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Employees Beyond Borders

Comparative report



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1. Introduction

The main aim of this project was to conduct in-depth research on the impact of the Directive 2009/52/EC (providing for minimum standards of sanctions and measures against employers of illegally present third-country nationals) in four countries of Central Europe: the Czech Republic, Hungary, Poland and Slovakia, to determine whether the Directive achieves its goals (e.g. combating irregular migration) and prevents the exploitation of migrant workers.

The main results of the project are four national reports, and a comparative report containing recommendations and summarising the results of the research. It is important to know that studies in each country were conducted by different research teams, and therefore their observations, analysis and conclusions vary. Having national researchers was an advantage in that it provided internal understanding of the described processes, but the different perspectives made the comparison challenging for the author.

The methodology presented below is common to all the countries' reports. It involves both research of a specified group of interlocutors and background information on foreigners, employers, statistics, regulations and procedures regarding third-country citizens.

It was interesting to present some responses from employers of migrants within the Visegrad Group countries to see similarities that are rooted in their common historical, social and cultural heritage. It was surprising for the author to hear familiar opinions and observations on behaviour from people who do not know each other and to identify different, but corresponding, situations regarding a foreigner's employment.

The report consists of six parts. The first chapter gives background information on the countries and the situation of migrants, procedures for employing a foreign worker, and local regulations. The second part presents the methodology used in each country for the research. The third, fourth and fifth parts are outcomes of the research divided into three sections: employment of foreigners, legal and illegal employment, and the impact of Directive 2009/52/EC. The last part of the report is dedicated to recommendations which were drawn from the process of the entire survey.

2. Background information

This research project covers four countries: the Czech Republic, Hungary, Poland and Slovakia. Located in Central Europe, they either border each other now or they did in the past. Regardless of their differences, such as geographic size, population and homogeneity, they share many common historical, economic, political and social developments.

Looking back only to the 19th century, the analysed countries did not exist as independent states; they belonged (at least in large part) to the Habsburg empire, gained their independence in 1918, and only then built their statehood. They suffered extensively during World War II, and afterwards became dependants of the Soviet Union, which imposed socialist regimes on them. Democracy and a pluralist political scene emerged only after 1989. In 1991, the Czech Republic, Hungary, Poland and Slovakia formed a political regional cooperative initiative called the Visegrad Group.¹ Aspirations to join the European Union and NATO were met in 2004 and 1999 respectively². For a better comparison of basic features, see the table below:

¹ The Visegrad Group (also known as the "Visegrad Four" or "V4") reflects the efforts of the countries of the Central European region to work together on common interests within the all-European integration. It was formed in 1991, and played its most important role in the initial period of its existence (1991–1993), during talks with NATO and the EU <http://www.visegradgroup.eu/about> (30.06.2014).

² Slovakia joined NATO in 2004

Table 1. Background information on the situation in the researched countries.

| | Czech Republic | Hungary | Poland | Slovakia |
|--|-----------------------|----------------|---------------|-----------------|
| Population (in thousands in 2014) | 10.512 | 9.879 | 38.495 | 5.415 |
| Area in km² | 78 866 | 93.030 | 312.679 | 49.035 |
| GDP per capita in PPS Related to the EU-28 (Eurostat 2013) ³ | 80% | 67%, | 68% | 76% |
| Unemployment rate (2014.06) | 6 % | 8,1% | 9,1% | 13,8% |
| Estimated number of migrants (according to national reports) | 441.000 | 110.000 | 121.200 | 71.600 |
| Estimated share of migrants to the national | 4,2% | 1,1% | 0,3% | 1,3% |

2.1. History of immigration in the Czech Republic, Hungary, Poland and Slovakia

Throughout their modern history, the four project countries were a source of many migrants seeking a better life abroad. Thousands of people escaped poverty during the 19th and 20th centuries. World War II made thousands more leave their homes as refugees. Despite closed borders, the socialist regimes existing in Czechoslovakia, Hungary and Poland also pushed people to migrate abroad.

The change came in 1989, when newly emerged democracies and free markets in these countries started to attract foreigners. However, they had very little experience in dealing with immigrants, which included political migrants seeking asylum and economic migrants. Migration laws at the time could be considered quite liberal, still allowing for movement of people from the West and the East. More recent migration laws and policies, following European Union examples and regulations, are stricter than before. Other milestones which should be marked include: the break-up of Czechoslovakia and formation of the independent Czech and Slovak Republics (1993), and the accession to the European Union (2004) and the Schengen zone (2007).

Since the change of political system in 1989, the Visegrad Group countries in Central Europe have developed immensely towards the welfare status existing in the older European Union countries; however, their GDP remains between 67% - 80% below the average EU GDP. Their developing economies are attracting more and more migrants, coming mainly from the neighbouring regions outside the European Union. Since the state borders of Hungary, Poland and Slovakia are also partially external borders of the European Union, they allow for easier arrival of migrants from the neighbouring, less economically developed non-EU countries. Poland borders Russia, Belarus and Ukraine; Slovakia borders Ukraine; and Hungary borders Ukraine and Serbia. Nevertheless, for many, the Visegrad Group countries are considered transit countries to the West. Generally speaking, the total number of migrants in the four countries, despite continuous growth, remains relatively small, both when compared to the other European Union countries and as a share of the general population. Statistics and predictions provide information on the growing influx of third-country nationals in future.

For many migrants from the eastern neighbourhoods, Poland, Slovakia and the Czech Republic are closer in terms of distance as well as cultural and language background: it is easier for them to communicate

³ Source of data: Eurostat

<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tec00114> (30.06.2014).

and find accommodation in these countries. Hungary has become a destination for many ethnic Hungarians living abroad.

A general trend shows that foreign workers coming from the West hold rather highly qualified jobs, including high management posts, while migrant workers from the East occupy low-paid and often unqualified positions.

The transition from being an emigrant country, which lacks local workers, to an immigrant one, which has a gradually growing influx of migrants, is still a new phenomenon for all four countries. Thus, they have had little experience in formulating adequate migration policies. Even now, new policies and laws are evolving as the flow of migrants continues.

After the political changes, policies were oriented to welcome compatriots returning from exile and migrants seeking to develop business activity. The four countries tried to facilitate relatively free entry for citizens of the former socialist block. However, aligning with the European Union's regulations changed this situation, making admission for those citizens more restricted. The global economic crisis and local market needs pushed authorities to offer better employment opportunities to certain groups – e.g. a simplified procedure for obtaining a work permit in Poland for citizens of Armenia, Belarus, Georgia, Moldova, Russia and Ukraine.

2.2. Migrants in Czech Republic, Hungary, Poland and Slovakia⁴

A general conclusion from the four observed countries is that freedom of movement within the European Union encourages EU citizens to move from one country to another. On the other hand, it also attracts third-country nationals to come and look for better job opportunities.

In the Czech Republic, according to the Czech Statistical Office (Český statistický úřad), there are 441,000 foreigners with a residence permit in the Czech Republic, which amounts to 4.2% of the total population – which is the highest share among the four countries presented. In this group, 238,000 foreign nationals have a permanent residence permit, while 203,000 have other residence permits (especially long-term stays over 90 days).

Among all foreign nationals legally staying in the CR, 37% are EU citizens. This includes Slovaks (91,000 people), Poles (19,000), Germans (18,000), Bulgarians (9,000), and Romanians (nearly 7,000). The high number of Slovak nationals is a result of shared statehood before 1993.

Among third-country nationals, the biggest groups come from Ukraine (105,000 people), Vietnam (57,000), and the Russian Federation (33,000).

For the purpose of this project, the situation was analysed in two cities in the Czech Republic: the capital city of Prague and Ústí nad Labem. Following the statistical data, 37% of all the foreign nationals legally residing in the CR live in the capital city of Prague, and, in addition, some of the foreign nationals who live in the Central Bohemian region surrounding Prague, commute to Prague to work. The most populous groups of foreign nationals in Prague are Russians (50% of the total number of all Russians in the country) and Ukrainians (nearly 50% of the entire Ukrainian community). Prague is also inhabited by one third of all Slovaks living in the Czech Republic and 19% of all Vietnamese migrants.

