

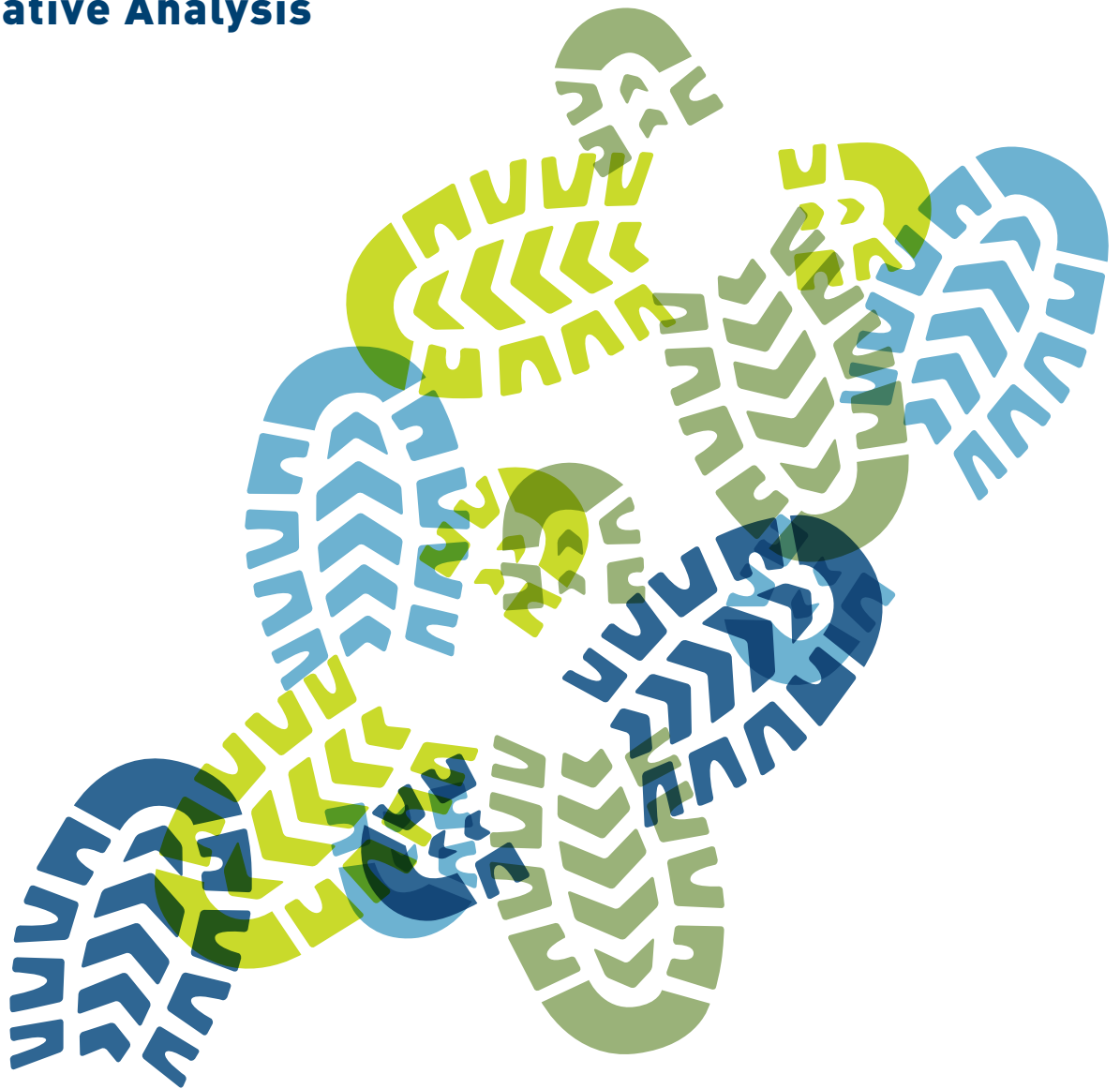
THIRD-COUNTRY COMPANIES AND WORKERS IN THE EUROPEAN CONSTRUCTION SECTOR:

A Regulatory, Quantitative,
and Qualitative Analysis

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REPORT

Vienna, April 2023



Brussels, April 2023

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LIST OF ABBREVIATIONS

BCC	Central Register of Professional Builders at the Bulgarian Construction Chamber	GHDC	Charleroi Hospital (<i>Grand Hospital de Charleroi</i>)
BUAK	Construction Workers' Annual Leave and Severance Pay Fund (<i>Bauarbeiter-Urlaubs- und Abfertigungskasse</i>)	GPA	Agreement on Government Procurement
CAI	Comprehensive Agreement on Investment	ILO	International Labour Organization
CJEU	Court of Justice of the EU	IMF	International Monetary Fund
CPC	Commission for Protection of Competition	IOM	International Organization for Migration
CREC	China Railway Engineering Group Company Limited	IPI	International Procurement Instrument
CRG	China Railway Group Limited	LOU	Public Procurement Act (Sweden)
CRTG	China Railway Tunnel Group	LSD-BG	Anti-Wage and Social Dumping Act (<i>Lohn- und Sozialdumping-Bekämpfungsgesetz</i>)
EC	European Commission	LUF	Act on Public Procurement in the Utilities Sectors (Sweden)
EEC	European Economic Community	MoU	Memorandum of Understanding
ECMIN	European Construction Mobility Information Network	NACE	Statistical classification of economic activities in the European Community
ECSO	European Construction Sector Observatory	NAFEA	Nepal Association of Foreign Employment Agencies
EFBWW	European Federation of Building and Woodworkers	OFC	Offshore Financial Centre
EFTA	European Free Trade Association	OPTTI	Operational Programme Transport and Transport Infrastructure
ELA	European Labour Authority	OSH	Occupational Safety and Health
ESPD	European Single Procurement Document	PPA	Public Procurement Agency
EESSI	Electronic Exchange of Social Security Information	PPL	Public Procurement Law
EU	European Union	PPR	Public Procurement Register
EU-LFS	EU-Labour Force Survey	QUES	Qualified Electronic Signature
FATS	Foreign Affiliates Statistics	RRP	Recovery and Resilience Plan
FDI	Foreign Direct Investment	SBS	Structure of Business Statistics
FGS FAMILIA	General Federation of Trade Unions FAMILIA	TCN	Third-country National
FIEC	European Construction Industry Federation	TED	Tenders Electronic Daily
GBH	Austrian construction workers union (<i>Gewerkschaft Bau-Holz</i>)	UNHCR	United Nations High Commissioner for Refugees

COUNTRY ABBREVIATIONS

BE	Belgium
BG	Bulgaria
BiH	Bosnia and Herzegovina
CZ	Czechia
DK	Denmark
DE	Germany
EE	Estonia
IE	Ireland
EL	Greece
ES	Spain
FR	France
HR	Croatia
IT	Italy
CY	Cyprus
LV	Latvia
LT	Lithuania
LU	Luxembourg
HU	Hungary
MT	Malta
NL	Netherlands
AT	Austria
PL	Poland
PT	Portugal
RO	Romania
SI	Slovenia
SK	Slovakia
FI	Finland
SE	Sweden
UAE	United Arab Emirates

EXECUTIVE SUMMARY

This report contains the research conducted by the *European Centre for Social Welfare Policy and Research* in the frame of the project **Better Functioning of the European Construction Labour Market – FELM** (VS/2021/0011 – Support for social dialogue) coordinated by the European Federation of Building and Woodworkers (EFBWW) and the European Construction Industry Federation (FIEC). The study has three parts:

1. a critical analysis of the EU regulatory and policy framework on the access of non-EU companies and workers to the European market;
2. a quantitative analysis of the number and characteristics of third-country construction companies, construction workers, and posted construction workers in the European Union (EU); and
3. six case studies, three on third-country companies' and three on third-country workers' access and participation in the EU construction market. The research was conducted during October 2021-March 2023.

