

EMN Focussed Study 2016

**Illegal employment of third-country
nationals in the EU**

Country Report SWEDEN



EMN Focussed study 2016:

Illegal employment of third-country nationals in the EU – Country Report Sweden

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EMN FOCUSED STUDY 2016

Illegal employment of third-country nationals in the EU

Country Report SWEDEN

Top-line "Factsheet"

Overview of the National Contribution – introducing the Study and drawing out key facts and figures from across all sections of the National Contribution, with a particular emphasis on elements that will be of relevance to (national) policymakers.

Please also provide a concise summary of the main findings of Sections 1-5 below, for example:

- ★ Extent to which illegal employment of third-country nationals (TCNs) is an issue in general in your (Member) State;
- ★ Key prevention and identification measures regarding illegal employment of TCNs in place in your (Member) State;
- ★ Possible sanctions for employers and sanctions and other outcomes for TCNs;
- ★ Mechanisms on access to justice and enforcement of rights of illegally employed TCNs;
- ★ Challenges as well as good practices in the field.

Overall, rather little is known about illegal employment of third-country nationals in Sweden. According to statistical data that Sweden reports to the European Commission in accordance with the European Union's Employers' Sanctions Directive,¹ the Swedish Police carried out 366 workplace inspections in 2015, whereby 94 illegally employed third-country nationals were detected. In some cases, financial and/or criminal sanctions were imposed on employers, but only 16 proceedings concerning financial sanctions and 7 criminal investigations were opened that year.

In international comparison, these figures appear low. It remains unclear, however, why this is the case. The available data can either indicate that illegal employment is not a widespread phenomenon in Sweden, or that the systems and routines to detect illegal employment are insufficient, and that the dark figure, the number of undetected cases, could be a high. Given the fact that Swedish society is highly regulated and that it can therefore be difficult for a third-country national to stay and work illegally under a protracted time, we can assume that the first hypothesis is true to a certain degree. At the same time, the available information and experiences that this study elaborates on indicate that the detection and investigation of undeclared work poses many difficulties for the responsible authorities and leave room for improvements. The study finds, for example, that awareness of the phenomenon and reliable information are not particularly well developed in Sweden, and that at certain points, cooperation between different public authorities has its weaknesses. Further to this, no public authority has a mandate to carry out random checks on workplaces specifically to detect illegal employment. A special Eurobarometer Survey carried out in 2013 found that 76% of respondents in Sweden were of the view that people doing undeclared work had only a small risk of being detected.

This EMN study finds that **illegal employment** is a **criminal offence** in Sweden, both for employers that hire third-country nationals that have no right to stay and/or work in Sweden, and

¹ 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.

for those third-country nationals that engage in such employment without the necessary permits. There are both financial and criminal sanctions. The **implementation of the Employers' Sanctions Directive**, which was a comprehensive and lengthy process in Sweden, brought about reforms and changes to several laws and ordinances.

Regarding the **prevention** of illegal employment, the Swedish **Migration Agency** and other authorities provide information on residence permits and work permits on their websites, informing among other things about the fact that most foreigners who are not EU-nationals need a work permit to work in Sweden. Information is also targeted at employers, describing under what conditions they can legally hire third country nationals. The websites also state that employers need to check whether a person they want to hire has a work permit, and that such employment needs to be reported to the Swedish Tax Agency. The Tax Agency itself also makes relevant information available and informs about the possible consequences of misbehaviour.

As illegal work/employment is a criminal offence, it is the Swedish **Police's** task to conduct intelligence and carry out investigations regarding such crimes. In practice, if the Police find reason to suspect a criminal activity, they shall start a **preliminary investigation**. In this framework, they can carry out control and law enforcement measures in accordance with the Code of Judicial Procedure (*Rättegångsbalken*), e.g. a house search. If a suspicion of criminal behaviour is not strong enough to motivate a preliminary investigation, the Police may conduct an **internal check on foreigners**. This is possible anywhere in Sweden, including at workplaces. The Police also **identify risk sectors** and **collect data** on inspections at work places. Risk assessments alone do not automatically trigger certain workplace inspections, however, as a concrete suspicion of criminal behaviour is needed to start a preliminary investigation.

Workplace inspections are also carried out by the Swedish **Tax Agency**, which focuses on issues such as undeclared employment, undeclared income or tax avoidance. In such contexts, when the Tax Agency has suspicions of criminal activity, the Agency can ask the **Police** for assistance and cooperate with public prosecutors. In addition, the Tax Agency has an explicit mandate to inspect workplaces that are required to keep workplace attendance records or cash registers, and in the framework of such inspections, employees can be asked to identify themselves.

The Migration Agency and the Work Environment Authority also have certain control and verification powers in the wider context of illegal employment. The **Migration Agency** may control whether a person who has been admitted to Sweden for work purposes really has taken up employment in Sweden and whether the employer adheres to the working conditions as foreseen by the employment contract. The **Work Environment Authority** ensures that laws about work environment and working hours are followed by companies and organisations. While detecting illegal employment of third-country nationals is not the focus of this agency, their workplace inspectors are entitled to inform the police if they find any signs of such activity. The Tax Agency, the Work Environment Authority and the Police can also carry out inspections together, or assist one another.

For an employer, having intentionally or through negligence an alien in his or her employment shall be sentenced to a **fine** or, in aggravating circumstances, to **imprisonment** for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. In addition to this criminal sanction, a (natural or legal) person who has an alien in his or her employment shall pay a **special charge** to the state if the alien has no right to stay in Sweden or does not have the necessary work permit. This special charge is a financial sanction that applies regardless of whether or not a criminal sanction is applied.

If the Police detect a person that is not in possession of a valid residence permit or a valid visa, they will check whether the person has been **ordered to leave**, i.e. whether the person has been refused entry or received an expulsion decision. If the person has been ordered to leave and any time period for voluntary departure has already elapsed, they will seek to carry out the return. They can also decide to detain the person. If the circumstances are unclear, i.e. if it is unclear whether or not the person is entitled to stay, the Police will seek to clarify the case with the help of the Migration Agency.

Illegally employed third-country nationals have rights vis-à-vis their employers, however. Swedish labour law and collective agreements must always be respected, even by companies that employ undocumented workers, and illegally employed third-country nationals have a **right to a salary** and, if relevant, other compensation. The Swedish Trade Union Centre for Undocumented Migrants, established in 2008, assists undeclared migrants to make such claims and helps them safeguard

their rights.

This study has largely been carried out by reviewing readily available material, such as reports and studies. Of particular importance was the final report of a government-appointed committee that was tasked with making proposals regarding the implementation of the Employers' Sanctions Directive, and the related government bill, which entered into force in August 2013. In addition to desk research, informal interviews have been conducted with experts from the Swedish Ministry of Justice, the Ministry of Employment, the Police, the Work Environment Authority, the Swedish Trade Unions Confederation, the Tax Agency and the Swedish Migration Agency.

Section 1: Overview of the situation regarding illegal employment in Sweden

This introductory section of the Synthesis Report will aim at setting the scene for the Study and contextualize the Study in terms of providing a brief overview of the general situation in the (Member) State with regard to illegal employment of TCNs.

Q1. Please provide an overview of the **general situation with regard to illegal employment** on the basis of available research and information in your (Member) State, including, *inter alia*:

- Q1a. Extent to which the grey and informal economy is present in your (Member) State;
- Q1b. Extent to which fighting illegal employment is a political priority in your (Member) States;
- Q1c. Public and/or policy debates in the area of illegal employment;
- Q1d. Extent to which illegal employment of TCNs is an issue in your (Member) State (e.g. severity and intensity of the issue), in particularly concerning the TCNs;
- Q1e. Available research on the main routes to an irregular employment situation in your (Member) State;
- Q1f. Any (planned) changes in law or practice in the field of illegal employment;
- Q1g. Issues with illegal employment in particular industries and sectors and particular types of employer (e.g. is it more prevalent in SMEs or larger businesses, start-ups or more established businesses?);
- Q1h. Profiles of the illegally working individuals (EU, EEA or TCNs);
- Q1i. Other related issues experienced in your (Member) State which may directly affect the extent of illegal employment in your (Member) State, such as corruption, trafficking in human beings, etc.

Please specify the reference/source of the information.

The **Swedish Trade Union Centre for Undocumented Migrants** estimates that Sweden hosts between 30,000 and 50,000 undocumented migrants and that many of them are in a vulnerable position. The Centre describes the exploitation of undocumented migrants as a "huge problem".² Other estimates, as published in Swedish Government Official Reports in 2010 and 2011, indicate a range of 10 000 to 50 000 irregular migrants. As immigration flows to Sweden have increased substantially throughout recent years, it can be assumed that irregular stays have increased as well, e.g. as a result of rejected asylum seekers avoiding return obligations, or migrants overstaying temporary residence permits. As a consequence, illegal employment may have become more frequent as well.

From an international perspective, however, the **informal or "grey" economy** in Sweden can be perceived as comparatively small. The number of undocumented workers is certainly higher elsewhere, too. According to statistical data that Sweden reports to the European Commission in accordance with the Employers' Sanctions Directive 2009/52/EC, the Swedish Police carried out **366 workplace inspections in 2015**, whereby **94 illegally employed third-country nationals** were detected. In some cases, financial and/or criminal sanctions were imposed on employers, but only 16 proceedings concerning financial sanctions and 7 criminal investigations were opened that year.

Problems and irregularities certainly exist, however, and according to experts, there is a considerable dark figure. Much illegal work, which is sometimes related to other crimes as well, such as trafficking or exploitation of workers, could therefore remain undetected. Sweden has put mechanisms in place to prevent, disclose and punish

² http://www.fcfp.se/?page_id=134.

illegal employment, such as **workplace inspections** and controls by the **Tax Agency**, the **Police** and other authorities. The Swedish **trade unions** also contribute to making sure that the labour law and collective agreements are respected. Regarding criminal activities, the Police Authority is the main responsible body. No public authority however has a mandate to carry out random checks at workplaces specifically to detect illegal employment.

It is illegal for employers in Sweden to hire persons who have no right to say and/or work in Sweden, and it is illegal for third-country nationals without a residence and/or work permit, or an exemption from the requirement to hold a work permit, to work. This does however not imply that a person working without a residence or work permit would not have any rights. Indeed, the Swedish **labour law** and **collective agreements** must always be respected, even by companies that employ undocumented workers. Illegally employed third-country nationals have a legal right to a salary and, if relevant, other compensation, even when their stay or work arrangement is illegal.

The topic of illegal employment has overall not been much debated in public, in the media or in policy circles over recent years, but some related issues have been discussed widely and intensively, such as **exploitation** of third-country nationals coming to Sweden in the framework of labour immigration, **wage-dumping**, the employment of EU nationals under unclear conditions in the berry-picking industry, and begging. These issues are not always clearly linked to illegal employment. Rather, in addition to illegal employment in a narrow sense, there seem to be various new forms of self-employment or independent economic activities that are not always clearly regulated and challenging for public authorities and the social partners to follow-up on.

