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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

Introduction

Addressing the challenges posed by irregular migration to the EU is an important component of the **comprehensive, long-term and sustainable approach to migration** as proposed under the New Pact on Migration and Asylum[1]. That approach ensures consistency in the development of EU policy in the areas of migration, asylum, integration and border management to help prevent unsafe and irregular arrivals to the EU. The New Pact aims at deterring irregular migration, preventing organised exploitation of migrants and promoting sustainable and safe legal pathways for those in need of protection. The renewed EU action plan against migrant smuggling for the period 2021-2025[2], presented alongside this report, provides the tools for fighting criminal smuggling networks and successfully deterring irregular migration in close partnership between the Member States, EU institutions and bodies as well as partner countries.

To successfully respond to irregular migration, it is also necessary to address the **drivers** motivating migrants to embark on perilous journeys towards the EU. The possibility for irregular migrants in search of a better life to **find a job in the informal economy**[3], hence gaining resources that can support the subsistence of family members in the country of origin, is one such driver, even if this situation makes them vulnerable to abuse and exploitation. Illegal employment of irregular migrants is a complex phenomenon that affects several domains, including migration, employment and social policies, fiscal policy as well as respect of individuals' rights. While the scale and occurrence of illegal employment differs between private households, small, medium businesses and large companies, and across economic sectors, illegal employment, nonetheless, 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 such as construction, agriculture, cleaning and hotels/catering.

Moreover, illegal employment of people not authorised to stay in the EU – similarly to the undeclared work of people entitled to stay but not to work and informal economy in general – is **damaging from an economic perspective**, as it leads to losses in public finances, tax and social contributions, depresses wages and working conditions, and creates unfair competition between businesses[4].

Illegal employment also exposes migrants to risks of **violation of individual and social rights**, notably labour exploitation, precarious living and working conditions and limited or no access to social protection. Furthermore, in some cases labour exploitation can also have links to serious and organised crime, either through trafficking in human beings for labour exploitation or exploitation of irregular migrants by smuggling networks through debt bondage – where a person is forced to work to pay off a debt – and exploitative work conditions. Criminal networks also target migrants already staying irregularly in the EU,

[1] COM(2020) 609 final.
[2] COM (2021) 591.
[3] The International Labour Organization (ILO) Resolution on decent work and informal economy (2002) defines "informal economy" as 'all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements'.
[4] European Migration Network Synthesis Report – Illegal employment of Third Country Nationals in the European Union (2017), p. 10.

forcing them to work in highly exploitative conditions, leveraging their vulnerability and their willingness to accept any kind of job opportunity to remain in the EU and have an income[5].

It is **difficult to estimate the size of illegal employment** in the EU because it is a 'hidden' phenomenon linked to the informal economy in the Member States. There are indications that illegal employment of irregular migrants is higher where the share of informal economic activity is high[6]. Although informal employment[7] is estimated to stand at 16.8% of all employment in the EU on average[8], the extent of illegal employment of irregular migrants is ever harder to quantify, in particular as regards the gender specific and child sensitive aspects[9], since irregular migration remains difficult to estimate.

Alongside stepped up measures to prevent irregular migration in the first place, the effective prohibition of the employment of irregular migrants remains a central element to countering irregular migration, hence also reducing its economic and social impacts including through the protection of individual's rights.

1. Objectives of the Communication

The **Employers Sanctions Directive**[10] provides a European legal framework to prevent and respond specifically to illegal employment of irregular migrants, who are in a more precarious and vulnerable situation than other third-country nationals. Although tackling employment and rights' violations of legally staying migrant workers is equally important, they are not subject of this Directive given that they are covered by the EU framework for legal migration[11] and specific national legislation.

The Directive sets the rules requiring employers to verify the right of the third-country nationals to stay in the EU and on sanctions for employers of irregular migrants, laying down minimum standards and detection mechanisms of illegal employment. It also sets out measures to **protect the rights of irregular migrants**, establishing mechanisms to claim back outstanding wages, to facilitate complaints that can reveal situations of illegal employment

[5] EU Serious and Organised Crime Threat Assessment 2021 (Europol).
[6] European Migration Network Synthesis Report – Illegal employment of Third Country Nationals in the European Union (2017), p. 14.
[7] In relation to informal employment, the International Labour Organization's report 'Defining and measuring informal employment' (2005) refers to non-standard, atypical, alternative, irregular, precarious employment.
[8] International Labour Organization (ILO) Factsheet, Overview of the informal economy in the EU, https://www.ilo.org/budapest/WCMS_751319/lang--en/index.htm.
[9] European Migration Network Synthesis Report – Illegal employment of Third Country Nationals in the European Union (2017) showed that in terms of gender, based on the statistics provided by eleven Member States participating in the study, predominantly men (from 69% in Cyprus to 100% in Lithuania and Slovakia) were identified as working illegally in the Member States which provided data.
[10] 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 (OJ L 168, 30.6.2009, p. 24).
[11] The EU framework for legal migration (Single Permit Directive (2011/98/EU), Blue Card Directive (2009/50/EC), Seasonal Workers Directive (2014/36/EU), Directive on intra-corporate transferees (2014/66/EU), Students and Researchers Directive (EU)2016/801, Directive on Long-term residents (2003/109/EC)) provide for rules that ensure equal treatment of third-country nationals with nationals of the Member States where they reside, with regard to, among others, working conditions, health and safety at the workplace, vocational training and advice services.

and to issue temporary residence permits to victims of particularly abusive employers to take part in criminal proceedings.

The Directive grants Member States the **flexibility** to design different approaches to achieve its objectives, which allow them to take into account national specificities relating to the labour market, the role of illegal employment and migration and the severity of violation. However, all Member States need to ensure that the rules are successful in deterring irregular migration and tackling illegal employment. Ineffective national approaches against illegal employment that do not reduce the attractiveness of the informal economy for irregular migrants, and as such do not contribute to reducing irregular arrivals, have a **knock-on effect on all Member States and on the EU migration policy as a whole**.

This Communication looks at the **practical application** of the Directive, following the **announcement under the New Pact** that the Commission will assess how to strengthen the effectiveness of the Directive and evaluate the need for further action. In this context, the Commission will also reach out to the "*European Platform to enhance cooperation in tackling undeclared work*", the working group of the newly established European Labour Authority (hereafter, European Platform tackling undeclared work).

This Communication also meets the obligation to report on a regular basis to the European Parliament and to the Council set out in Article 16 of the Employers Sanctions Directive. It identifies the necessary **actions to strengthen the Directive's implementation**, focusing on the three main strands of action: sanctions against employers, measures to protect the rights of irregular migrants and inspections. The Communication examines, *inter alia*, the implementation of Articles 6(2) and 6(5) concerning the effective procedures for introducing claims for back payments and the issuance of limited duration residence permits in the case of criminal proceedings.

The Communication follows the first implementation report of May 2014[12] and builds on the qualitative and quantitative information provided by the Member States[13] (including the data on the inspections in 2019 and 2020 and on their results) and a wide range of stakeholders, notably trade unions, employer and business associations, non-governmental organisations and representatives of migrants. It also takes account of the work of the Fundamental Rights Agency on protecting irregular migrants from labour exploitation [14] . Whilst the Communication seeks to chart a way forward, it acknowledges that there are **significant gaps in information** at the Commission's disposal that make it difficult to reach definitive conclusions on the impact and effectiveness of the Employers Sanctions Directive. This Communication presents concrete measures to fill these gaps.

[12] COM(2014) 286 final; it showed that, while all Member States prohibit illegal employment and have established financial, administrative or criminal sanctions, there were gaps, fragmentation and discrepancies; the severity of sanctions varied considerably, leading to the need to further asses proportionality and dissuasiveness. It showed that there was room for improvement in all areas offering protection, including claims against employers, complaint mechanisms and access to information. It also revealed that substantial efforts were needed to improve inspections and their prioritisation through systematic identification of sectors at risk.

[13] Member States provided their input on the implementation of the Directive through a questionnaire prepared by the Commission.

[14] Fundamental Rights Agency, Protecting migrants in an irregular situation from labour exploitation: role of the Employers Sanctions Directive (2021), available at: https://fra.europa.eu/en/publication/2021/employers-sanctions-against-exploitation.