The access and participation of third-country companies in the European construction market is regulated at three intersecting governance levels: the international, the EU, and the national levels. The existing legal framework provides access to the European market only to those third-country operators established in countries party to the World Trade Agreement on Government Procurement (GPA) or other free trade agreements the Union or individual Member States are party to. However, it does not preclude economic operators originating in other third countries which have registered

subsidiaries in the EU, to meet the criteria of being 'established in the EU' or 'established in third countries party to the international agreements' and thus obtain access to the European market. The analysis finds that while the overall framework is set at the international and EU levels, Member States can set their own criteria of inclusion and exclusion through national regulations and/or screening procedures.

The legal framework governing the employment and access of TCN workers in the European construction sector is based on national and EU level regulations. The fundamental rules for the issuance of a permit to reside and work in the different EU countries in general and for specific categories, such as seasonal, highly skilled, intra-corporate transfers, and posted workers, are regulated at the EU level through various directives. However, Member States' national sovereignty remains the primary basis in terms of access options and procedures. All Member States aiming to ameliorate labour shortages in various sectors, including construction, implement different measures that target the provision of access and facilitation of recruitment of TCN workers in their national markets. These measures include quota systems, special legislation, and bilateral agreements with individual third countries. The review of the posting and other related regulations indicates that for TCNs to be posted, they should already be residing and working in an EU Member State.

The quantitative analysis is based on the Eurostat inward foreign affiliates statistics (FATS), the Tenders Electronic Daily (TED) contract award notices, the European Labour Force Survey, and posting statistics drawn from prior notifications.

Main results on third-country (or non-EU) companies' quantitative analysis include:

- While the presence of third-country owned enterprises as a share of all enterprises in the construction sector in the EU was very small (amounting to just 0.1% in 2018), their weight appeared to be somewhat larger.
- Non-EU owned enterprises accounted for 1.2% of the turnover generated by the construction sector in the EU and 1.4% of value added.
- Non-EU enterprises were responsible for 15.4% of turnover, 19.0% of value added and 17.6% of persons employed in construction.
- In 2019, Slovenia was the EU country with the highest number of non-EU owned construction companies, whereas Luxembourg was the country where non-EU companies had the highest share of the national construction sector (10.6%).
- The origin for a considerable share of the foreign owned enterprises in the construction sector are not known (66.6%) due to data limitations. The available data indicate that in 2018 foreign owners came from the four EFTA countries (10.9%), the United States (8.5%), Israel (5.3%), Turkey (5.2%), and China and Hong Kong (2.3%). At the EU Member State level, geographical proximity, common language, and cultural similarities seem to be factors that can explain the higher presence of companies from EFTA area, Turkey, and Israel.
- Based on data from contract award notices published between 2011 and 2020, there were 347 contracts awarded to companies located outside the EU for construction work in a total amount of 8.8 billion euro. Both the number of contracts and the awarded value amount increased over time.
- The countries with the largest number of awarded contracts to non-EU companies were Germany (78), France (59), Poland (42) and Bulgaria (41). Although Germany awarded the most contracts (almost twice as many as in the case of Poland), these were lower in their value than in several EU Member States. Contracts

awarded by Poland had by far the highest total amount with around 5 billion euro, followed by Bulgaria (close to one and half billion).

- There were 25 contracts awarded to a company located in China or Hong- Kong for construction projects in a total value of 1.9 billion euro. The largest number of contracts were awarded by Poland (16), Germany (3) and Greece (2).

Main results on TCN workers' quantitative analysis include:

- Construction is a critical job destination for TCNs in the EU labour markets, where their share remains 8.5%.
- According to the calculations from the EU-LFS data, Slovenia (23.3%), Latvia (23.1%), Greece (18.9%), Estonia (16.9%) and Cyprus (16.6%) had the highest share of TCNs working in construction in 2020. In most EU countries, the trends over time seem relatively stable, except for the increasing trends of the share of TCN workers in Slovenia and the Czech Republic and a minor decline in Greece.
- Nationals of non-EU countries in the European region are the largest group of workers, constituting considerable shares of the construction workforce in Slovenia (19.5%), Greece (16.4%), Latvia (16.6%), Estonia (16.1%), Austria (7.4%) and Italy (6.2%). Countries with relatively higher shares of workers coming from Middle East & Africa region are Cyprus (10.0%), France (4.0%), Spain (3.1 %), and Italy (2.4%).
- The largest group of TCN workers are within the 35-44 age bracket (35.7%).
- Most TCN workers in the construction sector perform jobs under the category of the ISCO-700 "crafts and related trade workers" (69.4%) and ISCO-900 group "elementary occupations" (14.8%).
- On average, TCNs are more frequently employed in part-time work contracts than EU/EFTA workers. In the EU, 82.4% of TCNs in the construction sector are employees (%), 17.07% are self-employed, and 0.52% are classified as family workers. The share of self-employment is the highest for TCNs in the Czech Republic, the Netherlands, Belgium, and Italy.

- The quantitative data on the posting of TCNs is limited to 15 Member States. Among those EU countries for which data are available, Belgium, France, and Austria received the highest number of posted TCN construction workers. Belgium is the only receiving country in which posted third-country nationals account for a significant share (4.34%) of total employment in construction, followed by Luxembourg (1.8%), Austria (1.4%), and France (0.89%).
- The main sending countries of posted workers are Poland (in absolute terms) and Slovenia (in relative terms).

The three case studies of third-country

companies focused on the participation of third-country companies in public procurement in Bulgaria, a Turkish construction company in Slovenia, and a Chinese construction company in Sweden. The three case studies show the variation in public procurement practices in the three national contexts. The main modes of accessing the European market for third-country companies are through: participating in the bid as the sole participant, joint-ventures with local companies, and including local subcontractors. Apart from cooperation with local companies, third-country operators are also investing in public image, as many of the bids involve large projects of public importance. The cases jointly demonstrate the procedures and challenges in the application of regulatory principles of equal treatment, transparency and fair competition in public procurements involving third-country construction companies. By doing so, the case studies also showcase current weaknesses in procurement rules and procedures as well as possible ways to overcome them. Compliance of third-country companies with European environmental, social, and labour standards and their monitoring by national contracting authorities and public institutions are also fundamental for their enforcement.

The three case studies of TCN workers

focused on Bosnian workers in Austria, Ukrainian workers in Belgium and South-east Asian workers in Romania. Findings show that in all three countries, two have longer and one has a relatively shorter history of immigration, TCN workers in construction are becoming a significant pool of labour supply in response to the growing shortages in the receiving country labour markets. Yet, TCN workers are exposed to multiple additional risks, which derive from a combination of their precarious employment and immigration statuses, particularly when both employment arrangements and residence permits are temporary. Cases of unequal terms and conditions (such as underpayment/ minimum pay and poor accommodation) and exploitation have been evidenced in all three case studies. The risks for TCN workers are higher if they are either posted or sent through irregular channels to work in construction sites from their EU country of residence to another EU country. Language barriers and enforcement challenges are demonstrated in all three cases. However, while in Austria and Belgium, public authorities and social partners are strongly involved in the monitoring and enforcement of labour standards, in Romania, as an emerging country of immigration, monitoring and enforcement mechanisms are either new or still to be developed.

1 INTRODUCTION

This report contains the research carried out by the European Centre for Social Welfare Policy and Research in the frame of the European Commission funded project **Better Functioning of the European Construction Labour Market – FELM** (VS/2021/0011 – Support for social dialogue) (hereinafter FELM) coordinated by the European Federation of Building and Woodworkers (EFBWW) and the European Construction Industry Federation (FIEC).

