental organisation.

3) End of the procedure

The magistrate to the Public Prosecutor's office can decide autonomously and at any time that the person concerned is no longer to be considered as a victim of trafficking in human beings. He therefore consults police and/or inspection services, the specialized reception centre for victims of trafficking in human beings as well as the Immigration Office.

During the procedure, the Immigration Office can withdraw the residence permit in the following cases:

- If the person concerned holds a registration certificate, his residence permit can be withdrawn in case:
 - it has been established that the holder has voluntarily renewed contacts with the presumed perpetrators;
 - the victim ceases to cooperate with the magistrate to the Public Prosecutor's Office;
 - the victim is considered as a possible threat to public order or national security;
- If the person concerned holds a proof of registration in the alien's register, the residence

permit can also be withdrawn in case:

- the judicial authorities have made the decision to stop the proceedings;
- the victim's cooperation is fraudulent or his/her complaint is fraudulent or wrongful. In that case, the Immigration Office will consult the reference magistrate trafficking in human beings and inform the specialized reception centre.

As an example to depict **the impact of this protection mechanism**, Pag-asa (one of the specialized reception centers for victims of trafficking in human beings) counted 47 court decisions from 1 January 2011 until 31 December 2013 in which they acted as defendant (civil) party for 73 victims of all kinds of exploitations. The outcome was 39 convictions of the employer for trafficking in human beings and damage compensation for the victim.

The Immigration Office issued 36 authorizations for permanent residence to victims of trafficking in human beings in 2015.

(Section 5 – Q.14h of the EMN Questionnaire)

5.2. Outcomes for regularly staying third country nationals

5.2.1 Residence rights

The residence rights of regularly staying third-country nationals found to be working illegally are not automatically withdrawn. This is decided on a **case-by case basis** by the Immigration Office.

If a regularly staying third-country national is found to be working illegally, his work permit can be withdrawn by the competent regional authority. If the residence of the third-country national is linked to this work permit, then his/her residence rights can be withdrawn.

If a third-country national whose work is subordinate to his/her residence (e.g. students, in case of family reunification, etc.) is found to be working illegally, this will generally not have an effect on his/her residence rights. However, in exceptional cases, the third-country national can lose his/her residence rights. For example, the Immigration Office can put an end to the residence rights of a student who worked more hours than legally allowed and whose illegal work negatively influenced the results of his/her studies.

(Section 5 – Q.15a of the EMN Questionnaire)

5.2.2. Regularisation of illegal work

If a regularly staying third-country national is found illegally working, his/her **past work** may be **regularised** when his employer declares him/her to the Social Security ("Dimona") at least for the proven period of time of the labour relation.

However, the employer can still be sanctioned for not having declared the third-country national to Dimona (this declaration to the National Social Security Office is mandatory prior to the employment). Furthermore, the employer does not have the right to terminate the labour contract immediately (which may be oral, except for some special cases) just because the third-country national did not have a work permit. Eventually, the employer should pay a damage compensation for the rupture of the contract to the employee⁽⁹²⁾.

Finally, the situation can also be regularized through a **new application for a work permit** – by a new employer – and the acceptance of said application by the competent regional authority. This is only possible if the third-country national did not lose his/her residence rights (because of the illegal employment).

(Section 5 – Q.15b of the EMN Questionnaire)

5.2.3. Fines

As stipulated in article 183/1 of the Social Criminal Code⁽⁹³⁾ (as modified by the Law of 29 February 2016), a worker **can be fined** when his/her employment is not declared (through "Dimona") and thus not in conformity with the social laws. This can be the case for both regularly and irregularly staying third-country nationals. Two conditions have to be met for this administrative fine (sanction level 1) to be imposed:

- The worker carried out the employment knowingly and intentionally knowing that it was undeclared;
- A formal report was issued against the employer for this undeclared work.

This fine is not imposed for the mere fact of working without a work permit.

However, internal guidelines from the Administrative Fines Service indicate that this fine is often not imposed if the third-country national lodged a complaint to a social inspector against his/her employer himself/herself or if the third country national is a victim of trafficking in human beings or of exploitation⁽⁹⁴⁾.

92 Law of 3 July 1978 on labour contracts, Belgian Official Gazette, 22 August 1978.

93 Social Criminal Code of 6 June 2010, Belgian Official Gazette, 1 July 2010.

94 See for example: Agentschap Integratie & Inburgering, « Illegale tewerkstelling en zwartwerk : rechten en risico's voor de werknemer », <http://www.agii.be/thema/vreemdelingenrecht-internationaal-privaatrecht/arbeidskaarten-be-roepskaart/illegale-tewerkstelling-en-zwartwerk/rechten-en-risicos-voor-de-werknemer> ; and OR.C.A., "Le travail au

In practice, the above mentioned administrative sanctions have been rather rarely applied so far: since the entry into force of this sanction on the 1st of May 2016, only 30 individual cases have been reported. Up to now, only one administrative fine was imposed on a third country national by the competent administration of the Federal Public service Employment, Labour and Social Dialogue.

It is worth noting that it is not typical for labour inspection services in general to concentrate their repressive actions against the workers themselves, but rather against those who “use” or “abuse” them, that is to say their employers.

(Section 5 – Q.15c of the EMN Questionnaire)

5.2.4. Return decision, voluntary return and detention

As long as a third-country national is regularly staying on the Belgian territory, **no return decisions or administrative detention measures** are taken by the Immigration Office.

If a third-country national **loses his/her residence rights**, the Immigration Office can issue a return decision (order to leave the territory) - with a possible period for voluntary return. An entry ban can be imposed. Administrative detention is possible if the third country national is intercepted after the deadline on the order to leave the territory has passed and it is established that he/she did not follow up on his/her order to leave the territory.

(Section 5 – Q.15d and Q.15e of the EMN Questionnaire)

5.3. Outcomes for third country nationals with a temporary or permanent residence permit in another Member State

On the one hand, if the third-country national regularly resides in another EU Member State and if he/she is allowed to work there, he/she is not automatically authorized to legally work in Belgium for a Belgian employer. In order to do so, he/she would **need to obtain a residence permit in Belgium**. If he/ she does not obtain said permit, he/she is to be considered as an illegally working third-country national who irregularly resides in Belgium⁽⁹⁵⁾. The third-country national can thus be issued an order to leave the territory by the Immigration Office.