The Ústí nad Labem Region has a slightly higher proportion of foreign nationals (7%) than the country average (4.2%). Most foreign workers in the Ústí nad Labem region come from Vietnam, Ukraine and Slovakia.

⁴ Information on the situation of migrants quoted after national country reports or additional information provided by the researchers.

In Hungary, the number of foreigners has been growing continuously in the last ten years. According to the Central Statistical Office, in 2001 there were 110,000 foreign nationals (1.1% of the entire population), while the 2011 census estimates already 205,000 foreigners (equal to 2.1% of the population). Although the number in 2013 decreased to 141,000 foreigners, the share of third-country nationals grew. It was 37% in 2012, a small increase since 2011 (32%) and 2010 (34%).

In Hungary nearly 60% of foreigners are citizens of other EU member states. Most of them come from neighbouring countries, primarily from Romania, which was the country of origin of 30% of the foreign nationals staying in Hungary in 2012.

A unique feature of the migrants in Hungary is that, according to the Office of Immigration and Nationality in 2013, most migrants are ethnic Hungarians and are therefore culturally similar to the native population. As a consequence of new legislation simplifying the naturalisation procedure, the share of foreigners from Romania dropped after 2005. In this regard, an important change came after Bulgaria and Romania joined the European Union, as citizens of these countries were no longer counted as third-country nationals. Similarly, since Hungary abolished temporary work restrictions for Romanians on 1 January 2009, the number of work permits issued annually decreased substantially. Nevertheless, Romanian citizens remained a large portion of the foreigners in the Hungarian labour market. Out of third-country nationals, Ukraine, Serbia and China show the biggest numbers.

The research was carried out in two cities – the capital city of Budapest and Nyíregyháza, which is located in the north-eastern part of the country.

In Poland, according to the National Census in 2011, there were 55,400 foreigners registered. Other sources state that 121,219 foreigners applied for different types of residence permits in 2013. Ukrainian represent the biggest number, accounting for about 30% of all foreigners; other notable groups include citizens of the Russian Federation, Belarus, Vietnam, and China.

Different estimates provided by researchers say that the number of undocumented migrants varies between 50,000 and 450,000 people, coming mainly from Ukraine, Vietnam, Moldova, China and Belarus, which correlates with statistics on legal migrants.

In Poland, the project was conducted in two cities – the capital city of Warsaw and Poznań. A difference in intensity of migration is clearly visible between these two cities. The largest number of immigrants arrive in Warsaw and seek employment there. In 2008, out of 18,000 work permits issued in Poland, 7,760 (43%) permits were issued in the Mazowieckie region (voivodship), while only 1,157 work permits were issued in the Poznań region (Wielkopolska voivodship). The numbers nearly doubled in 2013: out of 39,000 work permits issued in the entire country, 21,548 were issued in Warsaw, and only 2,432 in Wielkopolska. Given the size of its population, Wielkopolska thereby ranks sixth among all regions.

Warsaw, being the capital city, always attracted immigrants, offering them greater employment opportunities and access to NGOs offering legal and social counselling. Also, it is located relatively close to the eastern state border with Belarus and Ukraine. The majority of Chinese migrants live in Warsaw, where the Vietnamese community has likewise found employment in trade and fast food businesses. Poznań is known as an international fair trade, business and student city. Among the estimated 4,500 foreigners living there, the majority come from Ukraine, Germany and Belarus.

In Slovakia, there has been a gradual increase in the number of migrants entering the country since 1993. Interestingly, while legal migration has been increasing even after accession to the European Union and to the Schengen area, irregular migration and the number of persons seeking international protection has been gradually decreasing.

In terms of the origin of foreigners holding a residence permit in Slovakia, the largest groups of immigrants come from other EU member states. For a better perspective, in 2013 the twelve countries with the largest numbers of migrants were: the Czech Republic – 9,321, Hungary – 6,912, Romania – 5,949, Poland – 5,050, Germany – 4,093, Austria – 2,147, Italy – 2,140. Regarding third-country nationals, the

largest groups come from Ukraine – 6,898, Serbia – 4,021, the Russian Federation – 2,633, Vietnam – 2,089 and China – 1,926.

The Slovak research was run in Bratislava, the capital city, and in Kosice, the largest city in eastern Slovakia. According to the Statistical Office of the Slovak Republic, there were 10,234 foreign residents registered in Bratislava and 4,123 in Kosice in 2013. The actual size of these populations may differ as many residents of eastern Slovakia migrate to Bratislava and its surroundings in order to work without changing their resident address. Moreover, those who register only as temporary residents are not included in the statistics.

2.3. Reasons and motivations for migration

Economic development and related welfare growth are clearly noticeable in the Visegrad Group countries. Joining the EU further boosted their economies. However their welfare status and wealth are still far behind the level found in the Western European countries. Thus searching for good employment opportunities is not among the top priorities for incoming migrants.

Most migrants choose the four countries because other factors played an important role in their decision. One of these is the distance to their country of origin – as stated, many migrants come from bordering countries. Another reason is linguistic and cultural similarities: for Ukrainians, Russians and Belarusians seeking employment in Poland, the Czech Republic and Slovakia. Similarly, many migrants in Hungary come from neighbouring countries or have Hungarian roots, so they can better integrate into the receiving society.

The motivations of foreigners staying in destination countries vary. Apart from the most typical, namely high or low-skilled job opportunities, motivations also include family reunification, entrepreneurship, and studies. For example, in Hungary in 2013, 37,547 third-country nationals applied for a residence permit, with 12,787 for the purpose of employment, 5,609 for the purpose of family reunification and 12,276 for the purpose of studies. This shows that the number of people willing to study almost equals that of those willing to work.

The employment of third-country nationals in Hungary, based on the number of work permits, is most frequent in the following branches of the economy: trade, automotive repair and maintenance, process manufacturing, and the hotel and catering industries. Similarly, foreigners in Slovakia are mainly employed in business services, transport, construction, the automotive industry, wholesale trade, education, and less notably in the sectors of food production, manufacture of electrical machinery and manufacture of radio, television and communication components.

The irregular employment in all studied countries is most widespread in seasonal jobs – those in agriculture and construction, as well as in household employment. Quite frequently, illegal jobs are offered in hotels and catering (restaurants, cafes).

2.4. Overview of the procedure of foreigners' employment

Migration laws and policies have significantly changed in recent years. To a large extent, these changes were dictated by accession to the European Union.

On May 1, 2004 the Czech Republic, Hungary, Poland, and Slovakia became members of the European Union and automatically abolished employment restrictions for other EU citizens. Moreover, European Union Directives were also dedicated to them, and the countries have been obligated to implement these regulations into their national laws.

In the research, respondents clearly expressed that European law greatly influenced the procedure for employing foreign workers. The following three instruments of EU law were mentioned most frequently:

- **Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment;**

- *Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegal third-country nationals;*
- *Directive 2011/98/EU of 13 December 2011 on a single application procedure for a single work and residence permit for third-country nationals in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.*

Restrictions on access to the labour markets. Generally speaking, we can identify two categories of access to the labour markets of the researched countries that are attributed to EU regulations. Unrestricted access is open to EU nationals and their family members together with holders of permanent residence permits. However, the employer still has duties related to proper registration and keeping an employee's record. Restricted access to labour markets for all third-country nationals is usually exercised through the issuance of work permits. Based on the analysis of the four research projects, some common elements can be identified.

Labour market test. All four countries have institutions for labour market tests for employers willing to employ a foreign national. The objective of the test is to justify the employment of a foreign national in the position concerned. A foreign national can obtain a work permit only if the competent authority deems that their employment in the given position is justified. In other words, if a citizen of the country can be engaged for said position, a foreigner will not receive the work permit.

People with protection status. All four countries give preference to third-country nationals enjoying protection status, e.g. refugee status or beneficiaries of subsidiary protection in accessing the labour market. In the Czech Republic, they need work permits, but this can be obtained without the labour market test. In Hungary and Poland, they do not need work permits. In the Czech Republic and Slovakia, there is a requirement of stay in the country for a period longer than 12 months.

