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

National contribution from the Netherlands

Final Version, 19 February 2024

1. INTRODUCTION

This is the national contribution of the European Migration Network (EMN) National Contact Point (NCP) for the Netherlands to the 2023 EMN study 'Illegal employment of third-country nationals: 2017-2022 situation analysis'. This report reflects the (changes to) legislation, policies and measures regarding the illegal employment of third-country nationals, as well as good practices and challenges in the period of 2017 – 2022. Other NCPs in EMN Member and Observer Countries have produced similar reports on this topic, based on developments within the respective Member or Observer Country. The national contributions have been prepared on the basis of a common EMN template with study specifications to ensure, to the extent possible, comparability between the Member States.

Disclaimer on the definition and interpretation of the contribution of the Netherlands:

In the Netherlands, the Ministry of Social Affairs and Employment is responsible for the labour market access of foreign nationals within the framework of the Foreign Nationals Employment Act (*Wet arbeid vreemdelingen*, Wav). When reporting data which is compiled by the Ministry of Social Affairs and Employment or its agency the Netherlands Labour Authority (*Nederlandse Arbeidsinspectie*, NLA), the data concerns foreign nationals, as stipulated by the Wav. In essence, a foreign national could be, for instance, a German or Greek citizen. However, in our answers we report data and findings on foreign nationals when these nationals are third-country nationals.

The Ministry of Justice and Security is responsible for legislation and policy regarding the residence of aliens in the Netherlands. Almost all legislation for aliens is designed to accommodate the residence of third-country nationals. There is subtle difference in terminology when considering the legislation which is relevant when reporting on illegal employment in the Netherlands. In this template, we speak of foreign nationals when we link our answer to the Foreign Nationals Employment Act. We speak of third-country nationals when we link our answer to the Aliens Act 2000 (*Vreemdelingenwet*, Vw).

Moreover, in the Netherlands foreign nationals employees are never fined or detained on the ground of working illegally for an employer because the foreign employee is never perceived as an offender in such cases. Following a violation of the Foreign Nationals Employment Act, the NLA only fines or sanctions the employer. These are administrative fines and sanctions.

Finally a few words should be dedicated to the definitions used. In the Netherlands, labour exploitation (*arbeidsuitbuiting*) is regarded as a form of human trafficking, as mentioned by Article 273f of the Dutch Penal Code (*Wetboek van Strafrecht*). Not every report of labour exploitation and/or registration of a victim of human trafficking leads to a criminal investigation. There are possibly too few indications to continue the investigation, there is no complex dependency relationship between the presumed victim and perpetrator or during the criminal investigation itself further prosecution is refrained from. Here we speak of employees who are not strictly exploited as mentioned by Article 273f, but who are confronted with underpayment, long working days, fines, bullying on the job, (sexual) intimidation, and as such are 'severely

disadvantaged' (*ernstig benadeelden*). We use the terms labour exploitation and severely disadvantaged where appropriate.

2. TOP-LINE FACTSHEET

Public debate, Policies and Legal Framework

During the research period the prevention of labour exploitation of third country nationals was a policy priority of the Dutch government. From 2017 to 2022, there have been numerous public and policy debates surrounding this issue. The first is the obstacles faced by the Netherlands Labour Authority (NLA) in their efforts to combat this problem. The second is the violations of the Foreign Nationals Employment Act (Wav) that have been observed. The third is the exploitation of workers in the delivery services. During this same period several changes have been made to laws and policies. Such as; the Amendment of the Foreign Nationals Employment Act (Wav) and discontinuation of the Asian Catering Industry residence scheme (*Regeling Aziatische horeca*). The Dutch government has also implemented the 'Together against Human Trafficking' Program, which demonstrates their commitment to combating this issue at a national level.

Prevention and Identification

In an effort to combat the labour exploitation of third country nationals, the Netherlands has taken significant further steps towards prevention. Starting in 2022, the National Labour Inspectorate (NLA) introduced a monitor specifically focused on labour exploitation and severe disadvantage.¹ The NLA employs various techniques and sources to gather information for this monitor. Recent findings from the monitor shed light on the sectors most susceptible to labour exploitation. These sectors include the business service sector, hospitality sector, construction sector, work in public households, and the parcel delivery sector. Although no major operational changes have been made in the methods used to identify illegal employment of third-country nationals, by closely monitoring trends and developments, the Netherlands is better equipped to combat labour exploitation and severe disadvantage.² The NLA does this by multi-year plans based on risk analyses.

Sanctions and Outcomes

The Netherlands has implemented amendments to legislation on sanctions for employers who illegally employ foreign nationals since 2017. There have been revisions to the lower regulations, primarily focusing on the proportionality of the penalties imposed. Organisations provide detailed information to third-country nationals working in the Netherlands, which includes details on the rights and responsibilities of third-country nationals working in the Netherlands.

¹ For the definitions of labour exploitation and severe disadvantage see the disclaimer in the introduction.

² For the definitions of labour exploitation and severe disadvantage see the disclaimer in the introduction.

Challenges and Good Practices

This study has identified various challenges in the Netherlands concerning the prevention and identification of labour exploitation and severe disadvantage³ of third-country nationals. As well as challenges with regards to the sanctioning of employers who illegally employ foreign nationals. Such as problems with identifying third-country nationals who have their official residency/work permit in another EU Member State and are (sometimes illegally) working in the Netherlands. In addition to that, it is also difficult to identify these vulnerable groups when they are working in environments where oversight is difficult. The limited capacity (budget and personnel) of the involved organisations was also noted as a challenge.

This study likewise identified several good practices. First, the increased and improved cooperation between the organizations involved in these processes were noted as a positive. Within organisations, there are central points where signals of illegal employment are registered and compiled. Second, the increased efforts to inform employees and employers about their rights and duties was also noted as a good practice. On top of that, the simplification of judicial procedures and the introduction of proportionality to the fines were also mentioned as improvements.

3. CONCEPT NOTE

BACKGROUND AND RATIONALE FOR THE STUDY

The European Commission's 2007 Communication 'Stepping up the fight against undeclared work' states that any form of illegal employment of nationals or third-country nationals in the EU Member States decreases tax revenues, undermines the financing of social security systems, as well as distorts fair competition among firms.⁴ In addition to this negative economic impact, employers who pursue illegal employment practices provide their employees with limited information on minimum standards in working conditions, employment regulations and their rights. Such illegal employment is often done in precarious conditions, which makes employees more susceptible to exploitation.

Preventing illegal employment is a policy objective and priority for the EU and its Member States. This is because the possibility of working in the EU without the required legal status is becoming one of the key drivers of irregular migration into the Union.⁵ For the purposes of this template, in the EU context, illegal employment

³ For the definitions of labour exploitation and severe disadvantage see the disclaimer in the introduction.

⁴ European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Stepping up the fight against undeclared work, 2007, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0628&from=EN>, last accessed 8 March 2023.

⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU action plan against migrant smuggling (2021-2025), 2021, https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-591_en_0.pdf, last accessed 14 April 2023, p. 20.

covers⁶ both the illegal employment of third-country nationals who are irregularly staying on the territory of an EU Member State and of legally residing third-country nationals who are working outside the conditions of their residence permit and/or work permit.

Illegal employment is a complex phenomenon affecting several domains, including migration, employment, social policies, fiscal policy, and respect for individuals' rights. While the scale and occurrence of illegal employment differs between private households, small and medium businesses, and large companies, and across economic sectors, illegal employment provides grounds for those employers willing to cut labour costs and circumvent rules to take advantage of workers ready to undertake low-skilled, low-paid jobs in labour-intensive sectors and ready to work in difficult and often precarious conditions.⁷ It is important to note that these workers often have no alternative or better options, making it a necessity rather than a choice. As a result, the successful prevention of illegal employment is at the intersection between employment, migration and human rights matters.

Nevertheless, the EU competencies in employment and migration policies defined in the Treaty on the Functioning of the European Union (TFEU)⁸ differ. Member States are primarily responsible for employment policy, while migration policy initiatives, including prevention of irregular migration, is a competence that is shared between the EU and its Member States. In 2009, to tackle illegal employment and to increase Member States' coordination, the European Commission introduced the Employers' Sanctions Directive.⁹ The Directive was designed to provide Member States with rules to step up action against the illegal employment of third-country nationals who are illegally staying. The measures cover prevention, detection, and sanctions, and seek to deter employers from engaging in illegal employment, as well as seeking to increase protection of irregularly staying third-country nationals against exploitative employers.

Since then, the need for joint action against illegal employment has been reiterated in the 2015 European Agenda on Migration¹⁰ and the European Commission's 2020 Communication on a New Pact on Migration and Asylum.¹¹ Both policy documents, as

⁶ EMN Glossary, Version 8, https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/illegal-employment_en, last accessed 8 March 2023.

⁷ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, 2021, https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592_en_0.pdf, last accessed 14 April 2023, p. 20.

⁸ Treaty on the Functioning of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>, last accessed 8 March 2023.

⁹ Council of the EU, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2009, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0052>, last accessed 8 March 2023.

¹⁰ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, a European Agenda on Migration, A European Agenda on Migration, 2015, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0240&from=EN>, last accessed 8 March 2023.

¹¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020,

well as the European Commission's 2021 Communication on the Employers' Sanctions Directive,¹² continue to emphasise the necessity to strengthen the effectiveness of the Employers' Sanctions Directive and evaluate the need for future action. Furthermore, the EMN study on the Illegal Employment of Third-Country Nationals in the EU (2017) concluded that action against the illegal employment of third-country nationals needs to increase by introducing and implementing protective measures and risk assessments to improve the identification of undeclared work.¹³ Therefore, in terms of existing policy evaluations, a study providing systematic up-to-date analysis of measures, obstacles, and good practices to tackle illegal employment of third-country nationals in EMN Member States and Observer Countries is relevant.

Additionally, the identification of illegal employment has become ever more relevant in the context of the war in Ukraine. According to data provided by UNHCR¹⁴, since the war began in Ukraine, more than 8.2 million Ukrainian nationals have been recorded as arriving in Europe, while approximately 5 million have been registered under the Temporary Protection Directive in the EU. Many working-age adults are estimated to be working during their stay as beneficiaries of temporary protection, as they have the right to access the labour market of Member States. Nevertheless, the possibility for displaced Ukrainians to take part in illegal employment activities exists. The European Commission's 2022 Communication on Guidance for access to the labour market, vocational education and training and adult learning of people fleeing Russia's war of aggression against Ukraine emphasizes the need to ensure that beneficiaries of temporary protection are not exploited and do not partake in undeclared work activities.¹⁵ Furthermore, research conducted in this field, claims that in the EU public employment services lack necessary data to account for the informal employment of Ukrainians fleeing the war.¹⁶ Similar conclusions can be drawn from the survey conducted by the European Union Agency for Fundamental Rights (FRA) showing that many displaced Ukrainian persons may be recruited for informal employment. As a result, it is also relevant to gather information from EMN Member States and Observer Countries on whether the situation for Ukrainians who fled the war in Ukraine has led to a specific impact or consequences on the illegal employment of third-country nationals.

https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF, last accessed 8 March 2023.

¹² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, 2021, https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592_en_0.pdf, last accessed 8 March 2023.

¹³ EMN study on the Illegal Employment of Third-Country Nationals in the EU (2017), https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf, last accessed 8 March 2023, p. 45

¹⁴ UNHCR, Operational Data Portal, <https://data.unhcr.org/en/situations/ukraine>, last accessed 8 March 2023.

¹⁵ European Commission, Communication from the Commission on Guidance for access to the labour market, vocational education and training and adult learning of people fleeing Russia's war of aggression against Ukraine 2022/C 233/01, 2022, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0616\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0616(01)), last accessed 25 May 2023, p. 3.