On the other hand, if the third-country national does not need a residence permit for a longer stay in Belgium as a **temporary posted worker**, he/she is acting outside of the scope of free

noir rendu punissable pour le travailleur – quelles conséquences pour les travailleurs sans papiers?, <http://orcasite.be/userfiles/file/20160602%20Le%20travail%20au%20noir%20rendu%20punissable%20pour%20le%20travailleur.pdf>.

95 The Law of 30 April 1999 on the employment of foreign workers, Belgian Official Gazette, 21 May 1999.

movement of workers in the EU, but depends on the freedom of services on behalf of his/her employer established in the other EU Member State. If he/she is a legally posted worker, he/she is allowed to work in Belgium and the work situation is considered as legal.

(Section 5 – Q.16 of the EMN Questionnaire)

5.4. Back payment of salaries, taxes and other costs

5.4.1. Back payment of salaries, taxes and social contributions by employers

Outstanding remuneration:

Employers may be liable to **pay outstanding remunerations** to third-country nationals – staying either regularly or irregularly in Belgium - who are illegally employed in the framework of a labour contract⁽⁹⁶⁾.

Regarding irregularly staying third-country nationals, the Law of 11 February 2013⁽⁹⁷⁾, which transposes the Sanctions Directive, states that when an irregularly staying third-country national is working in Belgium in the framework of a labour contract, he/ she is presumed to have worked (unless proven otherwise) for at least three months (article 7). Irregularly staying third-country nationals are thus entitled to the payment of a **salary of (at least) three months** from their (former) employers.

When the illegal employment is detected by the inspection services, **employment and wage payment should be regularized** for the (ir)regularly staying third-country national. This means that a declaration must be made to the National Social Security Office and the Tax department; and the employer must give proof of the net wage payment to the Labour Inspectorate.

To this effect, the inspectors carry out a **salary investigation**, which should be swift, in particular in the case of irregularly staying third-country nationals who will be expected to leave the country (order to leave the territory and possible detention in view of a return). During the investigation, the labour inspectors must gather all the relevant information to be able to make a calculation of the outstanding remuneration, regardless of whether the employer is willing (or not) to pay the third-country national.

The Labour Inspectorate of the Federal Public Service Employment, Labour and Social Dialogue

96 On the basis of Social Criminal Code of 6 June 2010, Belgian Official Gazette, 1 July 2010, the Law of 12 April 1965 on the protection of workers' remuneration, Belgian Official Gazette, 30 April 1965, and the Law of 5 December 1968 on collective labour agreements and Joint Committees, Belgian Official Gazette, 15 January 1969, and for irregularly staying third-country nationals, on the basis of the Law of 11 February 2013 on sanctions and measures against employers of third country nationals staying irregularly, Belgian Official Gazette, 22 February 2013.

97 Law of 11 February 2013 on sanctions and measures against employers of third country nationals staying irregularly, Belgian Official Gazette, 22 February 2013.

has given directives to its staff to make sure that the outstanding remuneration is paid immediately or at a later stage.

Three situations can occur:

1. The Labour Inspectorate tries to convince the employer - who is present - to pay the outstanding remuneration at the time of the inspection, so that the worker can immediately receive his/her wages⁽⁹⁸⁾.
2. If the employer is not present at the moment of the inspection, the Labour Inspectorate asks the employer to pay the outstanding payments via a transfer on a (foreign) bank account given by the worker when interviewed by the Labour Inspectorate or via a deposit to the Deposit and Consignment Office (Federal Public Service Finance). For irregularly staying third-country nationals who do not have a bank account⁽⁹⁹⁾, the employer is asked to pay the outstanding wages via a deposit to the Deposit and Consignment Office⁽¹⁰⁰⁾. The Labour Inspectorate will need a contact address for the irregularly staying worker, as it can send a letter to the worker in order for him/her to come back to Belgium and retrieve his/her back payments at the Deposit and Consignment Office⁽¹⁰¹⁾.
3. If the employer is not willing to pay the outstanding wages, a criminal record ("Pro Justitia") is drafted and sent to the Labour Prosecutor⁽¹⁰²⁾, who decides whether to prosecute or not. It is however worth noting that these cases are seldom prosecuted by the Labour Prosecutor.

The Labour Inspectorate also receives complaints from NGOs or Myria (the Federal Migration Centre), more particularly concerning the non-payment of wages to irregularly staying third-country nationals. For these cases, the Labour Inspectorate has concluded a special agreement with an NGO (OR.C.A) for handling the complaints of third-country nationals. The purpose of this cooperation⁽¹⁰³⁾ is to offer the foreign worker the opportunity to recover his/ wages before voluntarily returning to his/her country of origin or being removed.

In case of refusal of the regularisation of the wage payment, there are other means to obtain the payment of the wages due to a third-country national, such as joining criminal proceedings as a **"civil party"** or bringing a claim before the **labour court** (see section 5.4.1. of this report).

98 Payment in cash is normally prohibited by law, but the labour inspection has the right to judge the opportunity to accept payment in cash (as element of proof) in this exceptional case (Source: Labour Inspection).

99 Several organisations and NGOs have pointed out that it is often difficult in practice for irregularly staying third-country nationals to get a bank account in Belgium. See for example: Myria, "*Etre étranger en Belgique en 2016*", Myriadocs n°2, December 2016.

100 Law of 11 February 2013 on sanctions and measures against employers of third country nationals staying irregularly, Belgian Official Gazette, 22 February 2013.

101 This scenario can be challenging in practice (e.g. for third-country nationals issued a return decision and an entry ban), as stated by labour inspection services in reports.

102 In this scenario, there is no automatic guarantee that the third-country national will get the wages he/she is entitled to.