Foreign citizens with local descent. Both Hungary and Poland introduced legal preferences for migrants having origins in these countries. In Poland, holders of the Polish Card (Karta Polaka) do not need to obtain a work permit, whereas in Hungary, according to the Law on Citizenship, foreign nationals of Hungarian origin can immediately acquire Hungarian citizenship.

Seasonal work regulations. Poland, Hungary and Slovakia introduced a special procedure for employment of third-country nationals working only a few months a year. In Hungary, it allows a foreigner to stay for a period of 150 days a year for the purpose of employment, a period which may be divided, if the seasonal work so requires, into multiple periods. The introduction of these options, however, did not actually boost the employment of third-country nationals in Hungary. In Poland this regulation applies only to nationals of listed countries (Armenia, Belarus, Georgia, Moldova, Russian Federation, Ukraine) for a period of 6 months within 12 consecutive months. This procedure is commonly known as a “statement” procedure, wherein an employer only registers a declaration on the intention to employ a foreigner. Slovakia introduced a procedure in which a labour market test is not required for seasonal employment not exceeding 180 days during a consecutive 12 month period. This option is limited to the holders of temporary residence cards for the purpose of family reunification (within 12 months of the granting of the card), as well as to the long-term residents of any of the EU Member States.

Work permits. In the Czech Republic, Slovakia, and Hungary, work permits can be issued to a foreigner for a maximum of two years. In Poland, they are valid between one and three years. The work permit allows for work in a specified position, for a specified employer, with a fixed remuneration. If changing employers, the type of work, or job position, an employee must obtain a new work permit. A separate work permit has to be issued for all activities performed under one of the types of contracts specified in the Labour Code or under a service contracts, including short-term contracts, part-time contracts, and seasonal work.

There are some exceptions that countries provide for some categories of third country nationals who do not need work permits, such as spouses of holders of permanent residence and students, but these differ from country to country.

2.5 The Employers` Sanctions Directive

The Employers Sanctions Directive (2009/52/EC) is considered to have significant impact on national regulations. It is also a regulation whose implementation was required in the four researched countries.

It entered into force on 20 July 2009 with a deadline for transposition in the Member States of 20 July 2011. The directive requires Member States to prohibit the employment of non-EU nationals illegal residing in a Member State. It lays down common minimum standards on sanctions against employers who infringe the prohibition⁵. Member States must ensure that infringements are subject to effective, proportionate and dissuasive sanctions, including financial sanctions in relation to each illegally employed non-EU national and payment of the costs for returning the illegally employed non-EU national. Member States must ensure that employers are liable to pay back-payments, such as outstanding remuneration, including the cost of sending it to the employee's country of origin, and social security contributions. An intentional infringement constitutes a criminal offence when the employer persists in his/her non-compliance, employs a significant number of illegal non-EU nationals, employs such persons in particularly exploitative working conditions, and employs victims of human trafficking or illegally employs minors.

The four project countries took different approaches to the transposition of the Directive into their national legislations. Poland's Parliament adopted a separate Law Act implementing the Directive directly, while other countries changed a number of their laws to accommodate the Directive's obligations.

3. Methodology

The main aim of the project was to find out whether the Directive achieves its goals (e.g. combating irregular migration) and prevents the exploitation of migrant workers. The other important issue in the research was to examine the impact of the Directive in the four countries of the Visegrad Group: Poland, the Czech Republic, Hungary and Slovakia.

In each researched country we tried to investigate employers' level of knowledge of foreign employees' labour rights, as well as to analyse the opinions of key actors in the labour market on the effectiveness of Directive 2009/52/EC and the national regulations concerning employment of third-country nationals.

The research questions were as follows:

1. What is the level of knowledge that employers have regarding the employment of third-country nationals?
2. What are the employers' opinions on the Directive and national regulations applicable in the employment of third-country nationals?
3. What is the role of the Directive? For whom was it created? For employees or employers? Does the Act implementing the Directive provide enough protection for an irregular employee? Do those regulations have a real impact on the employment relationship?
4. Is the implementation of such regulations effective? Does it achieve an outcome?
5. What are other possible tools for protecting foreigners from illegal employment? What instruments could be provided for a foreigner to guarantee that his/her labour rights are respected?

⁵

http://europa.eu/legislation_summaries/internal_market/living_and_working_in_the_internal_market/l14566_en.htm (30.06.2014).

In each country a similar research process was carried out, based on the common concept, adjusted aims, objectives, and tools. Researchers in the Czech Republic, Hungary, Poland and Slovakia followed the same questionnaires and were encouraged to interview the same five groups of respondents⁶:

1. civil servants,
2. NGOs and trade unions,
3. employers,
4. recruitment agencies and employee unions,
5. academics and experts.

The research was carried out in four countries between November 2013 and March 2014. Altogether, 84 people were interviewed.

Table 2. Number and groups of the respondents in researched countries.

| | Czech Republic (Praha / Ústecký kraj) | Hungary (Budapest / Nyíregyháza / Visegrád) | Poland (Warsaw / Poznań) | Slovakia (Bratislava / Košice) |
|---|---|---|------------------------------------|--|
| civil servants | 6 | 5 | 8 | 4 |
| NGOs and trade unions | 6 | 3 | 4 | 3 |
| employers | 5 | 5 | 7 | 7 |
| recruitment agencies and employee unions | 0 | 2 | 4 | 5 |
| scholars and experts | 2 | 5 | 2 | 1 |
| Total | 19 | 20 | 25 | 20 |

The different groups of respondents gave a diversified picture of foreign workers' employment in the national labour markets. It is worth mentioning that the respondents' opinions were rather frank, but the experience and position they represent influenced their answers. Civil servants were rather distanced from the problems of migrants, in contrast to NGOs' representatives, who identified existing challenges but sometimes overemphasised them. Legal knowledge, especially details of the local regulations implementing the Directive, was shown to the greatest extent by experts and academics.

Respondents were chosen on the basis of their work experience, previous collaboration with the project partner organisation, or thanks to private networks. In some cases, the researchers encountered obstacles when arranging interviews with civil servants who showed very little interest and willingness to cooperate on this project and looked for excuses not to do so.

The most challenging task during the research was to reach out to the appropriate employers. There were different strategies for identifying and encouraging employers to participate in the research. However, lack of trust and a fear of inconvenient questions might have discouraged some of them. In some cases they did not allow for the interviews to be recorded or they completely refused to be interviewed. They feared being exposed to the authorities for illegal employment practices. Most employers were found by 'word of mouth'. Suspicious behaviour toward researchers and many refusals show that employing

⁶ Researchers in the four countries reached about 20 respondents and wrote country reports, which were used as the main source of information for the comparative report.

migrants is a sensitive issue in these countries. It was significant that a number of respondents agreed to talk only if their interviews were not recorded.

One of the interesting outcomes, already visible while identifying the best interlocutors, was the **lack of interest of trade unions in supporting migrant workers** in the researched countries. The national trade unions tend to support citizens of the country they are based in. Lack of access to trade unions leads to a weaker position of migrants in the labour market. In case their workers' rights are violated, the migrants can individually turn for help only to NGOs working with migrants or on integration issues, but not to trade unions.

To some extent, the employers selected for the study reflect the policy of employing foreigners in these countries – e.g. in Slovakia due to administrative burdens, only big companies, with HR departments, are able to employ a third-country national. Therefore most of the employer interviews were conducted at multinational companies with hundreds of employees. In the Czech Republic, after the law was changed in 2009, many employers prefer to employ EU citizens (especially Romanians and Bulgarians) over third country nationals.

4. Outcome of the research: Employment of third-country nationals

The following part of the report is based on research undertaken in the four countries. The use of the same methodology – questionnaires and defined groups of respondents – created the chance to make comparisons between the countries. The majority of interviews were conducted either with employers who engage migrant workers legally or people involved in the issues of legal employment (civil servants, agencies, NGOs). There was one employer who openly admitted to illegally employing third-country nationals.