The Swedish Trade Union Confederation is of the view that illegal employment is a serious problem in Sweden and that the available structures to prevent and detect it are inadequate. There is very little documented knowledge about third-country nationals working in the country illegally, but according to trade unions there is ample **anecdotal evidence** of criminal and **informal economic activities**, especially in the service, trade, transportation and repair shop sectors, mostly in Sweden's bigger cities. Sometimes, not only employees in such businesses, but also the business owners are undocumented. A few hundred people contact the Swedish Trade Union Centre for Undocumented Migrants each year for assistance regarding their working conditions and their right to stay and work in Sweden. Still, according to the Trade Union Confederation, illegal employment remains to a large extent unrecorded.³ The Swedish Economic Crime Authority also points out that there is a high and continued risk that foreign labour and vulnerable people are increasingly used as undeclared workers by criminal networks.⁴

As far as criminal sanctions are concerned, Chapter 20, Section 3 of the Swedish Aliens Act demands that a **fine** shall be imposed on an alien who intentionally or through negligence is employed in a position or conducts an activity that requires a work permit without holding such a permit. Furthermore, Chapter 20, Sections 1 and 2 criminalise illegal stay. According to Section 5 of the same law, a person who intentionally or through negligence has an alien in his or her employment shall be sentenced to a fine or, in aggravating circumstances, to **imprisonment** for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. In addition, Chapter 20, Section 12 of the Aliens Act demands that a (natural or legal) person who has an alien in his or her employment shall pay a **special charge** to the state, if the alien has no right to stay in Sweden or does not have the necessary work permit. This special charge, a **financial sanction**, applies regardless of whether or not the **criminal sanction** in Chapter 20, Section 5 is applied.

On 22 September 2016, the Swedish Government presented a number of measures aiming at improving the return of rejected asylum seekers. Among other things, the Government announced that the possibilities for authorities to carry out **risk-based work-place inspections** needed to be enhanced.⁵ Following this announcement, new legislation and/or practices regarding the prevention and detection of illegal employment is likely to be developed and implemented at some point in 2017 or 2018.

The Swedish government is of the view that undeclared employment is a serious societal problem in Sweden, not only regarding foreigners but also Swedish nationals. According to the government, undeclared work leads to **tax evasion** and **unfair competition** among companies, and there are also negative consequences for productivity and labour market participation. Against this background, the government has recently extended requirements to keep **workplace attendance records** ("personalliggare") to additional industry sectors. Since January 2016, all

³ This information is based on first-hand information from an expert from the Swedish Trade Union Confederation, 12 January 2017.

⁴ The Swedish Economic Crime Authority (2014): Ekobrottsmyndighetens lägesbild 2014.

⁵ Regeringskansliet [Government Offices of Sweden] (2016): Åtgärder för ett bättre fungerande återvändande, Press Conference, 22 September 2016.

construction sites in Sweden must have electronic attendance recorders that register entries and exits to/from the workplace. Previously, the number of sectors that needed to keep such records was more limited, applying only to restaurants, hairdressers and laundries. Furthermore, the government has instructed the Swedish Work Environment Authority to increase its monitoring and control of companies that are **violating health and safety regulations** to gain competitive advantage. This mandate also includes increased collaboration with other Swedish agencies, as well as consultations with the social partners, in order to develop **information campaigns** specifically targeted at sectors and companies with high rates of undeclared work. At the time of writing, 12 public authorities participated in this initiative.

The Swedish tax authority has a legal right to request information regarding attendance records that show who has been present at a site, as well as to carry out **unannounced visits** to verify that no undeclared workers have been present on the site. In 2015, the Tax Agency made 7 165 on-site checks of workplace attendance records. In total, they made 21 077 inspections at businesses.⁶ In April 2016, the government asked the Tax Agency to identify additional businesses for which mandatory workplace attendance records should be introduced, such as for garages/repair shops, food wholesale trades, and body and beauty care businesses. The existing requirements are therefore likely to be expanded to additional sectors.⁷

No reliable research is available on the **main routes to an irregular employment** situation in Sweden. It is likely, however, that such situations often arise when third-country nationals who have come to Sweden legally overstay their residence or work permits or their visas.⁸ There can also be situations in with rejected asylum seekers who have been ordered to leave continue their stay in Sweden illegally, and continue working. Further to this, it is also possible that legal labour immigrants lose their jobs but stay in Sweden and work illegally despite the fact that their residence permits become invalid when they change employer or job during the first two years after arrival.⁹

Illegal employment can exist in many sectors of the Swedish economy, but control activities by the Police have recently focused on the accommodation and food services sector (e.g. **restaurants** and **hotels**), particularly in Sweden's metropolitan areas. It can therefore be assumed that this sector is particularly prone to irregularities. Of the 366 workplace inspections that the Police carried out in 2015, 234 (64%) targeted the accommodation and food services sector. Another 87 inspections (24%) were targeted at the **wholesale** and **retail** trade sector, including repair shops for motor vehicles and motorcycles.

On 27 May 2016, a **European Platform** to enhance cooperation in tackling undeclared work was launched in Brussels. In Sweden, the Swedish Work Environment Authority serves as the national contact point for this forum.

Section 2: Prevention measures

*This section of the Synthesis Report will provide a comparative overview of the prevention measures of illegal employment of TCNs available in the (Member) States. Particular distinction will be made between (i) measures and incentives for employers and (ii) measures and incentives for employees. Furthermore, a cross-cutting distinction will be made between the two main categories of TCNs subject to examination of this Study: (i) **irregularly staying and illegally working TCNs** and (ii) **regularly staying and illegally working TCNs**. The section will also examine how risk assessments are carried out. Moreover, any good practices and success stories in prevention measures will be highlighted in the Synthesis Report under this section.*

Q2. Please describe the types of **preventive measures** targeting TCNs as well as employers of TCNs to discourage them from employing a TCN illegally in your (Member) State:

The **preventive measures** available in Sweden are listed in the Table below. Generally no difference is made between *irregularly staying and illegally working* third-country nationals on the one hand, and *regularly staying and illegally working* TCNs on the other hand.

⁶ Skatteverket [Swedish Tax Agency] 2016: Årsredovisning [annual report] 2015. Solna, p. 111.

⁷ Regeringen [Government Offices of Sweden] 2016: Regeringsbeslut - Uppdrag om krav på personalliggare i fler verksamheter. Stockholm, 7 April 2016.

⁸ Landsorganisationen i Sverige [Swedish Trade Union Confederation] (2013): Fusk och utnyttjande – om avregleringen av arbetskraftsinvandringen. Stockholm, p. 36.

⁹ *Ibid.*, p. 37.

a. **Preventive measures and incentives for employers:** Please indicate which measures and incentives for employers exist in your (Member) State and describe the measures.

Measure/incentives for employers	<u>Irregularly staying and illegally working TCNs</u> *Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. **Please specify if these measures are established to tackle illegal employment or are general incentives.	<u>Regularly staying and illegally working TCNs</u> *Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. **Please specify if these measures are established to tackle illegal employment or are general incentives.
<p>a.1. Information campaigns targeted at employers</p> <p><i>Outreach/awareness-raising activities to inform employers on the criteria by which they can hire TCNs</i></p> <p>For each campaign that has been run in your MS indicate:</p> <ul style="list-style-type: none"> - Which sectors were targeted? - How the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.) 	<p>The Swedish Construction Industry in Collaboration (<i>Byggbranschen i Samverkan</i>), a joint organisation featuring employers and trade unions in the construction sector, has been running the project "Clean Construction Industry". The target groups for this project are students and teachers in secondary schools' vocational programmes, college and universities, as well as the industry and the public. This project aims to change attitudes towards undeclared work in the construction sector. The Swedish Economic Crime Authority and the Swedish Tax agency have contributed to this project by participating in a film designed to combat illegal work in the construction industry.¹⁰</p> <p>For the period 2015-2018, the government has instructed the Swedish Work Environment Authority to increase its monitoring and control of companies that are violating health and safety regulations to gain competitive advantages. This mandate also includes increased cooperation with other Swedish agencies, as well as consultations with the social partners, in order to develop information campaigns specifically targeted at sectors and companies with high rates of undeclared work.</p>	
<p>a.2. Information support for employers</p> <p><i>Simplification of administrative procedures and information support for employers recruiting TCNs (e.g. helpline, information on government website etc.)</i></p>	<p>The Swedish Migration Agency provides information on its website, targeting employers and informing them about the fact that most foreigners who are not EU-nationals need a work permit to work in Sweden. The website also describes the requirements for work permits and under what conditions employers can hire third country nationals. It also says that employers need to check whether a person they want to hire has a work permit, and that such employment needs to be reported to the Swedish Tax Agency. This information is directed to all employers, regardless of industry sector. Currently, the information is only available in Swedish. (http://www.migrationsverket.se/Andra-aktorer/Arbetsgivare/Anstalla-fran-lander-utanfor-EU.html).</p> <p>The Tax Agency also informs employers about their duty to report the employment of a third-country national to the Agency. There are brochures and online information services, and a form for reporting can be downloaded from the Agency's website.¹¹</p> <p>The Swedish Work Environment Authority also has information on residence and work permits on its website, in Swedish and several other languages (https://www.av.se/en/work-environment-work-and-inspections/foreign-labour-in-sweden/work-permits-and-residence-permits/). The Work Environment Authority also links to the more detailed information provided by the Migration Agency.</p>	

¹⁰ Please see European Employment Policy Observatory (2016): European Platform tackling undeclared work – Member State Factsheets and Synthesis Report. Brussels, p. 175.

¹¹ See <https://www.skatteverket.se/foretagochorganisationer/arbetsgivare/internationellanstallning/anstallningavtredjelandsmedborgare.4.353fa3f313ec5f91b95ba1.html>.

<p>a.3. Partnership agreements and initiatives by Social Partners</p> <p><i>Conclusion of agreements between trade unions and employer organisations in the same sector (e.g. construction industry) establishing bilateral agreements of actions to curb illicit activities.</i></p>	<p>As mentioned above under a1, the Swedish Construction Industry in Collaboration (<i>Byggbranschen i Samverkan</i>), a joint organisation featuring employers and trade unions in the construction sector, has been running the project "Clean Construction Industry".</p>
<p>a.4. Obligation of the employer to notify the authorities about employing a TCN</p>	<p>Yes. According to Chapter 6, Section 13a of the Swedish Aliens Ordinance, employers are obliged to check whether a third-country national that they want to hire has the necessary permit to stay and work in Sweden. They also have to keep a record (e.g. photocopy) of the document they checked.</p> <p>Employers also need to notify the Swedish Tax Agency when they employ a third country national. This follows from Chapter 7, Section 1b of the Aliens Ordinance and failure to do so can result in a fine, or in aggravating circumstances, to imprisonment for up to six months.¹²</p> <p>In addition, employers that hire an asylum seeker that is exempted from the requirement to hold a work permit have to report such employment to the Swedish Migration Agency.</p> <p>Foreign companies that send posted workers to Sweden must report this posting, as well as a contact person, to a registry in Sweden, which is kept by the Work Environment Authority.</p>
<p>a.5. Other measures/incentives for employers</p>	<p>There are penal sanctions against employers who intentionally or through negligence have an alien in their employment, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. Failure to report the employment of a third-country national, or submitting incorrect information, can also result in fines or, in aggravating circumstances, to imprisonment.</p> <p>An important method for Swedish authorities to be able to check whether companies declare all their workers are workplace attendance records. While such records have been mandatory for business branches such as restaurants, hairdressers and laundries for a long time, also the construction industry is now required to keep such records. Since 1 January 2016, all construction sites in Sweden must have electronic attendance recorders that register entries and exits. The Swedish tax authority has a legal right to request information regarding attendance records that show who has been present on the construction site in question, as well as to carry out unannounced visits at construction sites to verify that no undeclared labourers have been working on the site. This requirement does not only apply to the main entrepreneur at a construction site, but also to any subcontractors or suppliers.¹³ In 2015, the Tax Agency made 7 165 on-site checks of workplace attendance records. In total, they made 21 077 inspections at businesses.¹⁴ In April 2016, the government asked the Tax</p>

¹² Chapter 20, Section 6 of the Aliens Act.