103 Based on a gentlemen's agreement.

Taxes and social security contributions:

When the illegal employment of (ir)regularly staying third-country nationals is detected, employers have to pay taxes and social security contributions to the State.

In cases of irregularly staying third-country nationals, the employer can be held liable for this. Article 5 of the Law of 11 February 2013 stipulates that the employer who illegally employs an irregularly staying third-country national in Belgium has to pay an amount equal to the taxes and social security contributions that he/she would have paid if the third-country national had been legally employed, including the possible arrears or possible administrative fines.

For regularly staying third-country nationals, the taxes and social security contributions can be claimed before court by the tax and social security institutions.

In cases where wages have been back-paid by the employer to an (ir)regularly staying third-country national following an injunction of the labour inspection, these amounts are declared to the Social Security Office and Tax authority via a report of the inspection services.

(Section 5 – Q.17a of the EMN Questionnaire)

5.4.2. Payment of costs of returning irregularly staying third-country nationals

As stipulated in article 13 of the Law of 30 April 1999⁽¹⁰⁴⁾ (as modified by the Law of 11 February 2013), the employer of a third-country national who irregularly resides in Belgium may have to **cover the costs of his/her forced return**, as well as a daily sum for the **costs linked to accommodation, living and health**.

This means that when an irregularly staying third-country national has been returned to his country of origin by the Immigration Office, the **expenses related to the return** (airplane tickets of the third-country national and - where appropriate - the airplane tickets of his/her police escort) and the **daily costs related to the detention** of the third-country national in a closed centre can be claimed of the employer.

(Section 5 – Q.17d of the EMN Questionnaire)

5.4.3. Regime of several liability regarding wages

Principals, contractors and subcontractors may be severally liable for the payment of the wages due to the workers by their contractors or subcontractors.

¹⁰⁴ Article 13 of the Law of 30 April 1999 on the employment of foreign workers, Belgian Official Gazette, 21 May 1999.

The law of 12 April 1965 on the protection of workers' remuneration⁽¹⁰⁵⁾ includes a chapter VI/1, which introduces different **regimes of several liability regarding wages**.

Section 1 of said chapter provides a **general regime of several liability applicable to nine sectors**: private guards, construction, agriculture, cleaning services, horticulture, electricians in building sites, woodwork, metal, meat transformation (the transport sector is suspended). This general system targets all possible partners in the chain of commercial partners: principals, contractors, and subcontractors may be severally liable for the payment of the wages due by their contractors and subcontractors. The several liability may be initiated by the worker himself before a court (which happens only exceptionally) or by the labour inspector who is competent for minimum wages. There is a possible exception for so-called "due diligence". The proceedings take place in two steps: first a notification is sent by the inspection services to the commercial partners who are determined as being responsible for the non-payment of the wages: from 14 days after this notification, the liability is applicable for a period of maximum one year. Only future wage debts are thus covered. The second step is the summon to pay sent by the inspector to the liable partner. In practice, the liable partner usually puts an end to the contractual relationship with the contractor or subcontractor or the summon will finally not be sent because a back-payment for all outstanding wages has been made by the employer under injunction (and pressure) of the labour inspector.

Section 2 provides for a **special regime for third country nationals residing irregularly in Belgium**. As explained in section 5.3.1 of this report, there is a legal presumption that at least three months' salary is due for irregularly staying third-country nationals (unless the labour inspection is able to prove longer working periods). Just as in section 1, the same steps may be taken towards any of the involved commercial partners in a chain of subcontractors or outside such a chain. The contractor (in the absence of a chain of subcontractors) and the intermediary contractor (in case of a chain of subcontractors) are severally liable for the payment of wages due by their direct subcontractor. There is a possibility for the liable partner(s) to avoid this liability when he has a written statement by the negligent employer that the latter will apply the minimum wages and not employ irregularly staying third-country nationals, and that he is aware of his legal obligations. However, the contractor or intermediary contractor in possession of such a statement will still be liable if they are aware that their direct subcontractor employs irregularly staying third-country nationals. Counterproof to the above mentioned statement can be given by the inspection services as the output of an enquiry. The inspection services' notification to the liable partner(s) will neutralize the exception of due diligence. In these cases, the contractor or intermediary contractor are severally liable for the payment of the wages linked to the work carried out from the moment they were aware of the employment of irregularly staying third-country nationals. The liability will be executed if no spontaneous wage regularisation takes place on injunction of the inspection services. In the framework of a chain of subcontractors, the contractor and intermediary contractor who are aware that their indirect subcontractor employs irregularly staying third-country nationals are severally liable for the payment of wages due to the workers by their indirect subcontractor (from the moment they were aware of the employment). Principals who are aware that their

¹⁰⁵ Law of 12 April 1965 on the protection of workers' remuneration, Belgian Official Gazette, 30 April 1965.

contractor or the direct or indirect subcontractors of their contractors employ irregularly staying third-country nationals are severally liable for the payment of wages due to the workers by the above mentioned partners (from the moment they were aware of the employment).

Section 3 provides a **special regime for wages**, but this is only valid in the construction sector and only in the context of a “direct” relationship between two contractors.

In addition to the above mentioned regimes, another regime of several liability exists in case of the illegally hiring of a worker⁽¹⁰⁶⁾: in this case the client who hires the worker is considered as the real employer and has to comply with all obligations resting on the shoulders of the one who acted as if he were an illegal temporary work agency.

In practice, labour inspectors may be confronted with situations of third-country nationals found at work who are underpaid, where the four above mentioned systems can apply, especially when the third-country national is posted from another EU Member State. In such a case, the inspector shall give priority to the liability system foreseen in section 2.

(Section 5 – Q.17b of the EMN Questionnaire)

5.5. Access to justice and claims against employers

5.5.1. Right of illegally employed third-country nationals to make a claim against their employer

Illegally employed **third-country nationals can make a claim against their employers**.