4.1. Reasons for employing third-country nationals

Based on collected data, the research team tried to find out why employers are willing to employ a foreigner and why some opt against hiring foreigners. Interestingly enough, in all four countries the answers regarding *“the need to protect the domestic labour market”* were given. This statement was frequently made in the name of protecting citizens' rights; some key people wanted to hide their biased opinions behind this statement, while others, like authorities, were expressing their obligation to take care of native workers first.

It can be noted that not every employer can afford hiring a third country citizen. The Czech and Slovak respondents in particular mentioned that only big companies can afford having non-EU citizen staff. The procedures linked to employment of third-country citizens are time consuming and costly.

Usually a job seeker is not able to go through this procedure alone. Companies occasionally have no dedicated budget for such a purpose [for HR representatives responsible for hiring migrants] or they have problems approving it. (employment agency, 17, SL⁷)

We can plan ahead for almost a year, so we can cope with the length of the procedure⁸, but what about other employers? (employer, 4, CZ).

In the examined countries, migration policies are new and continuously developing projects. The benefits of a foreign labour force are not obvious to the local authorities, and therefore the idea of limiting access to the national labour markets gains support. The opinion that the *“complexity of procedures reflects the lack of the state's interest in employment of foreigners”* is not rare. Moreover, xenophobia and bias on the part of local employers towards third-country nationals is another obstacle encountered in the research.

⁷ To identify the sources of quotations cited in the text, additional information in the brackets indicate the group of respondents, the number of the interview and the country it has been conducted in.

⁸ The entire process of engaging a new worker from a third country in the Czech Republic usually takes about 6-9 months.

There are different reasons for employing a foreign worker, but undoubtedly **the reasons are universally shared**, as they were repeated independently in the four investigated countries. Some of the employers have chosen foreign workers because of their qualifications (language skills), while others were looking for any employee willing to work in certain conditions.

We should take into consideration that the real reasons for employing a foreigner could differ from responses given to the researchers. A respondent who says he prefers to employ Ukrainians because they are hardworking employees gives the impression of being open to foreigners. However, while describing his preferences, a respondent employing a household worker with unlimited working hours points out that: *“an employee is hardworking, has no family, and is available 24 hours a day”* (employer, 1, HU). These characteristics show the real motivations for third-country nationals' employment that might lead to possible abuse.

The most common reasons for employing a foreign worker are:

- **Lack of skilled domestic labour force.** There are some sectors with shortages of workers. In these cases, it does not matter whether the specialist is a foreigner or not.

In IT, for example, the Indians are just as good as the Hungarians, but the good Hungarians have already been hired abroad. ... One of our clients could hire about ninety development engineers, but there are not enough Hungarians... There are these firms, you know, that moved in and offer services, and they need natives of every language who know the trade. (Relocation agency, 1, HU).

On the other hand, there are positions which local job seekers are reluctant to take. Consequently, employers might prefer foreigners: *“The Czechs are lazy; there is a generous social welfare system which does not force them to work”* (employer, 2, CZ); while:

(...) foreigners seem to work more, they are not as demanding as Czechs, they do not complain so much (NGO, 4, CZ).

They are hardworking, do not complain, do not demand cars, do not require secretaries (agent, 21, PL).

- **Specific qualifications.** Foreigners' language skills are in high demand in certain areas of employment e.g. in education translation services or international business. Other skills are connected with certain trade markets or particular services which can be performed only by people coming from a given cultural background.

Some job positions require [employing foreigners] just because of the name itself, such as Thai massage or a Chinese chef (civil servant 2, SL).

there are such places, like catering, where offering a Chinese dish or kebab requires a foreigner. Obviously this is not Polish cuisine. Foreigners are recruited to get business to market, to create any substitute for authentic ethnic cuisine or to follow traditional ethnic recipes. They look more credible (civil servant, 4, PL).

- **Economy.** As a motivation for employing third-country nationals, lower costs are frequently mentioned. However, some employers noted that the costs of employing a third-country national are the same as those of employing a domestic worker, if not higher. There are cases where the employer needs to cover accommodation, travel or meal costs. Obviously, this

concerns only legally employed workers and the employer has no option to save on any fees. Polish respondents in our research claim that it is a myth that all migrant workers are “cheaper”:

Specialists arriving e.g. from Ukraine, expect salaries comparable to the Poles' salaries. (work agency, 9, PL)

It is not the case that workers from Ukraine or India or Belarus earn very little money here, they simply get the right money. (employer, 15, PL)

I am responsible for that person, I provide accommodation – this is an additional cost. I would not bear this cost when employing a Pole, and here I do, because I would like them to have a place to live and I help them with that process. (employer, 23, PL)

In all project countries, it was noticed that third-country nationals are usually less demanding than local workers, and they accept either lower wages and/or worse working conditions as compared to local nationals.

There are positions that are paid a minimum wage and employers cannot find a skilled labour force in Slovakia (employers' union 19, SL).

In Poland foreigners agree to work in conditions which would not be acceptable for Polish workers for the same salary, e.g. in conditions below certain standards of safety or hygiene or taking up afternoon shifts. An employee coming from another country is not in a hurry to go home after work and is willing to accept different working hours. (employer, 13, PL)

- **Loyalty.** The other issue present in the research is the specific loyalty of foreign workers:

The majority of Poles working for low wages in humiliating conditions would leave the job after three months and seek employment opportunities abroad (trade union, 17, PL).

From these justifications on employing foreign workers emerges an impression of a rather positive employer-employee relationship, which could be **reinforced by introduction of employment policies open to foreigners** or campaigns promoting cooperation with foreigners in different branches of the economy.

As mentioned in the country reports, it is evident that the **nationality of a foreigner often determines the sector** in which the person works. Ukrainians often work in household employment and agriculture (seasonal work) in the researched countries. Thais are often employed in massage parlours. Arabs tend to work in hotels and catering branches. The catering and the food industries are more diversified in the researched countries: in Hungary there are Serbian, Albanian and Kosovar workers in bakeries; in Poland many Armenians find employment as kebab sellers.

It is important to note that in some sectors **workers are more exposed to exploitation than in others**. These are: agriculture, domestic work, and construction. Foreign workers employed in these branches are more often employed on an irregular basis and are therefore more vulnerable to work abuses.

When comparing the Czech Republic, Hungary, Poland and Slovakia, one finds an element shared by all four economies: the **Ukrainian workforce**. Ukraine, although not an EU Member State, seeks links with the European community. Ukraine's economic, social and, most recently, political situations are very unstable, which pushes a large population group to look for employment opportunities abroad. The grounds for the Ukrainian workforce's large presence in the researched countries are similar: geographical proximity and minimal language barriers, as the Ukrainian language is very similar to the other Slavic languages, Czech,

Polish and Slovak. In Hungary, however, even though a language barrier exists, the Ukrainian workers are still desirable thanks to the Hungarian minority living in Ukraine.

4.2. Knowledge about the procedure of employment of a third-country national

Access to basic information about the procedure for employing foreigners **is not** a problem in any of the analysed countries. Information can be found online, through phone-line services, or at the offices of competent authorities. However, many respondents complain that even if they have general knowledge about the issue, they cannot obtain comprehensive detailed information on the procedure in one place. Some respondents pointed out that there should be a governmental body responsible for providing complete and detailed information.

The key factor in understanding the interrelation between knowledge and the employment of foreigners is the size of an enterprise. In Slovakia, respondents did not have any problems with the procedure as all of them represented big international companies with specialised HR departments. In other countries, it was repeatedly stated that large companies can afford having a specialised department, or at least a personnel manager responsible for foreigners' employment, while small businesses cannot afford such workers. In smaller companies in Poland, accountants often deal with such formalities. Employers themselves often did not have much knowledge, and opted to entrust their staff to handle the procedures.

As there are no governmental agencies that support employers, **external institutions supporting the process of employing migrants** were founded in every country: NGOs, relocation agencies, and lawyers with detailed knowledge, all capable of arranging all formalities on behalf of employers and/or employees.

