

# Current trends, challenges and risks related to the unlawful employment of migrants and their respective rights in Austria

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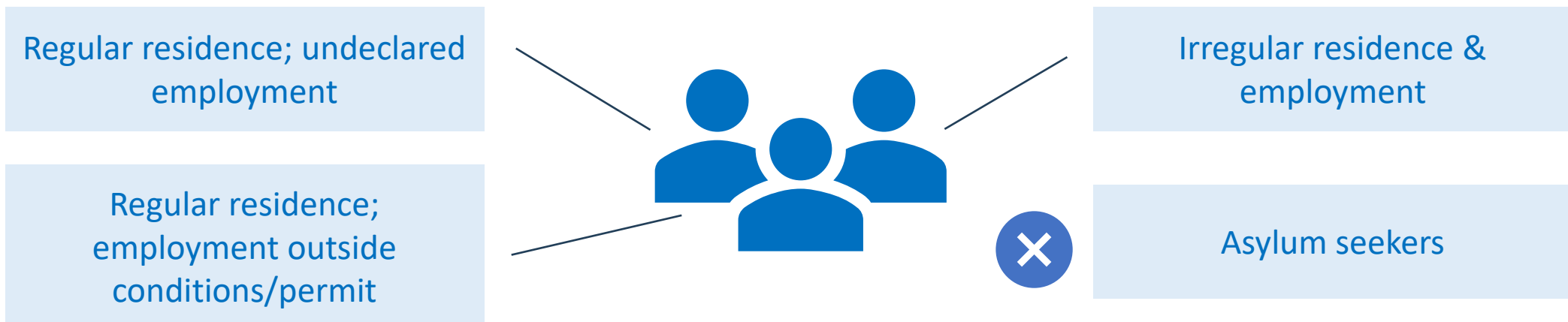


# Concept and definition

*"Unlawful employment of third-country nationals (TCN)"* → Employment outside the applicable legal framework of persons from countries outside the EU

*"Administrative irregularity" & "Irregularity as a process rather than a static state"* [Näre et al., 2024]

*"capacity to exercise their rights – albeit in a constrained environment"* [Triandafyllidou 2013, Düvell 2011]



➤ **Period: 2017 - Fall 2023**

[follow-up to Heilemann, 2017]

➤ **Data collection:**

- Semi-structured expert interviews (Financial Police, Vienna Chamber of Labour)
- Written questionnaire (Federal Ministry of Labour and Economy, UNDOK Drop-in center, IOM Austria)
- Statistical data from the Financial Police
- Secondary sources: policy and legal documents, reports, press releases, media reports and websites



*forthcoming 10/2024*

Third-country nationals (without free access to the labour market) require an official permit to take up employment in Austria


- Conditions in the Act Governing the Employment of Foreign Nationals
- Labour and social law regulations (e.g. General Social Insurance Act, Act to Combat Wage and Social Dumping)



## **Financial police** responsible for identifying unlawful workers

- On-site inspections at companies
- Focus on irregularly staying and unlawfully employed TCN
- Checks in combination with high penalties > deterrent effect
- After identification of suspected case of unlawful employment:
  - Report to the administrative criminal authorities and file charges against the employer (serious cases: public prosecutor's office)
  - Possible arrest of foreign nationals (in case of exigent circumstances and suspected irregular stay)

# Key findings

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- 1 Trend reversal**
  - 2 Risk sectors**
  - 3 Consequences under aliens law**
  - 4 Non-assertion of rights**

# 1) Trend reversal

- **Trend reversal** in the origin of unlawfully employed persons (EU citizens < third-country nationals)