¹⁶ GLOBSEC, Between Vague Return Prospects and Limited Employment Opportunities: The Challenges of Ukrainian Refugees' Labour Market Integration, 28 February 2023, <https://www.globsec.org/sites/default/files/2023-02/Policy%20Brief%20-%20Between%20Vague%20Return%20Prospects.pdf>, last accessed 25 May 2025, p. 3.

STUDY AIMS AND OBJECTIVES

The study provides a descriptive overview of the illegal employment situation in the EU, as well as in some EMN Observer Countries. It will equip national and EU policymakers with a better understanding of the approaches adopted by EMN Member and Observer Countries concerning different aspects of the illegal employment of third-country nationals.¹⁷ In addition, the research will provide insights on the magnitude of illegal employment of third-country nationals in the EU and the sectors affected by it. Finally, the latest examples of good practices in illegal employment prevention will be provided to policymakers. As such, the study has the following aims:

- Provide an overview of the situation of illegal employment of third-country nationals in EMN Member and Observer Countries since 2017 and an update on the 2017 EMN study on the Illegal Employment of Third-Country Nationals in the EU.
- Gather insights about new developments regarding the institutional and legislative framework to fight the illegal employment of third-country nationals in EMN Member and Observer Countries and possible areas of concern in this field since 2017.
- Identify new measures used in EMN Member and Observer Countries to detect cases of illegal employment of third-country nationals and protect the rights of illegally employed third-country nationals since 2017.
- Share the latest good practices on the prevention of illegal employment of third-country nationals since 2017.

SCOPE OF THE STUDY

The scope of this EMN Study is the illegal employment of third-country nationals¹⁸ who are either legally staying or irregularly staying in the territory of an EU Member State.

The study gives an overview of the diverse responses of EMN Member Countries and Observer Countries to counter the illegal employment of third-country nationals. With this in mind, the focus in this study is on illegal employment practices undertaken by employers and third-country nationals and the target group to be analysed is third-country nationals who engage in illegal employment.

The analysis considers illegal employment of third-country nationals through three key categories. First, a third-country national legally residing in the country but illegally employed in undeclared work. Second, a third-country national legally residing in the country working outside the conditions of their residence/immigration permit. Third, a third-country national irregularly staying in the country and working.

The possibility for employers to take advantage of workers or to exploit them applies to all these three categories. Nevertheless, the level of vulnerability for third-country nationals increases the more an employee is in an irregular situation, i.e., in terms of staying and working in the country. The study also accounts for cases of illegal 'self-

¹⁷ EMN Observer Countries to explain and address the situation concerning the illegal employment of relevant groups at the national level.

¹⁸ Where it is difficult in EU Member States to differentiate between third-country and EU nationals, please provide an explanation and focus on third-country nationals where possible.

employment', specifically platform work, undertaken by third-country nationals and this can fall under all three categories. Beneficiaries of temporary protection are included in the study, and this category is one example of a group falling under the first category. International protection applicants are excluded from the scope of this study, due to the diverging regulatory framework under which they access Member States' labour markets.

PRIMARY RESEARCH QUESTIONS

The study asks the following primary research questions, with reference to the reporting period 2017-2022:

- What new national legal and policy changes on illegal employment of third-country nationals have been introduced in EMN Member and Observer Countries since 2017?
- What new preventive measures and incentives are in place in the EMN Member or Observer Countries designed to mitigate the illegal employment of third-country nationals since 2017?
- Have EMN Member or Observer Countries introduced any new initiatives to identify the illegal employment of third-country nationals since 2017?
- What new sanctions for employers are in place in the EMN Member or Observer Countries, and what are the factors affecting their implementation since 2017?
- What are the possible outcomes and/or sanctions introduced by EMN Member or Observer Countries for identified illegally employed third-country nationals since 2017?

If an EMN Member Country or Observer Country has implemented changes designed to account for the Ukrainian refugee situation, it should briefly provide information on these developments in the appropriate sections of the common template.

DEFINITIONS

The following key terms are used in the common template. The definitions are taken from the EMN Asylum and Migration Glossary, unless specified otherwise in footnotes:

- **Illegal employment:** Economic activity carried out in violation of provisions set by legislation.
- **Illegal employment of a legally staying third-country national:** Employment of a legally staying third-country national working outside the conditions of their residence permit and / or without a permission to work which is subject to each EU Member State's national law.
- **Illegal employment of an illegally staying third-country national:** Employment of an illegally staying third-country national.
- **Irregular stay:** The presence on the territory of an EU Member State of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence in that EU Member State.

- **Informal economy:** All economic activities by workers and economic units that are -in law or in practice -not covered or insufficiently covered by formal arrangements.
- **Platform work:** any work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service.¹⁹

¹⁹ European Commission, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work, COM (2021) 762, Article 2(2), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0762>, last accessed 6 July 2023.

4. NATIONAL CONTRIBUTION FROM THE NETHERLANDS

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

SECTION 1: NATIONAL LEGAL AND POLICY FRAMEWORK CHANGES ON ILLEGAL EMPLOYMENT IN THE EMN MEMBER OR OBSERVER COUNTRY²⁰

Q1 Is the prevention of illegal employment of third-country nationals a national priority in your EMN Member or Observer Country?²¹ Yes/No/Other. Please explain your answer.

Yes, during the research period this was a policy priority in the Netherlands. In the coalition agreement of the Rutte III government (Oct. 2017 - Jan. 2022) prevention of illegal employment and labour exploitation was incorporated as a priority.²² The Rutte III government placed a strong emphasis on enhancing efforts against human trafficking, which also includes efforts against labour exploitation and illegal employment. This led to the establishment of the interdepartmental program "Together against Human Trafficking" in 2018. The government aimed to achieve a comprehensive approach to halt perpetrators and reduce the number of human trafficking victims in the Netherlands, while also improving support for the victims.²³ During the subsequent government Rutte IV (Jan 2022 - now) combating illegal employment and labour exploitation remained a policy priority. The program "Together against Human Trafficking" was therefore continued.²⁴

Q2 Is there a current or has there been any recent public and/or policy debate (since 2017) regarding illegal employment of third-country nationals in your country (i.e., in Parliament, the media, etc.)? Yes/No. If yes, please elaborate on the main issues of the debate and indicate the reasons of its emergence.

²⁰ Since the EMN study on the Illegal Employment of Third-Country Nationals in the EU (2017), https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf, last accessed 8 March 2023.

²¹ Hereinafter, 'your country.'

²² Government of the Netherlands (Rijksoverheid), 'Regeerakkoord 2017: 'Vertrouwen in de toekomst'', 4. <https://www.rijksoverheid.nl/documenten/publicaties/2017/10/10/regeerakkoord-2017-vertrouwen-in-de-toekomst>, last accessed on 11 September 2023.

²³ *Parliamentary Papers II*, 2018-2019, 28 638, nr. 164.

²⁴ Government of the Netherlands (Rijksoverheid), 'Regeerakkoord 2022: 'Omzien naar elkaar, vooruitkijken naar de toekomst'', 22. <https://www.rijksoverheid.nl/regering/coalitieakkoord-omzien-naar-elkaar-vooruitkijken-naar-de-toekomst>, last accessed on 11 September 2023.

Between 2017 and 2022, there have been both public and policy debates regarding illegal employment of third-country nationals in the Netherlands, focusing on four main issues: obstacles encountered by the Netherlands Labour Authority (*Nederlandse Arbeidsinspectie* - NLA) to act on abuses by temporary work agencies; rising reports of violations of the Foreign Nationals Employment Act (*Wet arbeid vreemdelingen* - *Wav*); illegal employment in delivery services; and changes in legislation and policy to combat labour exploitation and illegal employment.

In 2018, unemployment in the Netherlands reached a record low - only 3.4 per cent of the labour force was without a job that year.²⁵ However, labour market abuses grew, the NLA 2018 annual report showed.²⁶ This was particularly the case in hotel cleaning and industries like catering, retail and transportation, where the NLA encountered unpaid work, assault and illegal employment.²⁷ The exploitation is also evident from the number of complaints the NLA receives annually about temporary work agencies. Fines worth 2.2 million euros were imposed on temporary work agencies in 2019, a million more than in 2018. The increase is particularly in relation to illegal employment.

This led to news coverage concerning why it is so difficult for the NLA to act on abuses by temporary work agencies. Of more than four thousand complaints received by the NLA in 2018 and 2019, more than eighty percent were not investigated at all, according to the national newspaper *Volkskrant*.²⁸ According to the NLA, supervision of the industry is hampered by its volatility. Every year, some three to four thousand temporary work agencies are added and almost as many disappear. Moreover, budget cuts affected NLA inspections. This changed when the new coalition decided to strengthen enforcement and grant an additional amount of money to the NLA from €13 million in 2018 rising to €50 million every year from 2022 on, of which 30 million will be used for the domain of fair working conditions.²⁹

In 2019, a debate emerged in the media concerning the increase of reports of violations of the Foreign Nationals Employment Act and the risk of exploitation for illegally employed third-country nationals.³⁰ Whereas the NLA received 1182 reports of violations in 2015, 1817 violations were reported in 2018. A report means that an employer is suspected of employing someone from outside the European Union

²⁵ NRC, 'Aantal misstanden op arbeidsmarkt neemt toe', <https://www.nrc.nl/nieuws/2019/05/08/aantal-misstanden-op-arbeidsmarkt-neemt-toe-a3959439>, last accessed on 24 August 2023 (in Dutch).

²⁶ Ibid.

²⁷ *Trouw*, 'Onderbetaling, illegale arbeid en uitbuiting: er gaat veel mis in de schoonmaaksector, zegt de Inspectie SZW', <https://www.trouw.nl/economie/onderbetaling-illegale-arbeid-en-uitbuiting-er-gaat-veel-mis-in-de-schoonmaaksector-zegt-de-inspectie-szw~b838228f/>, last accessed on 24 August 2023 (in Dutch).

²⁸ *De Volkskrant*, 'Inspectie treedt nauwelijks op tegen malafide uitzendbureaus: 'het is dweilen met de kraan open'', <https://www.volkskrant.nl/nieuws-achtergrond/inspectie-treedt-nauwelijks-op-tegen-malafide-uitzendbureaus-het-is-dweilen-met-de-kraan-open~ba29f5cb/>, last accessed on 30 August 2023 (in Dutch).

²⁹ Letter from the Minister of Social Affairs and Employment of 30 October 2018, 2018-0000173114.

³⁰ *NOS-Nieuwsuur*, 'Meer meldingen rond arbeidsmigranten: 'Cowboybedrijven omzeilen de wet'', <https://nos.nl/nieuwsuur/artikel/2305154-meer-meldingen-rond-arbeidsmigranten-cowboybedrijven-omzeilen-de-wet>, last accessed on 24 August 2023 (in Dutch).

without the required work permit.³¹ As a response, the Ministry of Social Affairs and Employment (*Ministerie van Sociale Zaken en Werkgelegenheid* – SZW) addressed in their 'integrated approach' of 2019 that third-country nationals working in the Netherlands are increasingly victims of abuses related to working and living conditions.³²

More recently, the media reports on the increase of illegal employment in sectors such as meal, flash and parcel delivery. It has proved difficult for the NLA to intervene in these sectors. This also led to parliamentary questions.