For example, in Hungary relocation agencies prepare summaries and lists for their clients, who may need knowledge about the procedure.

Our clients are well aware of the procedure. We always prepare a comprehensive brochure in which we state that third-country nationals are required to have a work permit. ... In case the legislation changes, we write it down in advance. ... It is worth noting that even the Office of Immigration was ignorant of the changes that were to come into effect on January 1 [2014]. Their clerks do not bother reading the official journal to keep track of changes. It is not their job. (relocation agency, 1, HU)

In Poland, and similarly in the Czech Republic, independent individuals started to offer their assistance in addition to HR departments and lawyers specialising in migrant issues. So-called 'agents' arrange everything for a foreigner or employer, as is the case in Poland. Sometimes they represent a couple of clients simultaneously. They receive substantial remuneration for their services; nevertheless they complain that *"the procedure has become extremely complicated and difficult"* (agent, 21, PL).

The agents' responses recorded in the interviews provoke debate over the importance of their services. All the agents overemphasize their role in the procedure of employment of third-country nationals. In other words, they take care of their customers while binding and making them dependent on the agent's services. Therefore, it is recommended to **make an effort in facilitating procedure and supporting employers in their independent actions**. Also, raising awareness about legislation and procedures regarding the employment of foreigners should be considered.

4.3. Employers' difficulties in employing foreigners

Most problems occur not because the employers' knowledge is limited, but because theoretical knowledge on procedures is different from the reality:

It never works as a whole, as it should; there will always be some difficulties, no matter how hard you have worked to be prepared. We do not have a problem finding any formal information, but you have to experience how it works. And that is where I need help. (employer, 4, CZ)

It was confirmed that complicated procedure discourages many employers. A surveyed employer who is motivated to hire a foreigner for the first time states that he is *"is terrified by a lot of information on the issue"* (civil servant, 2, PL) already at the beginning of the hiring process. Some people were discouraged by a two-stage procedure: a *labour* market test and the application for a work permit. In Poland, until April 2014, an employer who wanted to obtain permission to employ a foreign worker had to visit two offices. Since May 2014, the employer needs to visit only the Labour Office in order to carry out a labour test. The responsibility for obtaining a work permit lies solely with the worker. Employers frequently gave up at the preliminary stage, discouraged by too many initial obligations: *"not every employer is satisfied that he has to deal with all the formalities, because firstly, it takes time, and secondly, he does not want to be responsible for another person"* (NGO, 8, PL).

The long and expensive procedure is the biggest source of discouragement. In the Czech Republic, the entire process of engaging a new worker from a third country usually takes about 6-9 months: *"It is terrible how many things you have to do: I started in autumn, sometime in October, and only now [March], I finally know that I have arranged the work permits"* (employer, 1, CZ).

In Slovakia, bureaucratic burdens make employment of third-country nationals unnecessarily troublesome. The requirement that various documents must be either notarised or certified with an apostille and translated into Slovak causes delays in meeting official deadlines for submission of the documents or causes applications to be considered incomplete.

Additionally, not only procedures turn out to be obstacles. Hungarian entrepreneurs complain that engaging foreign nationals may present an extra barrier: they often have to pay travel expenses, accommodation and subsistence for that person. In this sense, foreigners become an extra financial burden. Employers admit that sometimes completing the procedure is possible only thanks to NGO assistance.

It was stated several times that employing a third-country citizen for the first time is the biggest challenge: *"But I think that for someone who starts, it is a disaster. He does not know and obviously cannot know (...) [how to do it]"* (employer, 1, CZ).

Therefore in order to encourage legal employment of foreigners, there should be formal support on a local level and different forms of incentives available for beginners (individuals or small business).

5. Research outcome: Legal and illegal employment

The term "illegal work" is defined in the four researched countries both as a legal institution and as a social phenomenon. This twofold understanding might explain why the discussion about third-country nationals' employment becomes controversial, and why researchers in all countries faced the problem of lack of trust when interviewing employers.

According to the legal regulations, "legal employment" of a foreigner is a situation in which s/he has some kind of authorisation to stay in the country (e.g. residence permit, visa) and an authorisation to work (e.g. work permit), no matter whether this is included in one or more documents. In contrast, "illegal

work” means employment without at least one of these necessary documents. Nevertheless, there is another connotation to “illegal work,” which means infringement of other legal norms, e.g. worker’s social rights or other labour laws.

In the **social meaning**, “illegal work”⁹ is perceived as a “*not completely legal job*”, and “*the grey market*” and is accepted by the society. There are many situations where the third-country national works illegally. People tend to excuse disregarding obligations and legal regulations, e.g. his/her visa just expired; s/he has a family so s/he must earn money; s/he is a good worker, but at the moment has some problems with her/his residence permit, etc. In such cases, both the employer and the employee often ignore their disobedience of the law and continue playing against the system.

Irregular employment and its most common forms, such as unregistered employment, or registering at minimum wage,¹⁰ is widespread in each of the studied countries, regardless of the nationality of the workers, be it foreign or domestic. The participants in the study repeated that it is a “**practice widespread in society**”. The author of the Hungarian report concluded that irregular employment can be traced back to the previous political regime in the country. Employment outside the sectors of the formal economy existed in the socialist system, and for a long time was tolerated by authorities.

Last, but not least, irregularly employing third-country nationals is frequently based on a consensus between the employer and the worker: both want to receive extra profits. Unfortunately, the consequences for each party are different, and usually they are more painful for migrants.

5.1. Why do employers decide to employ irregularly?

The respondents’ answers in the studied countries demonstrate that there are two categories of employers: ones who violate employment laws **intentionally**, knowing the risks and being aware of the consequences, and ones who are not **fully aware of the consequences** of their actions. Examples of unintentional irregular employment include: belated renewal of a work permit for a third-country national and introducing changes in the job description, such as the place of work, and not reporting it to the relevant authorities. In both cases, employers may complain about the procedures being too complicated, but what is decisive here is the employer’s motivation.

There are some repeating motives for irregular migrants’ employment in all examined countries:

- **Irregular employment is a widespread practice**

Respondents indicated quite frequently that the real driving force of irregular employment is that it is a **widespread practice**, one tolerated by the societies of the Czech Republic, Hungary, Poland and Slovakia.

Illegal employment is generally a problem of the society as a whole. (NGO, 7, SL)

People who want to work and find themselves in a situation in which they have no possibility of getting legal work accept illegal employment just to earn money somehow. (employment agency, 15, SL)

- **Regular employment is too expensive**

Respondents, regardless of the studied country, indicated that in general, employers tend to “*save on costs as employees cost a lot*” (employer, 14, SL). They avoid paying taxes, social security and health care contributions, regardless if a worker is domestic or a foreigner:

⁹ There are different levels of irregularity. A worker may have a permit to stay, but not a permit to work, or the documents can be expired. Most serious but less frequent are cases in which irregular employment is combined with irregular stay. For example, when a person entered the country on a tourist visa but found a job and overstayed.

¹⁰ The employer officially pays the minimum wage to the worker and pays fewer taxes. The remaining wages are given “under the table”, without informing the state.

To tell the truth, illegal employment is maybe caused by... legal employment is quite expensive. That would probably be the main reason behind the illegal employment of Czech workers. (civil servant, 2, CZ)

- **Procedure is too complicated, too expensive, and too long**

Complicated administrative procedures and increasing bureaucracy may discourage employers from legal employment of third-country nationals. In every country it is “*necessary to submit [a certain] amount of documents (such as proof of health insurance, proof that a foreigner meets the prerequisites for employment, etc.*” (scholar, 20, SL). The respondents often complained that it was impossible to be well prepared and to have all required documents.

Civil servants expect various redundant papers and require visiting their office several times to complete one procedure. Hungarian employers expressed the opinion that registering third-country nationals is worthwhile only if their employment will be necessary in the long-run. If an employer decides to change the position of a third-country worker, s/he must the change work permit as well. Therefore some business people might decide to take an easier path by omitting all formalities.