Third-country nationals can make a claim against their employer by lodging a complaint against their employer to the inspection services. The Labour Inspectorate of the Federal Public Service (FPS) Employment, Labour and Social Dialogue has created a **national contact point** especially for foreign workers: SPOC.LabourInspection@employment.belgium.be. Complaints can be addressed to: COMPLAINTS.LabourInspection@employment.belgium.be. The advantage of this system is that the Labour Inspectorate legally guarantees the **confidentiality of the complaint**. It is however worth noting that the contact point is not always very well known by third-country nationals. It is used more often by posted workers than by other third-country nationals working in Belgium.

Third-country nationals have the right to **defend their rights** before a court, which is a fundamental human right. A third-country national may bring all his/her claims concerning a labour relation, working conditions, wages etc. to the **labour court** (i.e. a civil court) as long as

¹⁰⁶ Law of 24 July 1987 on temporary work, agency work and on the supply of worker to users, Belgian Official Gazette, 20 August 1987.

his labour contract has ended since no longer than a year⁽¹⁰⁷⁾, independently of the fact if he/she is staying in Belgium or not. If the third-country national's employer is prosecuted before a **penal court** (e.g. when he has put the third-country national at work illegally, when he has underpaid the third country national, etc. and this has been detected by a labour inspector), the third-country national can declare himself/herself "civil party" in this proceeding in order to obtain damage compensation as a victim (damage can be equal to the outstanding wages or exceed this amount for other reasons like moral grief)⁽¹⁰⁸⁾.

Third-country nationals are also entitled to **legal aid**⁽¹⁰⁹⁾ ("pro-deo"), in line with the right to legal assistance guaranteed by article 23 of the Belgian Constitution. It is worth noting that the system of legal assistance has been subject to changes since September 2016. Several NGOs have expressed concern that (irregularly staying) third-country nationals might no longer be able to access legal assistance in practice⁽¹¹⁰⁾.

Furthermore, some **third parties** can also act on behalf of irregularly staying third-country nationals in legal proceedings, even without the authorisation of the third-country national or if the third-country national no longer resides in Belgium (see section 5.4.2 of this report).

(Section 5 – Q.18a and Q.18b of the EMN Questionnaire)

5.5.2. Third parties acting on behalf or in support of third country nationals

Some **third parties** are entitled to act **in legal civil proceedings on behalf of irregularly staying third-country nationals**, even without needing the authorization of the third-country national, or when the third-country national no longer resides in Belgium. This is possible as a result of the Law of 11 February 2013⁽¹¹¹⁾, transposing the Sanctions Directive. These third parties are:

- The trade unions and employers' federations recognized as partners in the National Labour Council (among other things) and those for the public sector;
- Myria- the Federal Migration Centre, an independent public body.

There are also other opportunities for third-country nationals to obtain support in the framework of legal proceedings.

107 Article 15 of the Law of 3 July 1978 on labour contracts, Belgian Official Gazette, 22 August 1978.

108 Article 1382-1383 of the Civil Code, and article 4 of the Code for criminal proceedings.

109 See Judicial Code – article 664.

110 For example, see: "Réforme de l'aide juridique: Koen Geens interpellé par des associations", 7 sur 7, 27 April 2016, <http://www.7sur7.be/7s7/fr/1502/Belgique/article/detail/2688446/2016/04/27/Reforme-de-l-aide-juridique-Koen-Geens-interpelle-par-des-associations.dhtml>

111 Article 8 of the Law of 11 February 2013 on sanctions and measures against employers of third country nationals staying irregularly, Belgian Official Gazette, 22 February 2013.

In case of **human trafficking**, third-country nationals who were recognised as victims can lean for their defence on:

- Myria, the Belgian Federal Migration Centre (it can be a “civil party” - in its own name and in the name of the victims – in cases of smuggling and trafficking in human beings)⁽¹¹²⁾;
- Three specialized centres for the reception and support of victims of trafficking: VZW Payoke (Flemish Region), Pag-asa (Brussels-Capital Region) and VZW Sürya (Walloon Region), can also be “civil parties” - in their own name or in the name of the victims of human trafficking.

In cases where a **labour related exploitation of the third-country national has been accepted as a case of discrimination** on the basis of ethnic origin or nationality, the victim can lean on Myria- the Federal Migration Centre, the social partners represented in the National Labour Council among other things, and on other organisations which aim at defending human rights, in order to act on behalf of the third-country national as a victim in criminal or civil proceedings.

Furthermore, it is also worth mentioning that labour prosecutors may start a **“class action” proceeding** when a group of workers, part of an undertaking, are victims of serious infringements committed by their employer (Law of 3 December 2006⁽¹¹³⁾). This action is based upon the proof of infringements before the labour court but does not lead to sanctions for the employer, only a statement and recognition of the employer’s fault. This is the basis for the tribunal to allow compensation to the workers. However, this proceeding is seldom used.

(Section 5 – Q.18c of the EMN Questionnaire)

5.6. Information for illegally employed third-country nationals on their rights

Official information packages of public authorities (e.g. official websites) provide information on employment and residence in Belgium to all actors – including third-country nationals - who are willing to act within the limits of the law.

But there are no specific information notes or brochures published by the Belgian authorities that focus specifically on the rights of irregularly staying and illegally working third-country nationals. **NGOs and other organisations** have however produced information materials for illegally working third-country nationals.

¹¹² In 2015, Myria instituted civil proceedings in 6 new cases (3 on trafficking, 3 on smuggling). See Myria- Federal Migration Centre, 2016 Annual Report on trafficking and smuggling of human beings: beggars in the hands of traffickers, 2016, p. 5.

¹¹³ Law of 3 December 2006 modifying various legal provisions on social criminal law, Belgian Official Gazette, 18 December 2006.

It is however worth mentioning that the Labour Inspectorate has worked in collaboration with NGOs and trade unions to produce **joint brochures**. Furthermore, another interesting example is the brochure produced at the initiative of the Federal Public Service Justice – produced in collaboration with other bodies – entitled “You have applied for asylum and you want to work?”⁽¹¹⁴⁾. See section 2.2. of this report.