- In 2022, investigation by national newspaper NRC revealed that platform companies Uber Eats and Deliveroo are employing third-country nationals through loopholes.³³ Third-country nationals, from countries such as Albania, Bangladesh and Brazil, easily circumvent the platforms' digital checks by paying legal, registered delivery drivers to work under their names. In addition, the delivery drivers make improper use of student visas to work and live in the Netherlands. The Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst* - IND) previously informed NRC that it received signals in 2021 about students particularly from Bangladesh who dropped out of higher education early and registered "in relatively large numbers as self-employed with a sole proprietorship".
- In 2022 the national newspaper Volkskrant reported that the NLA was concerned about the impetuous growth of flash delivery services in the Netherlands.³⁴ Flash delivery drivers are said to be at risk of excessive work pressure, illegal employment, heavy physical strain and collisions.³⁵ Some are also hired as (bogus) self-employed workers, which means they are not entitled to continued payment of wages in case of illness and are not insured in case of disability and unemployment. Following parliamentary questions, the Minister of Infrastructure and Water Management stressed that the NLA is paying particular attention to the labour risks associated with meal and flash delivery such as illegal employment and underpayment.³⁶
- In the case of parcel delivery, the NLA found abuses such as illegal employment, incomplete records, excessive working hours, undeclared work, use of forged driving licenses and underpayment.³⁷ Parcel delivery companies work with complicated constructions with subcontractors, which can lead to rogue labour constructions with undocumented workers.³⁸ As part of a chain

³¹ Ibid.

³² Letter from the Minister of Social Affairs and Employment and the Minister of the Interior and Kingdom Relations of 20 December 2019, 2019-0000167768.

³³ NRC, 'Fietskoeriers Uber en Deliveroo werken zonder papieren', <https://www.nrc.nl/nieuws/2022/09/15/fietskoeriers-uber-en-deliveroo-werken-zonder-papieren-2-a4142077>, last accessed on 12 September 2023.

³⁴ *De Volkskrant*, 'Inspectie verontrust over snelle groei flitsbezorgers: werkomstandigheden 'verre van volwassen'', <https://www.volkskrant.nl/nieuws-achtergrond/inspectie-treedt-nauwelijks-op-tegen-malafide-uitzendbureaus-het-is-dweilen-met-de-kraan-open~ba29f5cb/>, last accessed on 24 August 2023 (in Dutch).

³⁵ Ibid.

³⁶ Letter from the Minister of Infrastructure and Water Management of 11 March 2022, 2022Z03338.

³⁷ *FD.nl*, 'Inspectie ziet verbeteringen bij pakketbezorgers', <https://fd.nl/bedrijfsleven/1462138/inspectie-ziet-verbeteringen-bij-pakketbezorgers>, last accessed on 24 August 2023 (in Dutch).

³⁸ *Parliamentary Papers II*, 2022-2023, 29 502, no.185.

approach for fairer parcel services, the NLA carried out checks and inspections at parcel delivery companies between 2017 and 2019. As a result of this chain approach, 60% of subcontractors report that their employers have become stricter in their control measures.³⁹ Yet, it remained a recurring debate in the media and Parliament⁴⁰, while the Belgian police has carried out inspection raids at PostNL sites in Belgium in 2022. PostNL is one of the largest postal and parcel services of the Netherlands and the Benelux. At the PostNL sites in Belgium, people were arrested suspected of trafficking in human beings, forgery and forming a criminal organisation, among other things.⁴¹

In 2021, Parliament discussed amendments to the Wav, aiming to balance restrictive admission policies with protecting foreign workers' rights and combating illegal employment.⁴² Some political parties debated the potential impact on labour migration to the Netherlands.⁴³ The legislative changes are further described in Q3.

Q3 What are the major changes to: a) law, b) policy and c) practice since 2017 regarding illegal employment of third-country nationals in your country?

a) During the research period 2017-2022 the following changes in laws concerning third-country nationals working in the Netherlands took place;

■ **Amendment of the Foreign Nationals Employment Act (Wav): enhancing the position of third-country nationals who work in the Netherlands**

The Foreign Nationals Employment Act (Wav) was amended as of January 1, 2022. This change extends the maximum duration of the employment permit and the combined residence and work permit from one to three years. The amendment also includes measures to strengthen the worker's position, such as the requirement for monthly wage payments via bank transfer. This ensures that migrant workers have more direct access to their earnings, enabling better oversight by the NLA. The goal of this legal change is to make the system more flexible and future-proof while improving the situation of migrant workers.⁴⁴ This change was partly driven by the coalition agreement of the Rutte III government in 2017.⁴⁵

³⁹ Nederlandse Arbeidsinspectie (NLA), 'Effectonderzoek Ketenaanpak Pakketdiensten', 2022, <https://www.nlarbeidsinspectie.nl/publicaties/rapporten/2022/12/21/effectonderzoek-ketenaanpak-pakketdiensten>, last accessed on 3 October 2023.

⁴⁰ *Parliamentary Papers II*, 2021-2022, 2949.

⁴¹ NOS, 'Arrestaties bij nieuwe invallen PostNL België in groot fraudeonderzoek', <https://nos.nl/artikel/2422944-arrestaties-bij-nieuwe-invallen-postnl-belgie-in-groot-fraudeonderzoek>, last accessed on 10 October 2023 (in Dutch).

⁴² Ministry of Social Affairs and Employment, 'Wetswijziging van de Wet arbeid vreemdelingen', <https://open.overheid.nl/Details/ronl-2abf76a1-1d2f-452a-bd96-97976f17894e/1?hit=554&text=illegale%20tewerkstelling&sort=date-asc&count=20&page=28#panel-gegevens>, last accessed on 24 August 2023.

⁴³ Letter from the Minister of Social Affairs and Employment of 14 April 2021, 2021-0000054099.

⁴⁴ Letter from the Minister of Social Affairs and Employment of 14 December 2020, 2020-0000120392.

⁴⁵ Government of the Netherlands (Rijksoverheid), 'Regeerakkoord 2017: 'Vertrouwen in de toekomst'', <https://www.rijksoverheid.nl/documenten/publicaties/2017/10/10/regeerakkoord-2017-vertrouwen-in-de-toekomst>, last accessed on 11 September 2023.

■ **Discontinuation the Asian Catering Industry scheme (*Regeling Aziatische horeca*)**

The scheme for the Asian catering industry has been definitively discontinued. Since January 1, 2022, the scheme had already been suspended for new cases. This decision was made by the Council of Ministers upon the proposal of the Minister of Social Affairs and Employment. The scheme allowed Asian restaurants in the Netherlands to more easily employ specialized chefs from outside the European Economic Area (EEA). The decision to definitively discontinue the scheme was influenced by a report from the NLA on employers in the Asian catering industry. The report highlighted that approximately half of the inspected hospitality businesses were in violation of regulations. Some employers were suspected of labour exploitation, human trafficking, employment of undocumented individuals, or other criminal offenses. However, the discontinuation of the scheme does not mean that the sector can no longer bring personnel from outside the EU to the Netherlands. Employers can apply for a combined residence and work permit (GWA) based on the general rules outlined in the Foreign Nationals Employment Act (Wav).⁴⁶

■ **Amendment to the Au Pair Scheme (*Verblijfsvergunning au pair*)**

The Au Pair Scheme was amended as of September 30, 2022. The change aims to ensure that the scheme is used for its intended purpose in the future. The amendment includes additional requirements for third-country nationals who wish to work as au pairs in the Netherlands. The au pair must be unmarried and cannot have (foster) children. Additionally, an existing condition has been adjusted: according to the new regulation, the au pair cannot be older than 25 years at the time of application. Previously, the age limit was 30 years.⁴⁷ There were indications that many au pairs were required to work more than 30 hours per week and perform heavy household tasks. Moreover, au pairs often find themselves in a dependent position or come to the Netherlands primarily to earn money for family in their home country. This does not align with the purpose of the Au Pair Scheme to promote cultural exchange. The policy change will be evaluated, and the results will be shared in 2024.⁴⁸

b) During the research period 2018-2022 the following policies were enacted or continued to combat or monitor the labour exploitation of third-country nationals;

■ **Implementation of the 'Together against Human Trafficking' Program**

The focus in the research period has been to combat trafficking in human beings through the "Together against Human Trafficking" program (see Q1). In addition to the 2 million euros previously allocated to the Public Prosecution Service (*Openbaar Ministerie* – OM) and the police, there was a significant intensification of efforts against the trafficking of human beings outlined in the coalition agreement of 2017. This coalition agreement allocates additional resources for the accommodation of victims of the trafficking in human beings (2 million euros). Furthermore, 50 million euros was additionally allocated to

⁴⁶ Letter from the Minister of Social Affairs and Employment, 18 November 2022, 2022-0000235529.

⁴⁷ *Government Gazette (Staatscourant)*, 2022, nr. 8628.

⁴⁸ Immigratie- en Naturalisatiedienst (IND), 'Au-pairs', <https://ind.nl/nl/over-ons/achtergrondartikelen/au-pairs>, last accessed on 11 September 2023.

the NLA from 2022 on, of which 30 million euros is aimed at fair working conditions, including the combat of labour exploitation and severe disadvantage.⁴⁹ On top of that, a portion of the 291 million euros designated extra for the police was outlined to be used for, among other things, additional police liaisons for trafficking in human beings.⁵⁰

■ **Monitor labour exploitation and severe disadvantage**

To strengthen the approach to labour exploitation as a form of trafficking in human beings, the NLA published a report on labour exploitation and severe disadvantage on July 7 2022. This monitor is based on reports and insights from 2020 and 2021.⁵¹ Based on the national dataset used for the monitors, the NLA makes data per region available to its partners. In this manner the NLA has improved the availability of data to its partners, which makes sure better follow-up action can be taken.

Additionally, a regional pilot (East Brabant pilot) was launched to develop and implement a regional monitor for labour exploitation. This initiative was driven by the Victim Monitor Human Trafficking 2016-2020 published by the National Rapporteur, which emphasized the importance of enhancing the approach to labour exploitation. The goal of implementing (regional) monitors for labour exploitation is to gather information about vulnerable sectors and locations where potential victims of labour exploitation may be found, as well as collecting concrete data about the victim population and their backgrounds.⁵²

c) The following changes in practices regarding the labour exploitation and illegal employment of third-country nationals took place;

■ **Inspection visits to recognised sponsors by the IND**

As of January 2018, the Immigration and Naturalisation Service has started inspection visits of recognised sponsors. A recognised sponsor is an organisation, such as an employer, a research or educational institution, or an au pair agency, that has an interest in the arrival of an employee, researcher, student, or au pair from outside the European Union (EU). Every week, inspectors of the IND Enforcement and Supervision Team (HTO) visit a number of recognised sponsors to check whether all conditions and requirements are met correctly. In the case that the IND observes breaches, this may lead to a warning or an administrative fine. In the case of very serious malpractice or breach, it may be decided to revoke recognised sponsorship or the employee's, researcher's, student's or au pair's residence permit. In addition to these inspection visits, the IND participates in joint inspections with the NLA, where

⁴⁹ For the definitions of labour exploitation and severe disadvantage see the disclaimer in the introduction.

⁵⁰ *Parliamentary Papers II*, 2018-2019, 28 638, nr. 164.

⁵¹ NLA, 'Monitor arbeidsuitbuiting en ernstige benadeling 2020-2021', <https://www.rijksoverheid.nl/documenten/kamerstukken/2022/07/07/monitor-arbeidsuitbuiting-en-ernstige-benadeling>, last accessed on 11 September 2023.