The objectives of the FELM project, in which the research activities of the report at hand are embedded, comprise the following:

- **To assess European labour market challenges linked to the increased number of non-EU companies and workers on the European construction sector, scrutinizing both businesses' challenges and workers' challenges.**
- **To produce a comprehensive picture on how non-EU companies and non-EU workers access the European labour market as well as the terms and conditions of their work in the European construction sector, through a legal, quantitative, and qualitative analysis.**
- **To draw up conclusions and offer joint social partner recommendations on how to improve the functions of the European construction market.**

Construction is one of the most substantial economic sectors in the European Union. Since the CoVID-19 pandemic, the sector had a strong recovery as total investment in construction increased by 5.2% in 2021 and amounted to €1.6 trillion, corresponding to 11.1% of EU total GDP

(FIEC, 2021). The gross value added (GVA) of the construction sector is about 5.5% of the total GDP of the EU area (Eurostat). This share has varied between 5 and 6% in the period 2010–2021. In 2021, the Member States with the largest shares of added value of the construction sector were Finland (7.7 %), Romania (7.3 %), Austria (7.2 %) and Lithuania (7.1 %). Whereas the highest rate of growth of the construction sector among Member States, in this period, were from Hungary, Lithuania, Denmark, Germany and Finland. The number of enterprises in the construction sector in the period 2010–2021 seems to present a stable trend with about 11 million active enterprises. The number of employed persons in the construction sector was about 25 million in 2018, and the trend seems to have been increasing since 2015. The three largest occupations (ISCO 1-digit groups) in the construction sector where employment occurs are clerical support workers, craft and related trades workers, and elementary occupations (unskilled workforce). Looking at the employment structure, most employment is in self-employed persons (about 4,000,000 persons in 2020), employees, and own-account workers (European Construction Observatory data mapper). The vacancy rate in the sector in the EU has also been growing from 3.1% in the fourth quarter of 2019 to 3.8% in the fourth quarter of 2022, which is higher than the vacancy rate of the whole economy of 2.8% in the same period (Eurostat, jvs_q_nace2). According to an ELA study, construction is one of the four main groups of occupations that dominates the list of labour shortages across the EU along with healthcare related occupations; software professionals; and engineering craft workers (McGrath, 2021).

In the recent years, an increase in the presence of third-country companies and third-country workers¹ has been observed in the European construction sector across all Member States. This new trend has created new challenges for the European and national social partners of the construction sector. To understand the trends and their characteristics of the access and participation of third-country companies and workers in the European construction, EFBWW and FIEC, the European social partners of the construction industry, have commissioned the study at hand. The research questions for this study therefore are:

- How do non-EU companies and non-EU workers access the European labour market?
- How many non-EU construction companies are currently active on the European construction market (broken down by country of destination, country of origin and construction activity)?
- How many non-EU construction workers are currently employed in the EU? How many TCN workers are posted across the EU (broken down to the level of disaggregation permitted by the existing databases and other data sources)?
- What are the terms and conditions under which non-EU companies and workers operate in the European construction sector?
- What are the businesses and workers' challenges?

The methodology required to accomplish the study was that of mixed method and entailed:

- A review of legal instruments: a critical analysis of the European legal framework and, where necessary, of the national legislative, administrative, and practical framework allowing the employment of third-country workers.
- A quantitative data collection and analysis: number and characteristics of third-country construction companies, construction workers, and posted construction workers.

- Case Studies: up to six case studies covering non-EU companies working in the European construction sector, non-EU workers employed in the European construction sector, and non-EU workers posted from one EU country to another EU country.

The report is structured as follows. In the next chapter, the methodology and the datasets and other empirical materials for all three components of the study are presented. The findings are then divided in three parts. Chapter 3 presents the analysis of the EU and national regulatory framework on non-EU companies' access to the European market, the regulatory framework on non-EU workers' access to the European market, and the regulatory framework on non-EU posted workers' access to the European market. Chapter 4 presents the quantitative analysis on non-EU companies, non-EU workers and non-EU posted workers. Chapter 5 presents the qualitative analysis of the six case studies. In the end of the report, some conclusions are drawn.

¹ In this report, third country refers to companies that are established in and workers that come from countries outside the European Union. In this report we use third-country and non-EU interchangeably.

2 METHODOLOGY

The study has three different components: a critical analysis of the EU regulatory and policy framework on the access and participation in the European construction market of third-country companies and workers, a quantitative analysis of the number and characteristics of third-country construction companies, construction workers, and posted construction workers in the European Union (EU); and a qualitative analysis of six selected case studies. The data sources and analysis for each component are described in this Methodology chapter of the report.

2.1 LEGAL ANALYSIS

The legal analysis focuses on the EU-level legal framework and any relevant national migration policies that enable the participation of third-country companies and workers in the European construction sector. At the EU level, it is first examined the participation of foreign companies in public procurement in the main legal documents, namely the Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, the plurilateral World Trade Organisation Agreement on Government Procurement (the 'GPA') (approved by Council Decision 94/800/EC), and other international agreements the Union is party to. We analyse the conditions of participation and exclusion of non-EU companies in public procurement as well as appeal procedure in cases of claims of irregularities or abuse. Secondly, the analysis of the regulatory framework on non-EU workers'

access to the EU labour market concentrates on the Directive 2011/98/EU for a single permit for third-country nationals to reside and work in an EU Member State, as well as special categories' directives such as that of the seasonal workers, the highly skilled, and intra-corporate transfers. Other relevant directives that discuss either terms of employment and labour mobility or working conditions are also discussed in relation to third-country nationals. At the national level, the analysis focuses on national policy that enables the recruitment of non-EU workers through bilateral agreements or other special measures such as quotas for specific sectors or professions. The final section of the legal analysis is dedicated to the intersection of the posting of workers regulation with migration regimes that leads to the posting of third-country nationals across the EU.

2.2 QUANTITATIVE ANALYSIS

The quantitative analysis of third-country construction companies, construction workers and posted construction workers presented in this report is based on EU-level statistical data that are currently available in the field. Table 1 provides an overview of the data sources used. More detail on these datasets, including limitations, and their use in the analysis are described below.

Data sources for the analysis of third-country (non-EU) construction companies include Eurostat inward foreign affiliates statistics (FATS), and data on contract award notices covering public procurement from the Tenders Electronic Daily (TED). Statistics on foreign-owned companies in the EU provided by Eurostat

are available until 2019, while the latest published TED data on contract award notices are until 2020. Inward FATS provides comparable data across EU Member States on the number and characteristics of foreign-controlled EU enterprises including through indicators such as turnover (sales), employment and value added. The data are published in the Eurostat online database and cover all EU Member States with data comparable across time as of 2007. Data on TED contract award notices are based on public procurement standard forms that are filled in by contracting bodies and are sent for publication to TED. The data files used for this report are publicly available on the EU Open Data Portal and contain information on the most important fields from the contract award notices. The inward FATS analysis includes the share and number of non-EU companies at the EU level and the national level, value added, and persons employed by foreign owned companies, on-EU companies by country of ownership, and share of construction companies controlled by Offshore Financial Centres. The TED data analysis provides the number and value of contracts awarded to non-EU companies in total and by Member State, the number and value of contracts awarded by region of origin, as well as the contracts awarded to companies registered in China or a joint venture that included a Chinese company by year, awarding country and value.

While the analysis makes use of the latest data available at the time of writing from these two datasets, also drawing on previous years to

analyse trends, the lack of more up-to-date data presents a limitation. Another shortcoming regarding inward FATS is missing information due to data confidentiality which limits comparisons between countries and over time. In addition, although national business registers are the main data source to identify enterprises with foreign control or ownership for these statistics, national statistical offices in EU Member States can also rely on other data sources (e.g., administrative data, private databases, or other national sources) for this purpose.² Countries may also apply different definitions for the foreign owned (controlled) companies covered. For example, Estonia and Poland employ a threshold to company size with data reported only on enterprises above this benchmark (thus largely excluding smaller sized companies with foreign ownership). Given these limitations, alternative approaches and data sources have been explored in the past to analyse the presence of foreign ownership in companies in the EU. For example, a relatively recent study conducted by the EC Joint Research Centre (2019) used the Orbis database to compile a dataset with firm level data for 2007–2016.