- **Unfriendly attitude of administration**

The surveyed employers often expressed suspicions that their applications for work permits of third-country nationals are rejected on the basis of protecting the domestic labour market. In the Czech Republic, the civil servants and NGOs surveyed spoke about the baffling case of an employee who had held the same position for four years, each year being granted a work permit and then in the fifth year, when theoretically the person could apply for a permanent residence, the work permit was denied:

(...) well, they are for example people who have already been here for a couple of years and they would like to apply for a permanent residence permit, and suddenly they are not granted the permit and they have to deal with it somehow. (civil servant, 2, CZ)

Not surprisingly, migrants do not accept decisions of this kind and apply new strategies to deal with negative decisions for the authorities. One of the strategies used in such cases can be **self-employment**, as seen in some countries. For example, in the Czech Republic statistics show a massive increase of self-employed persons from third countries since 2009, when authorities began issuing considerably fewer work permits. Another strategy is to **study and work** which is possible in Poland and the Czech Republic, and to some extent in Hungary¹¹. Those who do not have possibility of studying or opening their own business work illegally.

- **Inspections are insufficient**

Due to the insufficiency of labour inspection mechanisms in general and a significant number of foreigners working in violation of the binding provisions, the likelihood of an employee being detected is rather low. Chances for impunity are higher for shorter periods of employment. Even if the employer were to be caught and fined, illegal employment might still prove profitable.

Such employers prefer to pay a fine of up to 5,000 PLN than to hire on a contract of employment. There are no medical examinations, nor health and safety training. (employer, 13, PL)

¹¹ Students can work during their term-time for a maximum of twenty-four hours a week, and outside their term-time or for a maximum period of ninety days or sixty-six working days.

Some level of irregular employment is necessary to sustain the market, and sometimes it is worth paying the fine. (scholar, 4, HU)

On the other hand, employers are aware of the potential lack of administrative power among institutions controlling the labour market. In Poland, these competences lie within the Labour Inspector and the Border Guard.

PIP [National Labour Inspectorate] cannot inspect a farm, there is no such power, unless the farmer has the status of an employer – and has signed an employment contract. Of course, this is not the case, and therefore he can only be controlled by the Border Guard (scholar, 10, PL).

Respondents, including those representing Labour Inspectorates, were aware that the inadequate number of staff conducting such inspections affects the number of inspections. Moreover, the competences of controlling bodies are also limited. On the other hand, the labour inspectorate has the obligation to report on the status of third-country nationals to the Border Guard. The separation of these controls would significantly contribute to the enforcement of migrants' labour rights, regardless of their immigration status.

- **Ignorance of the consequences**

The consequences for the employer are not as large and long-lasting as for the foreign worker. The employer must pay a fine (in Poland the fine is rather small, in the Czech Republic it is quite high but rarely enforced), but still, the punishment for the foreigner is much more painful: in the case of being caught performing irregular work s/he will be returned to the country of origin.

Often individuals employ [a foreigner illegally] (...) thinking that it is 'nothing special' to hire someone without a contract. They often do so with Polish citizens for cleaning, baby-sitting or tutoring. In fact, everything should be formalised, and we know that often it is not. Well, they might think that the situation with a foreigner would be the same, without considering the consequences for themselves and for the foreigner (civil servant, 12, PL).

- **Easy exploitation of foreign irregular workers**

Some explanations for choosing foreign workers were repeated by many interlocutors. Third-country workers are usually more flexible, which means they tend to accept more challenging working conditions than local workers would .

In agriculture, you have to start working at dawn, and even when it is 35 degrees you also need to work In agriculture, the working conditions are not that pleasant to Hungarian workers, in general (civil servant, 1, HU).

It is easier to abuse foreigners and not pay them salaries (...). A foreigner is less likely to assert her/his claims, because s/he risks too much (civil servant, 7, PL).

[Irregular workers are becoming] a source of cheaper labour compared to legally employed colleagues. In part, binding laws passed by the current government push employers towards illegal employment (...). Clearly, obstacles are thrown in their way. And anyone who wants to employ or to be self-employed faces so many obstacles that employers prefer illegal work/employment (employment agency 15, SL).

Reflecting on this quotation from an employer, who would hire a migrant while disregarding binding provisions because he is “*hardworking, has no family, is available 24h a day,*” we might ask ourselves if the same employer would engage a worker regularly if s/he fit the description?

When trying to answer why some employers decide to engage third-country nationals irregularly, we can also consider why some others do not follow in their footsteps. Some employers were of the opinion that the regulations are so “detailed and thorough” that employing foreign nationals irregularly is hardly possible.

You can perhaps employ irregularly those who are already here. But if you have to bring in someone from outside, that is the hardest thing you may ever face. (...) As for Thai massage you cannot employ anybody irregularly. You can't bring in anybody irregularly. Once they are in, it is easier to do things the regular way. (...) The process is so complex and thorough that it is impossible to get around it. It does not happen very often that someone just comes over from Thailand as a tourist and starts working irregularly. I can hardly imagine anyone risking that. (employer 3, HU).

Some other entrepreneurs feel more responsible for their migrant employees. They provide support for their staff members. This strategy takes into account the correlation between migrant workers' well being and the success of the business. The entrepreneur knows that difficulties with the legal status of a migrant might entail future troubles, e.g. having more controls and fines to pay. In some cases, entrepreneurs expressed fear of inspections and assumed penalties to be extremely large.

We've never been in such a situation and do not want to be, when someone is employed illegally and works for us. It is pointless to be bothered in the future by inspections, have problems, or receive a penalty higher than the amount I would have paid a worker every month. (employer, 16, PL)

It is a big problem, because the labour inspect or or Border Guard can find out and the penalties imposed are high. Someone has to be very irresponsible to hire a foreigner without the necessary documents (...). It is a rather serious matter. [Otherwise] you constantly work under the stress that something may come out (employer, 18, PL).

Those quotations might suggest the conclusion that a **decrease in irregular employment is only possible as a consequence of an increased number of controls**. But employers who want to employ irregularly will do so regardless of the consequences. Moreover, some of them are equipped with knowledge of the sanctions mechanism: e.g. inspectors' competences, amounts of penalties, and conditions of criminal liability. In one case, mentioned by an interviewee in Poland, an employer intentionally denounced his foreign worker to the authorities and paid a fine as a consequence, but since it was much lower than a regular salary he would have had to pay the employee, he still made a profit.

5.2. Why do employees agree to be employed irregularly?

Illegal employment is possible because third-country nationals agree to participate in this process. While foreigners explain their decisions using various narratives, the most common is a purely **economic reason**. Income in a receiving country is still attractive, even if lower than remunerations earned by native employees.

Foreigners who came to make some money in Hungary are determined to work because they want to support their families. They may be paid badly in Hungary, but often it is more than what they could get at home. This all depends of course on their personal circumstances, but usually they deem that they are better off than being unemployed. (civil servant, 3, HU)

Third-country nationals may also be forced by circumstances, especially when they need to support their families [in the country of origin] and they are able to earn more money in Slovakia than at home, albeit illegally. (employers union 19, SL)

Rigid regulations on employment of third-country nationals also push migrants towards irregular employment.

In all countries a **work permit is valid for one specific position for a specified employer**. If the parties (an employee or an employer) want to change it, the whole procedure of receiving a work permit must start again, which is inconvenient and time-consuming for all. There are also other explanations as to why workers do not insist on signing a contract with their employers.

Very often, Ukrainian citizens do not want to be bound up with any contract. For this reason, they come to work to Poland while in Ukraine they have sick leave, holidays or unemployed status. Binding with a Polish employer could cause their agreement to be discovered by the Ukrainian employer or administration and the employee would have to face some unpleasant consequences. So sometimes they do not want to sign any contracts. (union of employers, 11, PL)

These statements by employers could be considered as excuses or justifications for not guaranteeing foreign employees equal social rights and legal contracts.

Although the research has not proved it, there is another entrepreneurial opinion justifying illegal employment, namely the risk that migrants would leave for better jobs in Western Europe. Expecting that third-country workers will soon leave the country and the job, employers do not offer a contract.

