

EMN Study

Unlawful employment of third-country nationals in Austria

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SUMMARY

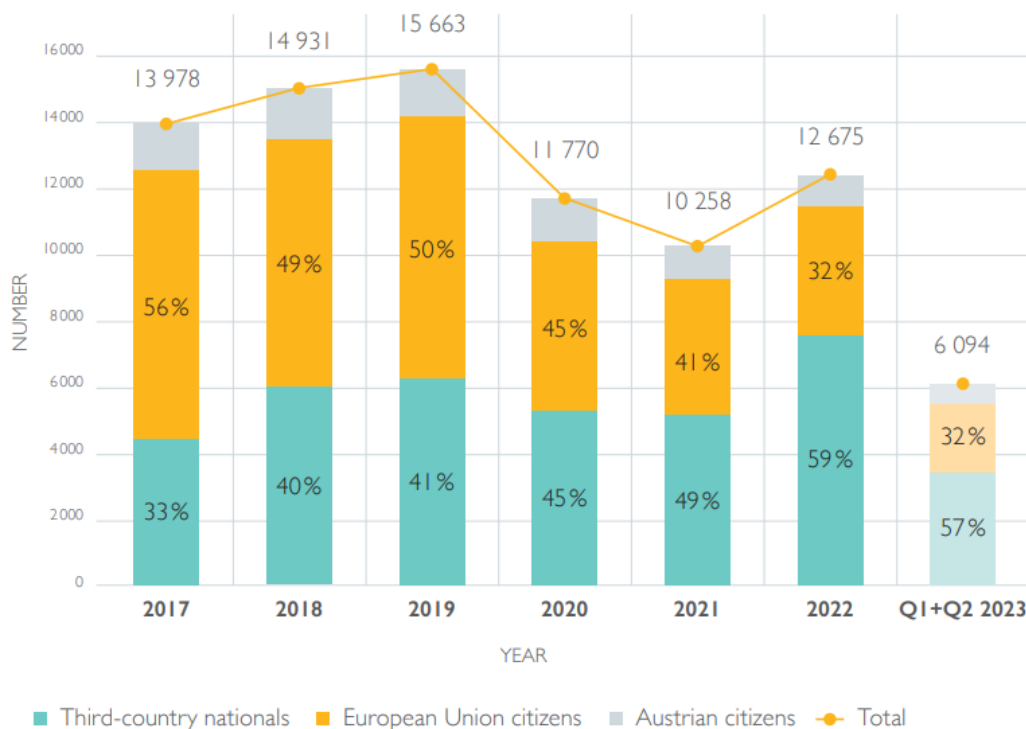
The relevance of the issue of unlawful employment increased in the Austrian context in the period from 2017 to 2023. The central finding of this study is that while the legal framework has remained almost unchanged and the scope of inspection activities relatively constant, there has been a sharp increase in the number and proportion of identified cases of third-country nationals suspected of being unlawfully employed. In order to address this issue, it will be necessary to tackle various challenges in terms of prevention, identification and sanctions, as well as with regard to the consequences for third-country nationals and the assertion of relevant rights, and to build on appropriate good practices.

In this context, this study examines the unlawful employment of third-country nationals in Austria in the period from 2017 to 2023 and builds on a previous study conducted by the European Migration Network (EMN) in 2016/2017. The current study provides an overview of risk areas and current trends, and analyses measures to prevent and identify unlawful employment. It also discusses possible consequences for employers and third-country nationals as well as challenges and good practices.

Overview of unlawful employment of third-country nationals

Since 2017, new trends and developments regarding unlawful employment have emerged, which have also led to new challenges and approaches. One key development during the period under review is a reversal of the trend in the origin of persons suspected of being unlawfully employed in Austria: since 2020 the majority have come from third countries, whereas in previous years predominantly EU citizens were identified as unlawfully employed (see figure 1).

Figure 1: Persons whose employment breaches the requirements of labour and social law and has been reported to the authorities, by nationality group (2017 to mid-2023)



Source: Data provided by the Financial Police, 26 July and 2 August 2023.

Note: This data also includes the category other, i.e. third countries that were formerly part of the European Union as well as countries of the European Free Trade Association (EFTA) and the European Economic Area (EEA). The figures for Other are so small that they cannot be shown.

Cases of exploitative working conditions and unlawful employment of third-country nationals also came to public attention in Austria during the COVID-19 pandemic. In this context, an increased risk of exploitation and a rise in existing vulnerabilities were also observed in 2020 and 2021.

The Anti-Fraud Office at the Federal Ministry of Finance regularly conducts risk assessments in the sectors most affected by unlawful employment. The focus in Austria continues to be, in particular, on the sectors of catering and tourism, agriculture and forestry, and construction. One new area of risk is van delivery services. Generally speaking, unlawful employment in Austria does not usually take place in large companies directly but via subcontractors. In recent years, there has also been an increase in the number of third-country nationals posted to Austria via other EU Member States.

Prevention and identification of unlawful employment

The legal framework for the prevention of unlawful employment is laid down in the Act Governing the Employment of Foreign Nationals. There have been no changes in this regard. However, during the period under review new IT systems were developed in the private sector, in particular in the construction industry. These IT systems check the relevant data and the completeness of documents and permits before employees are hired.

The Financial Police continue to carry out on-site checks on businesses to identify unlawful employment, with the number of checks remaining fairly constant in the period from 2017 to 2022. One practical innovation will be the planned use of digital document scanners in checks conducted by the Financial Police.

Consequences for employers and third-country nationals

In Austria, it is always the employer that is sanctioned in cases of unlawful employment. This may involve, in particular, the employment of a third-country national who has not been declared to the social insurance system as required and/or does not have the corresponding approval of the labour market authorities or residence permit. Sanctions against employers remained largely unchanged since their deterrent effect is considered to be sufficient by the Federal Ministry of Labour and Economy. However, legal amendments were made in relation to the nature of these sanctions, for example in connection with wage and social dumping and the suspension of work permits.

In Austria, an employee cannot be penalized for unlawful employment. However, there may be consequences under aliens law for unlawfully employed foreign nationals. There are no plans to regularize employment or irregular residence. In any case, foreign nationals have the same legal rights towards their employer as Austrians, irrespective of their residence permit and regardless of whether or not they have a valid employment contract. As a result, unlawfully employed third-country nationals can access the same support services and complaint mechanisms. In practice, however, asserting and enforcing their rights is seen as a key challenge since unlawfully employed third-country nationals make very little use of the existing mechanisms.