2. Illegal employment and sanctions against employers

Effective, proportionate and dissuasive financial and criminal sanctions for illegal employment remain key to reducing incentives for employers to hire irregular migrants. Sanctions should counterbalance the economic gains of hiring irregular migrants. Sanctions against employers should also reflect the seriousness of the offence and proportionally respond to the severity of the violation increasing in cases of particularly exploitative working conditions (e.g. persistent violation, significant number of irregular migrants hired, and employment of victims of human trafficking). The effective and proportional application of sanctions is **dissuasive** when the risks of being detected and sanctioned outweighs the economic advantages of hiring irregular migrants.

Based on these principles, the Employers Sanctions Directive defines minimum standards for financial and criminal sanctions against employers and sets additional administrative measures, such as loss of public benefits or exclusion from public contracts, to counter illegal employment. Member States have flexibility in determining the actual level of sanctions, depending on the specific national situation, severity of the violation or whether the employer is a natural or a legal person, and Member States may also introduce higher standards than the minimum ones laid down in the Directive. At the same time, it is of primary importance that in an area without internal borders, and in order to prevent irregular migration, action against illegal employment is undertaken on a common basis and that all national systems work effectively. Gaps in one or a few Member States would undermine the deterrent effect on illegal employment and irregular migration of people willing to work in the informal economy, with consequences on the EU migration policy as a whole.

Illegal employment occurs in different economic environments, among which private households, small or medium sized companies and large companies. It is important to ensure that all types of employers are **informed and aware** of the possibilities of legal employment and recruitment, the steps to be taken to prevent and avoid illegal employment as well as the risks and consequences of hiring irregular migrants.

Member States have generally transposed the provisions of the Directive on sanctions into national legislation, although the approaches chosen vary significantly as they are influenced by a variety of factors (e.g. different national sanctioning systems, social impact and perception of illegal employment, economic situations and levels of wages, incidence of illegal employment in the economy). This is reflected in the significant diversity in the range and scale of financial (Table 1) and criminal (Table 2) sanctions, as well as in the different choices made by Member States in the use of other measures (e.g. exclusion from public aid or EU funding or exclusion from public contracts). In addition, there is a scattered and incomplete overview of the prosecutions opened against employers and the sanctions applied in practice making it **difficult to fully assess the impact** of the Directive in ensuring an efficient sanctioning approach to illegal employment in all the Member States and in ensuring that sanctions are effective, proportionate and deterrent.

2.1. Financial sanctions

The Directive provides that employers who hire irregular migrants are to be subject to financial sanctions that should proportionally increase with the number of irregular migrants employed and could be reduced in cases where employment is for private purposes (e.g.

household assistance). As already reported in 2014, all Member States have transposed the rules on financial sanctions against employers. However, due to information gaps regarding the application of financial sanctions against employers in practice, it is not possible to assess in a conclusive manner the impact in this area. The limited information available shows that there are **significant differences in the size of the fines applied** to legal persons per irregular migrant employed, with minimum sanctions ranging from EUR 300 in Belgium to approximately EUR 10 000 in Croatia and the maximum sanctions ranging from EUR 3 000 in Belgium, Cyprus and Estonia to EUR 43 000 in Italy.

As an indication of the **proportionality of the sanctions**, they can go from about 1.5 times the monthly minimum wage[15] to 92[16]or even 700[17] times the monthly minimum wage in the Member State concerned. Furthermore, the national laws in the majority of Member States[18] prescribe the amount or the minimum fine and how it increases proportionally with every irregular migrant employed, whereas the remaining Member States leave it up to the judiciary to decide the precise amount depending on the number of irregular migrants involved[19].

The difference in the level of fines applied in the Member States depends on a variety of elements, such as the economic situation and the level of minimum wage in a Member State. Furthermore, the type of employer (e.g. household or an enterprise) also affects the level and nature of the sanctions. However, the Member States should make sure that the **difference in the level of sanctions is justified and the sanctions are effective, proportionate and dissuasive for each Member State**.

Member States with a more stringent sanctioning system consider that **higher financial sanctions are a good deterrent** to illegal employment, whereas Member States applying lower sanctions or where the risk of sanctions is considered low in comparison to the potential profits from illegal employment found the **sanctions are not a sufficient deterrent**[20]. It is therefore indicative that eleven Member States have changed their legislation since 2014 to increase the amount of the fine imposed. The Fundamental Rights Agency also indicates that, in practice, in most Member States sanctions and penalties imposed on employers are not severe enough to dissuade employers from practicing illegal employment[21]. Moreover, work of the European Platform Tackling Undeclared Work shows that, beyond a well-functioning system of sanctions and their enforcement, also good and clear structures are equally important to motivate and facilitate compliance.[22]

[15] Latvia.
[16] Bulgaria the sanctions can range from 3 to 92 times the monthly minimum wage (from BGN 2,000 up to 60,000).
[17] In Czechia the sanctions can range from 5 to 700 times the monthly minimum wage (from CZK 50,000 up to CZK 10,000,000).
[18] Belgium, Bulgaria, Estonia, Greece, Spain, France, Croatia, Italy, Cyprus, Lithuania, Luxembourg, Hungary, the Netherlands, Austria, Romania, Slovenia, Slovakia and Sweden.
[19] Czechia, Germany, Latvia, Malta, Poland, Portugal and Finland.
[20] European Migration Network Synthesis Report – Illegal employment of Third Country Nationals in the European Union (2017), p. 30
[21] Fundamental Rights Agency, Severe labour exploitation: workers moving within or into the European Union (2015), p. 18-19.
[22] The virtual library of the Platform Tackling Undeclared Work can be accessed via: https://ec.europa.eu/social/main.jsp?catId=1495&langId=en.

2.2. Criminal sanctions

According to the Employers Sanctions Directive, criminal sanctions (which may be criminal fines, prison sentences or other penalties) are applied to **serious cases of illegal employment** with aggravating circumstances such as repeated violations, employing a significant number of irregular migrants or employing them in particular exploitative working conditions, or employing victims of trafficking in human beings and minors. In the majority of Member States, illegal employment constitutes a criminal offence in itself[23] whereas the remaining Member States have in general criminalised illegal employment in all the circumstances foreseen by the Directive[24].

Since 2014, there has been **some progress with legislative changes** in Italy, Germany, France and Sweden facilitating the application of criminal sanctions in practice[25]. For example, Italy abolished a requirement that the exploitation needs to occur through violence, threats and intimidation and classified hiring or subjecting employees to work under exploitative conditions as a criminal offence. Germany criminalised exploitation and profit-making itself, and not only the act of forcing a person into exploitative employment. France extended the competences of the labour inspectorate to include recording of offences of trafficking in human beings, forced labour and servitude. Sweden adopted legislation strengthening the criminalisation of trafficking in human beings addressing exploitation through misleading or using another person's dependent situation, vulnerability or difficult situation and exploiting through forced labour.

However, there are differences in the severity of criminal sanctions between Member States as shown in the Table 2, both in terms of length of possible prison sentence, ranging from 8 days to 12 years, and the amount of the fine applied. In addition, there is a significant gap in information concerning the application of criminal sanctions against employers in practice and the number of proceedings launched. These elements point to the fact that the **Directive had a limited impact** in deterring illegal employment through sanctions and has not yet been able to establish an efficient framework for effective, proportionate and dissuasive sanctions across the EU. The feedback provided by stakeholders representing trade unions and non-governmental organisations, collected during dedicated targeted consultations on the topic, support such conclusion as it confirms that **sanctions for exploitative employers appear to be lower than the benefits gained** through undeclared work and social dumping. Therefore, Member States should assess whether the level of criminal sanctions applied at national level is deterrent enough and contributing to an efficient framework of sanctions against illegal employment.

[23] Belgium, Czechia, Germany, Estonia, Greece, Spain, France, Italy, Cyprus, Malta, the Netherlands, Austria, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden.

[24] Article 9, Employers Sanctions Directive: When the violation is intentional and committed persistently, involves a significant number of third country nationals or minors, where the working conditions are exploitative or where the third country national is a victim of trafficking in human beings.

[25] Fundamental Rights Agency, Protecting migrants in an irregular situation from labour exploitation: role of the Employers Sanctions Directive (2021), p. 35.