Obtaining a job in Hungary is looked at by some of the foreigners as a stepping stone to the EU. Once they are in and can afford staying legally or illegally in the country, some of the foreign employees will look for opportunities in other EU countries with better salary and better conditions – sometimes they simply disappear. (employer, 3, HU)

If this fear is well-founded, upholding the strategy of employment used hitherto will not reverse this process, as there will be more migrant workers willing to leave the country in search of safer employment opportunities.

Regardless of the motivation for illegal employment, its consequences remain the same: **an employer hardly bears any risk of financial sanctions whereas a third-country national,¹² apart from the fines, faces the risk of expulsion and a ban on entering the Schengen area.**

Moreover, a foreigner is almost always more vulnerable to potential abuse of his/her employment rights, in particular, when s/he does not speak the language fluently or does not know the local standards and realities. Due to **lack of knowledge of foreigners' rights**, there is a risk that the employer would offer a third-country national worse employment conditions (e.g. lower remuneration, increased workload, inconvenient schedule) than those offered to domestic employees.

To all this, it is necessary to add that the line between illegal employment and exploitation is very thin. (NGO 6, SL)

Slovaks know their rights better, while foreigners do not understand current legislation as well. (civil servant 2, SL) Therefore, foreigners can be more easily abused than illegally

¹² A migrant working irregularly is not obligated to pay a fine in every country. In Poland s/he might be charged from 240 to 1,200 euro and up to 3,600 euro in the Czech Republic. There is no fine in Hungary.

working domestic employees, as they are often unaware [of their rights]. At the same time, illegal employment of foreigners may be caused by increased bureaucracy in public administration. (scholar 20, SL)

A Czech person is more risky, s/he peaches against you more readily because there is not a language barrier. The foreigners are simple and gullible; they are not well versed in the system and have no chance to get information. (employer, 2, CZ)

6. Research outcome: The Impact of Directive 2009/52/EC

Changes related to European and international economic integration, the development of new technologies, the demographic ageing of European societies, and the development of segmented labour markets in many countries contributed to the need for strategic actions aimed at increasing the flexibility and security of labour markets in the European Union. This involved the adoption of the model of the so called "flexicurity" by the EU member states, which in result should ensure that EU citizens enjoy a high level of employment security, i.e. the possibility to easily find a job at every stage of their professionally active life and to have good prospects for career development in a quickly changing economic environment¹³.

This support particularly applies to the legal immigration of highly qualified workers from third countries, mainly immigration of students, academics and researchers, artists, entrepreneurs and foreign Slovaks living in other countries. (civil servant 3, SL)

However, on the other hand, respondents underlined that there is a "natural protection of the labour market. Due to high unemployment in Slovakia, it is understandable that the employment of foreigners is restricted" (employer 8, SL). Some even explained that the European Union wanted to keep out poorly qualified migrants who would work irregularly, and European regulations, such as Directive 2009/52/EC, help achieve this goal.

With our research in the four countries, we tried to determine whether employers and other labour market actors have knowledge of the Directive and its implementation on the national level. We also looked for their opinions on the purport of such provisions. The outcome of the research shows that employers do not perceive the Directive as an important tool to prevent irregular employment of migrants. Moreover, the tendency to engage them on an irregular basis becomes evident and socially acceptable regardless of the Directive's implementation.

Knowledge of the existence of the Sanctions Directive and its implementation in national legal frameworks varies among the researched countries, according to the collected data. Still, some similarities can be observed.

Employers had heard about the implementation of the Sanctions Directive or they **knew about the national regulations transposing the Directive, but they did not attach much importance to it**. The interviewed employers stated that they had heard about new regulations, but since it concerns irregular employment they did not pay much attention to it, as they comply with the binding provisions. Even if they knew about the changes in the law, they did not recognise which provisions had been implemented according to the European Union regulations. They were familiar with relevant legislation to the extent necessary for their work.¹⁴ Bigger companies also suggested that their HR departments or lawyers have more

¹³ Towards Common Principles of Flexicurity: More and better jobs through flexibility and security, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2007, p. 3-4, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0359&from=EN> (30.06.2014).

¹⁴ It was difficult to measure the real knowledge of employers during the research – testing (asking precise questions) was rather impractical, so the irlevel of knowledge of the regulations is based on their statements. Asked about their obligation to keep a

knowledge about the Directive, so they do not need to know all the details. Amendments to the law were considered to be more challenging for small businesses. On the other hand, NGOs and academics had detailed knowledge about these issues and shared opinions on implementation of the Directive.

As was mentioned above, **the struggle by trade unions for migrant workers' rights neither is visible nor even exists in the studied countries.** Their attitude towards foreign workers is rather reserved, and they very often claim that they are concerned with the protection of *home* workers. This specification written about Czech trade unions is suitable for all researched countries. In Poland, for example, representatives of a trade union organising demonstrations against exploitation of foreign workers were not aware of the legal provision of back payments for an employee. Even if a union exists, it is not very professional in this field.

Based on country research, it was not possible to determine in which country the employers have the most thorough knowledge of the Directive. However, it was evident that respondents in the Czech Republic seemed to be more aware of these regulations. This could be a result of a large scale campaign on irregular migration held at the time new regulations came into force. In Poland, a much smaller information campaign took place. Leaflets and cards stating important information for employers were distributed to employers of third-country nationals. The information campaign in Poland was rather invisible, at least our respondents did not recall receiving any of the cards or leaflets that civil servants spoke about, and therefore it may not have had much impact on raising the knowledge of employers.

A general opinion of all respondents was that **the regulations did not significantly change their approach towards employing foreigners.** There were just some minor additional responsibilities imposed on the employers, like an obligation to confirm the legal status of an employee before the expiration of a contract or a duty to report such employment to more agencies than before. Still, the regulations did not change much in the procedure itself.

Employers themselves emphasized that there was **no significant change**, except for the introduction of the penalties for employing an irregular migrant. They explained that now they should be more careful to avoid errors with documents or procedure; however, large enterprises did not consider this to be a problem. Consequently, such an approach may be more inconvenient to small businesses, as the penalties will be considered too high for them. *"I think the purpose is primarily to intimidate. In practice, I cannot see any difference, we are just more afraid that we can make a mistake, but we have an experienced personnel department"* (employer, 3, CZ).

A doubt was expressed several times, in all researched countries, as to whether the Directive or its national implementation could have any impact on the regular or irregular employment of foreigners, or whether it could significantly increase the quality of employees' protection from exploitation. Many of the respondents had the opinion that **the most considerable problems are caused by bureaucracy, inaccessible legalisation channels and the economic situation** of the country.

The mere existence of the Sanctions Directive, including some critical comments from NGOs and scholars, was perceived positively. The respondents in the four countries agreed that the **aim was to prevent employment of irregular migrants.** Respondents stated that it is crucial not to punish illegally employed foreigners, but their employers who benefit from their work.

... the purpose of the Sanctions Directive is to punish the dishonest employers who profit from the illegal employment of foreign workers. (...) (NGO, 3, CZ)

The aim of the Directive was to protect illegally employed third-countries nationals but, at the same time, to anchor a penalty system for employers who employ foreigners illegally. (employer 12, SL)

copy of documents (visa, residence permit), some employers responded that they keep it anyway (as they store personal documents), some that they knew about this duty or explained that other people in the firm look after all the formalities.

The intention to **help foreigners to claim back-payment and legalise residency** during the time of the procedure was assessed positively.

The possibility in the Directive to claim back-payment can be actually considered a progressive element. (scholar, 5, HU)

[The positive side of this Directive] is also the possibility for a third-country national, in case of need, to legalize his/her residence in the territory of Slovakia (...) to avoid deportation. (civil servant 2, SL)

Unfortunately, the implementation of these intentions was deemed ineffective. In the Czech Republic the information about the right to enforce due remuneration from the employer is handed over to an employee in writing 30 days prior to his/her expected return to the country of origin.