(Section 5 – Q.19a of the EMN Questionnaire)

5.7. New measures regarding compensation for third-country nationals since July 2014

Since 1 October 2016, as a result of the entering into force of the Law of 23 August 2015, **the payment of wages in cash** is prohibited (a few exceptions aside decided by social partners in a collective agreement) and payment by bank transfer became the general rule. Moreover, the law stipulates that in case of a forbidden cash money transfer, the payment is legally assumed to be not done at all, so the employer not only risks a penal sanction but also risks having to pay twice.

In the case of the illegal employment of third-country nationals, this can hamper a quick settlement by the labour inspection services giving an injunction to the employer to make a back-payment (which - per definition - has to be done quickly). In practice, the labour inspection services have to be inventive and think about the third-country national's first concern and will thus facilitate any correct but swift payment (even in cash), without having to fall back on the long procedure of bank transfer via the deposit and Consignment Office of the Ministry of Finance. Such settlements are only possible if all partners agree on the spot.

(Section 5 – Q.19b of the EMN Questionnaire)

5.8. Strengths and weaknesses regarding outcomes for illegally employed third-country nationals

On the basis of information obtained from desk research, reports from relevant organisations, labour inspection services or interviews with NGOs, some strengths and weaknesses of the outcomes for illegally employed third-country nationals could be identified.

Regarding the provision of information to third-country nationals on their rights, some **cooperation** has been set up amongst public authorities and with trade unions and NGOs. An interesting example is the brochure produced at the initiative of the Federal Public Service Justice – produced in collaboration with other bodies – entitled “You have applied for asylum and you want to work?”.

114 Available at: http://fedasil.be/sites/5042.fedimbo.belgium.be/files/en_asylum_and_work.pdf

Regarding complaints and access to justice, third-country nationals have the possibility to directly **lodge a complaint** against their employer to the Labour Inspectorate of the Federal Public Service Employment, Labour and Social Dialogue. The advantage of this system is that the Labour Inspectorate legally guarantees the confidentiality of the complaint. Furthermore, third-country nationals can **defend their rights before a court** (civil and penal proceedings). Regarding the **back-payment of wages** of irregularly staying third-country nationals, there is a first humble **start of cooperation** between labour inspectorates and NGOs (like OR.C.A), which promises to show some positive results (although on a very small scale) and should be continued.

However, some challenges have also been identified. First of all, NGOs stressed that many third-country nationals are **not aware of their rights** and do not necessarily know to whom to address their complaints related to illegal work and the payment of their wages. There are various sources of information available (public bodies, but also NGOs and trade unions) but there is no single point of contact that they can address anonymously (to obtain information about the enforcement of their rights, be it by mediation, advice, intervention of labour inspection, assistance by an NGO, assistance of a lawyer in order to bring his case to court, etc.). Several NGOs – such as OR.C.A or Ciré - expressed the need⁽¹¹⁵⁾ for the creation of a central contact point focussed on the defence of the labour rights of third-country nationals, which would safeguard their anonymity and take appropriate actions.

As illegally working third-country nationals are not always aware of their rights, and as they are often afraid of the possible repercussions of lodging a complaint (e.g. in terms of their residence status), they **seldom file a complaint** to the Labour Inspectorate in practice.

Furthermore, an issue that will often arise is the **proof of the labour relation** between the employer and the third-country national. Not only the employer caught for illegally employing third-country nationals will try to avoid any sanctions and minimize his responsibility, but the worker himself, in particular if it is a third-country national, can be reluctant to cooperate with police forces or inspection services.

What's more, all the usual **legal remedies** to recover unpaid wages (and all the other labour rights not granted by the employer) at the disposal of Belgian citizens are in principle also accessible to third-country nationals. This can however prove to be challenging in practice, as pointed out by NGOs. There are only little instances in which there are "civil parties" in cases of criminal prosecution of the employer. For cases brought before civil (labour) courts, a third-country national (or the organisation that supports him) bears the full burden of proof for his claim. NGOs have also pointed out that in civil cases brought before the labour court, the worker risks being obliged to pay the costs of the court proceedings if he loses the case, which can have a dissuasive effect on bringing cases before the civil court. It is also worth noting that the procedure before the court does not provide an irregularly staying third-country national with a temporary residence permit. Third-country nationals have a right to legal assistance, but recent reforms in this regard have led NGOs to express their concern that the assistance could become

¹¹⁵ During interviews conducted in the framework of this study.

less accessible to many third-country nationals⁽¹¹⁶⁾.

Furthermore, all the labour inspection services, even if they have no competence regarding minimum wages, should report their findings of infringements regarding third-country nationals to their colleagues who are competent in the domain of wages (that is to say the Labour Inspectorate of the Federal Public Service Employment, Labour and Social Dialogue). The Labour Inspectorate can then try to obtain the payment of the outstanding remuneration to the third-country national. This requires a **particular awareness** of all enforcement services that combat social fraud and illegal work, but these enforcement services are not always equipped or trained for the protection of workers' rights.

In cases where the labour inspector does not succeed in obtaining back-payments to the benefit of the third-country national, he can **draw up a penal report** ("Pro Justitia") for the labour prosecutor. However, this does not provide any guarantee that the worker will receive his wages.

Finally, the legal regime of several liability for wages opens up greater potential for future interventions of the labour inspection services. But this would entail that - in the framework of the SIOD/SIRS - **instructions** are given to all enforcement inspectorates to not only focus on repression of employers, but also be aware of findings and elements of proof needed to claim back-payments.

5.9. Case studies on outcomes for third-country nationals

CASE STUDY 1: A third-country national residing and working irregularly

Mr. Adawe Shire, a 38 years-old carpenter from Somalia entered your (Member) State via irregular means with his wife and 2-year old daughter. They have been in the (Member) State for three years. Mr. Shire has been working without an employment contract at a construction company as a general construction worker. Now he has found a job in his profession and would like to sign a contract and apply for a legal residence permit. What happens after the labour inspectorate detected irregularities on a random control? What are the consequences for him? If Mr. Shire is not detected but he is offered a new job with a written contract can his situation be regularised?