¹³ For more information on attendance records in the construction industry, the so-called ID06-system, please see https://www.id06.se/se/in_english.

¹⁴ Skatteverket [Swedish Tax Agency] 2016: Årsredovisning [Annual Report] 2015. Solna, p. 111.

	<p>Agency to identify additional businesses for which mandatory workplace attendance records should be introduced, such as for garages/repair shops, food wholesale trades, and body and beauty care businesses. The existing requirements are therefore likely to be expanded to additional sectors.¹⁵</p> <p>The Government also intends to facilitate and extend the possibility for individuals to report irregularities at work places to the media without disclosing their identity. While government officials have long had a right to inform the media about any irregularities without having to fear any negative consequences, the staff of private companies that operate in publicly funded sectors (such as welfare and care institutions and schools) should also have a right to act as “whistle-blowers”, according to the government. Part of this right is also that employers may not investigate who has reported a certain issue to the media.¹⁶</p>
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b. **Measures and incentives for employees from third countries:** Please indicate which measures and incentives for employees from third countries exist in your (Member) State and describe the measures.

Measure/incentive for employees	<u>Irregularly staying and illegally working TCNs</u> <i>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</i>	<u>Regularly staying and illegally working TCNs</u> <i>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</i>
<p>b.1. Financial incentives for employees</p> <p><i>Financial and fiscal incentives, including social security incentives – i.e. any social security incentives aimed at encouraging employers to legally register their employees</i></p>	<p>There are no direct financial or fiscal incentives, but third-country nationals who are staying in Sweden irregularly do not have access to certain benefits or insurance payments, such as unemployment benefits. Third-country nationals who stay irregularly have access to limited basic healthcare, and their children are allowed to go to school, but generally, it will be difficult for them to lead an ordinary life. There is a risk for them to be detected and ordered to leave, too. Moreover, staying in Sweden irregularly is penalised in accordance with Chapter 20, Sections 1-3 of the Swedish Aliens Act. Thus, there are incentives for third-country nationals to aim at a regular status in Sweden.</p>	<p>There are no direct financial or fiscal incentives, but working in Sweden without the necessary permit is penalised in accordance with Chapter 20, Section 3 of the Swedish Aliens Act. Third-country nationals that work without the necessary permit also risk to be detected and ordered to leave. Thus, there are strong incentives for them to aim at a regular status in Sweden.</p>

¹⁵ Regeringen [Government Offices of Sweden] 2016: [Regeringsbeslut - Uppdrag om krav på personalliggare i fler verksamheter](#). Stockholm, 7 April 2016.

¹⁶ Regeringen [Government Offices of Sweden]: [Ny lagstiftning för ordning och reda](#). Stockholm, 9 May 2016.

<p>b.2. Information campaigns targeted at employees(potential or current)</p> <p><i>(including pre-departure campaigns and post-departure campaigns in third countries)</i></p> <p>For each campaign that has been run please:</p> <ul style="list-style-type: none"> - Provide detail of the campaigns, including who are the target groups; what country, type of workers, etc. - Explain how the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.) 	<p>Over recent years, there have been no particular campaigns in this regard. However, the Swedish Migration Agency provides information on its website, targeting prospective labour immigrants and other migrants that intend to come to Sweden for various purposes, see http://www.migrationsverket.se/Privatpersoner.html. For any possible ground for legal residence in Sweden, the website informs about how to apply for a residence/work permit and the conditions that need to be fulfilled. Most types of residence and work permits can also be applied for online. Large parts of this information are available in several languages.</p> <p>Even other online resources inform about legal entry to, and stay in Sweden, such as “Working in Sweden”, https://sweden.se/collection/working-in-sweden/.</p>
<p>b.3. Information support for employees from third countries</p> <p><i>(e.g. One-stop shop information points)</i></p>	<p>As mentioned above, the Swedish Migration Agency provides information on its website, targeting prospective labour immigrants and other migrants that intend to come to Sweden for various purposes, see http://www.migrationsverket.se/Privatpersoner.html. Even other online resources inform about legal entry to, and stay in Sweden, such as “Working in Sweden”, https://sweden.se/collection/working-in-sweden/. The Swedish missions abroad also provide information regarding conditions and requirements for residence and work permits in Sweden on their respective websites.</p> <p>In 2008, the Swedish trade unions established the Swedish Trade Union Centre for Undocumented Migrants (<i>Fackligt center för papperslösa</i>).¹⁷ The task of the centre is to support undocumented migrants that are being exploited on the Swedish labour market. Irregular migrant workers who experience problems such as discrimination or exploitation can contact the centre for any assistance. To get help, there is no obligation to be a member of a trade union, and migrants may choose not to disclose their identity. The services of the centre are free of charge.</p> <p>Specifically for posted workers, the Swedish Work Environment Authority has published a folder entitled “Your rights at work as posted worker”. This information leaflet informs posted workers on the fact that, when working in Sweden, foreigners have the same rights and obligations as permanent residents. Regardless the form of employment, background, nationality or ethnicity, everyone has the same right to a safe, healthy workplace.¹⁸ It is the Work Environment Authority’s task to ensure that the right of employees to a safe, healthy workplace is respected.</p>
<p>b.4. Other measures/incentives for employees (incl. obligation of TCN to notify the authorities about any changes in employment conditions)</p>	<p>Residence and work permits issued in the framework of labour immigration to Sweden are always temporary at the beginning. Permits are granted for the time of employment, or – in case the position is permanent – for a maximum of two years, with the possibility of an extension. During the first two years, the residence permit is linked to a specific employer and a clearly defined occupation. After that, the foreign worker may change employer, but not occupation. After a total time of four years, a</p>

¹⁷ http://www.fcfp.se/?page_id=134.

¹⁸ Swedish Work Environment Authority: [Your rights at work as posted worker](#). Stockholm.

	<p>permanent residence permit can be granted, which then allows for full labour market access.</p> <p>This means that when a third country national workers changes employer or occupation during the first two years of their stay in Sweden, they have to apply for a new permit. This is also necessary when ownership of the employing company changes, when there is a substantial change regarding the working conditions, or when a third-country national performs different tasks at work than originally foreseen.</p> <p>It is not clear, however, whether this should be seen as an incentive for employees to aim at a legal stay. The Swedish Trade Union Confederation is critical towards the fact that work permits are strictly temporary. In their view, permanent permits would reduce the risk of third-country nationals being exploited and/or losing their right to stay and work illegally.¹⁹</p>
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¹⁹ Landsorganisationen i Sverige [Swedish Trade Union Confederation] (2013): Fusk och utnyttjande – om avregleringen av arbetskraftsinvandringen. Stockholm, p. 37-38.

Q3. Does your (Member) State carry out **risk assessments** to identify the sectors of activity ('sensitive sectors') in which the illegal employment of TCNs is most concentrated? (Yes/No)

Please indicate if there are differences between the two main categories of TCNs:

(i) irregularly staying and illegally working TCNs and (ii) regularly staying and illegally working TCNs

Yes. According to Section 19 of the Ordinance 2014:1102 with instructions for the police authority, the **Police** shall **identify risk sectors** and **collect data on inspections** at work places. This requirement is based on Article 14 of the Employers Sanctions Directive 2009/52/EC.²⁰ The Police have identified the following risk sectors:

- Accommodation and food service activities;
- Wholesale and retail trade, repair of motor vehicles and motorcycles;
- Other service activities.

The Swedish **Tax Agency** has identified industry sectors and business branches in which tax-related irregularities often exist, and when needed, the Police assists the Tax Agency to carry out on-site inspections. There is also a legal mandate for the Tax Agency to inspect workplaces that are required to keep workplace attendance records or cash registers, and in the framework of such inspections, employees can be asked to identify themselves.

If **Yes**, please describe:

a. What are the **methods and tools** used for carrying out the risk assessments?

At the Swedish **Police**, the identification of risk sectors is mainly based on experience from previous controls. The three sectors mentioned above are the ones in which most controls have been carried out so far. In general, the Police base their work in this field on access to reliable intelligence information. The main sources of such information are reports on irregularities that have come to the Police's knowledge. Such reports often come from the public in different forms.

Regarding controls at workplaces, the Police sometimes cooperate with other authorities, for example the Tax Agency. In such cases, the underlying risk assessment is usually done by the authority that the Police cooperate with. At joint controls with other authorities, the Police is usually present to assist the officials from other authorities, and when a concrete suspicion of illegal employment of third-country nationals arises, the Police can take its own verification and control actions. When there is a suspicion of illegally working third-country nationals, the Police may carry out their own controls at workplaces.

A factor that prevents the Swedish Police from working with risk assessments in a more systematic manner is that the Police is not entitled to conduct random controls at workplaces, i.e. inspections that are not based on intelligence information. According to Swedish law, there must be a suspicion regarding the presence of illegally working third-country nationals at a specific workplace. If there is no such suspicion, a control cannot be carried out.

The **Tax Agency** focuses much of its control and inspection activities on industry sectors for which there is a legal requirement to hold workplace attendance records or cash registers.

b. Which **authorities** are involved in drawing up the risk assessment?

As mentioned above, according to Section 19 of the Ordinance 2014:1102 with instructions for the police authority, the **Police** shall identify risk sectors and collect data on inspections at work places.

c. How are the **results** of the risk assessments used in practice (e.g. used to target inspections)?

Risk assessments do not automatically trigger a workplace inspection by the Police, as more concrete suspicions of criminal behaviour is needed for the Police to start a preliminary investigation. Rather, risk assessments play a role to identify industries that are susceptible to illegal employment or other employment- or tax-related irregularities. For example, the legal requirement for certain industries to keep workplace attendance records is the result of a risk assessment in the sense of previous experiences and intelligence. In other words, risk assessments are used for targeting inspections to specific industries, but they are not sufficient for concrete law-enforcement measures by the Police.

²⁰ Directive [2009/52/EC](#).

Q4a. What are **the strengths and weaknesses** of prevention measures of illegally employed TCNs in your (Member) State? Please reference the sources of the information provided.

The prevention measures in Sweden have not been formally evaluated; hence no particular strengths and weaknesses can be identified. The fact that risk assessments regarding business sectors in which illegal employment often exists are not very well elaborated or formalised in Sweden can be seen as a weakness. The Swedish government has announced that the possibilities for authorities to carry out risk-based work-place inspections will be enhanced. This also indicates that there are weaknesses that require improvements.

Q4b. What **good practices** can be identified in your (Member) State in the area of prevention of illegal employment? What were the particular **success factors** with measures that can be identified as good practices? Please reference the sources of the information provided.

The Swedish provisions regarding prevention of illegal employment have not been evaluated; hence no particular success factors can be identified.