Strictly speaking, they do not offer anything to them, handing over the information in writing is not good for anything. (...) Thus it has huge limitations. (NGO, 1, CZ)

Moreover, it was pointed out critically that **migrant workers finding themselves in vulnerable situations have much more to lose than their employers**. In the Czech Republic, cases of the deportation of illegally working foreigners were reported in which the employer was not even properly identified. This leads to unjust situations where illegally employed foreigners are expelled, and their employers, bearing more responsibility for the violation, are neither punished nor even identified, which obviously contradicts the intentions of the Sanctions Directive.

According to the Czech transposition, the employer must pay the owed wages to the foreigners only after s/he has been penalized with a financial sanction. Establishing a fine as a precondition to the payment of the owed salary is perceived as unfair and unnecessary. In practice, it would result in lifting the penalty on the employer due to procedural reasons.

The Czech report also criticized provisions that establish the liability of the main contractor or subcontractor only within three months from the infringement. Respondents with legal backgrounds described this provision as largely inapplicable, especially because the identification and untangling of the subcontracting chain is very difficult and time-consuming, taking more than 90 days.

It is important to mention that the Employers' Sanctions Directive is seen as the common voice of all EU countries, so the sanctions should be comparable as well.

Financial sanctions imposed on employers, as stipulated in Article 5 of the Directive, should be **effective, proportionate, and dissuasive**. Comparison of data in the four countries shows a discrepancy between them: the amount of the fines oscillates from 5 EUR to a maximum of 2,500 EUR in Poland, and up to 200,000 EUR in the Czech Republic for a private person illegally employing third-country nationals for personal purposes. In Hungary, the fine ranges from 650 to 1,300 EUR for a private person, and from 200 to 5,000 EUR for employers who are legal entities. In Slovakia, the fine is between 2,000 to 200,000 EUR.

Some respondents see the **implementation only as a fulfilment of an obligation** which was unnecessary or even inconvenient for the country.

We had to transpose it the way we transposed it. (civil servant, 6, CZ)

It is implemented, I would even say, rudely so that it would not affect the employers if possible. (...) In fact, it is made so that it [a lot of provisions] could not be applied at all. (expert, 1, CZ)

The Directive was not passed with good intentions, but it was a result of the work of lobbying groups. (employer 14, SL)

Surprisingly, the opinions on the implementation of the Directive in the Czech Republic, Hungary, Poland and Slovakia are also very similar.

The expected **deterrent effect of the sanctions** was assessed as discouraging employing on an irregular basis. Respondents mentioned that in the case of smaller companies, the deterrent factor might primarily be the fine, for bigger companies it could be their exclusion from public procurement. However, in reality, as reported by partners, neither low sanctions in Poland nor sanctions as high as in the Czech Republic, are discouraging enough. This means that the Directive did not reach its aim of changing the way illegal employment of foreigners is perceived: employers do not grasp it as dissuasive. In the case of a small fine, the company will pay it, and when the fine is too high it is not enforceable. Sometimes awareness of the sanctions causes the opposite effect, encouraging irregular employment.

The level of penalty is in fact lower than the taxes owed to the state, so if you take into account strictly the economic aspect, it may even be worthwhile to hire illegally. (NGO, 8, PL)

It was mentioned several times, in all researched countries, that the **implementation is considered a missed opportunity**. States implemented the Directive to a minimal extent. In all countries it was emphasized that new regulations are not applicable to the citizens of third countries residing legally who have been exploited at their jobs.

When assessing the impact of the Sanctions Directive, we can assume on the basis of our research that it is not significant. Even if **the number of discovered irregular migrants in studied countries is lower than a few years ago**, the change is not due to the impact of the Directive, but to other factors. The decrease in the number of foreigners without a residence permit in the Czech Republic is similar to the situation in 2008, when a significant decline in the number of foreigners without a residence or a work permit was observed. Obviously, the change in 2008 is not attributed to the new sanctions. Furthermore, there was not much decrease in the past three years since the penalty transposition came into force, showing beyond a doubt that the new regulations had no impact on the numbers.

The purpose of the Sanction Directive is to combat illegal migration and to protect undocumented migrants from exploitation. Unfortunately, during the research no evidence was found that the protection of undocumented migrants was strengthened in the countries after the implementation of the Directive. According to the data provided by researchers from the studied countries, **no residence permit was granted on humanitarian grounds and no procedure was initiated to recover back payment** from the employers of migrant workers.

The statistics confirm threats of irregular migrants to take action. In this case, the significance of the Directive is not visible:

No foreigner has been given a residence permit in order to claim his right arising from the Sanction Directive, not a single employer has been convicted of illegal employment, no administrative proceedings on the liability of the main implementer has been commenced. (...) Is it necessary to say anything more? (NGO, 2, CZ)

...good ideas but I do not see much impact... (civil servant,4, CZ)

This explains why the relevant authorities have not encountered a case of illegal employment of third-country nationals who would be a subject to the provisions of the Directive in practice. (civil servant 3, SL)

By the end of the research, **the provisions of Sanctions Directive had not been fully applied in any of the project countries.** This can be interpreted in different ways:

- The problem of undocumented migrants working illegally exists on a rather negligible scale;
- The Directive gets around substantial economical issues and problems of migrant workers existing in these countries. The countries avoid introducing comprehensive changes to their law and regulations, and only implement necessary, obligatory EU regulations.
- The control mechanisms of employment (including working conditions and legal status of foreigners) is insufficient and the high level of society's acceptance supports illegal employment in a way.

7. Recommendations

Based on the collected data, recommendations given in country reports, comparing similarities and differences in the studied countries, some recommendations can be drawn which can be useful on the international level:

- **Construct international regulations with regard to the situation of all abused workers.** The controversy in relation to the Sanctions Directive is that it guarantees minimal protection only to undocumented migrants while employees (foreigners and domestic workers) who are abused by the employer should have equal rights regardless of their residence status.
- **Simplification of the employment procedure.** The highest amount of complaints concerned bureaucratic and administrative burdens which are complicated and time-consuming. Simplification of the procedure could be achieved through lowering the criteria for obtaining a residence permit (e.g. for specific professions), opening the work permit for more than one employer, and fostering communication between competent authorities to issue the decisions faster. In each country the instructions on "how to employ a third-country national" should be described in a comprehensive and intelligible way on one Internet site. All relevant authorities (Labour Inspectorate, the ministry responsible for work of foreigners, etc.) should use the same information. The need to abolish labour market tests wherever they exist was also mentioned several times.
- **Support individual entrepreneurs and small businesses** that employ third-country nationals. The analysis shows that large companies with HR departments possess sufficient knowledge and capacity to employ a third-country national. Thus, it is recommended to provide a support system for individual **entrepreneurs and small businesses, e.g. in the form of** individual, no cost consultations.
- **Strengthening the interest of employers and employees in regular employment.** Currently, neither employers nor employees have sufficient incentives to make their relation fully legal, especially in the case of short-term employment. Since the sanctioning mechanism does not seem to be working, the parties of the employment relationship could be encouraged by economic policies and more flexible regulations to report the employment to the authorities.
- **Separate labour inspections from the immigration police.** Use the controls of the labour market as a protective mechanism for all workers. The separation of these controls would significantly contribute to the enforcement of migrants' labour rights, regardless of their immigration status. Therefore no information should be exchanged between these two authorities.
- **Rethink penalties.** The main objective of labour inspection is to detect and penalize all kinds of labour law infringements. It would be worthwhile to reconsider the role that labour inspections play in the labour market apart from the penalisation. The educational function of labour inspections could be enhanced, particularly for the employers who unintentionally violated the law. It is also possible to introduce sanctions other than financial penalties, e.g. public stigmatisation of perpetrators.
- **Raise awareness of the labour rights of third-country nationals.** Information about rights, responsibilities, and liability of the migrant workers should be provided by local authorities, institutions dealing with employment of third-country citizens, non-profit organisations, and trade unions. Migrants

should be thoroughly informed of the risks of illegal employment. Awareness-raising campaigns should be carried out more frequently through events, newsletters, and publications in the countries of origin and/or at the embassies.

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