If, during an inspection, this person is found to be working illegally and residing irregularly in Belgium, the police will be contacted and a declaration will be made to the Immigration Office. The Immigration Office will take the final decision regarding the residence status of this person. It can issue a **return decision**. An **entry ban** may be imposed. **Detention** is also possible in order to organize a forced return.

¹¹⁶ See for example: "Réforme de l'aide juridique: Koen Geens interpellé par des associations", 7 sur 7, 27 April 2016, <http://www.7sur7.be/757/fr/1502/Belgique/article/detail/2688446/2016/04/27/Reforme-de-l-aide-juridique-Koen-Geens-interpelle-par-des-associations.dhtml>.

This person's residence status cannot be **regularized** on the basis of a job offer or a work contract.

The inspection services will try to ensure that the salary of the person is paid to him by his former employer, in line with the Sanctions Directive, which means (at least) three months of salary.

(Section 5 – Q.21a of the EMN Questionnaire)

CASE STUDY 2: A third-country national on a student permit employed more hours than allowed

Ms. Svitlana Ivanenko, a student holding Ukrainian citizenship, aged 22, moved to your (Member) State one year ago. Svitlana is enrolled in a two year master's programme at university. She holds a residence permit for students. For the past six months she was also employed for 10 hours per week at a local café. During some months of the academic year as well as the summer break at university, Svitlana started to work longer hours at the café, leading to work of almost 45 hours per week during term time for 3 months without changes in her part-time student contract. What happens after the labour inspectorate detected that Svitlana was working 40 hours per week? Please specify the maximum hours per week that students are allowed to work in your (Member) State.

In Belgium, a student can apply for a work permit type C, which will allow him/her to work part-time as a student for 20 hours a week during the school year. During the school holidays, a student can work without a work permit.

If this student works more hours than she is legally allowed to, and this is discovered by the inspection services, this will generally **not have an impact on her residence rights**.

However, in exceptional cases, the Immigration Office can decide to **withdraw her residence rights** (e.g. when the illegal work negatively impacted the outcome of her studies). This is examined on a **case by case basis**. If she loses her residence rights, the Immigration Office can issue an **order to leave the territory** (with possible period for voluntary return).

Her **work permit** can also be withdrawn. The Belgian Regions, who are competent for issuing work permits, have a certain right of appreciation in this regard.

(Section 5 – Q.21b of the EMN Questionnaire)

CASE STUDY 3: A third-country national who resided and worked regularly, but whose permit has expired

Jiao Bao, a 33 years old web designer from China arrived in your Member State two years ago through a temporary residence permit arranged through an IT company that employed him. She lost her job and found a job in a local bar for which she was not authorised by her residence permit. After four months of working in the local bar, she applies for a job at another IT company and receives a job offer. However, in the meantime she was detected by the labour inspectorate of working irregularly in the local bar. What happens after the detection taking into consideration that she holds a job offer?

If, during an inspection, this person is discovered while working and if she is working outside the conditions of her stay (in this case her work permit type B will mention the employment at an IT-company), the Belgian Regions, who are competent for delivering the work permits, can decide to **withdraw her work permit**. But this is not automatic, it is decided on a **case by case basis**. The Regions have a certain amount of appreciation in this matter. They can, for instance, regularize the work situation of this person on the basis of the job offer, or they can effectively withdraw the work permit. In that case, the Immigration Office will make a decision regarding the residence status of this person. The Immigration Office can withdraw the residence permit and issue an **order to leave the territory**.

(Section 5 – Q.21c of the EMN Questionnaire)

CASE STUDY 4: A third-country national present as a tourist

Marija Bogdanovic, a Serbian citizen, aged 45 has entered your (Member) State as a tourist one month ago. Due to visa liberalisation for the Western Balkans countries, Marija has the right to remain in your (Member) State for up to 90 days per six-month period as a tourist without requiring a visa¹¹⁷. During her stay in your (Member) State, Marija has been working for a family she met through friends as a housekeeper and babysitter. She has been living with the family and has been paid cash for her work. After two months the family asks Marija to stay and work for them full time. They offered to grant her a work contract and asked her to apply for a residence permit. Marija intends to apply for a residence in permit in your (Member) State during the 90 days period she enjoys visa liberalization. However, Marija is detected by the authorities in your (Member) State before applying for the permit. What would be the consequence for Marija?

¹¹⁷ Based on the visa free travel decision adopted by the EU Member States on 30 November 2009: http://europa.eu/rapid/press-release_IP-09-1852_en.htm?locale=fr

If, during an inspection, this person is found to be working, the police services will be contacted and the Immigration Office will be notified. As a tourist, she is not allowed to carry out any remunerated activities in Belgium. The Immigration Office takes the final decision regarding the residence status of this person: this can be an **order to leave the territory**, or the decision can be a return decision with **detention**, so that the Immigration Office can organize the return to the country of origin.

(Section 5 – Q.21d of the EMN Questionnaire)

CASE STUDY 5: A third-country national seasonal worker

Mr. Karim Harrak, a 25 year old from Morocco entered your (Member) State as a seasonal worker for strawberry picking. He has been residing on a seasonal worker permit and is required to leave your (Member) State after the legally allowed duration for stay expired¹¹⁸. The contract with his current employer is valid for six months. However, after his contract expired he remained in your (Member) State and took on another job in a hotel. He thus remained in your (Member) State longer than the legally allowed duration. After a few months in the second job, he applied again as a seasonal worker for strawberry picking. However, it is detected that he has overstayed in the country. What would be the consequences for Karim?

Please note that the Seasonal Workers Directive has not yet been transposed into Belgian law.

If this person is caught during an inspection by the inspection services in the hotel, the police services will be contacted and the Immigration Office will be notified. The Immigration Office takes the final decision regarding the residence status of this person: this can be an **order to leave the territory**, or the decision can be a return decision with **detention**, so that the Immigration Office can organize the return to the country of origin. An **entry ban** can also be issued.

He will not receive a work permit or a residence permit while staying irregularly in Belgium.

If he had applied for a new job as a seasonal worker, and it was determined that his new application was done from Belgium (without this person having been caught during an inspection), it would be refused on this basis. He would have to return to his country of origin and lodge his application from there.