2.3. Other administrative measures

In addition to financial and criminal sanctions, in line with Article 7 of the Directive, Member States can impose other administrative measures against employers, such as loss of public benefits, exclusion from public contracts, recovery of public subsidies, temporary or permanent closure of establishments or withdrawal of a licence to operate. The Directive also provides for the possibility to 'name and shame' and publish a list of employers that have committed a criminal offence.

Here too, the implementation of these measures varies significantly across the Member States including on the duration of the application of these additional measures. Moreover, only nine Member States[26] include all four administrative measures in their national legislation and, although all Member States include at least one of the measures in their national legislation, **in practice only eight Member States[27] report having applied them**, making it difficult to fully evaluate the effectiveness and impact of these measures.

The temporary or permanent closure of establishments or withdrawal of a licence to operate seems to be the measure most applied[28], whereas only three Member States[29] apply loss of public benefits and exclusion from public contracts and no Member States reporting recovery of public subsidies. Only six Member States[30] provide for the possibility to publish the list of employers responsible for illegal employment. Additional measures, such as the exclusion from public procurement and national and EU funding, **remain very much under-used despite their potential** to dissuade employers to hire irregular migrants[31].

It also emerges that in practice undocumented workers may often be employed through complex employment relationships involving **sub-contracting arrangements**, recruiters and temporary work agencies, as well as through **online platforms providing short-term work** (e.g. food and meal delivery, transport service), which increases the difficulty in identifying employers who hire irregular migrants. In this regard, the liability of the entire chain of employers is intended to protect migrants especially in those economic sectors where subcontracting is widespread, such as construction[32], as well as in the newly emerged economic area of online platform work.

However, stakeholders find these provisions to have a **limited impact in the complaints procedures and determining chain liability** in view of the likelihood that a contractor that has carried out due diligence obligations is held not liable as allowed in Article 8(3) of the Directive. For example, in Belgium[33] the contractor's 'due diligence obligations' is met by simply issuing a written declaration by a subcontractor that they do not or will not employ

[26] Germany, Spain, France, Lithuania, Austria, Poland, Romania, Slovakia and Sweden.
[27] Belgium, Greece, France, Hungary, Croatia, the Netherlands, Slovenia and Slovakia.
[28] Only five Member States (Belgium, Greece, France, Croatia and the Netherlands) reported applying this measure in the period from 2012-2019.
[29] Hungary, Slovenia and Slovakia
[30] Bulgaria, Cyprus, France, the Netherlands Portugal and Romania.
[31] Feedback provided by the European Trade Union Confederation (ETUC) and the Platform for International Cooperation of Undocumented Migrants (PICUM) as part of the targeted consultations
[32] Feedback provided by Platform for International Cooperation of Undocumented Migrants (PICUM) as part of the targeted consultations.
[33] Example provided by European Trade Union Confederation (ETUC) in the context of the targeted consultations.

irregular migrants, relieving the main contractor from all responsibilities. **Member States should do more to hold main contractors** liable for violations in the subcontracting chain including the intermediaries to irregular employment given the similarities of their role to the role of the employers.

2.4.Actions to improve the effectiveness of sanctions against employers

Despite Member States having generally transposed the Directive, **it is not possible to reach firm conclusions** on whether the sanctions applied in practice are deterrent, effective and proportionate and whether they have a significant impact on preventing illegal employment of irregular migrants.

Although Member States have flexibility in determining the most appropriate levels of sanctions at national level, a common understanding is needed on what effective, proportionate and dissuasive sanctions are in practice and on their impact. An improved reporting mechanism should be complemented by an exchange of best practices to learn about the different national approaches and, in particular, about the approaches that have proven to be effective and have had a deterring effect.

The Commission will foster **mutual learning and exchange of best practices** between the Member States and stakeholders, with the support of administrative and criminal law experts in the Commission's dedicated Irregular Migration Expert Group on the Employers Sanctions Directive. The exchange of good practices will allow the Commission to support Member States as needed in **determining and adapting the level of sanctions** at national level that are effective, proportionate and dissuasive, collect information in order to promote a more consistent approach to sanctions and ensure that they can have an impact in reducing illegal employment and exploitation.

In addition, it is necessary to **raise awareness and inform employers** about the risks and consequences that they face by hiring irregular migrants, contributing to the increase of the deterrence of the system. The Commission will support Member States in designing effective information campaigns, targeting in particular employers working in the sectors most at risk of illegal employment and those that may not have easy access to this information (e.g. households, small enterprises) seeking the expertise of the European Platform tackling undeclared work. The Commission will also provide financial support through the Asylum, Migration and Integration Fund.

The Commission will:

- promote dialogue between the Member States and stakeholders, with the support of administrative and criminal law experts to support Member States in determining and adapting the level of financial and criminal sanctions at national level, and collect relevant information from national authorities;
- provide support to Member States in designing and implementing awareness raising and prevention campaigns targeting employers in the risk sectors seeking the expertise of the European Platform tackling undeclared work;
  relaunch the work of the Commission's dedicated Irregular Migration Expert Group on the Employers Sanctions Directive as a network of expertise, exchange and support to the Member States.

Member States should:

- assess the level of financial and criminal sanctions set at national level to evaluate whether they are effective, proportionate and dissuasive against illegal employment;
- strengthen the activities for raising awareness and providing information to employers on the possibilities of legal employment and recruitment, steps needed to prevent illegal employment and risks and consequences of hiring irregular migrants.

3. Measures for protecting the rights of irregular migrants

Articles 6 (2) and 13 of the Employers Sanctions Directive grant irregular migrants a set of rights to ensure that they are adequately informed about their entitlements from illegal employment, can lodge complaints against labour violations and claim back unpaid wages. These are key provisions to **protect migrants from the risk of exploitation and abuse**: irregular migrants reporting labour violations and engaging with the authorities is conducive to holding employers accountable for unpaid wages, taxes and social contributions, ensuring a level-playing field on the labour market and uncovering situations of exploitation and abuse of workers.

Further efforts are still needed as regards the implementation of **the protective elements of the Directive**, particularly in relation to access to information, access to justice and recovery of back payments, and the granting of temporary residence permits.

3.1. Access to information

Ensuring that migrants are able to obtain information about their rights and that the support mechanisms for lodging complaints and legal assistance are available is a **prerequisite for effective access to justice** for irregular migrants, in particular for those who are victims of abusive employers. The Employers Sanctions Directive provides the tools for irregular migrants to exercise their rights effectively, ensuring that they are systematically informed about their rights to lodge claims for back payment of remuneration before the enforcement of any return decision, that they are able to receive any back payment of remuneration even after they have returned to their country of origin and can lodge complaints against employers either directly or through third parties (see section 3.2). The Directive therefore guarantees that the migrants working in the EU without a right to stay can exercise their rights effectively within the EU, but also from abroad where relevant; such rights must be respected even when the return procedures of the Return Directive[34] are applicable, notably once an overall assessment of the individual situation of a migrant worker is concluded and their migration status determined.

A majority of Member States **only provide general information on employees' rights and not targeted information that is relevant for the specific situation of irregular migrant workers**. In some cases, **the information is limited** to occupational health and safety considerations, and does not include information on unpaid remuneration. Moreover, while

[34] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24.12.2008, p. 98).

other Member States[35] provide targeted information, this is often done only as part of the return procedure[36]. This situation has a **negative impact on the irregular migrants**, who are not sufficiently informed about the possibility to introduce a claim or receive unpaid wages before their return to their country of origin.

The Directive does not set rules on the modalities for providing information to the irregular migrants, and national practices differ with regards to **when the information is provided, as well as by whom and how**[37]. In the majority of the Member States labour inspectors are required to inform workers of their rights, which is a good practice that all Member States should follow. However, there are also other modalities. For example, in Austria the information is provided at a drop-in centre for undocumented workers, while in Italy it is done through a specific form explaining the rights of irregular migrant workers, including the obligation for the employer to pay outstanding wages, pension and social insurance contributions and on how to take action against the employer; however, such information is not provided systematically and is only available in a certain number of foreign languages. The Commission will encourage exchange of best practices and experiences among Member States to inform efforts to improve the way in which such information is provided to irregular migrant workers and increase awareness of existing rights and possibilities.