The TED dataset of contract award notices mostly contains information on contracts whose publication is mandatory because they are above a certain threshold (for construction 5,382,000 EUR). While it also covers contracts with a value below this threshold, for lower values national rules apply and are not necessarily reported by contracting authorities in all EU Member States,

TABLE 1 DATA SOURCES USED FOR THE QUANTITATIVE ANALYSIS

Data source	EU coverage	Latest year
Eurostat inward foreign affiliates statistics (FATS)	EU27	2019
TED contract award notices (csv subset)	EU27	2020
EU Labour Force Survey (EU LFS)	EU27	2020
Posting statistics	12 EU MS	2019

² Eurostat provides detailed methodological guidelines for national statistical authorities responsible for data collection and has also recently established a database, called the EuroGroups Register, where data from national statistical business registers are integrated and available for national statistical offices in EU Member States and EFTA countries (<https://ec.europa.eu/eurostat/web/statistical-business-registers/eurogroups-register>).

which affects comparability across countries and over time. Another important limitation concerns the identification of the winning tenderer from third countries, which in the current dataset is captured by the country where the company to whom the contract was awarded is located. However, in the case the contract is awarded to a joint venture of an EU and non-EU company, it might be that only the country of the EU company is recorded in the data. Non-EU companies may also participate as sub-contractors for awarded projects, but this is not possible to capture based on the TED dataset. Finally, the data refer only to contracts that have been awarded and therefore provide no information on unsuccessful bids in which non-EU companies may have participated. Despite these limitations, the TED dataset is the only comparative data source that allows for a systematic assessment of public contracts awarded in EU Member States.

Data for the analysis of the third-country (non-EU) and other foreign construction workers in EU Member States are drawn from the EU Labour Force Survey (EU-LFS). The EU-LFS data version used for the analysis presented here is the 2021 release where the latest data year available is 2020. The EU-LFS, to date, is the largest survey for Europe which covers the working age population and includes all EU Member States. It is the standard source for comparable data on labour force providing information on job characteristics including industry/sector and occupation (OECD, 2020). Cross-country comparativeness of the survey items is facilitated by the harmonised questionnaires and, wherever possible, common, and standardised classification schemes are used to determine the workforce characteristics. Our EU-LFS data analysis includes the share of TCN, EU/EFTA and native workers for the period 2010–2020, the share of foreign workers in European construction, characteristics of TCN workers such as region of origin, age composition, education levels, occupations, working hours, contract duration, and employment type.

Although the EU-LFS dataset offers several relevant variables and possibilities to analyse the situation of TCN construction workers in the

EU, it has various shortcomings. EU-LFS is a general-purpose dataset targeted at the overall population where foreign workers are likely under-represented within the survey. The smaller sample size of foreign workers in such survey projects (even in large-scale and reliable ones such as the EU-LFS) hinders our ability to conduct further disaggregated estimations regarding the characteristics of the foreign workforce. The issue of small sample size is problematic, especially when looking at trends and characteristics within each EU country, with the number of observations for foreign workers being very small in some countries such as Bulgaria, Croatia, Romania, and Slovakia. We tried to overcome this by pooling data from more survey years (2016–2020) to conduct the analysis presented in section 5.2 of the report. For any more detailed breakdown and analysis, the sample sizes would need to be much larger. It is also important to note, that some groups of migrant workers (e.g., undocumented migrant workers, migrant workers living in collective accommodations, those staying in the country only temporarily, such as posted workers, or arrived in the host country recently) are typically not captured by such surveys. Migrant workers are also presumed to have a higher risk of non-response, which may be explained by language barriers, namely insufficient command of the interview language, or by refusal to participate in the survey, for instance, for fear of being exposed. Lastly, another potential problem stems from the measurement of migrant workers, which is somewhat limited based on the EU-LFS for various reasons. Conceptually, the EU-LFS question only explores the stock of migrants and the categorisation of TCN workers into broad groups in terms of region of origin in the dataset and does not allow determining workers' specific countries of origin.

There is no publicly available data on the number of posted construction workers who are citizens of non-EU countries. To estimate their number, we use data collected through national prior notification tools (see De Wispelaere & Pacolet, 2018; De Wispelaere, De Smedt & Pacolet, 2021). Prior notification tools are used by all EU countries and require companies to declare postings in advance in accordance with

Directive 2014/67/EU. The amount of data collected through these tools and the amount of data the collecting national authorities are willing to share varies. As such, we are only able to provide estimates for twelve EU countries. Nevertheless, the information collected through prior notification tools provides the most comprehensive data currently available on posted TCN workers in the construction sector.

2.3 QUALITATIVE ANALYSIS

The qualitative analysis of this report focuses on six case studies: three on third-country companies and three on third-country workers in the European construction industry. The case studies on third-country companies examine foreign companies access to the construction market, participation in public procurement projects, and project implementation practices, in three selected EU Member States: Bulgaria, Slovenia, and Sweden. The case studies on third-country workers examine their access to the labour market, their terms and conditions of

employment, including their participation in posting, and the challenges workers, public authorities and social partners face when monitoring and enforcing labour standards for third-country workers.

The empirical material for the case studies is based on primary and secondary sources collected during the period May 2022-January 2023 in all six countries. In total, we conducted 27 interviews with representatives of public authorities, employers' organizations, trade unions, non-governmental organizations, and journalists. The interviews were conducted online or on the phone. Details of the fieldwork are presented at the beginning of each case study. For each case study, laws and regulations, public procurement documents, bilateral agreements and other relevant official documents were consulted. National statistics were drawn from national statistics offices, public institutions websites or other publications. To complement our viewpoint, in addition to academic and grey literature, we also consulted media and news reports with coverage on the specific cases under study.

3 ANALYSIS OF THE EU AND NATIONAL REGULATORY FRAMEWORK

3.1 REGULATORY FRAMEWORK ON NON-EU COMPANIES' ACCESS TO THE EU MARKET

The legal framework covering non-EU companies' access to the European market is comprised of EU legislation and a few international agreements, the most important of which are:

- Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.
- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC.
- The plurilateral World Trade Organisation Agreement on Government Procurement (the 'GPA') [approved by Council Decision 94/800/EC].
- Other international agreements the Union is party to.

Third-country companies can enter the European market through direct investment. The EU has established a framework for the screening of foreign direct investments (FDIs) in its Regulation (EU) 2019/452, according to which Member States shall have their own national mechanisms reported to the Commission and updated regularly in the form of a public list.³ FDIs can be screened by national institutions for two reasons: security and public order. The effects to be considered are on critical infrastructure, critical technologies, supply of critical inputs, including energy or raw materials, access to sensitive information, and freedom

and pluralism of media. And that determining factors might be whether the foreign investor is directly or indirectly controlled by the government, including state bodies or armed forces, of a third country, including through ownership structure or significant funding; evidence of the investor's previous involvement in activities that have affected the security or public order of a Member State; and the risk of the investor's criminal activity (Article 4). The regulation has been criticized for transplanting definitions from older EU regulation such as the Capitals Movement Directive, and while third-country investments are protected by the freedom of capital movement, it might be used as a bargaining chip in international negotiations, therefore, a common EU policy and politics for the screening of FDIs based on both hard law and approach has been recommended (Otto, 2020).

The participation of foreign non-EU economic operators in public procurement, on the other hand, is regulated by Directive 2014/24/EU, the plurilateral World Trade Agreement on Government Procurement (GPA) and other relevant international agreements the EU is party to. While individual Member States could technically allow third-country operators to participate in public procurement in their national law either by not distinguishing operators based on country of establishment or by explicitly regulating third-country operators access in their national legislation, Directive 2014/24/EU intertwines access to the pan-

3 The current list of national mechanisms for the screening of FDIs is available here: https://policy.trade.ec.europa.eu/enforcement-and-protection/investment-screening_en

European market with EU-level international agreements, such as the GPA (Article 25), or bilateral agreements between one Member State and one or more third countries (Article 9, 17).