Regarding the requirement for companies in certain branches to keep **workplace attendance records**, as described above under Q 2a, it can be assumed that this measure helps to prevent illegal employment. At construction sites, all workers must now be recorded, including those representing suppliers and subcontractors. Attendance records also make it easier for the authorities to verify whether all staff is registered and declared.

Providing employees and employers with clear and understandable **information about work permit requirements** and Swedish labour law can also be considered a good practice. Whether the provision of such information by Swedish authorities is sufficient or not has not been evaluated, however.

Section 3: Identification of illegal employment of third-country nationals

This section of the Synthesis Report will aim to provide an overview of the identification practices of illegal employment of TCNs in the (Member) States. It will start with a descriptive overview of the types of national authorities involved in the identification of TCNs as well as look into specific identification measures in place and how these are carried out in practice.

Q5a. Which types of **national authorities** are responsible for identification of illegally employed TCNs?

**Please indicate if there are any differences in the approach to identification between the two main categories of TCNs: (i) irregularly staying and illegally working TCNs and (ii) regularly staying and illegally working TCNs.*

***Please specify if these authorities are specifically tasked to identify illegally employed TCNs or involved in general checks on illegal employment.*

Article 14 of the Employers Sanctions Directive demands that Member States shall ensure that **effective and adequate inspections** are carried out on their territory to control employment of illegally staying third-country nationals, and that such inspections shall be based primarily on a **risk assessment** to be drawn up by the competent authorities in the Member States.²¹

In Sweden, no public authority currently has a direct responsibility to systematically or randomly check whether third-country employees have the necessary permits to work in Sweden. However, as described in further detail below, there are several public authorities that, in accordance with their respective mandates and tasks, have specific roles when it comes to irregularities at workplaces, including the detection of illegal employment of third-country nationals.

To employ a third-country national who is not entitled to work in Sweden is a criminal offence in accordance with Chapter 20, Section 5 of the Aliens Act, while at the same time, the employee himself or herself also commits an offence in accordance with Chapter 20, Section 1 of the Aliens Act. As illegal work/employment is a crime, it is the Swedish **Police's** task to conduct **intelligence** and carry out **investigations** regarding such crimes. If the Police finds reason to believe that a certain person stays in Sweden illegally, they shall start a **preliminary investigation**. In this framework, they can carry out control and law enforcement measures in accordance with the Code of Judicial Procedure (*Rättegångsbalken*), e.g. a **house search**.

²¹ Directive [2009/52/EC](#).

If the suspicion of criminal behavior is not strong enough to motivate a preliminary investigation but the police has reason to believe that a foreigner stays in Sweden illegally, they may conduct an **“internal check on foreigners”** (*inre utlänningskontroll*) in accordance with Chapter 9, Section 9 of the Swedish Aliens Act. This provision demands that a foreigner staying in Sweden is required, upon request by a police officer, to present a passport or other documents showing that he or she has the right to remain in Sweden. It is also the duty of the foreigner, when summoned by the Swedish Migration Agency or the Police, to visit the Agency or the Police and provide information about his or her stay in this country. Internal checks on foreigners aim at ensuring the foreigners do not stay in Sweden without the necessary permits and that they leave the country if they have received a refusal of entry or expulsion order. It is mainly the Police that are responsible for such controls.²² Checks on foreigners can be done at workplaces, and in practice, when the Police assist the Tax Agency at a workplace inspection and a suspicion of illegal employment arises, they may decide to check the identity of the employees.

According to Chapter 7, Section 1 of the Swedish Aliens Ordinance, the Swedish **Tax Agency** (*Skatteverket*) and the **Employment Service** (*Arbetsförmedlingen*) shall inform the Police when they come into contact with a foreigner who does not have a residence permit and cannot show that he or she has applied for such a permit, or is exempted from the requirement to have such a permit. In 2015, the police carried out 23,652 internal checks on foreigners, which was considerably less than in previous years.²³

In addition to police competencies in detecting and following up on illegal stay or work, other authorities also have certain competencies regarding the employment of third-country nationals in Sweden.

The **Tax Agency** administers Sweden’s various taxes and is responsible for the Swedish population registry. Everyone who lives in Sweden is registered in the population registry, and living or working in Sweden normally means paying taxes on salary and other income. The Tax Agency is thus the only public agency in Sweden that has a relationship to all employers and employees. In the framework of the administration of taxes, the Tax Agency has a mandate to control whether the right taxes are paid, both by private individuals and by companies. All tax declarations that are sent to the Agency are first checked automatically. Some declarations can then be selected for in-depth control, which means that the Agency can, for example, ask questions about the declared taxes and/or require supporting documentation. As for companies, the Agency can carry out in-depth revisions including verification of bookkeeping. This is often done at the companies in question. In certain sectors, where there is an elevated risk of tax irregularities, **targeted controls** can be undertaken, concerning, for example, **undeclared employment, undeclared income or tax avoidance**. In such contexts, when the Tax Agency has suspicions of criminal activity, the Agency can ask the Police for assistance and cooperate with public prosecutors. The Agency also has a particular, and organizationally separated, unit for economic crimes. Among the tasks of this unit is to assist public prosecutors with criminal investigations, and to prevent tax-related crime. In addition, the Tax Agency has an explicit mandate to inspect workplaces that are required to keep workplace attendance records or cash registers, and in the framework of such inspections, employees can be asked to identify themselves.

Since 2014, the Swedish **Migration Agency** (*Migrationsverket*) has the legal power to conduct **follow-up controls regarding work permits**. The Migration Agency is the authority that considers applications from people who want to take up permanent residence in Sweden, visit Sweden, seek protection from persecution or become Swedish citizens, among other types of mobility and migration. Regarding work permits, the Agency not only processes, and decides on applications; it shall also control whether a person who has been admitted to Sweden for work purposes really has taken up employment in Sweden and whether the employer adheres to the working conditions as foreseen by the employment contract. If a foreign worker has not taken up his or her position within four months, or if the working conditions are not respected, the work permit is withdrawn. The Migration Agency conducts such checks in accordance with certain standards and routines. On the one hand, there are targeted checks on certain industry branches during certain periods of the year. On the other hand, there are also random inspections into all types of industries. The Agency also conducts checks on the basis of incoming tips. In 2015, a total of 141 such follow-up controls were concluded, and they resulted in three work permits being withdrawn.²⁴ In 2016, a total of 569 controls were carried out and another 42 initiated. As a result, 124 work permits were withdrawn. In most cases, the persons concerned either did not start working or their employment had ended, or the requirements for work permits were not fulfilled.²⁵ Detecting illegal employment is not within the mandate of the Migration Agency.

Last but not least, the Swedish **Work Environment Authority** (*Arbetsmiljöverket*) also has a role to play when it comes to illegal employment. The Work Environment Authority has a mandate from the government and the

²² The Swedish Coast Guard may also conduct such checks, according to Chapter 9, Section 9 of the Aliens Act.

²³ Source: Polismyndigheten, Statistik inre utlänningskontroll, available at <https://polisen.se/Press/Statistik-inre-utlanningskontroll/>.

²⁴ Source: Migrationsverket [Swedish Migration Agency] (2016): Årsredovisning 2015 [Annual Report 2015]. Norrköping, p. 119. The small number is to a certain degree due to the fact that the Migration Agency initiated most of its follow-up checks towards the end of the year.

²⁵ Migrationsverket [Swedish Migration Agency] (2017): Årsredovisning 2016 [Annual Report 2016]. Norrköping, p. 78.

Swedish Parliament to ensure that laws about work environment and working hours are followed by companies and organisations. Their goal is to reduce the risks of ill health and accidents in working life, and to improve the work environment from a holistic perspective. A large part of their day to day work is inspecting workplaces. When irregularities or shortcomings are found, the Work Environment Authority requires employers to correct them. While detecting illegal employment of third-country nationals is not the focus of the authority's work, inspectors are entitled to inform the police about any signs of such activity. On that basis, the Police may start a preliminary criminal investigation or conduct an internal check on foreigners. The Work Environment Authority may also carry out workplace inspections together with the Police and/or the Tax Agency.

In addition to its general work on work environment issues, the **Work Environment Authority** also has a specific task regarding posted workers: Foreign companies that post employees to work in Sweden for more than five days are required to notify this to the Work Environment Authority. The obligation applies to foreign employers, both inside and outside the EU. The employer is also required to appoint a contact person in Sweden. This person must be able to show documentation that proves that the laws covering posting in Sweden are complied with, for example a valid employment contract.

Q5b. Are there special authorities responsible for **specific sectors**? If yes, please describe.

No, this is not the case, but the control and inspection activities of the agencies and authorities described above are often focused on certain sectors, where an elevated risk of irregularities has been identified. An internal Police report published in 2014 showed that "internal checks on foreigners" conducted by the Police often focused on restaurants in metropolitan areas.²⁶

The **Tax Agency** also bases their targeted controls on a risk assessment, and there is an explicit mandate to perform checks on industries that are required to keep workplace attendance records or cash registers. Post-arrival checks on labour immigrants, carried out by the **Migration Agency** also focus on certain branches or sectors.

Q5c. With regard to **labour inspectorates**, do they have separate functions/departments targeted to the detection of illegal employment of migrants from third countries?

In Sweden, no public authority has a mandate to carry out random checks on workplaces with the specific purpose of detecting illegal employment. It is therefore unclear what "labour inspectorates" means in a Swedish context. The various agencies and authorities and their respective tasks in relation to irregular employment are described above under Q 5a. Neither of these authorities has a separate function only for detecting illegal employment. Only within the Police, there are specialised teams.

Q5d. How do national authorities and other organisations involved **cooperate**? Are there any specific cooperation mechanisms/fora in place in your (Member) State? Is there any legal basis specifying that authorities must cooperate, including a cooperation agreement or it is done on an ad-hoc basis by authorities?

The various ordinances and instructions by which the Swedish government directs the work of public agencies and authorities include provisions on co-operation between these agencies and authorities. There is no co-operation agreement regarding the prevention and detection of illegal employment specifically, but as mentioned before, the Aliens Ordinance requires the Tax Agency and the Employment Service to inform the police when they come into contact with a foreigner who does not have a residence permit and cannot show that he or she has applied for such a permit, or is exempted from the requirement to have such a permit. Regarding internal checks on foreigners, the police closely co-operates with the Coast Guard and the Migration Agency. Regarding workplace inspections, the Tax Agency often asks the Police for assistance.

For the period 2015-2018, the Swedish Work Environment Authority has been instructed by the government to increase its monitoring and control of companies that are violating health and safety regulations to gain competitive advantage. This mandate also includes increased collaboration with other Swedish agencies, as well as consultations with the social partners, in order to develop information campaigns specifically targeted at sectors and companies with high rates of undeclared work. At the time of writing, 12 different authorities were involved in this initiative, which is, among other objectives, expected to advance the prevention and detection of illegal employment in Sweden.

Q5e. Please provide **statistics on the number of staff/inspectors** involved in identification/inspections on illegal employment per authority and if available, per sector for 2015 (or if not available for latest available year).

²⁶ Rikspolisstyrelsen (2014): Tillsynsrapport 2014:14 – Inre utlänningskontroll. Stockholm.

Please specify if the staff is specifically dedicated to identifying illegally employed TCNs or are involved in general checks on illegal employment.