(Section 5 – Q.21e of the EMN Questionnaire)

¹¹⁸ Based on Directive 2014/36/EU – Seasonal workers – allowing third-country nationals to reside in a Member State between five months and nine months in any 12-month period. The permit is renewable. IE and the UK are not participating in this Directive.

CASE STUDY 6: A third-country national working for an international trading company

Mrs. Awa Diop arrived from Senegal in your country illegally a year ago and has been working for an international trading company during that time irregularly ever since. For the last five months she has not been paid her salary by her employer. She decides to sue the company and to give up her false identity which the employer was aware of. What would be the consequence for Mrs. Diop?

This person can lodge a complaint against her employer. She has a right to receive her salary and can claim this. She can bring her employer to court.

If she is detected during an inspection, regardless of whether she lodged a complaint or not, the police and the Immigration Office will be contacted. The Immigration Office takes the final decision regarding the residence status of this person. This can be **an order to leave the territory**, or the decision can be a return decision with **detention**, so that the Immigration Office can organize the return. An **entry ban** can also be imposed.

(Section 5 – Q.21f of the EMN Questionnaire)

Additional comments about the case studies:

In each of the cases described above, the situation of the person should be verified in order to check if there is trafficking in human beings (THB) or economic exploitation. If clear indicators of THB are present, the Prosecutor has to be informed. In cases of THB, the Prosecutor has to decide about the status of the victim (see procedure described in section 5.1.4 of this report).

Conclusions

The fight against social fraud and illegal employment (including of third-country nationals) is **high on the political agenda** in Belgium, as it can have many negative consequences (such as the disturbance of the labour market or the economy). Many actions have been undertaken over the last decades to combat these phenomena. A **solid structural framework** has been set up for the identification and sanctioning of social fraud and illegal employment. The Social Criminal Code – introduced in 2010 – centralized the fragmented legislation of social criminal law. On the level of enforcement of social criminal law, there are numerous policy organs, collaborative connections and supervising services, who aspire to a common vision and a coordinated approach to combat social fraud and illegal employment.

Different **information and prevention measures** targeting employers and/or employees are implemented by public authorities in Belgium, although they do not always specifically focus on the illegal employment of third-country nationals. These measures include information support (e.g. general information on the legal obligations linked to residence and employment of third-country nationals in Belgium published by public bodies on their websites); protocols of cooperation and plans for social competition signed with the social partners; or the obligation for the employer to notify the authorities when employing a third-country national. NGOs and other organisations – as well as trade unions – also provide information to illegally working third-country nationals. There are thus various sources of information available to employers and employees, and the different prevention actions means that employers are often aware of the high sanctions they can face in case they illegally employ third-country nationals (which can have a dissuasive effect).

Different public authorities are involved in the **identification of illegal employment**, at the federal and regional level. The cooperation between the different authorities involved is regulated by the Social Criminal Code and is managed and steered by the federal coordination body, the Social Information and Investigation Service. Overall, the activities of the inspection services are characterized by a high level of cooperation, which includes the sharing of findings, strong communication channels, joint inspections, shared action plans for controls and access to common databases. Labour inspection services mostly find infringements (including the illegal employment of third-country nationals) by doing inspections in the field. Inspectors may carry out controls in several places and use different tools and methods, such as common checklists or standard interrogation forms. However, the identification of illegally working third-country nationals remains somewhat underexploited, which is linked to different factors (including the

difficulty to prove the labour relationship between the employer and the third-country nationals or the current emphasis put on the detection of illegally working posted workers).

All the infringements of social law, their descriptions, the **possible sanctions** and the modalities of the sanctions process are set out in the Social Criminal Code. The Code provides for four different levels of violations of employment and social security provisions, each with a corresponding sanction (from an administrative fine to a prison sentence and/or a criminal fine). Employers found to be illegally employing third-country nationals face a sanction level 3 or 4. The prosecution policy of the public prosecutors is streamlined and targets the most serious forms of fraud and exploitation of employees, among which third-country nationals. The criminal sanctions that employers face are high and should have a dissuasive effect. However, criminal proceedings can take place over long periods of time (which means that the criminal activities can change form) and infringements by certain offenders keep occurring as the mere risk of financial sanctions is overshadowed by potential profits.

Outcomes for third-country nationals (regularly or irregularly staying in Belgium) found to be working illegally can be diverse, in terms of their residence status, return decisions, entry ban, detention, possibility for regularisation of the work situation or fines. Employers may be requested to pay outstanding remunerations to illegally employed third-country nationals. They also have to pay the taxes and social security contributions to the State. Principals, contractors and subcontractors may also be severally liable to pay the wages due by their commercial partners. Employers of irregularly staying third-country nationals may also have to cover the costs of the third-country nationals' forced return, as well as a daily sum for the costs linked to accommodation, living and health. Regarding access to justice and the facilitation of complaints, illegally working third-country nationals can lodge a complaint against their employers. They can defend their rights before a court (civil and penal), and they are entitled to legal assistance. Furthermore, regarding irregularly staying third-country nationals in particular, certain third parties may act in legal proceedings on their behalf. However, there are certain challenges associated with outcomes for illegally working third-country nationals, such as the fact that third-country nationals are not always aware of their rights; the fact that they are often reluctant to lodge a complaint or cooperate with the Police or the Inspection services; or the fact that access to legal remedies can be difficult in practice.

Statistical Annex

1. Inspections and sanctions for employers

Table A.1: Number of convictions for illegally employing third-country nationals in Belgium (2014-2016).