The **low level of knowledge of their rights by irregular migrants** is one of the risk factors for labour exploitation, as irregular migrants may be unable to identify such risks themselves pointing to a **need to improve access to information** by labour intermediaries, placement agencies as well as enforcement authorities (including labour inspectorates) to provide information to irregular migrant workers on their rights and where to go for support and redress. Stakeholders also pointed to the same problem and the consequent need[38].

The fact that the information provided to migrants is often limited, not systematically provided and not targeted to the specific situation of irregular migrant workers, **negatively affects the aim of the Directive to provide objective and reliable information to migrants to exercise their rights**. However, the insufficient reporting by Member States about the number of back payment claims introduced and successfully concluded and about the cases opened against abusive employers based on the reporting of an irregular migrant worker do not allow, at this stage, to substantiate this emerging evidence.

3.2. Access to justice and remuneration and granting of temporary residence permits

Even when informed about their rights, **irregular migrant workers may be deterred from filing complaints** against employers for recovering unpaid wages or denouncing possible situations of exploitation due to the possibility of being ordered to return, lose their income and, in some cases, retaliation of employers. To avoid that such situations undermine proper access to justice, the Employers Sanctions Directive requires the establishment of **specific**

[35] Austria, Belgium, Czechia, Estonia, Spain, France, Lithuania, Luxembourg, Latvia, Malta, Slovakia and Slovenia.
[36] E.g. Croatia, Cyprus, Portugal and Slovakia.
[37] European Migration Network Synthesis Report – Illegal employment of Third Country Nationals in the European Union (2017), p. 36.
[38] Feedback provided by the Platform for International Cooperation of Undocumented Migrants (PICUM) and European Trade Union Confederation (ETUC) as part of the targeted consultations.

mechanisms through which irregular migrants can file a complaint to competent authorities either directly or through third parties (e.g. trade unions, employees' associations and non-governmental organisations) including when they are no longer present in the Member State[39]. Irregular migrant workers may also receive support from these third parties in administrative or civil proceedings[40]. These mechanisms can also support the implementation of the Victims Rights' Directive[41] and ensure that irregular migrants who are victims of crime, notably the criminal offences defined by the Employers Sanctions Directive, are not denied access to justice[42].

Member States have chosen different modalities to set up **effective complaints mechanism**. A study conducted by the Platform for International Cooperation of Undocumented Migrants (PICUM)[43] shows that in 13 Member States[44] (out of the 15 covered by the study) there are civil and administrative procedures through which workers can file claims for unpaid wages and in 11[45] there is also an inspection body competent to take individual workers' complaints on issues related to underpayment of wages. Practice also shows that while migrants that are found to be illegally employed (regardless of whether they are residing regularly or irregularly) can file claims for compensation of unpaid wages in twenty Member States under the same conditions as with a valid employment contract[46], in practice the **complaints mechanisms could operate more efficiently**[47]. The Fundamental Rights Agency[48] shows that, in some Member States, migrants in an irregular situation are not using existing complaint systems. This may be for a number of reasons: a lack of incentives for workers to come forward; limited information on their rights and the available complaint mechanism; economic barriers such as membership fees to trade unions that assist member only; and, mostly, fear of being detected, detained and returned.

The **cooperation of public authorities with social partners and non-governmental organisations** is key to facilitating complaints, as they often have direct contact with the workers and can raise awareness, inform the irregular migrants of their rights, build mutual trust and help the workers identify situations of undeclared work and labour exploitation in order to file a complaint. The role of social partners and non-governmental organisations is also very important to facilitate complaints and expose situation of exploitation and reducing

[39] Only Malta requires the third country national to be present personally to lodge a complaint.
[40] The approval of the third-country national, to act in his/her behalf, is required in Bulgaria, Cyprus, Estonia, Malta, Slovakia, Finland and Sweden.
[41] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012.
[42] Under the Victims' Rights Directive, victims' rights shall apply to victims in a non-discriminatory manner, independently of their residence status.
[43] Platform for International Cooperation of Undocumented Migrants (PICUM), A worker is a worker: How to Ensure that Undocumented Migrant Workers Can Access Justice, (2020), p.21.-22.
[44] Austria, Belgium, Bulgaria, Cyprus, Czech Republic, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal and Spain.
[45] Belgium, Bulgaria, Cyprus, Czech Republic, France, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain.
[46] European Migration Network Synthesis Report – Illegal employment of Third Country Nationals in the European Union (2017).
[47] Fundamental Rights Agency, Protecting migrants in an irregular situation from labour exploitation: role of the Employers Sanctions Directive (2021) p. 12.
[48] Idem p. 5.

the fear of irregular migrants of being subject to return procedures if detected by migration authorities. In a large majority of Member States the law grants an important role to these stakeholders, notably trade unions[49], within the national mechanism for facilitating lodging of complaints.

In addition to the difficulties in filing complaints, irregular migrants also face barriers in receiving unpaid remunerations. While the Directive prescribes that the wage should be presumed to be at least as high as the minimum wage[50] and for the duration of at least three months, stakeholders point to a **number of gaps in implementing the minimum remuneration provisions in practice**. This is due to, for instance, lack of awareness of the relevant provisions among the labour inspection authorities or professionals who assist and advise irregular migrant workers. In practice, irregular migrants may face situations where the presumption of minimum three months of employment does not presume full-time employment[51] while having to provide proof of the hours worked and various types of evidence, such as messages, photos or testimonies[52]. Moreover, irregular migrants face obstacles in actually receiving the payments of the wages, due to the length or the costs of the judicial process, barriers to opening bank accounts without legal residence, employers' strategies to evade payment[53] or challenges to access financing in case of employer insolvency[54] or return.

While the Directive allows illegally employed third country nationals to claim back payments after they have returned to their country of origin, **mechanisms to facilitate claims for people who are no longer in the Member State seem to be absent** with only very few Member States having specific recovery mechanisms[55]. Nonetheless, setting up effective mechanisms is key to ensure that irregular migrants who return before the conclusion of proceedings for claiming back their unpaid wages are not disadvantaged in exercising their rights. In Belgium, if the labour inspectors determine that the wages have not been paid correctly and in cases where workers are not immediately available, or have left the country, the employers are obliged to pay the salaries into the Federal Deposit and Consignment Fund; however, there is no department or administration that is charged with having to pay back due wages or inform the migrant. In France, in cases where the irregular migrant is in detention or is no longer in the country, the wages are deposited to the Office of Immigration and Integration (OFII) and then paid to the migrant. Moreover, the OFII has the right to recover the wages, with the cooperation of the fiscal department if the employer fails to remunerate the migrant within 30 days.

[49] According to the information available to the Fundamental Rights Agency, all EU Member States but Italy, Malta, Slovenia and Finland.
[50] In a number of Member States, such as Bulgaria, Cyprus, Germany, Greece, Spain, France, Hungary, Italy, Portugal, Slovenia, Slovakia and Romania, the illegally staying third country national is assimilated to a legal employee where minimum wages apply.
[51] For instance, Germany and Austria.
[52] Feedback provided by the European Trade Union Confederation (ETUC).
[53] Such as changing company structures or closing the business and moving their assets without officially filing for bankruptcy, or simply refusing to pay.
[54] State will often first recuperate contributions to tax and social security that are due even if this means the worker will not then receive their remuneration.
[55] Only Belgium, Greece and France reported having such mechanisms - European Migration Network Synthesis Report – Illegal employment of Third Country Nationals in the European Union (2017).

In order to **protect victims of severe exploitation and children**, to facilitate complaints so that these serious crimes are detected and punished, and to facilitate recovery of unpaid wages, Article 6(5) of the Directive allows Member States to **grant temporary residence permits** to irregular migrants, linked to the length of the relevant investigation or the judicial criminal procedure or the willingness to cooperate with the authorities[56]. These permits can be extended until reception of back payments of remuneration[57]. Such permits are usually issued for periods between 6 months and one year and can be prolonged[58]. In several Member States[59] temporary residence permits can be extended until the victim has been paid due wages; however, there is a lack of information as to how often this provision is applied.