⁵² *Parliamentary Papers II*, 2021-2022, 28638/31015, nr. 206.

the latter additionally checks for compliance with the Foreign Nationals Employment Act.⁵³

■ **Systematizing and professionalizing the detection of labour exploitation**

Since 2019, the NLA has been systematizing and professionalizing the detection of labour exploitation. This includes the ambition to strengthen the NLA's information position and share this knowledge more broadly. The first edition of the Labour Exploitation and Severe Disadvantage Monitor in 2022 (see Q3b) is a part of this effort. The NLA makes the insights from this report public to contribute to the collective knowledge position of stakeholders such as NGOs, municipalities, and other government agencies.⁵⁴

■ **Launch of the workinginnl.nl platform**

The website Workinnl.nl, provided by the Ministry of Social Affairs and Employment since November 2020, offers mobile workers an overview, informs them, and guides them through their rights and responsibilities when working and living in the Netherlands. As the platform provides information in various languages, workers can inform themselves about their right. The provision of such information can prevent and combat labour exploitation.⁵⁵

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

a) Planned future changes in law are:

Modernisation of Article 273f: Article 273f of the Criminal Code, which criminalises labour exploitation, is expanded to include a broader scope of labour exploitation. In this broader scope severe disadvantage⁵⁶ may be included. This is important because the current scope of the criminalisation of human trafficking is perceived as too limited for an effective approach to labour exploitation⁵⁷

b) Planned future changes in policies concerning the labour exploitation of third-country nationals:

Regulating the parcel delivery sector: In a letter from the Minister of Economic affairs and Climate policy of May 23 2023, future changes to the parcel delivery sector

⁵³ EMN Netherlands, '2018 Annual Review', p. 17, https://www.emnnetherlands.nl/sites/default/files/2019-07/EMN_Jaaroverzicht2018_eng.pdf, last accessed on 11 October 2023.

⁵⁴ NLA, 'Monitor arbeidsuitbuiting en ernstige benadeling 2020-2021', <https://www.rijksoverheid.nl/documenten/kamerstukken/2022/07/07/monitor-arbeidsuitbuiting-en-ernstige-benadeling>, last accessed on 11 September 2023.

⁵⁵ Government of the Netherlands (Rijksoverheid), 'Geen tweederangsburgers. Aanbevelingen om misstanden bij arbeidsmigranten in Nederland tegen te gaan', 2020, p. 34, <https://www.rijksoverheid.nl/documenten/rapporten/2020/10/30/tweede-advies-aanjaagteam-bescherming-arbeidsmigranten>, last accessed on 11 October 2023.

⁵⁶ For the definitions of labour exploitation and severe disadvantage see the disclaimer in the introduction.

⁵⁷ NLA, 'Meerjarenplan 2023-2026', <https://www.nlarbeidsinspectie.nl/publicaties/jaarplannen/2022/11/25/meerjarenplan-2023-2026>, last accessed on 11 October 2023.

were announced. This letter followed the NLA's report⁵⁸ on labour exploitation within the parcel delivery sector. The report emphasises that the research findings underscore the importance of labour market reforms. In relation to the labour market as a whole, a Policy Outline was sent to Dutch Parliament in the summer of 2022, addressing the promotion of sustainable employment relationships and the regulation of flexible labour, including working as or with self-employed individuals. These measures are of a general nature and therefore also encompass the sector of parcel service providers.⁵⁹

⁵⁸ NLA, 'Effectonderzoek Ketenaanpak Pakketdiensten', 2022, <https://www.nlarbeidsinspectie.nl/publicaties/rapporten/2022/12/21/effectonderzoek-ketenaanpak-pakketdiensten>, last accessed on 3 October 2023.

⁵⁹ *Parliamentary Papers II*, 2022-2023, 29 502 nr.185.

SECTION 2: PREVENTION MEASURES INTRODUCED

When applicable, take into consideration the Ukrainian refugee situation in your country since the beginning of the war in Ukraine, if this has led to a specific impact / consequences on the illegal employment of third-country nationals in your country.

Q5 Does your country monitor specific economic sectors regarding the prevention of illegal employment of third-country nationals? Yes/No. If yes, please indicate specific sectors targeted (e.g., the construction, agriculture and horticulture, housework/cleaning, hospitality, etc.). If no, please elaborate.

No, the NLA does not monitor specific sectors. However they do create multi-year programs and annual plans based on comprehensive inspection-wide risk analyses. (see Q6). When certain sectors are found to have a high that average occurrence of labour exploitation the NLA takes note of this and the organisation reports on trends. In 2022 the NLA published a monitor on labour exploitation and severe disadvantage in 2020 and 2021, and in 2023 the subsequent monitor about 2022 will be published.⁶⁰ The aim of the monitor is to provide insights into trends and developments in the nature and extent of labour exploitation in the Netherlands. The NLA accomplished this by conducting an analysis of various data sources, including internal data, desk research, and information from the Expertise Centre on Human Trafficking and Smuggling (EMM).⁶¹ The monitor from the NLA fulfils the intention to build a strong information position and share insights that can contribute to guidance at the strategic, tactical, and operational levels.⁶²

The monitor from the NLA concerning the period 2020-2021 identified various sectors that had a high occurrence of labour exploitation and severe disadvantage⁶³ for migrant workers, including third-country nationals;

- **The business service sector:** The business services sector accounted for eighteen percent of reports of labour exploitation and thirty-two percent of reports of severe disadvantage in 2022 in the Netherlands. The majority of reports within the business services sector concern temporary employment agencies or labour mediation. A smaller number of reports within the business services sector were related to companies in the cleaning industry. In almost a third of the investigations where severe disadvantage has been established, staffing agencies are involved. The staffing sector itself facilitates various other industries. Nearly half of the severe disadvantage investigations concern temporary workers in the industrial labour sector.⁶⁴

⁶⁰ For the definitions of labour exploitation and severe disadvantage see the disclaimer in the introduction.

⁶¹ The Expertise Centre for Human Trafficking and Smuggling (EMM) collects information, knowledge, and experience related to human trafficking and human smuggling. EMM provides support to law enforcement agencies with this information. See: <https://www.rijksoverheid.nl/contact/contactgids/expertisecentrum-mensenhandel-en-mensensmokkel-emm>.

⁶² NLA, 'Monitor arbeidsuitbuiting en ernstige benadeling 2020-2021', p. 7, <https://www.rijksoverheid.nl/documenten/kamerstukken/2022/07/07/monitor-arbeidsuitbuiting-en-ernstige-benadeling>, last accessed on 11 September 2023.

⁶³ For the definitions of labour exploitation and severe disadvantage see the disclaimer in the introduction.

⁶⁴ Ibid., p. 24.

- **Hospitality sector:** In 2020 and 2021, over twenty percent of the reports of labour exploitation were related to the hospitality sector. These reports of labour exploitation exclusively concerned restaurant businesses. Similarly, over twenty percent of the reports of severe disadvantage were related to the hospitality sector. Three-quarters of these reports were centered around restaurants. Both the majority of reports of labour exploitation and severe disadvantage within the hospitality sector pertained to businesses in the Asian catering industry. In some cases the severely disadvantaged individuals were employed based on a combined residence and work permit, which could be applied for by the employer for qualified chefs. The investigations indicated that the permit conditions were not met. Not only were the workers performing tasks other than those specified in the permit, but there were also often long working hours, underpayment, and a payroll administration that was not in order concerning the severely disadvantaged individuals.⁶⁵ Identifying the occurrence of labour exploitation in this sector led to the discontinuation of the Asian cooks residence scheme 2022 (see Q3).
- **Construction sector:** One sector that stands out compared to previous years is the construction sector. About eleven percent of the total number of reports of labour exploitation and thirty-six percent of the number of reports of severe disadvantage in 2020-2021 were related to businesses in the construction industry. In four out of the six concluded investigations of severe disadvantage, there is a case of cross-border service provision. This involves more than thirty severely disadvantaged individuals who were employed in the Netherlands through the intermediary of a Polish or Lithuanian staffing agency, originating from Russia, Belarus, Ukraine, and Georgia. From the aforementioned investigations, it is evident that the severely disadvantaged individuals are recruited in their country of origin or in Poland or Lithuania. This is often initiated by the workers themselves, through acquaintances, or through businesses established there. The journey is often organised by the employer.⁶⁶
- **Work in private households:** In 2020 and 2021 thirteen reports of labour exploitation have also been taken into consideration involving work within private households, making it often invisible. This allows perpetrators to easily remain under the radar. In 2020 and 2021, three such investigations were concluded, one concerning labour exploitation of au pairs and two regarding severe disadvantage in 24-hour care work and undocumented domestic work.⁶⁷ The NLA also published a separate report on the occurrence of labour exploitation within this sector.⁶⁸ The identification of the occurrence of labour exploitation in this sector led to the amendment of the Au Pair Scheme in 2022 (see Q3).
- **Parcel delivery sector:** Between 2017 and 2019, the NLA conducted checks and inspections at parcel service providers. During these inspections, numerous violations were identified, including: employees without work permits (illegal employment), incomplete record-keeping, excessive working hours, informal employment (unreported work), working while receiving benefits (benefit fraud), use of forged driver's licenses, unpaid payroll taxes and contributions,

⁶⁵ Ibid.

⁶⁶ Ibid., p. 25.

⁶⁷ Ibid.

⁶⁸ NLA, 'Verkenning naar arbeidsuitbuiting en ernstige benadeling in domestic work', 2021, <https://www.nlarbeidsinspectie.nl/publicaties/rapporten/2021/09/16/verkenning-naar-arbeidsuitbuiting-en-ernstige-benadeling-in-domestic-work>, last accessed on 11 October 2023.

and operating under the name and accreditation of previously dissolved companies. The identified violations prompted the initiation of a project with the aim of ensuring that individuals working in the parcel sector are paid fairly and in accordance with applicable regulations, and that no illegal labour or abuse of benefits occurs through a coordinated approach. The project was carried out in 2020 and 2021. The approach adopted by the NLA can be described as "putting pressure on the chain" in its entirety, involving inspections at depot transportation and parcel transportation facilities, as well as discussions held at (corporate) management levels with the four major parcel service providers. These discussions were focused on implementing structural control measures in their operations. The NLA will continue to focus on this sector, including through (re)inspections to assess whether the measures implemented indeed result in fairer work conditions.⁶⁹ This may also lead to stricter policies in the future, which can impact this sector (see Q4).

Q6 Has your country carried out new risk assessments to identify sectors of activity in which the illegal employment of third-country nationals is most concentrated since 2017? Yes/No. If yes, please provide information on 1) methods and tools used; 2) authorities involved and 3) how the results of the risk assessments are used in practice (e.g. to target inspections). If no, please elaborate.

Yes, The NLA continues to work with multi-year programs and annual plans based on comprehensive inspection-wide risk analyses.

1) The principle behind this is that inspections are primarily directed towards employers with the highest risk of non-compliance on the laws of the labour market. During the annual risk analysis, all risks within the scope of inspection are comparably assessed, resulting in the identification of risk themes. For the Multi-Year Program 2019-2022, 17 risk themes were defined. Each risk theme is assigned a score for likelihood and impact. Likelihood represents the probability "that a certain person experiences harm due to the occurrence of a risk." And 'impact' indicates the type of harm experienced when one is affected by a risk.⁷⁰

In the Multi-Year Plan 2019-2022, labour exploitation and illegal labour were identified as a high-priority risk theme's. Based on the risk analysis, labour exploitation was ranked first out of seventeen risk themes and the illegal labour theme was ranked third. The labour exploitation and illegal labour risk theme is addressed within various theme-based and sector-specific programs.⁷¹ The risk analysis leads to targeted inspections of companies with the highest likelihood of non-compliance with laws and regulations.

⁶⁹ NLA, 'Effectonderzoek Ketenaanpak Pakketdiensten', 2022, p. 2-6, <https://www.nlarbeidsinspectie.nl/publicaties/rapporten/2022/12/21/effectonderzoek-ketenaanpak-pakketdiensten>, last accessed on 3 October 2023.