Such statistical data is not available in Sweden. Internal checks on foreigners, to detect people without residence or work permits, can be carried out by any Police officer in Sweden. Police officers often work in flexible teams at local/regional level. The number of staff in such teams can vary over time, as do their tasks; hence no exact figure can be given.

Q6. What **identification measures** regarding illegal employment of TCNs exist in your Member State? (e.g. inspections; border checks; checks of premises by migration officials; other types of checks) Please describe.

A number of identification and control measures are in place, but most of them are directed towards detecting illegal entry into the country or illegal stay, not illegal employment in particular. The Tax Agency, the Police and the Work Environment Authority all carry out **workplace inspections**, with different mandates as described above, whereby illegal employment can be detected. The Police can also carry out internal checks on foreigners anywhere in the country, including at workplaces, to detect people who are not allowed to reside in Sweden.

Border checks do not appear as a measure useful for detecting illegal employment. Where they are carried out, they can only serve to detect illegal entries to the country or cases of migrant smuggling. The Migration Agency does not have a mandate to detect migrants staying or working in Sweden illegally.

Q7. How are **inspections carried out** in your (Member) State?

The Swedish **Tax Agency** frequently and regularly carries out checks on workplaces in the framework of its overall task, which is to ensure that business and individuals in Sweden pay the right taxes. Inspections are focused on sectors that are known for an elevated risk of tax irregularities. For several types of business, there is a requirement for companies to keep workplace attendance registers, such as the construction industry. Such workplace inspections are often carried out without previous notification. The Tax Agency may ask employees to identify themselves, and it may ask the Police for assistance at inspections. When the Police has reason to suspect criminal behavior, it may also check the identity of the workers present at a site and investigate whether either the employer, or an employee, or both have violated the provisions of the Aliens Act or any other relevant law.

When the **Police** has a well-founded suspicion of one or several persons working without the necessary permits at a specific workplace, they may start a preliminary criminal investigation or, if the suspicion is not sufficient to justify such an investigation, conduct an internal check on foreigners there, even without the involvement of the Tax Agency. Reports or signals by public authorities or individuals can trigger such checks, but the suspicion must be concrete. For example, if an individual calls the Police and expresses a suspicion that there might be irregular employees at a certain workplace, this is not sufficient. At least the name of a person working illegally or any other concrete information must be given. Sometimes, however, the Police has had special operations to detect illegal employment in specific branches, such as the restaurant sector in metropolitan areas. Neither the Police nor any other agency have a mandate to carry out random checks on workplaces.

As mentioned above, the **Work Environment Authority** also controls workplaces with a view to detect shortcomings regarding the work environment. The Agency's workplace inspectors may inform the Police about any inspections and request assistance, especially if they suspect illegal employment. However, a report by the Swedish National Audit Office found that they often do not make use of this possibility.²⁷

The above-mentioned Agencies may also **carry out inspections together**.

**Please provide information if any differences exist between the two main categories of TCNs: (i) irregularly staying and illegally working TCNs and (ii) regularly staying and illegally working TCNs.*

More specifically, please answer the following questions:

Q7a. What methods are used for selecting/sampling employers to be inspected (targeted labour inspections to specific sectors/categories of TCNs)?

Inspections by the Tax Agency and the Police are focused on sectors that are known, on the basis of previous experiences, for an elevated risk of irregularities, such as tax evasion or illegal employment. There is no focus on

²⁷ Riksrevisionen (2016): En god arbetsmiljö för alla – Statliga insatser inom arbetsmiljöområdet. Granskningsrapport RIR 2016:23, Stockholm, p. 62.

any specific groups of third-country nationals.

Q7b. How are inspections planned? Are they based on the results of a risk assessment?

Yes, inspections by the Police are based on intelligence regarding suspected criminal behavior. Inspections carried out by the Tax Agency are also based on risk assessments, which in turn to a large degree depend on previous experiences.

Q7c. Could inspections be triggered by reporting/signals from (a) the general public (e.g. whistleblowers) and (b) from illegally employed TCNs? Is there a hotline established to signal illegal employment cases? If yes, please describe.

There is **no** such **hotline** in Sweden. The Police does receive **signals**, reports and tips from other public authorities, including municipal authorities, the general public or from competitors of business reported. In order to trigger an internal check on foreigners or even a preliminary criminal investigation, incoming tips have to be sufficiently concrete, however. A general suspicion that undeclared workers could be present at a certain workplace is not sufficient. If incoming tips are not concrete enough, the Police may need to observe a workplace or otherwise gather further intelligence before it performs a check on foreigners or launches a preliminary investigation.

Q7d. Which authorities (a) decide on carrying out the inspections and (b) carry out the inspections?

As described in detail above, the Tax Agency, the Police and the Work Environment Authority carry out inspections at workplaces, however on the basis of different mandates. The Tax Agency focuses on suspected tax irregularities, the Police on criminal behavior, and the Work Environment Authority on improving the work environment of employees. Municipal authorities may also inspect certain workplaces (regarding the correct use of alcohol licenses), and the Migration Agency has a legal mandate to conduct follow-up controls regarding work permits. Depending on the circumstances, some of these authorities may carry out inspections together.

Q7e. Which elements are checked? (e.g. checking employees residence and/or employment permits or inspecting employer records (payslips, contracts of employment etc.)

In sectors for which there is a requirement to keep **workplace attendance records**, the Tax Agency may check these records and ask employees to identify themselves by showing an **identity document**. Thus, it can verify the correctness of the attendance records. When an employee refuses to disclose his or her identity, the Tax Agency may not use force. When an inspector suspects an irregularity or that an inspection could lead to a critical or even dangerous situation, they may however ask the Police for assistance. The Police has the authority to demand **identification** and, if necessary, use force.

The Tax Agency also checks cashiers in business where these are used, such as in the retail sector. Even at such inspections, assistance by the Police can be requested.

Q7f. What are the entry/search powers of inspectorates? Do labour inspectorates cooperate with the police/other law enforcement authorities while carrying out inspections? If yes, are cases of illegal employment of TCNs/exploitation automatically reported to police/law enforcement authorities?

Neither Tax Agency nor Work Environment Authority officials may use force to identify an employee. Thus they can only suspect illegal employment, not confirm it. As mentioned above, Tax Agency inspectors often cooperate with the Police, which may use force, if needed. The Work Environment Authority may request Police assistance, too.

Q7g. How often are inspections carried out in different sectors? Are inspections conducted at random intervals? If so, please give an indication of time between visits.

Inspections are carried out at **varying time intervals**. No concrete intervals or frequencies can be reported.

Q7h. How are inspections carried out (e.g. on-sight inspections/controls; interviewing and checking workers)?

Inspections at workplaces are the main method. Depending on which authority carries out the inspection, it may focus on cashiers and/or workplace attendance records, on the work environment, on alcohol licenses, or other elements to verify. Upon inspecting a workplace, workers can be asked to identify themselves, and naturally,

asking them questions is possible, too. Interviewing and checking workers can therefore often not be separated from a workplace inspection. But, as mentioned before, internal checks on foreigners by the Police may also be carried out at workplaces. In such cases, there is no full-scale workplace inspection.

Q8. What **technical tools and methods** are in use for identification of illegal employment of TCNs (e.g. planning maps, criteria to select enterprises, manuals, operational guidelines, checklists and scripts for interviews, visit protocols and visit follow up procedures)?

As described above, the identification of illegal employment in Sweden is based on tips/signals, intelligence and previous experiences, and it is carried out by inspecting workplaces or conducting an internal check on foreigners. As pointed out above, different public authorities have a role to play when it comes to inspections. No further technical tools or methods can be reported.

Q9. What are the **strengths and weaknesses** of identification measures of illegally employed TCNs in your (Member) State? What good practices can be identified in your (Member) State in the area of identification of illegal employment? What were the particular success factors with measures that can be identified as good practices?

The fact that no authority in Sweden has an explicit mandate to systematically or randomly check whether third-country employees have the necessary permits to work in Sweden can be seen as a weakness. Instead of one central function, several authorities have different tasks when it comes to irregularities at workplaces, including illegal employment. According to experts interviewed for this study, co-operation between the Tax Agency and the Police is considered to function well. The Work Environment Authority also cooperates with the Police (and the Tax Agency), but a report by the Swedish National Audit Office recently found that its workplace inspectors often do not report suspected cases of illegal employment.²⁸

Neither the Tax Agency nor the Work Environment Authority may force employees to identify themselves. When they inspect a workplace, they may suspect that undocumented foreign workers are present, but it is difficult for them to secure solid evidence as workers may leave the site. To improve the situation, workplace inspections are increasingly carried out jointly by the Tax Agency, the Work Environment Authority, and Police officers.

As mentioned above, the Swedish Work Environment Authority has been instructed to increase its monitoring and control of companies that are violating health and safety regulations to gain competitive advantage. This mandate also includes increased collaboration with other Swedish agencies, as well as consultations with the social partners. At the time of writing, 12 different authorities were involved in this initiative, which is expected, among other objectives, to advance the prevention and detection of illegal employment.

A special Eurobarometer Survey carried out in 2013 found that 76% of respondents in Sweden thought that people doing undeclared work had only a small risk of being detected. This was the highest share in the EU.²⁹ At the same time, Sweden had very high shares of people stating that undeclared work was unacceptable. While views expressed by a certain share of the people may not necessarily match the reality, the high percentage of people in Sweden viewing the risk of being detected as small indicates that a large part of the population does not trust the work of public authorities as regards the detection of undeclared employment.

Section 4: Sanctions for employers

This section of the Synthesis Report will aim to map the types of sanctions for employers which are found to be illegally employing TCNs. In addition, any good practices and success stories will also be recorded.

Q10. For each of the listed sanctions, please elaborate whether this type of sanction is imposed in your (Member) State (Yes/No) and if Yes, please describe in which cases are these sanctions applied.

Sanctions for employers	<u>Irregularly staying and illegally working TCNs</u> <i>*Please indicate if this sanction is imposed</i>	<u>Regularly staying and illegally working TCNs</u> <i>*Please indicate if this sanction is</i>
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²⁸ Riksrevisionen (2016): En god arbetsmiljö för alla – Statliga insatser inom arbetsmiljöområdet. Granskningsrapport RIR 2016:23, Stockholm, p. 62.

²⁹ European Commission (2014): [Special Eurobarometer 402](#) - "Undeclared Work in the EU". Brussels, p. 92.