More than half of the Member States[60] have domestic legislation providing for specific temporary residence permits for victims of particularly exploitative working conditions, while the others issue them in situations of trafficking in human beings. However, only five Member States[61] report granting such residence permits for labour exploitation to irregular migrants in 2018 and 2019 with most permits granted by France, followed by Sweden, Czechia, Germany and Poland. Sweden also reported granting residence permits to illegally employed minors.

While the Employers Sanctions Directive had a **positive impact** in this area, as it led to the establishment of specific complaint mechanisms and the possibility to grant temporary residence permits, consultations with stakeholders show that in practice the irregular migrants who have experienced labour exploitation face **challenges in accessing residence permit procedures** or in the conditions on granting the permits. Stakeholders report that victims face a lack of access to information and legal advice on the availability of permits and on how to apply or request consideration, on the granting of permits often being linked to criminal charges against particular employers, and on the permit being conditional on victims' participation in criminal proceedings, although this is not required by the Directive.

3.3. Actions to improve the protection of the rights of migrants

Access to information and justice, recovery of back payments and facilitation of complaints constitute the core of the Directive's protective measures designed to redress injustices suffered by irregular migrants. Circumstantial evidence and stakeholders' reports indicate that irregular migrants face **a lack of effective access to information and to complaint mechanisms**. The lack of data on the use of the complaint mechanism and issuance of temporary residence permits does not allow reaching firm conclusions on this matter.

Effective complaint mechanisms allow authorities to plan and better target their labour inspections, build strong cases against abusive employers in cooperation with irregular migrant workers and third parties, and ultimately hold those employers accountable. Member States should make sure that these **complaint mechanisms are easily accessible** and take into

[56] Article 13(4) of the Directive.
[57] Article 6(5) of the Directive.
[58] The temporary residence permit is granted for six months in Cyprus, Hungary, Italy, Romania, Sweden (renewable), for one year in Germany and Croatia and for three months in Slovakia (renewable).
[59] Estonia, Finland, Germany, Poland, Romania, Slovenia and Sweden.
[60] Fundamental Rights Agency, Protecting migrants in an irregular situation from labour exploitation: role of the Employers Sanctions Directive (2021).
[61] Czechia, Germany, France, Poland and Sweden.

account confidentiality that can encourage lodging complaints from irregular migrant workers and unveiling cases of exploitation. Member States should establish **safe reporting policies or protocols** to ensure that irregular migrant workers can report employers in violation and engage with law enforcement without facing the risk that their migratory situation affects the exercise of their rights. In the context of the Commission's dedicated Irregular Migration Expert Group on the Employers Sanctions Directive, the Commission will promote the **exchange of good practices to identify effective mechanisms** to claim back payments, receive remuneration and lodge complaints – taking into account the need for safe reporting policies or protocols – including after a migrant has returned to his home country.

Social partners and non-governmental organisations also play a central role in promoting and implementing the protective measures of the Employers Sanctions Directive and increasing their outreach to the irregular migrants. The Commission will strengthen the **dialogue with the social partners** and non-governmental organisations representing undocumented workers and engage with the European Platform tackling undeclared work when developing these activities.

It is necessary to **improve access to objective and systematic information** by irregular migrant workers on their rights and on the mechanisms for obtaining support and redress. With the support of EU funds, Member States should **develop information and awareness raising campaigns**, in cooperation with business associations, trade unions and non-governmental organisations, targeting irregular migrant workers. In cooperation with the Fundamental Rights Agency, the Commission will develop a dedicated training for inspectors to provide information to irregular migrant workers about their rights and how to lodge claims through remuneration mechanisms, including after return to their home country.

The Commission will:

- support the exchange of good practices on effective complaint mechanisms and practical policy or protocols to facilitate engagement of irregular migrant workers with law enforcement;
- launch a dialogue with social partners, employers' associations, trade unions and non-governmental organisations, seeking the expertise of the European Platform tackling undeclared work;
- support the development of information and awareness raising campaigns for irregular migrant workers about their rights, in cooperation with business associations, trade unions and non-governmental organisations.

Member States should:

- improve accessibility of complaint mechanisms to encourage irregular migrants to lodge complaints in cases of illegal employment and exploitation;
- establish safe reporting policies or protocols for irregular migrant workers to engage with law enforcement without risking their migration status affecting the exercise of their rights;
- support trade unions and civil society organisations in providing information and advice, legal assistance and other services to irregular migrant workers.

4. Inspections

4.1. Inspections carried out by Member States

Inspections are the **most important tool** in detecting employers hiring irregular migrants and situations of exploitation. It is based on the results of inspections that employers can be held accountable and sanctioned, and the necessary measures put in place to protect the irregular migrant workers subject to exploitation. Article 13 (1) of the Directive requires Member States to ensure effective and adequate inspections based on risk assessments identifying the sectors of activity at most risk, without which it is impossible to achieve the objectives of the Employers Sanctions Directive.

Given that the Directive is silent on the definition of 'effective and adequate' inspections, practice among Member States varies pointing to **several factors that limit the effectiveness of inspections**: identification of the economic sectors most at risk of illegal employment, the low levels of inspections carried out in Member States (including in the sectors most at risk of illegal employment), the lack of sufficient resources and the difficulties in engaging with exploited migrants identified during inspections.

As already indicated, there are **important gaps in the inspections data** submitted by the Member States. Furthermore, for the inspections to be effective, they need to be targeted, focussing on the **sectors most exposed to the risk of illegal employment** in the Member States. It is in those area that inspections are more needed. Member States carry out risk assessments to determine such risk areas[62], using national guidelines or annual action plans, data collected and results from previous inspections, complaints, tip-offs to referrals from other national authorities. It appears that the sectors most affected by illegal employment are similar in most Member States and are usually **labour-intensive and low-skill / low-wage sectors** with a high turnover of staff. Most common risk sectors include agriculture, construction, manufacturing, domestic care and social assistance, hospitality and food services[63]. However, in their reporting to the Commission, several Member States[64] do not identify risk sectors, indicating a need to better prioritise inspections. Although the risk sectors tend to be stable over time, economic developments can lead to the emergence of new sectors exposed to the risk of illegal employment, such as **platform workers**. Member States should, therefore, regularly update their risk sectors.

The **number of inspections carried out in the current system is unlikely to dissuade employers from hiring irregular migrants**. The share of employers active in a sector subject to inspections tends to be very low; consequently employers may consider that the economic advantage gained from illegal employment to be higher than the likelihood of being detected through inspections. Tables 3 and 4, which present the Member States' information on the inspections carried out in all the sectors[65], shows that the Member States' inspection efforts vary significantly. In 2019, for instance, **less than 1% of employers in all sectors**

[62] European Migration Network Synthesis Report – Illegal employment of Third Country Nationals in the European Union (2017), p. 20.
[63] Idem p. 14-15.
[64] Czechia, Estonia, Lithuania, Malta and Romania.
[65] Portugal (agriculture/forestry/fishing, construction and accommodation/food services) reports only on risk sectors.

were subject to inspections in Bulgaria, Estonia, France, Latvia, Netherlands and Sweden; in thirteen Member States, the inspections covered between 1% and 10% of their employers[66]; in Austria inspections covered 14.5% of all employers and inspections in Slovenia and Slovakia covered above 30% of all employers. The information at the Commission's disposal shows that in most Member States **inspections are not focused on risk sectors**, a situation that does not respond to the requirement of the Directive. In addition, Member States and other stakeholders[67] report that labour inspection authorities are **often understaffed and lack resources**, affecting the number and frequency of inspections carried out.