⁷⁰ NLA, 'Meerjarenplan 2019 – 2022 van de Inspectie SZW', <https://www.nlarbeidsinspectie.nl/publicaties/jaarplannen/2018/11/15/meerjarenplan-2019-2022>, last accessed on 11 October 2023.

⁷¹ Ibid.

The monitor labour exploitation 2020-2021 from the NLA has analysed the methods employed by offenders and employers to establish situations of labour exploitation or severe disadvantage⁷². For the description of these methods, the Barrier Model of Labour Exploitation has been utilised. The barrier model is a tool that illustrates the criminal business process followed to carry out labour exploitation (also applicable to severe disadvantage). It also highlights the barriers that can be erected to disrupt the operations of the offenders. This barrier model consists of seven steps: recruitment, entry, housing, identity, attachment, work and services (labour), and financial gain.⁷³

2) The NLA conducts the risk assessment, however the NLA collaborates with various organisations in addressing labour exploitation and severe disadvantage. At the governance level, it is represented in the Taskforce Human Trafficking, and there are (bilateral) discussions with the Functional Public Prosecution Service (OM), policy directorates, and the National Rapporteur on Human Trafficking and Sexual Violence against Children. Since 2018, the NLA has also been one of the partners in the (interdepartmental) Program 'Together against Human Trafficking'. Additionally, the NLA is one of the partners in the Human Trafficking Field Lab (MFL), an initiative of the Public Prosecution Service and the National Police to develop a new, more effective approach to combat human trafficking in collaboration with other (governmental) organizations and researchers.⁷⁴

3) An important place is also reserved for the National Steering Committee on Intervention Teams (LSI), in which the NLA also cooperates with organizations such as the Tax and Customs Administration (*Belastingdienst*), IND, National Employees Insurance Agency (UWV), Social Insurance Bank (SVB), the police and the Public Prosecution Service (OM). In the LSI context, the NLA works together at the national or local level to tackle abuses in the social and fiscal domain on a project-by-project basis.⁷⁵

Q7 What are the profiles of employers (i.e., type of enterprise: small, medium, large; type of industry/sector) that have been found to have engaged in illegal employment schemes of third-country nationals in your country? Please provide an overview.

In general there are some risk factors associated with employers, research shows that labour exploitation and severe disadvantage⁷⁶ primarily occur in sectors that employ

⁷² For the definitions of labour exploitation and severe disadvantage see the disclaimer in the introduction.

⁷³ NLA, 'Monitor arbeidsuitbuiting en ernstige benadeling 2020-2021', p. 32, <https://www.rijksoverheid.nl/documenten/kamerstukken/2022/07/07/monitor-arbeidsuitbuiting-en-ernstige-benadeling>, last accessed on 11 September 2023.

⁷⁴ Ibid., p. 33.

⁷⁵ NLA, 'Meerjarenplan 2019 – 2022 van de Inspectie SZW', <https://www.nlarbeidsinspectie.nl/publicaties/jaarplannen/2018/11/15/meerjarenplan-2019-2022>, last accessed on 11 October 2023

⁷⁶ For the definitions of labour exploitation and severe disadvantage see the disclaimer in the introduction.

unskilled and low-skilled labour. This often involves dirty, hazardous work and/or humiliating situations in which workers find themselves. These are the jobs for which few or no Dutch labourers are sought or available. It occurs that individuals who live and sleep at the workplace, reside with their employer, or are housed at a different location by their employer are dependent on their employer for both work and accommodation. Sometimes, they are not given a free choice regarding where and under what conditions they wish to live. Additionally, an isolated living environment and limited access to groceries can further increase their dependence on the employer.⁷⁷ At the moment, we are not able to provide a detailed profile of employers, including information on sectors/industries, as our policy experts indicated further analysis would be required.

Q8 What measures and/or incentives are in place to

- a) prevent employers from engaging in the illegal employment of third-country nationals
- b) prevent third-country nationals from becoming illegally employed?

For example, awareness raising campaigns, reviews of sectors excluded from employment permits/shortage occupation lists. Please identify developments introduced by national authorities since 2017 and indicate if they target the employer or the third-country national, or both.

a) Not many changes have taken place since 2017 with the preventative measures (except for fines, see Section 5). The following measures are in place (and were already in place before 2017) to prevent employers from engaging in the illegal employment of third-country nationals; if an employer wants to hire a third-country national, they will need to contact the authorities because they are responsible for the application. If the employee does not have a valid residence permit, a work permit will be denied. In cases of illegal employment, the employer can be subject to a sanction, namely an administrative fine.⁷⁸

Under Dutch laws and regulations, which were already in place in 2017, the employer has an obligation to provide information and an obligation to keep and retain records on the foreign national. Employers must notify the IND of changes that have consequences for the residence permit. For example, if there are any changes regarding the work activities or the residence status of the third-country national during their stay in the Netherlands, the employer must report these changes, under penalty of a fine. This can be the case if the employee starts performing different tasks than those for which the work permit was granted or if the residence permit has expired.⁷⁹

⁷⁷ NLA, 'Monitor arbeidsuitbuiting en ernstige benadeling 2020-2021', p. 17, <https://www.rijksoverheid.nl/documenten/kamerstukken/2022/07/07/monitor-arbeidsuitbuiting-en-ernstige-benadeling>, last accessed on 11 September 2023.

⁷⁸ EMN NL contribution, Illegal employment of Third-Country Nationals in the EU (2017), 22-26.

⁷⁹ EMN NL contribution, Illegal employment of Third-Country Nationals in the EU (2017), 22-26.

For employers, general information is available on the websites of the following governmental bodies:

- Ministry of Social Affairs and Employment:
<https://www.rijksoverheid.nl/ministeries/ministerie-van-sociale-zaken-en-werkgelegenheid>.
- Netherlands Labour Authority: In general the NLA provides information for the employers who do not know the rules or cannot apply the rules. For them, the NLA deploys preventive instruments such as education, self-inspection tools and consultation with industry associations. Examples of this are; an Explanation of the Foreign Nationals Employment Act (*Wet Arbeid Vreemdelingen*, Wav) for employers and foreign workers and a self-inspection tool for employers, including those related to foreign workers on the payroll:
<https://www.nlarbeidsinspectie.nl/>.
- Immigration and Naturalisation Service: explanation of the administrative steps for both employees and employers in the residence procedure:<https://ind.nl/en>.

b) There is, and already was before 2017, information available for third-country nationals to prevent them from being illegally employed in the Netherlands (see also Q24). The website of the IND provides updated information about the rights and obligations of third-country nationals in the Netherlands, including the obligation to provide information on changing (working) conditions. (<https://ind.nl/en>).

A new platform was also launched named [workinginnl.nl](https://www.workinnl.nl) (see Q3c, Q24). This platform also provides third-country nationals with information about their rights while working in the Netherlands. This platform is available in various languages;
<https://www.workinnl.nl>

In 2023 (outside the research period), Fairwork, an NGO sponsored by the Dutch government, published two flyers informing illegally employed third-country nationals of their rights (see Q24).

Q9 What 1) challenges and 2) good practices can be identified in your country in prevention of illegal employment of third-country nationals?

Please briefly describe the situation since 2017 and please indicate the source or who has identified the challenges and good practices.

Various challenges and good practices have been identified with regards to the prevention of labour exploitation in the Netherlands since 2017.

1) Challenges

- According to the NLA and the IND, challenges may be identified in cases where a third-country national is allowed to work in a specific EU Member State, but starts working (sometimes illegally) in another Member State. In this case, prevention is difficult to pursue. Likewise, in the case of posted workers this is

difficult. There are signals that in some cases employment agencies (*uitzendbureaus*) tend to exploit the vulnerability of third-country nationals.⁸⁰

- According to the IND, the following challenges could be identified:
 - Third-country nationals with study permits coming who are also performing paid labour form a vulnerable group: prevention of illegal employment / labour exploitation of the group has proved to be a challenge.⁸¹
 - The recognised sponsor system for highly skilled personnel might produce backdrops, as executive government bodies do rely on the sponsor, and have limited contact with the third-country national.⁸²
 - The prevention of labour exploitation of au-pairs might also be challenging. There is a IND reporting point for abuse of au pairs, but little use is made of this reporting point, as it is presumed au pairs are afraid that reporting labour conditions will affect their residence permit/status.⁸³ Reporting, however, does not affect their residence permit/status.⁸³ Besides au pairs, the au-pair agencies have a duty to report possible exploitation to the IND. However, the Research and Documentation Centre (*Wetenschappelijk Onderzoek- en Documentatiecentrum*, WODC) suggested in a report that host families have a stronger position than the au pair due to the fact that au pair agencies are funded by the host families.⁸⁴

2) Good practices

- The IND identifies the following good practices:
 - The IND actively provides information to third-country nationals on the rights and conditions linked to their specific residence permit and their employment status (*arbeidsmarktaantekening*).
 - Students, for example, receive info by the IND and their educational institution that they are only allowed to work a maximum of 16 hours per week.
 - In case of a single permit, the third-country national is communicated that labour tasks may only be performed for the sponsor-employer involved in the application process. This information is disseminated during the application process.⁸⁵
 - Au-pairs receive information in order to provide labour exploitation.⁸⁶
- The NLA deems the communicative approach by the responsible ministries successful. Information dissemination focuses on the prevention of labour exploitation of workers, rather than stressing the role of employers.

⁸⁰ Information provided by the Netherlands Labour Authority (NLA) on 3 October 2023 and the Immigration and Naturalisation Service (IND) on 5 October 2023.

⁸¹ Information provided by the IND on 5 October 2023.

⁸² Information provided by the IND on 5 October 2023.

⁸³ Information provided by the IND on 5 October 2023.

⁸⁴ WODC, 'Au pairs in Nederland: Culturele uitwisseling of arbeidsmigratie?', 2014, p. 82, https://www.eerstekamer.nl/eu/overig/20140401/wodc_rapport_au_pairs_in_nederland/document, last accessed on 25 October 2023.

⁸⁵ Information provided by the IND on 13 October 2023.

⁸⁶ Information provided by the IND on 5 October 2023.

Nonetheless, the NLA also sees good practice in its own Employers' Approach (*Werkgeversbenadering*).⁸⁷

⁸⁷ Information provided by the NLA on 3 October 2023.

SECTION 3: IDENTIFICATION OF ILLEGAL EMPLOYMENT MEASURES IMPLEMENTED

When applicable, take into consideration the Ukrainian refugee situation in your country since the beginning of the war in Ukraine, if this has led to specific impact / consequences on the illegal employment of third-country nationals in your country.

Q10 Have there been developments to improve the identification of illegal employment of third-country nationals taken place in your country since 2017 (e.g., new offices/agencies being introduced, increased number of inspections or other)? Yes/No

Please briefly describe.

No, no changes have occurred in the methods used to identify the labour exploitation of third-country nationals in the Netherlands since 2017. In the Netherlands, the following identification measures are employed to combat the labour exploitation of third-country nationals;

- Inspections conducted by NLA under the Foreign Nationals Employment Act (Wav).
- Arrests made by the police in accordance with the identification obligation.
- Border controls, which are carried out in the Netherlands by the Royal Military Police (*Koninklijke Marechaussee*). During border controls, the general purpose, duration, and means of stay are verified. For third-country nationals with a visa, this means that a check is performed at the border to ensure that the actual purpose of stay aligns with the purpose for which the visa was granted. If there are indications that the intent is to engage in employment not permitted by the visa, access can be denied.
- Indications of illegal employment in the Netherlands are shared with relevant authorities, including the NLA, through the efforts of the Expertise Center for Human Trafficking and Smuggling (EMM).