Convictions for employers	2014 (without Gent)	2015	2016
A1: Penal court (art. 175 §1 of the Social Criminal Code = <i>irregularly</i> staying and illegally working)	248	296	336
A2: Penal court (art 175 §2 of the Social Criminal Code = <i>regularly</i> staying and working without a labour permit)	28	26	66
A3: Penal court (art. 433 quinquies of the Criminal Code = human trafficking / economic exploitation)	31	23	42
B1: Administrative fines (in case of non-penal prosecution) at the FEDERAL level – in case of <i>irregularly</i> staying third-country nationals*	779 files (provisionally) i.e. 61% of the infringements**	593 files (provisionally) i.e. 54% of the infringements**	321 files (provisionally) i.e. 33% of the infringements **
B2: Administrative fines (in case of non-penal prosecution) at the FEDERAL level – in cases of <i>regularly</i> staying third-country nationals with no work permit*	215 files (provisionally) i.e. 61% of the infringements**	155 files (provisionally) i.e. 45% of the infringements**	93 files (provisionally) i.e. 29% of the infringements **

*Only the cases to be treated are mentioned (the ones who are not prosecuted in penal courts) – there is an important delay in treatment because of the time spent by public prosecutors to decide and communicate whether they will prosecute or not. As an average, +/- 50 % of the files to be treated by the administration leads to an administrative fine (situation on 10.02.2017 – work in progress).

** Total number of infringements reported for administrative treatment: 2014 (B1: 1265 and B2:352); 2015 (B1: 1098 and B2: 344); 2016 (B1: 968 and B2: 320).

Source: Offices of Labour Prosecutors of Belgium.

Table A.2: Type and number of sanctions for employers in Belgium (2014-2016).

Type of sanction for employers	2014	2015	2016
Imprisonment	36*	38	42
Penal fine	228*	260	325
Administrative fine (federal level)	994* (provisionally)	748 (provisionally)	414 (provisionally)
Confiscation of equipment and others (e.g. deposits on bank accounts)	5*	10	18
Claims to recover the costs of the return of the third-country nationals from the employer - initiated by the Immigration Office	Not available	Not available	182

*Without Ghent.

Sources: Offices of Labour Prosecutors of Belgium, the Research Service of the Federal Public Service Employment, Labour and Social Dialogue, and the Immigration Office.

2. Scale and profiles of illegal employment of third-country nationals

Table A.3: Number of identified illegally employed third-country nationals in Belgium (2014-2016).

Illegally employed third-country nationals	2014	2015	2016	Methodological notes
Number of cases of identified <i>irregularly</i> staying and illegally employed third-country nationals	769	679	605	Source: Collection of statistics of the SIOD/SIRS.
Number of cases of identified <i>regularly</i> staying and illegally employed third-country nationals	161	231	231	Source: Collection of statistics of the SIOD/SIRS.

Table A.4: Profiles of illegally employed third-country nationals in Belgium in 2015.

Illegally employed third-country nationals	Main nationalities	Age disaggregation	Sex disaggregation	Methodological notes
Number of cases of identified <i>irregularly</i> staying and illegally employed third-country nationals	1. Morocco 2. Brazil 3. Pakistan 4. Angola 5. Macedonia 6. Cape Verde 7. Guinea – Bissau 8. Sao Tome	Not available	Not available	Source: Collection of statistics of the SIOD/SIRS.
Number of cases of identified <i>regularly</i> staying and illegally employed third-country nationals	1. Pakistan 2. Brazil 3. Morocco 4. Algeria 5. Turkey 6. Cape Verde	Not available	Not available	Source: Collection of statistics of the SIOD/SIRS.

3. Outcomes for third-country nationals

Table A.5: Outcomes for identified illegally employed third-country nationals in Belgium (2014-2016).

Illegally employed third-country nationals	2014	2015	2016	Methodological notes
Number of residence and/or work permits issued to detected <i>irregularly</i> staying and illegally working third-country nationals	N/A	N/A	N/A	
Number of residence and/or work permits issued to detected <i>regularly</i> staying and illegally working third-country nationals	Not available	Not available	Not available	
Number of illegally employed third-country nationals who were granted a period for voluntary return	Not available	Not available	Not available	

Number of illegally employed third-country nationals who were given an order to leave the country following a labour inspection	614	720	680	Source: Immigration Office
Number of illegally employed third-country nationals who were detained to organize the return following an inspection (no information available whether the return effectively took place)	308	282	334	Source: Immigration Office
Number of new people assisted by one of the 3 specialized centres in order to obtain protection as victim of THB	156 ⁽¹¹⁹⁾	135 ⁽¹²⁰⁾	Not available yet	Source: Myria and three centres (Payoke, Pag-asa and Surya).
Number of decisions obliging employers to pay back payments/ amount equal to taxes and social security contributions	Not available	Not available	Not available	

Table A.6: Types and number of sanctions for illegally employed third-country nationals in Belgium (2014-2016).

Type of sanctions available for illegally employed third-country nationals (e.g. fines, imprisonment, etc)	2014	2015	2016	Methodological notes
Administrative sanction level 1 for third-country nationals whose work was not declared to DIMONA	Not applicable	Not applicable	1	Source: Research Service of the Federal Public Service Employment, Labour and Social Dialogue (administrative fines).

119 <http://www.myria.be/files/Mensenhandel-verslag-2015-deel3.pdf>

120 <http://www.myria.be/files/RATEH-2016-NL-D4.pdf>

Table A.7: Number of complaints lodged against employers for illegally employing third-country nationals in Belgium (2014-2016).

Number of complaints	2014	2015	2016
Complaints lodged by a third-country national to the Labour Inspectorate	4	1	5
Complaints lodged by a trade union to the Labour Inspectorate	2	3	1
Complaints lodged by an employers association to the Labour Inspectorate	10	1	—
Complaints lodged by an NGO (OR.C.A.) to the Labour Inspectorate	17	32	16

Source: Labour Inspection of the Federal Public Service Employment, Labour and Social Dialogue

Table A.8: Descriptive overview of the profile of employers, including affected sectors of labour market, in Belgium.

Profiles of employers: Employers are mostly small scaled SMEs, private households, employers in the sex industry, independent construction renovators. Employers often have foreign nationalities or are of foreign origin.

Labour market segments affected include: horticulture, construction, hotels and restaurants, etc.

Table A.9: Additional statistics and general observations on the availability of data and methodology of available data in Belgium.

In most cases, the databases used in this study do not allow to make a distinction on the basis of gender, age or nationality.

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