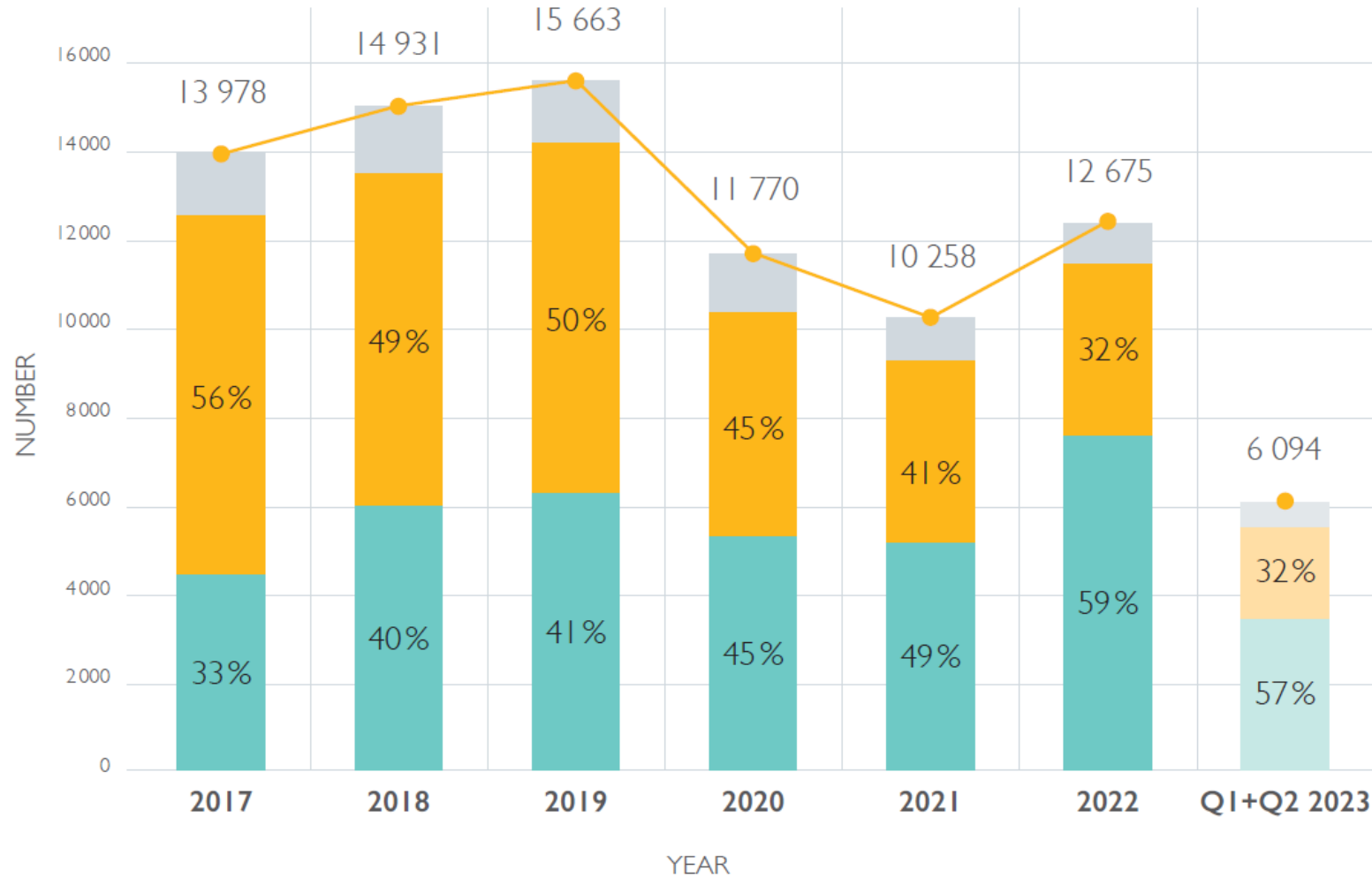
Number & proportion of identified cases of suspected unlawful employment of third-country nationals

## Why?

- COVID-19 [Birke and Neuhauser 2023; Kimm and Yun 2021; Neuhauser et al. 2021]
- Labour shortages
- Wage levels/demographics in neighbouring Eastern European countries
- (Sub)company structures and (sub)contracting chains



## Persons whose employment is suspected of violating labour and social law regulations and who have reported this to the police, by nationality group (2017 - mid-2023)



■ Third-country nationals ■ European Union citizens ■ Austrian citizens — Total

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

## 2) Risk sectors

- Unlawful employment can occur in all sectors but particularly at risk are:
  - Agriculture and forestry
  - Van delivery
  - Cleaning and private households
  - Gastronomy and tourism
  - Construction
  - Areas where a lot of unskilled personnel are needed at short notice (e.g. security services, event management, demolition work)



*[see also Biffi 2023; IOM, 2022; and Yun, 2023]*

## 3) Consequences under aliens law

In principle, only **sanctions** against employers → **No fines or prison sentences** for unlawful work for employees

*...however*

- Possible **consequences under aliens law**, depending on residence and employment situation
  - According to case law by Austrian Supreme Administrative Court, unlawful employment **endangers public order**
  - Issuance of a **return decision** by Federal Office for Immigration and Asylum, considering private and family life
  - **No regularization** of residence or work situation planned (exception: option for trafficked persons to apply for international or special protection)

## 4) Non-assertion of rights

Migrants have the **same rights** vis-à-vis their employers, regardless of

- (in)valid employment contract
- (ir)regular stay

Equal **support services** and **complaint opportunities**

[see further Chamber of Labour, UNDOK and Austrian Trade Union Federation, 2014]

*however...*

### ➤ Challenge of **asserting rights**

- Knowledge of their rights but do not enforce them
- Existing mechanisms are hardly used → personal gain?
- Cross-border enforcement of penalties

# Impact on migrants' rights

- TCN have same rights as all employees, yet they **rarely assert their rights** → gap between theory and practice
- Unlawful employment and irregular/precarious residence status **increases risk of labour exploitation** → **dependence** on employer  
[Ataç et al. 2023, Fox-Ruhs and Ruhs 2022, Triandafyllidou and Bartolini 2020]
- Labour shortages and **growing demand** for migrant labour → vs. **limited alternatives** for legal pathways

## Good Practice:

- Sezonieri Campaign (trade union for production workers - PRO-GE) **language courses** for harvest workers and seasonal workers to **inform them about their rights**
- **Low-barrier access** and a **target group-specific approach**, as with the UNDOK – Drop-in center for undocumented workers

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# Thank you for your attention!

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