	<i>in your (Member) State (Yes/No), and if yes in which cases ** Please provide reference to the specific legal provisions</i>	<i>imposed in your (Member) State(Yes/No), and if yes in which cases ** Please provide reference to the specific legal provisions</i>
Fines (e.g. fines imposed per illegally hired employee)	<p>Yes. According to Chapter 20, Section 5 of the Swedish Aliens Act, a person who intentionally or through negligence has an alien in his or her employment shall be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit.</p> <p>In addition, Chapter 20, Section 12 of the Aliens Act demands that a (natural or legal) person who has an alien in his or her employment shall pay a special charge to the state, if the alien has no right to stay in Sweden or does not have the necessary work permit. This special charge is a financial sanction that applies regardless of whether or not the above-mentioned criminal sanction is applied. Regarding the special charge, a number of exceptions can be made, e.g. when an employer has checked his or her employees' right to stay in Sweden, or when he or she has informed the relevant authorities about the employment at hand.</p> <p>According to Chapter 20, Section 12a of the Aliens Act, the special charge can also be applied to natural or legal persons that have <i>contracted</i> an employer who has an alien in his or her employment that does not have a right to stay in Sweden.</p> <p>The special charge is, for each illegally employed person, half the price base amount that was in force at the time when the illegal employment ended. If the illegal employment had been going on for more than three months, the charge is a full price base amount for each illegally employed person.³⁰ If the employer is unable to pay, his or her contract-givers can be required to pay he charge.</p>	
Imprisonment of employers <i>(Please indicate the aggravating circumstances)</i>	<p>Yes. According to Chapter 20, Section 5 of the Swedish Aliens Act, a person who intentionally or through negligence has an alien in his or her employment shall be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit.</p>	
Confiscation of financial gains (e.g. share of profit or revenue of the employer)	No.	
Ineligibility for public contracts	<p>Yes. An employer that has been convicted for an offence against Chapter 20, Section 5 of the Swedish Aliens Act (for having employed a foreigner who is not allowed to stay in Sweden or who does not have the necessary work permit) shall in certain circumstances be excluded from public contacts. It is the duty of the contracting institution to verify this.</p>	
Temporary or definitive closure of company or worksite	<p>No. A worksite may only be sealed or closed temporarily, if this is needed for a criminal investigation. Temporary closure is therefore not a sanction; it is merely a way of securing the criminal investigation.</p>	
Confiscation of equipment/property	No.	

³⁰ In 2016, the price base amount was SEK 44,300.

Suspension of activity	No. Suspension of an activity may be the direct or indirect result of an ongoing investigation, but it is not a sanction.	
Withdrawal of trading license/disbarment of activity	<p>Yes, under certain circumstances. The main rule for business activities in Sweden is that no license is required for conducting a business. For those businesses for which there is a license requirement, e.g. regarding trade in alcohol, weapons or pharmaceuticals, it is unlikely that the illegal employment of a third-country national is a sufficient ground for withdrawing a license. It could happen in extraordinary, aggravating circumstances, however, e.g. when a crime against Chapter 20, Section 5 of the Aliens Act is committed repeatedly.</p> <p>Also, business owners and persons with similar functions can under certain circumstances be prohibited to conduct business activities, or his/her business activities can be temporarily restricted, e.g. when he or she has committed a serious criminal offence. Businesses can also be sanctioned to pay corporate fines in the event of criminal offences committed in the framework of their business activities.</p>	
Withdrawal of residence permit if the employer is a TCN	No. In principle, a third-country national can be expelled from Sweden if he or she is convicted for a crime that can be punished by imprisonment, and if there is either a risk for continued criminal activity or if the crime committed is particularly severe. Loss of residence and expulsion is therefore only relevant in case of relatively serious crimes. When there are no aggravating circumstances, the irregular employment of a third-country national will normally not be a crime serious enough to justify expulsion.	
Other sanctions	Yes. In certain circumstances, as described in Chapter 20, Sections 15-17 of the Aliens Act, employers can be excluded from receiving public support (e.g. subsidies), state contributions or benefits, and they can be required to return any support payments, contributions or benefits that they have already received.	No.

Q11a. Do the procedures differ if the employer did not intentionally hire irregular worker? How is this established? What if the residence permit of the employee was revoked?

The **criminal sanction** as described above and as enshrined in Chapter 20, Section 5 of the Swedish Aliens Act, does not differentiate between cases in which illegal employment happens intentionally or through negligence. As regards the **financial sanction** ("special charge") in accordance with Chapter 20, Section 12 of the Aliens Act, however, there are a number of exceptions which in practice make it possible for employers who have made certain precautions before hiring a third-country national to avoid the special charge. For example, the charge can be avoided if an employer has checked whether the employee is entitled to stay in Sweden, has kept a record of the matter (e.g. copy of the residence permit), and has informed the relevant public authority of employing the person in question.

Q11b. What happens if the residence permit of the employee was revoked?

If the residence permit of an employee is revoked, this person is not entitled to stay or work in Sweden, as soon as the time period for voluntary departure has elapsed.

Q12a. Does legislation in your (Member) State provide for criminal sanctions for: a/b/c/d/e (as per Art.9.1 of the Employer Sanctions Directive 2009/52) or domestic equivalent?

Criminal sanctions for employers	Description
	<p><i>*Please indicate if this sanction is imposed in your (Member) State, and if yes in which cases</i></p> <p><i>** Please provide reference to the specific legal provisions</i></p>

<p>(a) the infringement continues or is persistently repeated</p>	<p>Yes. According to Chapter 20, Section 5 of the Swedish Aliens Act, a person who intentionally or through negligence has an alien in his or her employment shall be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. <i>If the infringement continues or is persistently repeated, this can be regarded as an aggravating fact; hence the criminal sanction can be imprisonment.</i></p>
<p>(b) the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals</p>	<p>Yes. According to Chapter 20, Section 5 of the Swedish Aliens Act, a person who intentionally or through negligence has an alien in his or her employment shall be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. <i>This also applies in cases in which the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals.</i></p>
<p>(c) the infringement is accompanied by particularly exploitative working conditions</p>	<p>Yes. According to Chapter 20, Section 5 of the Swedish Aliens Act, a person who intentionally or through negligence has an alien in his or her employment shall be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. <i>This also applies in cases in which the infringement is accompanied by particularly exploitative working conditions.</i></p>
<p>(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings</p>	<p>Yes. According to Chapter 20, Section 5 of the Swedish Aliens Act, a person who intentionally or through negligence has an alien in his or her employment shall be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. <i>This also applies in cases in which the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings.</i></p> <p>It should be noted that trafficking in human beings is a criminal act in accordance with Chapter 4, Section 1a of the Swedish Penal Code.</p>
<p>(e) the infringement relates to the illegal employment of a minor</p>	<p>Yes. According to Chapter 20, Section 5 of the Swedish Aliens Act, a person who intentionally or through negligence has an alien in his or her employment shall be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. <i>This also applies in cases in which the infringement relates to the illegal employment of a minor.</i></p>

Q12b. Has your Member States amended legislation on sanctions for illegally employed TCN since July 2014³¹? If so, please provide details.

³¹ The European Commission issued implementation report on the Employers' Sanctions Directive on 22 May 2014. This EMN study aims to examine whether/and if so – to what extent there has been new legislation/practices following that date.

No.

Q13. What are the **strengths and weaknesses** in sanctioning employers who illegally employed TCNs in your (Member) State? What good practices can be identified in your (Member) State in the area of sanctions for employers? What were the particular **success factors** with measures that can be identified as good practices? Please reference the sources of the information provided.

The sanctions system in Sweden as such has not been evaluated; hence neither any particular strengths or weaknesses nor any success factors can be identified. It is to be observed, however, that according to statistical data that Sweden reports to the European Commission in accordance with the Employers' Sanctions Directive 2009/52/EC, only 16 proceedings regarding financial sanctions and 7 criminal proceedings were initiated in 2015 concerning illegal employment of third-country nationals. In only three cases, a criminal sanction was actually imposed. The total sum of special charges (financial sanctions) that were imposed on employers that year was 243 900 SEK, and the total sum of fines (criminal sanctions) was 27 600 SEK. There was no case of imprisonment.

These small figures may either indicate that illegal employment is not a particularly frequent phenomenon in Sweden, or that either the inspections or the sanctions system has weaknesses, or both. In September 2016, the Swedish Government announced that the possibilities for authorities to carry out risk-based work-place inspections needed to be enhanced.

Section 5: Outcomes for third-country nationals found to be working illegally

This section of the Synthesis Report will aim to identify the possible outcomes and measures for TCNs found to be working illegally in the (Member) States. Hypothetical scenarios 'case studies' are presented under Question 21.

Q14. In the event that an **irregularly staying and illegally working TCN** is detected, please describe in which situations s/he is:

If the Police detect a person that is not in possession of a valid residence permit or a valid visa, they will check whether the person has been ordered to leave. If the person has been ordered to leave and any time period for voluntary departure has already elapsed, they will seek to carry out the return. Detention may be used for this purpose, if necessary. If the circumstances are unclear, i.e. if it is unclear whether or not the person is entitled to stay in Sweden, The Police will seek to clarify the case with the help of the Migration Agency. Normally, residence permits and visas need to be applied for from abroad, but if the person has a ground for legal stay in Sweden and an application for that permit is admissible from within Sweden, which would be an exception rather than a rule, he or she can apply for such a permit. The person may also apply for asylum; in that case, the Migration Agency will examine whether the person shall be allowed to stay in Sweden for protection or humanitarian reasons.

An irregularly working third-country national can be granted a temporary residence permit if this is necessary to enable a preliminary investigation or a main hearing in a criminal case, and if he or she has shown a clear intention to cooperate with the investigating authorities. This applies to a variety of possible cases, such as criminal cases against suspected traffickers or employers who have committed a violation against Chapter 20, Section 5 of the Aliens Act, which deals with illegal employment.

If no residence can be granted and the person does not apply for asylum, he or she will be ordered to leave.

The situation is the same irrespective of whether a person is detected in connection to a workplace inspection or in the general framework of internal checks on foreigners carried out by the Police. Regardless of the outcome, criminal charges may be pressed if the person is suspected for a violation against Chapter 20, Sections 1 and/or 2. These Sections criminalise illegal stay in Sweden.

Q14a. *issued with a return decision. Please also describe the procedure after an illegally employed TCN is detected and how is this communicated to immigration authorities.*

If there is no ground for granting the person a residence permit and he or she does not apply for asylum, the person will be ordered to leave.

Q14b. *is granted a period for voluntary departure*

Whether or not a period for voluntary departure is granted depends on the circumstances of the case. It is not done automatically. For example, if a person has been already been ordered to leave and the time for voluntary departure has already elapsed, the person will normally not be granted a period for voluntary departure again. The Police may also refer a person to the Swedish Migration Agency to clarify his or her current status and decide how to proceed.

Q14c. *has received an entry ban*

Whether or not a person receives an entry ban is not dependent on whether the person has worked in Sweden without the necessary permit. In most cases, entry bans are issued if a person who has been ordered to leave does not leave Sweden voluntarily.

Q14d. *fined (Please elaborate on the different types of sanctions in place)*

If a third-country national works in Sweden but has no right to stay on Sweden and/or does not have the necessary work permit, criminal charges may be pressed. As a consequence of such charges, fines can be imposed in accordance to Chapter 20, Sections 1-3 of the Aliens Act.

Q14e. *detained (Please also describe which authorities have the right to detain illegally employed TCNs)*

Whether detention is ordered or not depends on the individual circumstances of the case. Detention is not used automatically. Whether it is used or not depends, among other matters, on whether the person cooperates with the authorities and declares that he or she intends to leave voluntarily. Detention is in most cases used to enforce a return decision, but it may also be imposed on a foreigner if there is a risk that he or she engages in criminal activities in Sweden. The Migration Agency, the Police, and the Migration Courts are entitled to order a foreigner to be detained.

Q14f. *receives work permit*

There can be rare cases in which an irregularly working third-country national can receive a work permit. Normally, however, a permit to stay in Sweden for work purposes must be applied for from abroad.

Q14g. *receives residence permit*

There can be certain cases, to a limited extent, in which an irregularly working third-country national can receive a residence permit. For example, a person with no right to stay in Sweden can apply for asylum. The outcome of such an application can be that the person is granted a residence permit on protection or humanitarian grounds. Normally, however, residence permits must be applied for from abroad.