The Netherlands also conducts border checks using Mobile Supervision Safety samples (MTV samples). With third-country nationals, these checks assess, similar to other forms of border control, whether there is legal residence in the Netherlands. Indications of illegal employment identified through MTV samples are likewise reported to the Expertise Centre for Human Trafficking and Smuggling and subsequently shared with the NLA.⁸⁸

Q11 How many inspections are carried out per year (in absolute numbers and as a percentage of employers for each sector)?

See article 14 of Directive 2009/52/EC. Please briefly describe and provide more information on inspections if available (e.g., number of fines issued, investigations launched, etc.).

No information about the number of inspections per sector is available for the period 2017 -2022.⁸⁹

⁸⁸ EMN NL contribution, *Illegal employment of Third-Country Nationals in the EU* (2017), p. 30.

⁸⁹ This information was provided by the NLA on 3 October 2023.

Q12 Have there been measures put in place by your country to ensure that the inspections carried out to detect cases of illegal employment of third-country nationals are effective and adequate?

Please describe.

Yes, the NLA aims to achieve maximum impact with its supervisory activities and thus measures their effectiveness. The following measures have been put in place to ensure the effectiveness of the NLA inspections: collaboration, defining the intended or achieved impact and transparency. The guiding principle of the NLA is 'Increasing Impact Together'. Collaboration is essential for flexibility and innovation. The NLA monitors the implementation of promised improvement measures. Defining the intended or achieved impact, the corresponding intervention, and making it as transparent and measurable as possible represent the search for the right approach. The year 2017 marked the first time that this was addressed by explicitly specifying the intended effect, outcome, and reporting timeline for each program in the annual plans of the NLA.⁹⁰

Q13 Do the national authorities and other relevant organisations cooperate to identify situations of illegal employment of third-country nationals in your country? Has your country introduced any specific cooperation mechanisms since 2017 (i.e., partnerships with IGOs, NGOs or other)?

Please briefly describe.

Yes, national authorities and other relevant organisations cooperate in the Netherlands. Cooperation has always been an important factor in identifying situation of illegal employment of third-country nationals. On a national level the policy and legislation regarding the illegal employment of third-country nationals in the Netherlands falls under the responsibility of the Ministry of Social Affairs and Employment. The NLA is the regulatory authority responsible for legislation pertaining to foreign workers' access to the labour market. The consequences of illegal employment to third-country nationals and their right to residence falls under the responsibility of the Ministry of Justice and Security and are carried out by the Immigration and Naturalisation Service (IND).⁹¹

Yes, a specific cooperation mechanism has been introduced since 2017. This is namely the program 'Together against human trafficking', which was introduced in 2018 (see Q1). With this programme there has been an increased focus on cooperation between various partners when it comes to combating labour exploitation of third country nationals. These partners include; the NLA, municipalities, the national police, the public prosecutor's office, the IND, the Central Agency for the Reception of Asylum Seekers (COA), the Royal Netherlands Marechaussee and various NGO's.⁹²

Q14 Has your country pursued international/European cooperation initiatives to identify cases of the illegal employment of third-country nationals since 2017

⁹⁰ NLA, 'Resultaten en effecten', <https://www.nlarbeidsinspectie.nl/nederlandse-arbeidsinspectie/resultaten-effecten>, last accessed on 11 September 2023.

⁹¹ EMN NL contribution, *Illegal employment of Third-Country Nationals in the EU* (2017), p. 14.

⁹² *Parliamentary Papers II*, 2018-2019, 28 638, nr. 164.

(i.e., cooperation agreements or practises between two or more countries)?
Yes/No. If yes, please provide information on initiatives.

Yes, the Dutch authorities have pursued international/European cooperation initiatives to identify cases of the illegal employment of third-country nationals over the past 6 years. Initiatives include:

- The Netherlands Labour Authority (NLA) has cooperated within the EU policy cycle EMPACT, via Europol, to identify and combat labour exploitation.⁹³ The NLA closely cooperates with its international partners in the Empact Trafficking Human Beings (TBH) and is action leader of Empact THB Labour Exploitation.⁹⁴
- Together with its European counterparts in Aquapol⁹⁵, the NLA has also developed a multidisciplinary international approach to counter exploitation in inland navigation.⁹⁶
- In 2010, the Netherlands signed the Council of Europe Treaty no. 197 'Action against trafficking in human beings', committing itself, among other things, to international cooperation to identify cases of labour exploitation. By adhering to this Treaty, the Netherlands is still committed to GRETA, the Group of Experts on Action against Trafficking in Human Beings.⁹⁷
- The Netherlands values and pursues European cooperation initiatives organised through the European Labour Authority (ELA). The European Labour Authority was established to facilitate and support cooperation between the competent national authorities in the enforcement of undeclared work related to European labour law and social security. These cooperation initiatives include actions to target undeclared work of third country nationals (TCN), such as cases of illegal employment in the Member States.⁹⁸
- The Ministry of Social Affairs and Employment has concluded active partnerships with Poland, Romania and Bulgaria, the Czech Republic, Croatia, Germany and Luxemburg and Belgium (Benelux) on cooperation and exchange of information between national authorities to counter undeclared work and illegal employment.
- The Netherlands are represented in the ELA Management Board and the European Platform tackling undeclared work through the NLA.
- The NLA is also a member of the Senior Labour Inspectors Committee (SLIC) of European Commission's Directorate-General for Employment, Social Affairs and Inclusion (DG EMPL).

⁹³ NLA, 'Stand van zaken arbeidsuitbuiting en ernstige benadeling', <https://open.overheid.nl/documenten/ronl-21d1cee70fb477f3c168ccfb73bc991b53f8c14e/pdf>, last accessed on 16 August 2023.

⁹⁴ Government of the Netherlands (Rijksoverheid), 'Jaarplan 2023 NLA', 2022, <https://www.rijksoverheid.nl/documenten/rapporten/2022/11/25/bijlage-2-nl-arbeidsinspectie-jaarplan-2023>, last accessed on 13 October 2023.

⁹⁵ Founded in 2002, Aquapol is committed to improving the safety and security on Europe's main inland waterways and in the maritime domain.

⁹⁶ NLA, 'Stand van zaken arbeidsuitbuiting en ernstige benadeling', <https://open.overheid.nl/documenten/ronl-21d1cee70fb477f3c168ccfb73bc991b53f8c14e/pdf>, last accessed on 16 August 2023.

⁹⁷ Council of Europe, 'GRETA', <https://coe.int/en/web/anti-human-trafficking/greta>, last accessed on 16 August 2023.

⁹⁸ NLA, 'Programma Arbeidsuitbuiting en ernstige benadeling in 2022', <https://www.nlarbeidsinspectie.nl/jaarplan-2022/programmas-in-2022/programma-arbeidsuitbuiting-en-ernstige-benadeling-in-2022>, last accessed on 16 August 2023.

Q15 What 1) challenges and 2) good practices can be identified in your country in the area of the identification of illegal employment of third-country nationals since 2017?

Please briefly describe the situation since 2017 and please indicate the source or who has identified the challenges and good practices.

Various challenges and good practices have been identified in regarding the identification of labour exploitation in the Netherlands since 2017.

1) Challenges

- The capacity (budget and personnel) of the organisations involved in the identification of illegal employment and labour exploitation (NLA/IND) is limited. This impacts the productivity of the organisations involved. Moreover, it is presumed that third-country nationals sometimes do not report on their illegal employment. This could possibly be explained by their unfamiliarity with their rights. Or illegally employed third-country nationals might not know where to report.⁹⁹
- The IND and NLA indicate that challenges with regard to identification are prevalent in cases where a third-country national is allowed to work in a EU Member State, but starts working (sometimes illegally) in another Member State. In this case, identification is difficult to pursue. This is likewise difficult in the case of posted workers (*uitzendkrachten*).¹⁰⁰ This challenge is also mentioned in our answer to Q9.
- The IND also mentions that identifying and signalling illegal employment remains precision work and is dependent on the sharp perception of others (the environment in which illegal employment takes place). This will remain a challenge.¹⁰¹
- Another challenge mentioned by the IND pertains to the General Data Protection Regulation (GDPR) and the safekeeping personal data. The GDPR restricts the sharing of the data both internal and external with other organisations responsible for identifying illegal employment and enforcing government policies.¹⁰²

2) Good practices

- The increased cooperation between organisations has generally been identified as a good practice when it comes to combating labour exploitation of third country nationals including illegal employment. As of May 2022 the NLA deploys regional teams on an operational level. These teams are also the contact point for regional stakeholders.¹⁰³ Partners that collaborate in the program 'Together against human trafficking' include; the NLA, municipalities, the national police, the public prosecutor's office, the Immigration and Naturalization Service (IND), the Central Agency for the Reception of Asylum Seekers (COA), the Royal Netherlands Marechaussee and various NGO's.¹⁰⁴ Another good example of

⁹⁹ Information provided by the Netherlands Labour Authority (NLA) on 3 October 2023 and the Immigration and Naturalisation Service (IND) on 5 October 2023.

¹⁰⁰ Information provided by the IND and NLA on 5 October 2023.

¹⁰¹ Information provided by the IND on 13 October 2023.

¹⁰² Information provided by the IND on 13 October 2023.

¹⁰³ Information provided by the NLA on 23 October 2023.

¹⁰⁴ *Parliamentary Papers II*, 2018-2019, 28 638, nr. 164.

collaboration is the partnership of NLA, national police, the public prosecutor's office, the Royal Netherlands Marechaussee and the IND in the 'Expertisecentrum Mensenhandel Mensensmokkel' (The Centre of Expertise on Human Trafficking and Migrant Smuggling (EMM)). The EMM was founded in 2005, based on the need for centralization of information, knowledge and expertise on the themes human trafficking and human smuggling. In 2018, the partners decided on further development and the operational emphasis of the EMM task has been broadened to an operational, tactical and strategic role for the benefit of an integrated control strategy.

- The NLA aims to increase awareness on labour exploitation (both internally and externally). The NLA also aims to increase the number of reports on situations of illegal employment by providing information sessions to stakeholders.¹⁰⁵
- The IND concludes that including weaker reports and indications on illegal employment and labour exploitation can be seen as good practice because more information is being gathered. The compiled sum of weaker reports might indicate malpractices or cases which otherwise would not have been recognised from a single report.¹⁰⁶
- The IND mentions that receiving reports and signals (on illegal employment in relation to residence permits) via one central point within the organisation is a good practice. Compiling reports at one central point within the organisation provides a clear overview of all reports and signals of partners like for example the NLA.¹⁰⁷
- The Ministry of Social Affairs and Employment mentioned the following: Pertaining to the provision of temporary shelter and help for victims of labour exploitation and severe disadvantage¹⁰⁸, CoMensha, the Coordination Centre against the Trafficking in Human Beings, realised three 'crisis centres' in the Netherlands, where victims can be temporarily sheltered when found/detected by the NLA.¹⁰⁹

¹⁰⁵ Information provided by the NLA on 23 October 2023.

¹⁰⁶ Information provided by the Immigration and Naturalisation Service (IND) on 5 October.

¹⁰⁷ Information provided by the Immigration and Naturalisation Service (IND) on 13 October.

¹⁰⁸ For the definitions of labour exploitation and severe disadvantage see the disclaimer in the introduction.

¹⁰⁹ Information provided by the Ministry of Social Affairs and Employment on 5 October.

SECTION 4: SANCTIONS FOR EMPLOYERS INTRODUCED

When applicable, take into consideration the Ukrainian refugee situation in your country since the beginning of the war in Ukraine, if this has led to specific impact / consequences on the illegal employment of third-country nationals in your country.