In addition to detecting situations of illegal employment, inspections also serve to **identify situations of vulnerability and exploitation** especially in cases that concern the rights of children, core labour standards and gender equality. Furthermore, stakeholders[68] highlight that exploited workers are discouraged from reporting their situation during the inspections due to the risk of apprehension and return, in particular when inspections are carried out jointly by labour inspection and police / immigration authorities. Stakeholders therefore promote the idea of separating labour inspections and law enforcement / immigration activities by means of a 'firewall', which would guarantee that irregular migrants detected during inspections would not be referred to immigration authorities for return procedure. In addition, the Fundamental Rights Agency observes that when inspections are conducted jointly between labour authorities and anti-trafficking units or other specialised units trained on labour exploitation, they might **help identifying migrants who are victims of labour exploitation or trafficking in human beings.**

The mechanisms to facilitate complaints against employers through designated third parties like trade unions or non-governmental organisations aim at guaranteeing that situations of exploitation emerge and are reported to the competent authorities. Their effective implementation is of primary importance (see section 3.2) to ensure that irregular migrant workers can exercise their rights without the fear of being subject to return procedures. In addition, some Member States have taken further measures to facilitate the reporting of exploitation. The Netherlands, for instance, implements a policy known as 'free-in, free-out'[69] allowing irregular migrants to report a crime to the police without being arrested or facing return, regardless of the type of crime reported. Spain set up dedicated police teams that are tasked to provide assistance to migrants, including irregular migrants, by informing them of their rights, advising them on how to regularise their status and supporting them in lodging complaints against employers and others for mistreatment and exploitation without risk of being ordered return.

[66] Belgium, Czechia, Germany, Greece, Spain, Croatia, Hungary, Italy, Lithuania, Malta, Poland, Romania and Finland.
[67] Feedback provided by European Trade Union Confederation (ETUC) in the targeted consultations and by Member States representatives at the meeting of the National Contact Points for migrant smuggling in February 2021.
[68] Idem.
[69] It is based on an internal policy document of the national police and a Memorandum of Understanding shared with the Dutch Parliament.

4.2. Actions to improve the effectiveness of inspections

For the inspections to be effective in detecting illegal employment and ensuring the protection of irregular migrants, Member States should ensure that they target the economic sectors most at risk of illegal employment that cover a significant number of employers in such sectors and are carried out at regular intervals. For this reason, all Member States should **carry out comprehensive and regular risk assessments**, looking also at new and emerging economic areas such as the platform economy, to identify risk sectors and communicate them to the Commission.

The Commission, working closely with Member States and social partners, will promote the **exchange of best practices on inspections, risk assessment** and cooperation among national labour inspectorates, including with regard to what could be considered **deterrent and realistic targets** for annual inspections in the risk sectors identified by the Member States.

To facilitate the identification of situations of exploitation and of victims of trafficking during inspections and support Member States in implementing the obligations from the Directive, the Commission will promote, in a structured way, the exchange of practices, for instance on **joint inspections of labour authorities and specialised labour exploitation units**, in cooperation with the Fundamental Rights Agency and seeking the expertise of the European Platform tackling undeclared work. Moreover, Member States should provide **training to labour inspectors** on the rights of irregular migrant workers under the Employers Sanctions Directive and on the identification of cases of exploitation and human trafficking. At the same time, the Commission will explore the possibilities of supporting Member States with training in cooperation with the Fundamental Rights Agency, where appropriate.

The Commission will:

- work closely with Member States to identify possible annual targets for inspections of employers in the risk sectors;
- promote the exchange of good practices on inspections, identification of risk sectors and the cooperation between inspectorates seeking the expertise of the European Platform tackling undeclared work;
- promote the exchange of good practices for identifying victims of exploitation and trafficking, including on joint inspections with dedicated units.
- explore the possibility of supporting Member States with training of labour inspectors in cooperation with the Fundamental Rights Agency.

Member States should:

- ensure that inspections target the economic sectors most at risk of illegal employment, cover a significant share of employers in such sectors and are carried out at regular intervals;
- carry out comprehensive and regular risk assessments, looking also at new and emerging economic areas, such as the platform economy, to identify risk sectors and communicate them to the Commission;
- provide training to labour inspectors on the rights of irregular migrant workers under the Employers Sanctions Directive and on the identification of cases of exploitation and human trafficking.

5. Significant gaps in information

The Directive requires that Member States communicate annually to the Commission on the number of inspections and their results[70], on the back payments made by employers, on the other measures applied and on the facilitation of complaints[71]. This information is key to assessing how the measures of the Directive are implemented and their consequences. However, Member States provide very limited and uneven information leading to significant data gaps on inspections and their results, on the application of financial and criminal sanctions and on the number of criminal proceedings launched, as well as on the use and results of the complaints' mechanisms.

There is also a lack of complete and reliable data and information on the **application of the complaints mechanisms and their outcomes**, as well as insufficient reporting by Member States about the number of **back payment claims** introduced and successfully concluded and on the cases opened against abusive employers. No Member State has centralised data on the number of successful complaints filed by irregular migrants regarding the payments of their due wages. Therefore, even if claims are successful, whether or not workers receive back pay in the end is often unknown, with employers often declaring bankruptcy or disappearing. Without a comprehensive overview of the number and the outcomes of the complaints filed, it is difficult to reach any conclusions on how effective access to justice and the complaints mechanisms in Member States is, how often these mechanisms are used and with what success.

The lack of reliable and complete information **makes it difficult to assess in a conclusive manner whether the Directive had an impact** in deterring and reducing illegal employment and whether criminal sanctions in the Member States are effective, proportionate and dissuasive. Improved collection of information would contribute to a more effective enforcement strategy both at national and EU level.

To **fill the significant data gaps and allow a solid assessment** of the impact and effectiveness of the Employers Sanctions Directive, there is a need to improve reporting by national authorities. In the first place, the Member States must provide timely, complete and comparable information in order to meet their obligation stemming from the requirements of the Article 16(2) of the Directive. To support Member States in meeting their reporting obligation, the Commission will, with the support of the European Migration Network, **set up an IT reporting system and database**. Such a system will facilitate the collection of information from national authorities in relation to the financial, criminal and other sanctions imposed against employers, the use of the complaint mechanisms – including on the number of complaints lodged and their outcomes, wages claims and payments, temporary permits granted – as well as on the inspections carried out and their results. In cooperation with the Member States, the Commission will define clear **criteria and requirements for reporting**, to ensure consistency and high quality of contributions and that the data is complete, comparable and submitted in a timely manner.

[70] Article 14 of the Directive.
[71] Article 16(2) of the Directive.

The Commission will:

- set up an IT reporting system and database, with the support of the European Migration Network, for information and data collection on sanctions, use of protective measures and inspections;
- define clear criteria and requirements for reporting in cooperation with Member States.

Member States should:

- report annually and in a timely manner on the inspections and their outcomes (e.g. total number of proceedings opened and closed, fines and criminal sanctions imposed);
- improve collection of data on the application of the complaints mechanisms and their outcomes (e.g. number of back payment claims, results of claims, number of proceedings opened against employers).

6. Stepping up the EU action against illegal employment

To counter irregular migration, the EU needs to address all the facets of this phenomenon through a comprehensive approach, as indicated by the New Pact. In addition to addressing the root causes of migration, relaunching the fight against migrant smugglers in partnership with third countries and stepping up the opening of legal pathways to the EU, the EU also needs to **enhance its response to illegal employment**, as a driver of irregular migration and a source of exploitation and abuse. For this, it is necessary to ensure a more effective implementation and enforcement of the Employers Sanctions Directive, the most important tool at our disposal whose **potential is still to be fully exploited**.

The level and degree of implementation of the Directive by the Member States varies. While the differences in the various approaches reflect the flexibility granted by the Directive, allowing Member States to implement the solutions that fit best their national systems, it also shows a general **inefficient use of the rules on sanctions, protective measures and inspections** to detect abusive employers and protect migrants from exploitation.

In a first instance, significant improvements can already be achieved by **stepping up the effective application** of the existing key provisions of the Employers Sanctions Directive. The Commission encourages Member States to act on the key recommendations set out in this Communication. The Commission will promote a dialogue with Member States' authorities and various stakeholders, including through the relaunch of its dedicated Irregular Migration Expert Group on the Employers Sanctions Directive in 2021. The work of the Expert Group will aim to improve the identification and sharing of good practices between Member States, as well as supporting them in the interpretation and implementation of the Directive's provisions in a structured way. With this aim, the Commission will **work in close cooperation with stakeholders** such as national labour and immigration authorities, trade unions, civil society organisations, social partners, international organisations. Where relevant, the Commission will seek the expertise of the European Platform tackling undeclared work.

While supporting Member States in their implementation efforts, the Commission will also continuously monitor the implementation of the Directive and focus on its **effective enforcement**. Upon adoption of this Communication, the Commission will engage with the relevant authorities of the Member States to obtain additional information on the implementation of the key obligations on sanctions, inspections and protection of migrants' rights stemming from the Directive and aiming to identify possible solutions. Where appropriate, the Commission will launch **infringement** procedures.