The current GPA (2012) entered into force in 2014 and the last party ratified it in January 2021. It consists of twenty-one parties (covering 48 WTO members, counting the European Union and its 27 Member States as one party). Another 35 WTO members/observers and four international organizations participate in the Committee on Government Procurement as observers. Eleven of these members with observer status are in the process of acceding to the Agreement⁴. As detailed in paragraph (17) and (18) of the Recital of Directive 2014/24/EU, the GPA is a multilateral framework agreement of rights and obligations relating to public contracts, and contracting authorities in the EU Member States should apply the Directive to fulfil their obligations in relation to economic operators of third countries that have signed the GPA or other relevant international agreements with the EU. An exception is made in the case of contracts where the terms in the applicable international agreements are different from those of the Directive (Article 9) or in the case of contracts that include defence and security aspects (Article 17), in which case the terms of these international agreements are applicable (Article 9; Article 17). Other EU international agreements of relevance are included in Table 2.

As shown in Table 2: International Agreements between the EU and third countries and the presence of public procurement clauses, most free trade agreements include public procurement, although not all do. For example, Decision No 1/95 of the EC -Turkey Association Council Of 22 December 1995 on implementing the final phase of the Customs Union (96/142/EC) in its article 48 says that the EU and Turkey will initiate negotiations aiming at the mutual

opening of the Parties' respective government procurement markets, but an agreement has not been reached yet.

Foreign Direct investment between China and the EU Member States individually has also been growing since 2000, and especially after 2004, when the Chinese government decided to relax regulations and approval procedures including allowing private firms to invest abroad (Buckley et al., 2010). The latest available data indicate that the cumulative value of EU-27 FDI in China since 2000 until 2021 stood at 176 billion USD with an annual average of 8.3 billion USD between 2000–2020, whereas the cumulative value of Chinese FDI in the EU-27 since 2000 until 2021 stood at 155 billion USD with an annual average of 7.3 billion USD between 2000–2020. The largest recipients of Chinese FDI in 2Q 2021 were Germany (24% of total investment), Spain and Ireland (Rhodium Group, 2021). An earlier publication (Knoerich and Miedtank, 2018) indicated that Chinese investments had covered all EU Member States, with some concentration in France, Germany, and Britain, while Netherlands and Sweden had also received considerable amounts, and Eastern European state gaining some prominence by Chinese multinationals recently. Differently from other countries, the Chinese FDIs have been rapid-growing latecomers that seek strategic assets in the EU and have a strong state-backing, with some projects having led to controversies (ibid). After a long negotiation period, the EU has in 2021 concluded in principle the negotiations on the Comprehensive Agreement on Investment (CAI) with China, which aims to replace the existing Member States' Bilateral Investment Treaties with China with a single modernised agreement at the EU level and rebalance the current asymmetry in market access conditions and levels of commitment between the parties.

4 GPA parties include: Armenia, Australia, Canada, European Union with regard to its 27 Member States, Hong Kong China, Iceland, Israel, Japan, Republic of Korea, Liechtenstein, Moldova, Montenegro, Netherlands with respect to Aruba, New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, Ukraine, United Kingdom, United States; Observers include: Afghanistan, Albania, Argentina, Bahrain, Belarus, Brazil, Cameroon, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Ecuador, Georgia, India, Indonesia, Jordan, Kazakhstan, Kyrgyz Republic, Malaysia, Mongolia, North Macedonia, Oman, Panama, Pakistan, Paraguay, Philippines, Russian Federation, Saudi Arabia, Seychelles, Sri Lanka, Tajikistan, Thailand, Turkey, Viet Nam; and Negotiating accession parties: Albania, Brazil, China, Georgia, Jordan, Kazakhstan, Kyrgyz Republic, North Macedonia, Oman, Russian Federation, Tajikistan.

TABLE 2 INTERNATIONAL AGREEMENTS BETWEEN THE EU AND THIRD COUNTRIES AND THE PRESENCE OF PUBLIC PROCUREMENT CLAUSES

NAME OF THE AGREEMENT	NON-EU COUNTRIES INVOLVED	PUBLIC PROCUREMENT CLAUSES
The EEA Agreement	Iceland, Liechtenstein, and Norway	Yes
Deep and comprehensive free trade agreements	Georgia, Moldova, and Ukraine	Yes – a gradual opening of their respective procurement markets
Stabilisation and Association Agreements	Albania, North Macedonia, Montenegro, Serbia, Bosnia and Herzegovina, Kosovo*	Yes – a transitional period to establishing a free-trade area has been concluded with all but Kosovo (2026)
Agreement between the European Community and the Swiss Confederation on certain aspects of government procurement	Switzerland	Yes
EU-Vietnam Free Trade Agreement	Vietnam	Yes – almost all construction services, including procurement under the Ministry of Transport, and dredging services
EU-UK Trade and Cooperation Agreement	UK	Yes
EU-South Korea Free Trade Agreement	South Korea	Yes – already party to the GPA – EU firms can now bid for 'build-operate-transfer' (concession services).
EU-Singapore Free Trade Agreement	Singapore	Yes – already party to the GPA – expanded opportunities by both parties
EU-Mexico Partnership Agreement	Mexico	Yes – provisional, a new EU-Mexico association agreement is being negotiated
EU-Japan Economic Partnership Agreement	Japan	Yes – already party to the GPA – expanded opportunities by both parties
EU-Colombia-Peru-Ecuador Trade Agreement	Colombia, Peru, Ecuador	Yes – Colombia and Ecuador already party to the GPA
EU-Chile Association Agreement	Chile	No
EU-Central America Association Agreement	Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama	Yes – compatible with the GPA
EU-Canada Comprehensive and Economic Trade Agreement	Canada	Yes – already party to the GPA – expanded opportunities by both parties
Customs Union	Andorra, San Marino, Turkey	No

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ opinion on the Kosovo declaration of independence.

The agreement covers a commitment to more sustainable development, including the implementation of the Paris Agreement on climate change, decent work practices, and the ratification of the ILO convention against forced labour, and to fair competition, including clearer rules for state-owned enterprises, transparency on subsidies and the prohibition of other distortive practices. The agreement is in the phase of the finalization of the text, which will be followed by the legal review and translation, to then be submitted to the European Council for approval, and finally ratification.⁵

Despite the various agreements, the concern has been raised that a level playing field among EU and non-EU operators is not always granted. Therefore, the European Commission has proposed the establishment of an International Procurement Instrument (IPI) first published in 2012 and revised in 2016, which aims to strengthen reciprocity, counter discriminatory practices, and leverage the negotiation of the opening of procurement markets for EU business (European Commission, 2016). The legislation was at an impasse for a few years before inter-institutional negotiations between the Council and the European Parliament restarted in late 2021, with the institutions agreeing on a compromise text in March 2022. The instrument was finally adopted in June 2022. IPI introduces measures to limit the access that non-EU companies have to public tenders in the EU, if the governments of the countries where they are based do not offer the same access to EU companies. IPI also reduces the range of exemptions and sets thresholds for the budget size of the projects that are subject to IPI, specifically tenders worth at least €15 million for works and concessions, for example road or bridge construction, and €5 million for goods and services, which increases the level of scrutiny at the sub-national level. Social, environmental, and labour requirements are also now mandatory with the new instrument. IPI also instructs on how to evaluate bids from companies whose third country imposes

barriers, e.g., price penalties or reduced scores depending on certain prescribed criteria (Council of the EU, 2022; European Parliament, 2022).

The outlined legal framework allows access to the European market to only those third-country operators established in third countries party to the Agreement on Government Procurement (GPA) or other free trade agreements the Union or individual Member States are party to. However, it does not preclude economic operators originating in other third countries but have registered subsidiaries in the EU (or third countries party to the GPA and/or other agreements for that matter) to meet the criteria of being 'established in the EU' or 'established in third countries party to the international agreements' and thus obtain access to the European market.