Q16 Has your country amended legislation on sanctions to employers for illegally employing third-country nationals since 2017? Yes/No

Please provide any other relevant information on sanctions.

Yes, since 2017 the Netherlands has amended legislation on sanctions to employers for illegally employing foreign nationals. Although the relevant articles on fines and sanctions in the Foreign Nationals Employment Act (*Wet arbeid vreemdelingen*, Wav) have not been changed, the lower regulation has been revised since 2017.

Information on the lower regulation, which is frequently updated: The Imposition of fines policy (*Beleidsregel boeteoplegging Wet arbeid vreemdelingen 2020*) defines the amount of the fines imposed and is regularly updated. The amount of the fine differs based on the legal status of the employer and the type of violation of the Foreign Nationals Employment Act. In case of illegal employment of foreign nationals, a company currently risks a fine of € 8 000 per foreign national while private individuals risk a fine of € 4 000 per foreign national.¹¹⁰ The amount of the fine may be increased by 50% if the employer a) has intentionally violated the legal framework; b) if more than three foreign nationals are involved in the violation (Article 2 *Beleidsregel boeteoplegging*); c) if the employer has earlier violated the Foreign Nationals Employment Act in the five years preceding the actual violation (Article 3 *Beleidsregel boeteoplegging*). The amount of the fine can be decreased by 25%, 50% or 75% depending on the type and gravity of the violation, culpability and proportionality (Article 11 *Beleidsregel boeteoplegging*). Although this policy existed on paper in 2016, in practice no differentiation was made based on proportionality. This changed following an arrest by the Administrative Jurisdiction Division of the Council of State (*Afdeling bestuursrechtspraak van de Raad van State*, AbvRS) of 13 July 2022 (ECLI:NL:RVS:2022:1973). Within the light of this study, it is interesting to note that the amount of the fine is no longer increased by 50% if the foreign national is residing illegally in the Netherlands. In 2017, this still happened (Article 2b *Beleidsregel boeteoplegging Wet arbeid vreemdelingen 2016*).

Q17 What 1) challenges and 2) good practices can be identified in your country in the area of sanctioning employers for illegal employment of third-country nationals since 2017?

Please briefly describe the situation since 2017 and please indicate the source or who has identified the challenges and good practices.

The Netherlands identifies the following challenges and good practices in the area of sanctioning employers for illegal employment of third country nationals since 2017:

¹¹⁰ NLA, 'Labour market fraud and malpractices', <https://www.nllabourauthority.nl/topics/labour-market-fraud-and-malpractices>, last accessed on 2 August 2023.

1) Challenges

Revocation of residence permits has many consequences for workers, whilst after withdrawal of an employee's single permit (*Gecombineerde vergunning verblijf en arbeid* – GGVA), there are sometimes signals that new employees (third-country nationals) are easily hired again by the same employer via other ways or constructions.¹¹¹ This challenge is mentioned by the IND, which issues and revokes residence permits to third-country national workers.

Following Commission Communication (2021) 592 on the application of Directive 2009/52/EC, in which among other things the evaluation of the efficiency of national sanctions was discussed as a challenge, the Dutch government claimed that the current regular reports (such as annual reports by the organisations involved, *programmareportages*, and 'The State of Fair Work' (*De Staat van Eerlijk Werk*) provide enough information to determine the efficiency of sanctioning Dutch employers for illegal employment of third-country nationals.¹¹²

2) Good practices

Good practices identified by the Dutch government on the sanctioning of employers for illegal employment are:

- Fines for employers have been increased and are based on proportionality.
- Apprehension probability of employers has been increased
- Judicial procedures have been simplified.¹¹³

¹¹¹ This information was provided by the IND on 5 October 2023.

¹¹² Government of the Netherlands (Rijksoverheid), 'Fiche 2 - Mededeling toepassing Richtlijn Tegengaan Illegale Tewerkstelling', <https://www.rijksoverheid.nl/documenten/richtlijnen/2021/09/29/fiche-2-mededeling-toepassing-richtlijn-tegengaan-illegale-tewerkstelling>, last accessed on 13 October 2023.

¹¹³ Government of the Netherlands (Rijksoverheid), 'Concurrentie en illegale arbeid buitenlandse werknemers', <https://www.rijksoverheid.nl/onderwerpen/buitenlandse-werknemers/concurrentie-en-illegale-arbeid-buitenlandse-werknemers>, last accessed on 12 September 2023.

SECTION 5: OUTCOMES FOR THIRD-COUNTRY NATIONALS

When applicable, take into consideration the Ukrainian refugee situation in your country since the beginning of the war in Ukraine, if this has led to specific impact / consequences on the illegal employment of third-country nationals in your country.

Q18 If a situation of illegal employment is detected, please describe the outcome (regularisation, detention, return, other) that applies to the following categories of employees:

Please describe all situations in detail.

In the Netherlands, foreign nationals are never fined or detained on the ground of working illegally.

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

If the illegal employment is not in breach of the original conditions, the third-country national is allowed to stay in the Netherlands and work. If the original conditions (on which the residence and the work permit are issued) are not met, or if the regulations, related to the specific type of residence permit, have not been fulfilled, the residence permit and the work permit can be revoked. The residence permit can be revoked based on the Aliens Act 2000 (*Vreemdelingenwet*, Vw 2000). A residence permit can also be revoked if the foreign national works for an employer without complying to the Foreign Nationals Employment Act. In that case the third-country national will have to return.

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

The residence permit can be revoked based on the Aliens Act 2000. This can be done if the conditions are not met on which the residence permit was originally issued, or if the regulations, related to the specific type of residence permit, have not been fulfilled. A residence permit can also be revoked if the foreign national works for an employer without complying to the Foreign Nationals Employment Act. On the other hand, it is also possible that the illegal work is tolerated or regularised: the employer is fined, but he/she is able to apply for a work permit for the third-country national. To determine if the application is successful, an assessment is carried out on compliance to the prescribed conditions. As long as the third-country national has a valid residence permit, he/she cannot receive a return decision.

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

The Aliens Police Department, Identification and Human Trafficking (*Afdeling Vreemdelingenpolitie, Identificatie en Mensenhandel*, AVIM) first needs to identify the third-country national. When it becomes clear the third-country national is irregularly staying, he/she can be placed into custody based on the Compulsory Identification Act (*Wet op de identificatieplicht*). If the AVIM is not present during a (work) inspection, the regular police is also able to place a third-country national into custody based on the Compulsory Identification Act, after which the AVIM is notified. The AVIM notifies the Immigration and Naturalisation Service (*Immigratie- en Naturalisatiedienst*, IND) and the Repatriation and Departure Service (*Dienst Terugkeer & Vertrekt*, DT&V). AVIM, IND and the police all have the authority to issue a return decision to the illegally staying third-country national. If a return decision is issued, the third-country national regularly has a period of 28 days to depart voluntarily. In some cases, for instance when there is a risk of evasion, the third-country national also be issued an

entry ban based on Article 66a of the Aliens Act 2000. It should be nuanced that the forced return of third-country nationals who previously were in possession of a regular residence permit hardly occurs.¹¹⁴

In theory, the third-country national can apply for a residence permit. However, the third-country national needs to have a regular provisional residence permit (*machting tot voorlopig verblijf*, mvv), which needs to be obtained in the country of origin. The lack of a mvv, as well as an irregular stay on in The Netherlands, are grounds for the refusal of the residence permit, unless the third-country national is exempted. This can be the case, for instance, if the third-country national has a certain nationality or if urgent medical grounds are considered. Exemptions are not easily made. As long as the third-country national has no valid residence permit, no work permit can be applied for.

If there is the slightest indication of human trafficking, the presumed victim receives a reflection period. The period lasts for a maximum of 90 days (30 days if the Dublin Regulation is applicable to the victim). During this period, the third-country national can reflect whether they report to the police and whether they are willing to cooperate in the criminal investigation. During the reflection period, the IND halts the return procedure. After reporting to the police and/or declaring that he/she is cooperating in the criminal investigation, the third-country national is able to receive a temporary residence permit as a victim of human trafficking. The application is valid as long as the criminal investigation is running. Victims can also apply for this temporary residence permit if they are unable or unwilling to report to the police due to medical restrictions, minority or serious threats. In this case, a statement by the police or the Royal Netherlands Marechaussee (*Koninklijke Marechaussee*, KMar) and/or a medical statement is needed. For this group, the residence permit is valid for 1 year. Extensions are possible if abovementioned conditions still apply.¹¹⁵

Q19 A. What effective procedures are in place to allow third-country nationals in illegal employment to lodge complaints against their employer?

Please briefly describe. Effective procedures are understood as those used in practice and trusted by migrant workers.

A third-country national illegally employed who wants to lodge a complaint against the employer, can lodge this complaint via the Netherlands Labour Authority (*Nederlandse Arbeidsinspectie*, NLA). An online form can be filed in which complaints related to unfair, unsafe and unhealthy employment, as well as labour exploitation, are forwarded to the inspectors of the NLA. Third-country nationals are also able to report/lodge complaints against their employers by calling telephone number 0800 51

¹¹⁴ This information was provided by the IND on 28 September 2023.

¹¹⁵ Wegwijzer mensenhandel, 'Verblijf in Nederland voor slachtoffers van mensenhandel', <https://www.wegwijzermensenhandel.nl/ondersteunen-van-slachtoffers/verblijf-in-nederland-voor-slachtoffers#:~:text=Slachtoffers%20van%20mensenhandel%20zonder%20verblijfsvergunning%20die%20aangifte%20doen%2C,Dit%20staat%20in%20artikel%203.48%20van%20het%20Vreemdelingenbesluit>, last accessed on 7 August 2023.

51 or (from abroad) +31 70 333 56 78 of the NLA.¹¹⁶ Another online form is available in which the third-country national can report/lodge complaints against the employer when the social rights of the third-country national are violated whilst working in the Netherlands.¹¹⁷ It has to be mentioned, that the abovementioned forms are not specifically designed for illegally employed third-country nationals, and are intended for broader use.

Third-country nationals can also lodge a complaint online or by phone call at Report Crime Anonymously (*Meld Misdaad Anoniem*). This is an independent reporting point, which passes information anonymously to the police and investigation services.¹¹⁸ Irregularly staying third-country nationals do have the possibility to report crimes to the police without risking problems related to their illegal status.

In the Netherlands, trade unions may also engage either on behalf of or in support of an illegally employed third-country national, with its approval, when lodging a complaint against its employer in any administrative or civil proceeding with the objective of implementing Directive 2009/52/EC.

Q19 B. Are there different procedures in place to lodge complaints against employers if the third-country nationals in illegal employment are irregularly staying?

See article 13 of Directive 2009/52/EC. Please elaborate.

There are no different procedures in place to lodge complaints against employers if the third-country national is irregularly staying.

Q20 In which cases can a third party (for instance a trade union or an association) engage on behalf or in support of third-country nationals in illegal employment in administrative or civil proceedings against an employer? Are there differences between engaging on behalf of regularly and irregularly staying third-country nationals? *Please elaborate.*

In the Netherlands, a trade union can engage on behalf or in support of an illegally employed third-country national in administrative or civil proceedings against an employer. Most commonly, trade unions demand remuneration if one of the parties involved in a collective labour agreement (*collectieve arbeidsovereenkomst*, *cao*) violates the agreement. This is based on Article 15 of the Collective Labour Agreement Act (*Wet op de collectieve arbeidsovereenkomst*). Article 16 defines that, in case the third-country national suffered other than financial loss, a remuneration equal to the value of the loss will be made. However, the parties involved do have the possibility to

¹¹⁶ NLA, 'Oneerlijk, onveilig, ongezond werk of arbeidsuitbuiting melden', <https://www.nlarbeidsinspectie.nl/onderwerpen/melden/oneerlijk-onveilig-ongezond-werk-of-arbeidsuitbuiting-melden>, last accessed on 9 August 2023.