An irregularly working third-country national can also be granted a temporary residence permit if this is necessary to enable a preliminary investigation or a main hearing in a criminal case, and if he or she has shown a clear intention to cooperate with the investigating authorities. This applies to a variety of possible cases, such as criminal cases against suspected traffickers or employers who have committed a violation against Chapter 20, Section 5 of the Aliens Act, which deals with illegal employment.

Q14h. *Please indicate outcomes if identified as a victim of trafficking of human beings*

If there are indications that an illegally employed third-country national is a victim of trafficking in human beings, the official that is in charge of a preliminary (criminal) investigation may ask the Migration Agency to issue a temporary residence permit for the person in question so that the case can be investigated.

Q14i. *Other sanctions/outcomes*

The outcomes are generally as described under Question 14a.

Q15. *In the event that a **regularly** staying and illegally working TCN is detected, please describe in which cases:*

Q15a. *s/he can lose their residence rights*

If the Police, in the framework of a workplace inspection, detects a person that is entitled to stay in Sweden but not entitled to work, criminal charges can be pressed on the basis of Chapter 20, Section 3 of the Aliens Act. According to this provision, a fine shall be imposed on an alien who intentionally or through negligence is employed in a position or conducts an activity that requires a work permit without holding such a permit. This does not mean that the person will lose his or her right to stay in Sweden, however.

It is also important to note, that most legal immigrants are allowed to work in Sweden. Third-country nationals who stay in Sweden on the basis of short-term tourist visas, for example, or asylum seekers that do not reveal their identities to the authorities or who are a subject of a Dublin procedure, are not allowed to work in Sweden.

Q15b. *the illegal work is tolerated or regularised*

Illegal work will not be tolerated or regularised, but there may be rare cases, in which a person that is entitled to stay in Sweden but does not have the right to work can be issued a residence permit that includes a right to work, or be exempted from the requirement to have a work permit. This depends on the individual circumstances of each case. For example, there can be cases in which an asylum seeker is entitled to work even if the Migration Agency has not officially confirmed this.

Q15c. *fined*

As mentioned under Question 15a, a fine can be imposed if the person is found guilty of a violation in accordance with Chapter 20, Section 3 of the Aliens Act.

Q15d. *detained*

Detention cannot be ordered based on the fact that a person who stays in Sweden legally works without the necessary work permit.

Q15e. *issued a return decision*

Return cannot be ordered if a person stays in Sweden legally.

Q15f. *Other sanctions/outcomes*

The outcomes are as described under Question 15a.

Q16. What are the consequences for TCNs who have temporary or permanent residence permit in one EU country and is illegally employed in your (Member) State?

In order to legally reside and work in Sweden, any third-country national needs a residence and/or work permit in Sweden, regardless whether or not the person has a residence permit issued by another EU Member State. However, third-country nationals who are **long-term residents** in other EU Member States have a right to work in Sweden, but they need to apply for a residence permit.

Q17. Please describe the possibility for compensation or unpaid wages to the illegally working TCNs- i.e. back payment of the salary (see definition of back payment in the definition section)

a. In the event that back payment of salaries, social security contributions and income taxes are due in favour of the illegally employed TCN, please describe mechanisms in place which provide for the liability of the employer to pay:

(i) outstanding remuneration

(ii) amount equal to taxes and social security contributions (which is due to the State and not the TCN)

When the Employers Sanctions Directive was implemented in Swedish law, a new national law regulating the right of illegally employed third-country nationals to **remuneration** and **social security contributions**, also in the event that a dispute arises between the employee and the employer, was adopted by the Swedish Parliament.³² According to this law, a third-country national who has worked in Sweden without being entitled to stay there has a right to receive a salary and other compensation, if relevant. The law does not apply when an employer has checked whether the employee is entitled to stay in Sweden, kept a record of the matter (e.g. copy of residence permit), and has informed the relevant public authority of employing the person in question.

In cases in which the law applies and a dispute arises between the employee and the employer, the employee is at least entitled to a remuneration that equals the minimum salary and compensation (according to collective agreements or to what is customary) for the occupation/profession at hand. If the duration of employment cannot be proven by either part, it will be assumed that the third-country national has worked for three months. The

³² Law 2013:644 on the right to salary and other remuneration for work performed by a foreigner not entitled to stay in Sweden (*Lag 2013:644 om rätt till lön och annan ersättning för arbete utfört av en utlänning som inte har rätt att vistas i Sverige*).

employer is also responsible to cover the costs of transferring the outstanding salary to his or her former employee, if the employee has already left Sweden. If an employer is unable to pay, the principals (contract-givers) that have contracted him or her are in certain circumstances responsible to pay.

Regarding taxes and charges, employers must pay these irrespective of whether their employees work legally or illegally. An employer who illegally employs a third-country national and who does not pay the relevant taxes and charges can be required to do so retroactively, if the undeclared work is detected. If the Tax Agency is unable to calculate the amount of taxes that the employer has to pay, it can make an estimate in accordance with the Swedish Tax Procedures Act (*Skatteförfarandelag*).

b. Does your national legislation foresee that, in addition to employers, direct contractors and any intermediate subcontractor may also be required to pay any outstanding remuneration and taxes?

Yes, contract-givers can be required to pay outstanding salaries if the employer (the contractor) is unable to do so himself/herself. If there are several, or several levels, of contract givers, they will be required to share the cost among them.

c. Please provide comments on difficulties encountered or success factors with measures that can be identified as good practices in relation to claims for back payments.

So far, there is very little experience in Sweden regarding practices in relation to back payments.

d. In addition to back-payment, can employer be ordered to cover other expenses, such as payment of living expenses (please define how living expenses are defined/ calculated) and cost of return of illegally employed TCNs

The employer cannot be ordered to cover other living expenses for his or her employee, but as mentioned before, if he or she is found guilty of employing a third-country national illegally, he or she can be subject to a financial sanction ("special charge" in accordance with Chapter 20, Section 12 of the Aliens Act). This charge is considered to include the costs of a forced return on a lump-sum basis, which means that the charge is the same irrespective of whether the person is forcefully returned or not.

Q18a. Does the legislation in your (Member) State foresee the right of illegally employed TCN to make a claim against employer including in cases in which they have, or have been, returned?

Yes. Within the various statutory limitation periods, claims against employers can be made, irrespective of whether the third-country national is still in Sweden or not.

b. if the answer is positive, is it a specific claim, or it falls under general provisions concerning the right to bring a case before civil or labour courts

The right to make a claim against an employer falls under the general provisions in Sweden regarding court proceedings.

c. may third parties with legitimate interest act on behalf or in support of TCN in relevant administrative or civil proceedings (e.g. trade unions, organisation of migrant workers, public authorities)

Yes, this is possible. Illegally employed third-country nationals can, for example, contact the **Swedish Trade Union Centre for Undocumented Migrants** for help.

d. Please provide comments on difficulties encountered or success factors with measures that can be identified as good practices.

So far, there is very little experience in Sweden regarding practices in relation to back payments. Hence, no difficulties or success factors can be mentioned.

Q19a. Does your (Member) State provide for information to illegally employed TCNs on their rights?

Yes.

If Yes, is this foreseen in legislation, or else is it a part of general administrative guidelines or practices?

Please provide comments on difficulties encountered or success factors with measures that can be identified as good practices in relation to information obligations.

The basic rights of employees in Sweden are determined by law, but the provision of information regarding such rights to illegally employed third-country nationals is not legally regulated. As mentioned above, the Swedish Migration Agency, among other authorities, provides information about residence and work permits on its webpage, and in 2008, the Swedish trade unions established the "Swedish Trade Union Centre for Undocumented Migrants" (*Fackligt center för papperslösa*). The task of this centre is to support undocumented migrants that are being exploited on the Swedish labour market. Irregular migrant workers who experience problems such as discrimination or exploitation can contact the centre for any assistance. To get help, there is no obligation to be a member of a trade union, and migrants may choose not to disclose their identity. The services of the centre are free of charge. An information leaflet is available in several languages.³³

Q19b. Have any of measures referred to under questions 17-19 been introduced in your legislation after July 2014³⁴? If yes, which ones?

No.

Q20. What good practices can be identified in your (Member) State in the area of outcomes for illegally employed TCNs (sanctions and other outcomes)? What were the particular **success factors** with measures that can be identified as good practices? Please reference the sources of the information provided.

So far, there is very little experience in Sweden regarding sanctions and other outcomes. Hence, there is no information regarding difficulties or success factors can be mentioned.

Case studies

In order to better understand the different procedures used when authorities detect illegal employment of third-country nationals, five hypothetical case studies have been designed. It is recognised that outcomes for TCNs may largely differ depending on their particular situation. In this respect, the case studies will help to illuminate the elements which exist for national authorities to use discretion in response to this. For each of the case studies below, please describe the general procedure **after detecting illegal employment** and the consequences in your (Member) State for the third-country national. In order to determine the procedure and the consequences in accordance with the rules of your Member State, additional information about the particular circumstances of each case may be required. EMN NCPs are asked to identify the different circumstances relevant for each case.

Q21a. A third-country national residing and working irregularly

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

First of all, this case is unlikely to happen in Sweden. Somali nationals often apply for asylum in Sweden and they have relatively good chances to receive a positive decision,³⁵ especially in the event that a minor child is involved. In the unlikely case that Mr Shire has indeed not applied for asylum and stayed (and worked) in Sweden irregularly, he has committed a crime in accordance with Chapter 20, Sections 1 and/or 2 and/or 3 of the Aliens Act. When he is detected, he will be ordered to leave and he may be sentenced to a fine. At this point, or at any point in time before, he may however apply for asylum and thus try to regularize his stay. If he proves his identity

³³ The English version of the leaflet can be found here: http://www.fcfp.se/wp-content/uploads/2015/06/Papperslösa_Eng_A5-folder.pdf.

³⁴ The European Commission issued implementation report on the Employers' Sanctions Directive on 22 May 2014. This EMN study aims to examine whether/and if so – to what extent there has been new legislation/practices following that date.

³⁵ In 2016, the protection rate (first instance) for nationals of Somalia applying for asylum in Sweden was 44%. Source: Swedish Migration Agency.

to the Swedish Migration Agency or at least cooperates regarding the clarification of his identity, he will be normally be exempted from the requirement to hold a work permit and thus be able to accept the work contract he wishes to sign. If the asylum application ends with a positive decision, he will be issued a residence permit for protection or, in exception cases, humanitarian reasons. Such residence permits give access to the labour market, which means that he will be able to continue working. If Mr Shire's asylum application is rejected and he has legally worked at least four months during the time the application was examined, he may under certain conditions apply for a residence permit for work purposes from within Sweden ("status change"). Otherwise, if he has not worked for at least four months at the time of rejection, he will be ordered to leave Sweden.

If Mr Shire does not apply for asylum, he will have to leave Sweden upon being detected, and only after he applies for a work permit from abroad, and that permit is granted, he will be allowed to stay in Sweden again.

In case Mr Shire is not detected, he can apply for asylum from within Sweden, or he must leave Sweden to apply for a residence permit for work purposes. A residence permit cannot normally be applied for from within Sweden. If for some reason, however, his wife and/or daughter have already been granted a residence permit, Mr. Shire could in certain circumstances, depending on the wife's and/or daughter's permit, apply for family reunification. As being responsible for a minor child can be considered a special reason, he might be allowed to apply for such a permit from within Sweden.