3.1.1 CONDITIONS OF PARTICIPATION IN PUBLIC PROCUREMENT

Apart from access, conditions of participation in public procurement bids are equally important. In this section we discuss the terms stipulated in the Directive 2014/24/EU and the GPA as the main legal instruments. Firstly, the GPA is applicable to contracts above particular thresholds, which should be aligned with the ones in the 2014/24/EU Directive, and reviewed by the Commission periodically, as well as discussed and adjusted in the subsequent rounds of negotiations (see also paragraph 134 of the Recital). The current threshold for construction services is 5,000,000 SDR⁶ or 5,382,000 EUR, which is the threshold applied by most parties (Annex 1, GPA 2012).

Secondly, contract award criteria must observe non-discrimination criteria. Paragraph (98) of the Recital on the award criteria underlines economic operators from other EU member States or third countries parties to the GPA or to Free Trade Agreements, to which the Union is party, should not be discriminated directly or

⁵ For more details read the European Commission page on the CAI available here: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/china/eu-china-agreement_en

⁶ Special Drawing Rights

indirectly. Article 25 of Directive 2014/24/EU also stipulates that third-country economic operators from the countries party to the GPA and other international agreements should not receive less favourable treatment than EU economic operators. At the same time, in paragraph (135) of the Recital, the attention is drawn to the preservation of the competitiveness of the European Union:

Having regard to current discussions on horizontal provisions governing relations with third countries in the context of public procurement the Commission should closely monitor global trade conditions and assess the Union's competitive position.

In the contract award criteria, the main principle is that of the most economic advantageous tender, which as described in Article 67 of the Directive 2014/24/EU and further detailed in Article 68, must be based on 'the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with Article 68, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question'.

Thirdly, all operators, whether EU or non-EU, should comply with EU and national laws on technical, economical, and legal standards, as well as environmental and social aspects (Directive 2014/24/EU Recital (92), (93), (98), Article 67). For example, Paragraph (98) of the Recital of the Directive 2014/24/EU states that 'requirements concerning the basic working conditions regulated in Directive 96/71/EC, such as minimum rates of pay, should remain at the level set by national legislation or by collective agreements applied in accordance with Union law in the context of that Directive'. Article 18, Article 67, and Annex X of the Directive 2014/24/EU on contract award criteria makes also direct reference to quality criteria related to obligations deriving from environmental, social, and labour law established by Union law, national law, collective agreements or by the international environmental, social, and labour law provisions.

3.1.2 EXCLUSION CRITERIA AND APPEAL PROCEDURE

EU regulation also covers criteria for the exclusion of offers from public procurement bids and appeals. Article 57 of the 2014/24/EU Directive on Public Procurement sets out a wide range of exclusion criteria such as criminal activity, terrorism, exploitation of minors or human trafficking, fraud or money laundering, the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions, evidenced poor or deficient performance, misconduct during the bidding process that includes efforts to distort the procedure or misinform the contracting authority. The article also stipulates that measures taken by the economic operators shall be evaluated considering the gravity and particular circumstances of the criminal offence or misconduct.

Article 69 of the 2014/24/EU Directive on Public Procurement focuses on the 'Abnormally low bids.' This article addresses the issue of distortive practices that can lead to unfair competition. Economic operators must be required to explain their costs, in terms of manufacturing process or construction method; technical solutions; originality of the work; compliance with applicable obligations in the fields of environmental, social, and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions; compliance with rules on subcontracting terms; and the possibility of the tenderer obtaining State aid. When found in breach of compliance with applicable obligations on environmental, social, and labour EU, national or international regulations (Article 18), the bid must be rejected. Likewise, when a tenderer is not able to prove that the State aid is compatible with the internal market within the meaning of Article 107 TFEU, their bid should be rejected. In the latter case, the Commission should also be informed. The final point of the article also stipulates that Member States should be transparent about their procedures and provide information on the verification of 'abnormally low bids' accepted by contracting authorities.

While the article identifies the issue and stipulates conditions of verification and measures, it does not specify what 'abnormally low' means. The establishment of the threshold for what constitutes an abnormally low bid is thus transferred to national institutions. However, many Member States do not have a specific method how to identify abnormally low bids and review each case individually. The ones that do, have quite different thresholds ranging from 15% of the average price (BE, SK) to 50% (PT) with other countries not providing specifications, which makes the case of an abnormally low bid difficult to ascertain legally (SIGMA Public Procurement Brief 35, 2016). To assist contracting authorities, the Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs has also published a *Guidance on the participation of third country bidders and goods in the EU procurement market* in 2019, where special attention is paid to detecting abnormally low bids. Yet, the issue of non-cohesive mechanisms for establishing and monitoring the threshold across the EU remains.

The exclusion of third-country companies has already been tried in court at the national level. Two cases were heard by the Italian courts one in 2007 and one in 2014. Both cases referred to the previous Directive on Public Procurement, however, they are still useful in understanding exclusion criteria at Member State level. In the earlier case, Simiani S.A. requested the annulment, subject to suspension of execution, in part, the call for tenders for the supply, following a restricted procedure, of clothing equipment and barracks materials for the Carabinieri Corps, and the decision to exclude the applicant from the same tender. The reason for the exclusion included the unfulfillment of the all requirements as stipulated in the directive in economic-financial as well as technical and operational based on their declaration to avail of the technical and operational requirement of a Chinese firm that was not registered or had a subsidiary in the EU without referring to the international agreement that would entitle such participation in the bid, as prescribed in the *lex specialis*. The court found that the first claim was unfounded and the

second inadmissible, because the claimant firm did not fulfil the requirements stipulated by the law in terms of their own capacities and in terms of the use of the services of a third company from a country where there is no bilateral agreement applicable, although China is part of the WTO.

The second court case referred to the annulment of a provisionally awarded tender by the ABC Napoli Azienda Speciale to the Mario Cirino Pomicino S.A. for the supply of aqueduct equipment. In this case, the products to be supplied were also declared to be produced in China by the tenderer, however, they claimed their offer should not be excluded on these grounds because China should not be considered a third country due to it being signatory to a few agreements with the EU and because the company was still Italian having simply moved their production to China. The court ruled that China remains a third country without an applicable international agreement because none of the agreements signed is on public procurement, and that if the production of goods is executed in a country, their origin is that country, in this case China. Under these circumstances, the bidder failed to prove that the products originating from third countries did not exceed 50% of the total value of the products offered, which was in violation of national regulation.

Article 83 of the 2014/24/EU Directive on Public Procurement focuses on enforcement. National authorities should monitor and report on public procurement procedures regularly and if they identify any violations by their own initiative or upon the receipt of information specific violations or systemic problems, they should inform national auditing authorities, courts or tribunals or other appropriate authorities or structures. The results of the monitoring activities should also be made available to the public and on regular intervals to the European Commission as well. In addition, documentation should be made available to monitoring authorities to the extent that it does not interfere with privacy and confidentiality rules. Paragraph 121 of the Recital says that Member States are free to decide how and by whom the monitoring of public procurement is done and

design the procedure for bringing potential problems to the attention of the authorities, which does not necessarily mean addressing courts or tribunals. In line with Article 83, paragraph 126 of the Recital also highlights the importance of traceability and transparency in

the procedure, which is to be achieved by maintaining tender documentation and a procurement report on the decision, which would allow monitoring authorities to review the process in cases of alleged irregularities.

3.2 REGULATORY FRAMEWORK ON NON-EU WORKERS' ACCESS TO THE EU MARKET

The legal framework governing the employment and access of TCN workers in the construction sector in the EU concerns both national and EU level initiatives and laws. While the fundamental rules for the issuing of a permit to reside and work in the different EU countries is regulated at the EU level (Directive 2011/98/EU), Member States' national sovereignty remains the primary basis of the framework in this domain. In addition, several EU-level regulations cover different aspects of entry and labour market access for different categories of third-country nationals. In this section, we firstly review the EU-level directives pertaining to the recruitment of TCNs in the construction sector. Next, we discuss national-level frameworks of entry and work regulations for TCN and the bilateral agreements that the Member States conclude with non-EU countries.