By the end of 2022, the Commission will implement the measures presented in this Communication and **report on the results achieved** in the next implementation report due in 2024 at the latest. In light of the progress achieved through the recommendations presented in this Communication and the renewed implementation and enforcement efforts, and taking into account possible developments in the area of illegal employment and whether the Employers Sanctions Directive is still fit to respond to them, the Commission will then consider whether it is necessary to amend the existing legal framework.

TABLES

Table 1: Financial sanctions

MS	N/L person *	Amount of the financial sanctions			Article 5(3)**	Article 5(2)(b) ***	Changes
		Minimum	Fixed	Maximum			
Penalty applied to every illegally employed irregular migrant							
AT	N/L	€1 000/ €4 000		€10 000/ €50 000	N	On top	No change
BE	N/L	€300		€3 000	N	On top	No change
BG	N	BGN 500/ 1 000 (€255 / 511)		BGN 7 500/15 000 (€3 834 / 7 669)	N	On top	BG has increased the amount of the fine. Previously, the fine for natural person amounted from between BGN 500/1 000 to BGN 5 000/10 000. For legal person, it was up to BGN 20 000/40 000.
	L	BGN 2 000/4 000 (€1 022 / 2 045)		BGN 30 000/60 000 (€15 339 / 30 678)			
CY	N/L	€1 500		€3 000	Y	On top	The Cyprus' Government has submitted a bill to the Parliament in order to increase the administrative fines, to make the sanctions more dissuasive. The bill is expected to be enacted in the following weeks.
EE	N			€1 200	N	On top	No change
	L			€3 200			
EL	N/L		€5 000/ €10 000		N	On top	EL has increased the level of the sanctions. Previously, the fine amounted from between €3 000 to €15 000.
ES	N/L	€ 500		€100 000	N	On top	ES has increased the amount of the fine which previously amounted from between €6 001 to €60 000.
FR	N/L	€6 980		€15 000/€75 000	N	On top	France modulated the amount of the fine in order to better take into account the factual circumstances (Decree 4 June 2013)
HR	N	HRK 10 000 (€1 334)		HRK 30 000 (€4 002)		On top	
	L	HRK 70 000 (€9 338)		HRK 150 000 (€20 010)	Y		
HU	N/L	4*minimum wage		15*minimum wage	Y	On top	Minimum wage 161 000 HUF/month (€465 129) in 2020
IT	N	€1 800		€43 200	Y	Reflected	IT has increased the amount of the

							sanction. Previously fine amounted to between € 1.500 and € 12.000
LT	N	€869/€2 896		€2 896/ €5 792	N	On top	Change applicable since 1.1. 2017
	L	€1 000/€5 000		€5 000/ €6 000			
LU	N/L		€2 500		N	On top	No change
NL	N			€11 250	Y	Reflected	NL has increased the amount of the fine. Previously the fine was up to € 4 000 for natural person and up to € 8 000 for legal person.
	L			€45 000			
RO	N/L	RON 10 000 (€2 032)		RON 20 000 (€4 064)	N	On top	RO has increased the amount of the fine. Previously, the fine amounted from ROL 1 500 Lei to ROL 2 000.
SE	N/L			SEK 36 396/ 47 300 (€3 613 / €4 696)	N	Reflected	SE has increased the amount of the fine
SI	N	€ 2 000		€ 5 000	N	On top	No change
	L	€ 4 000		€ 12 000			
Number of irregular migrants taken into account in the determination of the fine							
CZ	N			CZK 5 000 000 (€196 900)	N	On top	CZ has increased the fine. Previously, the fine was up to 2 000 000 CZK
	L	CZK 50 000 (€1 969)		CZK 10 000 000 (€393 800)			
DE	N/L			€500 000	N	On top	No change
FI	N/L	€1 000		€30 000	Y	On top	No change
LV	N	€210		€500	Y	On top	No change
MT	N/L			€11 646,87	N	On top	No change in the amount of the maximum financial sanction but additional elements have been added e.g. the addition of return costs and the cost for sending payments to the third country.
PL	N/L	PLN 1 000 (€223,1)		PLN 30 000 (€6 693)	Y	On top	No change
PT	N/L	€2 000		€90 000	Y	On top	No change
SK	N/L	€2 000		€200 000	N	On top	No change

*N/L = Natural person/Legal person

** Article 5(3) of Directive 2009/52/CE: "*Member States may provide for reduced financial sanctions where the employer is a natural person who employs an illegally staying third-country national for his or her private purposes and where no particularly exploitative working conditions are involved*"

*** Article 5(2)(b) of Directive 2009/52/CE : "*Sanctions in respect of infringements of the prohibition referred to in Article 3 shall include: (b) payments of the costs of return of illegally employed third-country nationals in those cases where return procedures are carried out. Member States may instead decide to reflect at least the average costs of return in the financial sanctions under point (a)."*

Exchange rates 11/06/2021: BGN 1 = EUR 0.5113, CZK 1 = EUR 0.03938, DKK 1 = EUR 0.134474, HUF 1 = EUR 0.002889, PLN 1 = EUR 0.2231, RON 1 = EUR 0.2032, SEK 1 = EUR 0.09929, HRK 1 = EUR 0.1334

Table 2: Criminal sanctions

MS	Sanctions (duration of imprisonment and fine where applicable)					Comments
	9(1)a "the infringement continues or is persistently repeated"	9(1)b "simultaneous employment of a significant number of irregular migrants"	9(1)c "particularly exploitative working conditions"	9(1)d "employer who is knowledgeably employing a victim of trafficking"	9(1)e "illegal employment of a minor"	
AT	fine up to 360 daily fees or imprisonment of up to 6 months	fine up to 360 daily fees or imprisonment of up to 6 months	imprisonment of up to 2 years	imprisonment of up to 2 years	fine up to 360 daily fees or imprisonment of up to 6 months	The amount of a fine which can be up to 360 daily fees depends on the income of the perpetrator. The maximum financial penalty can be €1.8 million
BE	imprisonment of 6 months to 3 years and/or fine of €600 to €6 000		imprisonment of 1 -5 years and fine of € 500-50 000	imprisonment of 1 -5 years and fine of € 500-50 000	imprisonment of 10-15 years and fine of €1 000-100 000	Penalty of level 4 is applicable to employment of foreign nationals who are not permitted or authorised to stay for more than 3 months in Belgium
BG	imprisonment of 1 to 5 years and fine of BGN 5 000 (€2 554) to BGN 50 000 (€25 564)	imprisonment of up to 4 years and fine of BGN 2 000 (€1 022) to BGN 20 000 (€10 225)	imprisonment of 1 to 5 years and fine of BGN 5 000 (€2 554) to BGN 50 000 (€25 564)	imprisonment of up to 4 years and fine of BGN 2 000 (€1 022) to BGN 20 000 (€10 225)	imprisonment of 1 to 5 years and a fine of BGN 3 000 (€1 534) to BGN 30 000 (€15 338)	The Sanctions listed under 9(1)b apply to the person who employ simultaneously five or more illegally staying foreigners.
CY	Imprisonment of up to 5 years and/or a fine not exceeding €20 000					Each circumstances mentioned under 9(1)a-e can be cumulative or substitutive to each other.
CZ	imprisonment of six months to five years: Imprisonment for up to 6 months, forfeiture of property or of other property values, or a prohibition to undertake professional activities. - Penalty of imprisonment of up to one year, if a person committed the criminal offence of the illegal employment of foreigners as a member of an organised group, for remuneration, or repeatedly. - Penalty of imprisonment between six months to three years, if the perpetrator gained a considerable benefit for himself or herself or for someone else. - Imprisonment between one and five years and where appropriate, also forfeiture of property, if the perpetrator gained by this criminal act a benefit of a large scale for himself or herself or for someone else.			-	imprisonment of six months to five years	A monetary penalty may be imposed maximum up to 1 460 000 000 CZK (€ 53 100 563) to legal person.
DE	imprisonment of up to 1 year or a fine	imprisonment of up to 1 year or a fine	imprisonment of up to 3 years or a fine (serious cases: 6 months to 5 years)	imprisonment of up to 3 years or a fine	imprisonment of up to 1 year or a fine	1. In the case of a criminal offence committed with intent, a fine not more than € 1 000 000;