Q21b. A third-country national on a student permit employed more hours than allowed

Ms. Svitlana Ivanenko, a student holding Ukrainian citizenship, aged 22, moved to your (Member) State one year ago. Svitlana is enrolled in a two year master's programme at university. She holds a residence permit for students. For the past six months she was also employed for 10 hours per week at a local café³⁶. During some months of the academic year as well as the summer break at university, Svitlana started to work longer hours at the café, leading to work of almost 45 hours per week during term time for 3 months without changes in her part-time student contract. What happens after the labour inspectorate detected that Svitlana was working 40 hours per week? Please specify the maximum hours per week that students are allowed to work in your (Member) State.

This case cannot occur in Sweden. Third-country nationals with temporary residence permits for studies at Swedish higher education institutions (universities and university colleges) are exempted from the requirement to hold a work permit, so in practice, they may work as much as they want. However, if a person with a temporary residence permit for study purposes cannot show that he or she has made progress with their studies, the temporary residence permit may not be renewed or extended.

Q21c. A third-country national who resided and worked regularly, but whose permit has expired

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

This is a tragic case, as any negative consequences for Mrs Bao could probably have been avoided. The case is unlikely to happen in reality in Sweden, but it is theoretically possible. If Mrs Bao had applied for a new residence permit after losing her first job at the IT company, this permit would most probably been granted, as there are no restrictions to what jobs labour immigrants may carry out in Sweden. Switching from a highly qualified occupation to a job with lower skills requirements is generally not a problem as long as the applicant has a job offer and certain other conditions (such as regarding working conditions and minimum salaries) are fulfilled. Thus, there was no reason for Mrs Bao not to apply for a new work permit when accepting the job at the bar.

As she apparently did not request a new permit, her residence in Sweden and her work have become illegal, and she now faces both criminal charges (for working illegally) and an order to leave. As her offence is likely to be considered minor, she would probably not face a criminal conviction, but the fact that Mrs Bao already has another job offer at another IT firm does by itself not mean that she will be granted a new residence permit. Applications

³⁶ Based on Directive 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast) allowing students to take up employment of at least 15 hours per week. IE and the UK are not participating in this Directive.

for such permits are normally only admissible from abroad. She would therefore need to leave Sweden and to apply again from abroad.

Q21d. A third-country national present as a tourist

Marija Bogdanovic, a Serbian citizen, aged 45 has entered your (Member) State as a tourist one month ago. Due to visa liberalisation for the Western Balkans countries, Marija has the right to remain in your (Member) State for up to 90 days per six-month period as a tourist without requiring a visa³⁷. During her stay in your (Member) State, Marija has been working for a family she met through friends as a housekeeper and babysitter. She has been living with the family and has been paid cash for her work. After two months the family asks Marija to stay and work for them full time. They offered to grant her a work contract and asked her to apply for a residence permit. Marija intends to apply for a residence in permit in your (Member) State during the 90 days period she enjoys visa liberalization. However, Marija is detected by the authorities in your (Member) State before applying for the permit. What would be the consequence for Marija?

If Mrs Bogdanovic is detected, she has committed a criminal offence and faces criminal charges, as does her employer. She will be allowed to remain in Sweden as long as her passport entitles her to (up to 90 days), but then she will need to leave. As the job Mrs Bogdanovic wants to take is not a shortage occupation in Sweden, she cannot apply for a residence permit for work purposes from within Sweden. She will need to leave the country and apply for a residence permit for work purposes from Serbia or elsewhere.

If the Police conducts a criminal investigation into Ms Bogdanovic's employers and she is needed as a witness, the person in charge of the criminal investigation may apply for a temporary residence permit for Ms Bogdanovic.

A21e. A third-country national seasonal worker

Mr. Karim Harrak, a 25 year old from Morocco entered your (Member) State as a seasonal worker for strawberry picking. He has been residing on a seasonal worker permit and is required to leave your (Member) State after the legally allowed duration for stay expired³⁸. The contract with his current employer is valid for six months. However, after his contract expired he remained in your (Member) State and took on another job in a hotel. He thus remained in your (Member) State longer than the legally allowed duration. After a few months in the second job, he applied again as a seasonal worker for strawberry picking. However, he is detected that he has overstayed in the country. What would be the consequences for Karim?

Mr Harrak would be ordered to leave and possibly face criminal charges, and his application for a new permit for strawberry picking would be inadmissible. He can however leave Sweden and apply again from abroad.

At the time of writing this report, the Seasonal Workers Directive³⁹ was not yet implemented in Sweden. The government is working towards implementing it in national law by 1 December 2017.

A21f. A third-country national working from an international trading company

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

Mrs Diop can sue her employer, but there is no guarantee that she will be entitled to stay in Sweden. By employing her illegally, her employer has committed a criminal offence, but so does Mrs Diop. If she sues her employer but choses to stay in Sweden without a residence permit, she would perpetuate her illegal situation and run a greater risk of being detected and incriminated herself. She can however leave the country and sue her employer from abroad.

If the offence that her employer has committed is severe enough for the prosecutor's office to press criminal

³⁷ Based on the visa free travel decision adopted by the EU Member States on 30 November 2009: http://europa.eu/rapid/press-release_IP-09-1852_en.htm?locale=fr

³⁸ Based on Directive 2014/36/EU – Seasonal workers – allowing third-country nationals to reside in a Member State between five months and nine months in any 12-month period. The permit is renewable. IE and the UK are not participating in this Directive.

³⁹ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

charges, and if Mrs Diop declares an intention to co-operate in the investigation (e.g. as a witness in court), she could, upon the prosecutor's initiative, be granted a temporary residence permit for that purpose. According to the Swedish Aliens Act, an alien can – upon the initiative of the official responsible for a preliminary criminal investigation – be granted a residence permit for at least six months if

- this is necessary to enable a preliminary criminal investigation or a main hearing in a criminal case,
- the alien has shown a clear intention to cooperate with the investigating authorities,
- the alien has severed all relations with the persons who are the target of the preliminary investigation, and
- considerations of public policy and security do not indicate that a permit should not be granted.

If Mrs Diop has had such a permit, she can then apply for a another type of temporary residence permit in accordance with Chapter 5, Section 15 d of the Aliens Act, to make a case against her employer regarding the unpaid salaries.

Statistical Annex

1. Inspections and sanctions for employers

The European Commission has collected data under the reporting requirements of the Employers' Sanctions Directive imposed on (Member) States⁴⁰.

The following data are therefore available:

- ★ Number of inspections carried out by sector (and as percentage of the total number of employers in the sector)
- ★ Number of inspections which detected illegally staying third-country nationals (and as percentage of the total number of employees in each sector)
- ★ Sanctions, in particular how many proceedings have been opened following the inspections, how many have been closed and the total amount of the imposed fines
- ★ Criminal sanctions, in particular the number of prosecutions initiated following the inspections, the final decisions, the average duration of imprisonment imposed and the total sum of imposed fines

The statistics for 2015 has been made available on the IES in the Study folder: **EMN Outputs ->EMN studies ->.Illegal employment study ->Working Papers and Additional documents->Employer Sanctions Directive data**. EMN NCPs are encouraged to review the statistics and flag up any methodological issues or changes in the statistics. The Service Provider will make use of the statistics for the purposes of the Synthesis Report. EMN NCPs are also encouraged to use the statistics in the preparation of their national report.

Question A.1: Please provide statistics on a number of convictions for employing illegally staying TCNs for years 2014, 2015 and 2016, if possible broken down by specific criminal offences enlisted in Article 9.1. a-e of Directive 209/52, i.e.:

Convictions for employers	2014	2015	2016
Total number of convictions	16	3	<i>Not available</i>
(a) infringement continues or is persistently repeated	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>
(b) infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>
(c) the infringement is accompanied by particularly exploitative working conditions	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>
(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>
(e) the infringement relates to the illegal employment of a minor	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>

Question A.2: Please provide statistics on type and number of sanctions for employers in your (Member) State

Type of sanction for employers (please fill in)	2014	2015	2016

⁴⁰ IE and the UK do not participate in this Directive.

Financial sanctions imposed (total sum)	111 000 SEK	243 900 SEK	<i>Not available</i>
Criminal sanctions imposed (fines)	313 400 SEK	27 600 SEK	<i>Not available</i>

2. Scale and profiles of illegal employment of TCNs

Question A.3: Please provide statistics on a number of identified illegally employed TCNs. Please explain if any differences in the data provided here and the data under the reporting requirements on Directive 2009/52 available on the EMN IES in [this folder](#).

Illegally employed TCNs	2014	2015	2016	Methodological notes
Number of cases of identified <u>illegally staying</u> and illegally employed TCNs	157	94	<i>Not available</i>	
Number of cases of identified <u>legally staying</u> and illegally employed TCNs	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	

Question A.4: Please provide statistics on the profiles of illegally employed TCNs in your (Member) State for 2015

Illegally employed TCNs	Top 10 nationalities	Age disaggregation	Sex disaggregation	Methodological notes
Number of cases of identified <u>illegally staying</u> and illegally employed TCNs	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	
Number of cases of identified <u>legally staying</u> and illegally employed TCNs	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	

3. Outcomes for TCNs

Question A.5: Please provide statistics on the outcomes of identified illegally employed TCNs.

Illegally employed TCNs	2014	2015	2016	Methodological notes
Number of residence and/or work permits issued to detected <u>illegally staying</u> and illegally working TCNs	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	
Number of residence and/or work permits issued to detected <u>legally staying</u> and illegally working TCNs	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	
Number of illegally employed TCNs who were granted a period for voluntary return	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	
Number of illegally employed TCNs who were given an order to leave the country following a labour inspection	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	
Number of illegally employed TCNs who were deported following an inspection	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	
Number of illegally employed TCNs who were identified as victims of trafficking in human beings	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	

Number of decisions obliging employers to pay back payments/ amount equal to taxes and social security contributions	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	
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Question A.6: Please provide statistics on the types and number of sanctions for illegally employed TCNs

Type of sanctions available for illegally employed TCNs (e.g. fines, imprisonment, etc)	2014	2015	2016	Methodological notes
<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	

Question A.7: Number of complaints lodged against employers for employing illegally TCNs. Please provide any disaggregation/break down on the type of complaints if available – such as complaints lodged by third parties, complaints lodged by TCNs, etc.

Number of complaints	2014	2015	2016	Methodological notes
<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	<i>Not available</i>	

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

Illegal employment can exist in many sectors of the Swedish economy, but control activities by the Police have recently focused on the accommodation and food services sector (e.g. restaurants and hotels), particularly in Sweden’s metropolitan areas. It can therefore be concluded that this sector is particularly prone to irregularities. Of the 366 workplace inspections that the Police carried out in 2015, 234 (64%) targeted the accommodation and food services sector. Another 87 inspections (24%) were targeted at the wholesale and retail trade sector, including repair shops for motor vehicles and motorcycles. All other industry sectors were targeted to a much smaller degree.

Question A.9: Please provide any additional statistics and general observations on the availability of data and methodology of available data

There is almost no statistical data on illegal employment in Sweden, apart from what is reported to the European Commission in the framework of the Employers’ Sanctions Directive.