3.2.1 EU-LEVEL LEGAL FRAMEWORK

The main EU-level framework in the domain of recruitment of TCNs in the Member States, in any sector, is the Directive 2011/98/EU for a single permit for third-country nationals to reside and work in an EU Member State. The 2011 Directive sets the ground for the Member States to provide a single application procedure that encompasses 'a single application procedure leading to a combined title encompassing both residence and work permits within a single administrative act will contribute to simplifying and harmonising the rules currently applicable in Member States' (Recital of the Directive).

While such a unification of the permits simplifies the procedure for the migrants and the employers, the work and residence permit processing times as well as the number of TCNs admitted vary significantly among Member States depending on the national migration regime frameworks and bureaucratic processes. Importantly, given that many of the employment opportunities require workers to be relatively mobile considering the project-based construction jobs, lengthy application procedures and the waiting times become a determining factor to fulfil skills shortages and the employability of TCNs in this sector.

Furthermore, the Directive also emphasises in Chapter III, Article 12 that the TCNs 'shall enjoy equal treatment with nationals of the Member State' with regards to working conditions, freedom of association, education and vocational training, recognition of diplomas, social security, and tax benefits. However, just as the numbers and the procedures of TCN immigration are mainly at the discretion of the national authorities, such post-entry social and labour market rights of TCNs have also been observed to vary significantly in different Member States (Ruhs, 2013; Sainsbury, 2012). The EU legal framework does not limit the power of Member States in how they organise their social security schemes and entitlement regulations at the national level. Therefore, despite the provisions of the Directive, such rules remain within the competency of the Member State national law. Overall, the Directive 2011/98/EU targets remedying important aspects of TCN employment hurdles and precarity in the EU labour markets through a simplified and faster entry regulation and better conditions once in the host country.

Directive 2011/98 does not apply to several specific categories of TCN workers. Most importantly for the construction sector, the Directive does not cover posted workers and seasonal workers within its provisions. Instead, these and several other immigration channels are regulated through specific EU directives. We discuss the rules and regulations for the posted workers in the following section of this report. In this section, we focus, on other existing EU-level frameworks that cover some of these categories and other specific and targeted EU rules for temporary residence and employment. Currently, there are three such domains in which EU Directives are in force to regulate labour migration:

- Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers,
- Directive (EU) 2021/1883 of the European Parliament and of the Council of 20 October 2021 on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, and repealing Council Directive 2009/50/EC, and
- Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

Several critical issues can be raised regarding the impact and capabilities of these EU framework regulations due to their limited scope and problems identified in earlier analyses regarding their implementation (such as in the case of Directive 2009/50/EC Blue Card for highly qualified TCNs).

Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers

In Article 3 of the 2014/36/EU, a 'seasonal worker' is defined as a TCN 'who retains his or her principal place of residence in a third country and stays legally and temporarily in the territory of a Member State to carry out an activity

dependent on the passing of the seasons, under one or more fixed-term work contracts concluded directly between that third-country national and the employer established in that Member State.' As in the case of Directive 2011/98/EU, there is a single application procedure for the seasonal worker visa (Article 13). However, processing times of such visas to allow sufficient mobility can vary between countries. For instance, processing times for applications in 2018 varied from as long as 3 months in some countries (such as Belgium, UK, Sweden) to the fastest ones in about 15–20 working days in Czech Republic, Estonia, Italy, Latvia, and Lithuania (EMN, 2020, pp.17–18).

In the directive, seasonal workers' access and employment is framed in two categories: authorisation for work and residence for those staying less than 90 days and for those exceeding 90 days. Differently from the general permit that allows TCN workers to stay and work in an EU Member State for a minimum 1-year period (Directive 2011/98/EU), the duration of stay for seasonal workers 'shall be not less than five months and not more than nine months in any 12-month period' (Article 14). After this initial period, seasonal workers have the possibility for the extension of their authorisation and renewal as well as facilitation for their re-entry into the labour market in the EU Member States. However, no right to family reunification is given to seasonal workers through this Directive, which also implies the prevention of settling in the host country if the TCN worker's mobility is enabled through a seasonal work permit. In terms of entitlements, according to the directive, it is the employer's responsibility to provide seasonal workers with accommodation that meets the general health and safety requirement and that the accommodation costs are not to be automatically deducted from the wages of the worker (Article 20).

Construction is the fourth sector in order of importance, after agriculture, tourism and hospitality, and manufacturing (EMN 2020, p.11). Based on the total number of permits for seasonal workers (in all sectors) in 2019, Poland, Finland, Spain, Bulgaria, and Croatia are the top 5 destination EU member states (EMN 2020, p.10). Based on the availability of data, in the 2017–2019

period, construction sector has consistently been one of the sectors in which seasonal workers are hired. For instance, in Italy a total of 1263 first time authorisation for construction sector seasonal worker visas were issued.

Based on the EMN national country report, which is gathered by the reporting of the national units, two of the most critical areas in which the “equal treatment” has been restricted vis-à-vis this employment category has been access to unemployment and family benefits (EMN 2020, p.21). In 13 EU Member States,⁷ there are restrictions present in national legislation that prevent equal access of TCN seasonal workers to the family benefits and in 4 others,⁸ it has been reported that even though the national legislation does not explicitly acknowledge exclusion of seasonal workers the implementation processes make it difficult for TCN access. The main reason behind such practice-based violations of equal treatment is the temporary and short-term nature of seasonal employment and work and residence duration, which often put TCNs in an ineligible position. A similar picture also emerges in the domain of access to unemployment benefits where in X EU member states there are either legal or implementation hurdles that prevent the full application of equal treatment.⁹

Other social policy areas in which equal treatment has been observed to have been violated are the tax benefit claims for family members and access to educational vocational training. While access limitations in these domains are not as widespread, there have been difficult in access for TCN seasonal workers. These reporting do not specifically pertain to the seasonal workers in the construction sector. However, these observations are likely to be applicable for all sectors in which seasonal worker employment is available. In this sense, Directive 2014/36 seems to fall short of its goal in achieving equal treatment. Language barriers, duration of employment and stay, and the issues with social insurance transferability emerge as the most important practical

challenges in the application of this principle – along with the national legislation excluding TCNs specifically (EMN 2020, p.21–22).

Directive 2021/1883/EU on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment

The EU has a separate regulation for the employment of highly qualified TCNs and their access to the European labour market. The original framework was the Council Directive 2009/50/EC on conditions of entry and residence of third-country nationals for the purposes of highly qualified employment that set up the Blue Card programme. Despite its purpose, a few problems were identified in the implementation of this directive, such as the difficulty in filling many of the bottleneck skills shortages in medium skill occupations, relatively low level of attractiveness of the rights attached, and the very high salary thresholds to obtain the card (Kalantaryan and Martin, 2015). A new Directive 2021/1883/EU repealed the existing one, and because the 2021 Directive is relatively recent, the success of its implementation is still an open question.

Likewise, as noted in earlier reviews of the Directive and according to the EC report on bottleneck vacancies in EU labour markets where skill shortages are the highest (European Commission, 2014), the EU Blue Card can only address ten out of twenty. Among the top twenty bottleneck vacancies in the EU labour market reported by Member States, nursing professions, mechanical engineers, software developers, specialist medical practitioners, commercial sales representatives, electrical engineers, civil engineers, system analysts, primary school teachers, and accountants seem to be likely to be positively influenced by the Directive. However, for the other ten shortages, namely, cooks, metal working machine tool settlers and operators, shop sales assistants, heavy truck and lorry drivers, welders and flame cutters, carpenters and joiners, waiters, plumbers, and

7 AT, BE, BG, DE, EE, FI, FR, LT, LU, LV, PL, SK, and UK.

8 CZ, ES, HU, IT.

9 AT, BE, BG, CZ, DE, EE, ES, FI, FR, GR, HR, HU, IT, LT, LU, LV, MT, PL, PT, SK, and UK.

pipe fitters, building and related electricians, and health care assistants, the Directive presents no opportunities for TCNs to enter and work in the EU labour market.