¹¹⁷ NLA, 'Form for submitting a complaint to the Netherlands Labour Authority (The Ministry of Social Affairs and Employment) about a possible violation of social laws whilst working in the Netherlands', https://fd8.formdesk.com/arbeidsinspectie/klachtenformulier_English/?get=1&sidn=04ec190082884b7ba27540284b8b4828, last accessed on 9 August 2023.

¹¹⁸ Meld Misdaad Anoniem, 'Homepage', <https://www.meldmisdaadanoniem.nl/>, last accessed on 15 August 2023.

settle for another form of compensation (Article 17) than those mentioned in Articles 15 and 16. Besides this, temporary employees (*uitzendkrachten*) can turn to the SNCU, the (Dutch) Foundation for Compliance with the Collective Agreement for Temporary Employees. The SNCU provides legal advice and supports, among others, to third-country temporary employees in civil proceedings against an employer.¹¹⁹

Dutch law does not prohibit trade union membership of an irregularly staying third-country national. Trade unions themselves are allowed to determine the conditions linked to membership. This means that it is up to the trade union to decide if the trade union also engages in support of an irregularly staying third-country national.

Q21 Are there mechanisms in place in your country for the remuneration of a third-country national following a period of illegal employment (for example mechanisms to recover payment for overtime work) and what are the conditions for remuneration? Are there different mechanisms in place for regularly and irregularly staying third-country nationals?

Please describe.

Yes, in the Netherlands there is a mechanism in place for the remuneration of a third-country national following a period of illegal employment. Article 23 of the Foreign Nationals Employment Act (*Wet arbeid vreemdelingen*, Wav) and Article 7:616 of the Dutch Civil Code (*Burgerlijk Wetboek*, BW) provide the grounds for a remuneration claim of the wages earned. Third-country nationals can claim their wages and other considerations due to them based on the illegal employment they provided for the employer. The only condition needed is a proven violation of Article 7:616 of the Dutch Civil Code, stating that the employer is due to pay the wage to the employee on a defined moment. There is no different mechanisms in place for regularly and irregularly staying third-country nationals, except that Article 6 of Directive 2009/52/EC compels employers to pay back any outstanding remuneration to the illegally employed third-country national which is irregularly staying.

Regarding remuneration from employers to the Dutch State, social welfare contributions (*sociale zekerheidsbijdragen*) are discounted in the administrative fine issued to the employer involved in the illegal employment. The General Act on State Taxes (*Algemene wet inzake rijksbelastingen*, AWR) stipulates that a revised tax assessment (*navorderingsaanslag*) and an administrative penalty may be levied when the taxpayer (in this case the employer) has failed to pay the required amount of taxes. As irregularly residing third-country nationals are not covered by the social welfare system, this mechanism does not apply to this group.

Q22 How long does the presumed employment relation have to be for an employer to have to pay back outstanding remuneration and amounts equal to taxes or social security contributions?

Please describe.

In the Netherlands, there is no minimum period the presumed employment relation has to be for an employer to have to pay back outstanding remuneration and amounts equal to taxes or social security contributions.

¹¹⁹ Stichting Naleving CAO, 'Homepage', <https://www.sncu.nl/>, last accessed on 15 August 2023.

Article 23, sub 2, of the Foreign Nationals Employment Act (*Wet arbeid vreemdelingen*, Wav) specifies that, if an employer illegally has employed a foreign nation and underpayment is suspected, it is presumed that the foreign national has been working at least six months for the employer for a wage or salary as defined in Article 2, sub j, of Directive 2009/52/EC (a wage or salary and any other consideration, whether in cash or in kind, which a worker receives directly or indirectly in respect of his employment from his employer and which is equivalent to that which would have been enjoyed by comparable workers in a legal employment relationship).

Q23 Are there mechanisms in place to ensure that irregularly staying third-country nationals can receive any back payment of remuneration in cases in which they have been returned?

Please describe.

Yes, in the Netherlands there is a judicial mechanism in place which ensures that irregularly staying third-country nationals can receive back payment of remuneration in cases in which they have been returned. As mentioned in the answer to Q21, Article 7:616 of the Dutch Civil Code (*Burgerlijk Wetboek*, BW) provides the grounds for a remuneration claim of the wages earned. Such a claim can also be made by a returned third-country national. Reinforcing this, Article 23, sub 1, of the Foreign Nationals Employment Act (*Wet arbeid vreemdelingen*, Wav) forces an employer to pay the due wages of the (irregularly staying) foreign national. Regulation No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters (recast) enables third-country nationals to sue a Dutch-based employer in a Dutch court.

Q24 Does your country provide information to illegally employed third-country nationals on their rights? Is this information translated? Does the information provided differentiate between regularly and irregularly staying third-country nationals?

Please indicate when this information is provided to third-country nationals, in what form and by what authorities/organisations. Please also indicate any identifiable challenges or good practices found in this context.

The Dutch government does not provide specific information to illegally employed third-country nationals on their rights. At least, the information is not specifically aimed at this target group. The Dutch government, however, provides detailed information to third-country nationals working in the Netherlands via the site 'WorkinNL'. Information is included on the rights and duties of legally working and residing third-country nationals.¹²⁰

Although too recent to be part of the reporting period of this study, we deem it important to mention that on 6 April 2023, the Dutch non-governmental organisation FairWork published a flyer titled 'Do you know your rights as a migrant worker in the

¹²⁰ Government of the Netherlands (Rijksoverheid), 'Work in NL', <https://workinnl.nl/en/default.aspx>, last accessed on 7 August 2023.

Netherlands?'. This flyer is addressed to all migrant workers in the Netherlands, including illegally employed third-country nationals.¹²¹ On 17 July 2023, The Red Cross and FairWork have jointly published a flyer especially for irregularly staying and illegally employed third-country nationals 'Know your rights, when you work'.¹²² Both flyers aim to inform illegally employed third-country nationals on their basic rights in the Netherlands. FairWork provides help and states that the illegally employed third-country national can reach out to them via Whatsapp and e-mail, often in their own native language. FairWork is subsidised by the Dutch government.

¹²¹ FairWork, 'Do you know rights as a migrant worker in the Netherlands?', https://www.fairwork.nu/wp-content/uploads/2023/04/27836_Fairwork_A5FlyersArbeidsrechten_ENG_LR2.pdf, last accessed on 7 August 2023.

¹²² FairWork, 'For undocumented: know your rights when you work', <https://www.fairwork.nu/en/2023/07/17/know-your-rights-when-you-work/>, last accessed on 7 August 2023.

SECTION 6: CONCLUSIONS

This part of the study compiles the main findings from section 1-5.

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

Public debate, Policies and Legal Framework

During the research period the prevention of labour exploitation of third country nationals was a policy priority of the Dutch government. From 2017 to 2022, there have been numerous public and policy debates surrounding the issue of labour exploitation and illegal employment. The first is the obstacles faced by the Netherlands Labour Authority (NLA) in their efforts to combat this problem. The second is the violations of the Foreign Nationals Employment Act (Wav) that have been observed. The third is the exploitation of workers in the delivery services.

During the same period several changes have been made to laws and policies. One such change is the Amendment of the Foreign Nationals Employment Act (Wav), which aims to improve the protection and rights of third-country nationals working in the Netherlands. Additionally, the Dutch government has discontinued the Asian Catering Industry residence scheme (*Regeling Aziatische horeca*) after there were indications of misuse. The Dutch government has also implemented the 'Together against Human Trafficking' Program, which demonstrates their commitment to combating this issue at a national level.

Prevention and Identification

In an effort to combat the labour exploitation and severe disadvantage¹²³ of third country nationals, the Netherlands has taken significant further steps towards prevention. Starting in 2022, the National Labour Inspectorate (NLA) introduced a monitor specifically focused on labour exploitation and severe disadvantage of foreign nationals. This monitor serves as a valuable tool to understand and analyse the current trends and developments on issue within the country.

The NLA employs various techniques and sources to gather information for this monitor. These include internal data, desk research, and insights provided by the Expertise Centre on Human Trafficking and Smuggling (EMM). By combining these resources, the NLA tries to gain a comprehensive understanding of the nature and extent of labour exploitation in the Netherlands.

Recent findings from the monitor shed light on the sectors most susceptible to labour exploitation. These sectors include the business service sector, hospitality sector, construction sector, work in public households, and the parcel delivery sector. Recognizing these high-risk sectors allows for targeted efforts to prevent and address labour exploitation in these areas.

Although no major operational changes have been made in the methods used to identify illegal employment of third-country nationals in the Netherlands since 2017, the introduction of the NLA's monitor demonstrates a commitment to continuous

¹²³ For the definitions of labour exploitation and severe disadvantage see the disclaimer in the introduction.

improvement and tackling this issue head-on. By monitoring trends and developments, the Netherlands is better equipped to identify areas of concern and implement effective measures to combat labour exploitation and ensure the fair treatment of all workers, regardless of their nationality. The NLA does this by multi-year plans based on risk analyses. The government also launched a programme in 2018 called 'Together against Human Trafficking', which specifically focusses on combating the trafficking of human beings.

Sanctions and Outcomes

The Netherlands has implemented amendments to legislation on sanctions for employers who illegally employ foreign nationals since 2017. While the sanctions outlined in the Foreign Nationals Employment Act (Wav) have remained the same, there have been revisions to the lower regulations, primarily focusing on the proportionality of the penalties imposed.

In order to ensure the fair treatment of illegally employed third-country nationals, the Netherlands has established systems to guarantee their remuneration and back payment, regardless of their legal status. Additionally, trade unions have the ability to advocate on behalf or provide support for these individuals in administrative or civil proceedings against their employers.

However, it should be noted that the Dutch government does not provide specific information to illegally employed third-country nationals regarding their rights. The available information is not tailored towards this particular target group. Nevertheless, detailed information is provided to third-country nationals working in the Netherlands through the 'WorkinNL' website, which includes details on the rights and responsibilities of legally employed individuals from other countries who reside in the Netherlands.

Challenges and Good Practices

This study has identified various challenges in the Netherlands concerning the prevention and identification of labour exploitation and severe disadvantage¹²⁴ of third-country nationals. As well as challenges with regards to the sanctioning of employers who illegally employ foreign nationals. Such as problems with identifying third-country nationals who have their official residency/work permit in another EU Member State, but are working (sometimes illegally) in the Netherlands. In addition to that, it is also difficult to identify these vulnerable groups when they are working in private households where oversight is difficult. The limited capacity (budget and personnel) during the research period of the organisations (NLA/IND) involved in the prevention and identification of labour exploitation was also noted as a challenge.

This study likewise identified several good practices regarding the prevention and identification of labour exploitation and severe disadvantage¹²⁵ of third country nationals since 2017 in the Netherlands. As well as, good practices regarding the

¹²⁴ For the definitions of labour exploitation and severe disadvantage see the disclaimer in the introduction.

¹²⁵ For the definitions of labour exploitation and severe disadvantage see the disclaimer in the introduction.

sanctioning of employers who illegally employ foreign nationals. First, the increased and improved cooperation between the organisations involved in these processes were noted as a positive. Within organisations, such as the IND and NLA, there are central points where signals of illegal employment are registered and compiled. Second, the increased efforts to inform employees and employers about their rights and duties was also noted as a good practice. On top of that, the simplification of judicial procedures and the introduction of proportionality to the fines were also mentioned as improvements.