						2. In the case of a criminal offence committed negligently, a fine not more than € 500 000.
EE	fine of 30 to 500 daily rates (€96 to €1 600) or imprisonment of up to 3 years					Legal persons are punished by a pecuniary punishment only (€ 3 200 to € 16 000 000) Compulsory dissolution of a legal person.
EL	imprisonment of at least 5 months			imprisonment of at least 6 months	imprisonment of at least 6 months	There is no distinction between employers as natural and legal persons.
ES	imprisonment of 3 to 18 months and a fine of 12 to 30 months	imprisonment of 6 months to 6 years and fine of 6 months to 12 months	imprisonment of 2 to 5 years and fine of 6 to 12 months	imprisonment of 2 to 5 years and a fine of 6 to 12 months -	imprisonment of 3 to 18 months and a fine of 12 to 30 months	
FI	fine or imprisonment of up to 1 year					
FR	up to 10 years of imprisonment and a fine of €100 000					
HR	imprisonment from 6 months up to 5 years					
HU	imprisonment of up to 2 years	imprisonment of up to 2 years	imprisonment for up to 3 years	imprisonment for up to 3 years	imprisonment for up to 3 years	
IT	Imprisonment from 1-5 years and 5-15 for aggravating circumstances					IT has increased the length of imprisonment. Previously: imprisonment for minimum 3 months and maximum 1 year and fine of €5 000 for each illegally employed worker; with sanctions increased if the activities are linked to criminal actions related to profit making.
	Increase of one third to an half of the sanction			Increase of one third to a half of the sanctions and a fine of € 25 000 for each person involved	Increase of one third to a half of the sanctions and a fine of € 25 000 for each person involved	
LT	fine or imprisonment of up to 2 years		imprisonment up to 8 years	imprisonment 2 to 10 year or if two or more persons then 4 to 12 years		Specific sanctions for legal persons: 1) a fine (from €10 000 to 5 000 000); 2) restriction of operation of the legal entity; 3) liquidation of the legal entity.
LU	imprisonment of 8 days to 1 year and /or fine of €2 501 to €20 000					Specific sanctions for legal persons: 1) fine: minimum € 500, maximum € 750 000; 2) special confiscation;

						3) exclusion from participation in a public contract; 4) winding up
LV	Temporary deprivation of liberty (imprisonment up to 3 months) or community service, or a fine (up to 100 minimum monthly salaries monthly salaries (€ 50 000))					
MT	Fine of up to 11 646.87 and/or imprisonment of up to 2 years. The penalty shall be increased by one or two degrees by the aggravating circumstances mentioned under 9(1)a-e the penalty.					Specific sanctions for legal persons: 1. fine of maximum € 2 500 2. suspension or cancellation of any licence; 3. temporary or permanent closure; 4. compulsory winding up
NL	imprisonment up to 4 years or fine of the fifth category	imprisonment up to 4 years or fine of the fifth category and the maximum sanction for human trafficking is imprisonment for a term not exceeding twelve years.				The criminal code allows for the criminal prosecution of legal persons. Legal persons, as well as the superior or supervisor can be sanctioned.
PL	Fine (the fine is imposed in daily rates, defining number of rates and amount of one rate. The lowest number of rates shall be 100, and the highest 1 080 000 zlotys or restriction of liberty up to 12 months.		imprisonment of up to 3 years		Fine between 100 and 1 080 000 zlotys or restriction of liberty	Specific sanctions for legal persons: 1) prohibition to promote, advertise its activity, produced goods and provided services; 2) exclusion from the entitlement to benefit from public financial aid; 3) exclusion from the entitlement to benefit from the aid of international organisations; 4) exclusion from the entitlement to participate in the public procurement; 5) prohibition to pursue a certain economic activity; 6) publication of a judicial decision.
PT	imprisonment of up to 1 year or fine up to 240 days (maximum € 120 000)	imprisonment of up to 2 years or fine up to 480 days (maximum € 240 000)	imprisonment of 1 to 5 years	imprisonment of 2 to 6 years	imprisonment of up to 2 years or fine up to 480 days (maximum € 240 000)	Specific for legal persons: 1. fine; 2. interdiction of exercise of the activity for a period of 3 months to 5 years
RO		imprisonment of 1 to 2 years or fine	imprisonment from between 6 months to 3 years.	imprisonment between 3 months to 2 years	imprisonment between 3 months to 2 years	The penalty mentioned under 9(1)b applies to employment of more than 5 persons.
SE	a fine or imprisonment of up to 1 year					Corporate fine consist of at least 10 000 (€ 1 138) and at most 3

			000 000 SEK (€ 341 382). Moreover, Chapter 36, Section 4 of the Swedish Penal Code, makes it possible to forfeit profits that are a result of a crime. The legal person may therefore lose all profits that it has gained because of the illegal employment.
SI	imprisonment of up to 2 years	imprisonment of up to 3 years	The amount of the fine imposed on a legal person varies with the degree of a punishment (especially length of imprisonment) prescribed for the perpetrator of the criminal offence.
SK	imprisonment of up to 2 years	imprisonment of 6 months to 3 years	Sanctions for legal persons: Confiscation of a sum of money ranging from € 800 up to € 1 660 000; Confiscation of a property

Table 3: Inspections carried out by Member States in 2019

	Inspections		Results	
Member State	**Absolute number**	**Percentage of all employers in all sectors inspected**	**Number of inspections in which illegal workers were detected**	**Number of illegal workers detected**
Belgium	14 658	6,3%	1 062	1 629
Bulgaria	391	0,4%	4	14
Czechia	8 160	5,6%	74	180
Germany	98 224	6,0%	No data	No data
Estonia	100	0,2%	0	44
Greece	21 244	9,4%	30	41
Spain	15 706	1,7%	3 215	4 948
France	1 286	0,1%	1 068	1 800
Croatia	10 100	2,8%	142	321
Italy	129 289	8,2%	907	1 608
Cyprus	9 203	126,1%	68	104
Latvia	1 518	0,8%	6	6
Lithuania	7 141	6,6%	72	257
Luxembourg	5 682	64,6%	61	68
Hungary	15 509	3,5%	47	85
Malta	3 920	6,1%	13	22
The Netherlands	1 746	0,5%	386	405
Austria	27 518	14,5%	3 345	5 831
Poland	11 623	1,9%	497	574
Portugal	1 167	0,6%	0	757
Romania	1 416	1,5%	0	121
Slovenia	10 444	32,0%	96	0
Slovakia	23 891	36,6%	5	7
Finland	19 765	6,3%	17	53
Sweden	2 675	0,5%	331	584
Total	***442 376***	13,7%	***11 446***	***19 459***

Table 4: Inspections carried out by Member States in 2020

	Inspections		Results	
Member State	**Absolute number**	**Percentage of all employers in all sectors inspected**	**Number of inspections in which illegal workers were detected**	**Number of illegal workers detected**
Belgium	10 080	4,37%	832	1 371
Bulgaria	131	0,13%	5	5
Czechia	5 557	4,08%	36	66
Germany	No data	No data	No data	No data
Estonia	388	1,30%	53	132
Greece	10 904	10,61%	27	41
Spain	No data	No data	No data	No data
France	No data	No data	No data	No data
Croatia	8 101	2,15%	133	232
Italy	No data	No data	No data	No data
Cyprus	No data	No data	No data	No data
Latvia	1 239	0,68%	8	8
Lithuania	4 161	1,93%	0	3
Luxembourg	12 728	No data	54	70
Hungary	No data	No data	No data	No data
Malta	3 542	5,05%	19	33
The Netherlands	No data	No data	No data	No data
Austria	29 220	15,94%	3 483	5 302
Poland	6 823	1,17%	320	426
Portugal	631	1%	No data	239
Romania	724	No data	No data	53
Slovenia	7 826	No data	104	No data
Slovakia	13 182	19%	6	44
Finland	14 593	4,55%	2	6
Sweden	1 695	0,31%	239	406
Total	***131 525***	***4,82%***	***5 321***	***8 437***