Crucially of interest here, four of these high shortage occupations are the most prevalent in the construction industry such as the metalworking machine tool setters and operators (ISCO 08-7223), welders and flame cutters (ISCO 08-7212), carpenters and joiners (ISCO 08-7115), plumbers and pipefitters (ISCO 08-7126), and building-related electricians (ISCO 08-7411). Therefore, even in the 2021/1883/EU framework, it seems difficult to expect that the new Directive will have much influence on alleviating the shortages EU member states face in recruiting TCN workers in the construction sector.

Article 2(9) of the Directive 2021/1883 defines TCNs who would be eligible for this form of entry:

as concerns the occupations listed in Annex I (that are the two occupations classified in ISCO-08 as the 133: Information and Communications Technology Services Managers and 25: Information and Communications Technology Professionals)” or (b) as concerns other occupations, only where provided for by national law or national procedures, knowledge, skills and competences attested by at least 5 years of professional experience at a level comparable to higher education qualifications and which are relevant to the profession or sector specified in the work contract or binding job offer.

While the latter provision seems to leave some room for interpretation on the ‘highly qualified’ individuals, the initial implementation experience of the Blue Card Directive (2009/50/EC) has shown that this room for interpretation has led to only the two occupations for the ICT getting (few) applications for this access channel. There are no provisions in this revised version of the Directive to ensure labour flows more widely.

Furthermore, the high salary threshold also determined in this version of the Directive in Article 3(5) is only exceptionally accepted to be

lowered for occupations classified broadly in the ISCO 1 and ISCO 2 categories. This is a positive development to improve the attractiveness of this route for TCN workers. Based on the analysis in this report, we have seen that some portion of TCNs works in these highly qualified occupations in the construction sector (see Table 12 in the quantitative analysis). However, it is nevertheless a relatively small minority of socio-economically more secure workers when compared to the overwhelming majority of TCN workers being in the ISCO-7¹⁰ (which makes up about more than half of TCN workers in the construction sector) and ISCO-9 occupation task groups, which are left outside of the provisions of this Directive.

Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra- corporate transfer (ICT)

Article 3 of the Directive 2014/66/EC defines ‘intra-corporate transfer’ as

the temporary secondment for occupational or training purposes of a third-country national who, at the time of application for an intra-corporate transferee permit, resides outside the territory of the Member States, from an undertaking established outside the territory of a Member State, and to which the third-country national is bound by a work contract prior to and during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established in that Member State, and, where applicable, the mobility between host entities established in one or several second Member States.

The Directive, therefore, addresses a particular and a quite limited segment of TCN workers that would be entering and working in the EU labour markets regulated by this framework. The precise conditions set up by the directive also determine who and for how long TCNs can be employed. Article 5 (1) regulates that to be lawfully employed as an ICT worker, TCNs need to

10 In the EU-LFS, respondents are asked to indicate their occupation. Based on their responses, the EU-LFS post-codes these occupations into the existing ISCO-08 classification of occupations based on tasks. See here for more details https://www.ilo.org/wcmsp5/groups/public/@dgreports/@adcomm/@publ/documents/publication/wcms_172572.pdf

provide evidence of employment within the same undertaking or group of undertakings, from at least three up to twelve uninterrupted months immediately preceding the date of the intra-corporate transfer in the case of *managers and specialists*, and from at least three up to six uninterrupted months in the case of *trainee employees*; (c) present a work contract and, if necessary, an assignment letter from the employer containing the following: (i) details of the duration of the transfer and the location of the host entity or entities; (ii) evidence that the third-country national is taking a position as a manager, specialist or trainee employee in the host entity or entities in the Member State concerned [emphasis added].

As the framework of the Directive shows, the applicability of this entry channel is likely to be minor in many of the branches in the construction sector where TCNs are hired. Importantly, much of the individuals within this category would be secondments in the higher skilled occupations whereas the TCN employment is largely happening at medium and lower skilled occupations as detailed in other sections of this report.

Regardless of the limited applicability of the TCN recruitment in the construction sector, Article 5 (4) guarantees that all 'conditions in the law, regulations, or administrative provisions and/or universally applicable collective agreements applicable to posted workers in a similar situation in the relevant occupational branches are met during the intra-corporate transfer with regard to terms and conditions of employment other than remuneration' and that 'the remuneration granted to the third-country national during the entire intra-corporate transfer is not less favourable than the remuneration granted to nationals of the Member State where the work is carried out occupying comparable positions in accordance.' Likewise, Article 18 aims to ensure the 'equal treatment' principle for TCNs in that such employment of TCN workers do not cause social and wage dumping at EU labour markets.

One relevant aspect of the directive is that as the Article 14 outlines 'any modification during the stay that affects the conditions for admission set

out in Article 5 shall be notified by the applicant to the competent authorities of the Member State concerned.' This means that the consequences of the loss of employment or any employment related disputes between the workers and employers are within the discretion and jurisdiction of each national legislation. In this respect, TCN workers are *de facto* tied to their employer for their legal work rights, which can become a source of vulnerability for these groups.

Finally, in addition to organising the criteria and conditions for ICT workers, the directive sets out a potential for TCN workers who enter as ICT workers to have short-term mobility within the EU labour market. Article 21 states that 'third-country nationals who hold a valid intra-corporate transferee permit issued by the first Member State shall be entitled to stay in any second Member State and work in any other entity, established in the latter and belonging to the same undertaking or group of undertakings, for a period of up to 90 days in any 180-day period per Member State subject to the conditions laid down in this Article.' Such possibility of the provision of mobility within the EU is a particular advantage for TCNs working under this regulation as it fits the labour market and working structure of construction projects which can often encompass multiple and geographically mobile sites – which could be particularly relevant for managers and specialists hired through this framework and enhance the training opportunities and experience for the trainee TCN employees.

Other relevant EU Directives

In addition to the regulation of the recruitment practices into the labour force, there are also four other sources of EU law that are applicable in the context of employment of TCNs in the construction sector in order ensure better working conditions and to prevent undeclared and irregular employment prevalent in certain sectors in the EU labour markets.

The first one of these directives is the Directive 2009/52/EC minimum standards on sanctions and measures against employers of illegally staying third-country nationals. This Directive's aim is to address the irregular employment and

residence conditions for TCNs in EU Member States directly, which puts in place a reinforced legal framework through obligations and sanctions put on employers. In addition to direct criminal and financial sanctions that comprise the measures to deter employers from employing TCNs without regular access and work permits, the Directive also foresees exclusion from subsidies, public contracts, and national and EU public benefits (Article 7). The Directive targets the reduction of undeclared work and subsequent exploitation and poor working conditions that TCN workers are exposed to. While the Directive does not specifically regulate the illegal conditions in the construction sector, its prohibition of the employment of workers who do not hold a valid residence permit or authorisation apply to the TCNs who are hired by construction sector employers (Article 3). The Directive also holds any subcontracting parties responsible for the application of the regulations set in place with this legislation (Article 8).

The other two directives relevant in this framework do not specifically address the issues addressing solely TCN employment. However, both the Directive 2019/1152/EC on transparent and predictable working conditions and the Directive 2008/104/EC temporary agency work, more broadly, foresee that the regulations of the directives are applicable to 'all legal workers', who have the necessary permits and rights to be employed in the EU labour markets.

Directive 2019/1152 is an important legal document for the TCN employment in construction because, given the nature of the jobs and projects, some of the working conditions controls related to health and safety as well as the working hours, rest periods, protection against unjust dismissal, employer change, and social protection access become particularly open to precarious conditions. Furthermore, the directive further iterates that regardless of the type and duration of the employment relationship, employers need to ensure fair and equal treatment in working conditions. Importantly, a crucial aspect of the directive is to measure the extent of protection and work condition guarantee for workers who are employed with the most vulnerable and precarious contracts such as the zero-hour and

on-demand contracts regardless of the total work hours. In this respect, the directive is broadly applicable to various forms of vulnerable TCN workers in the construction sector.

The Directive 2008/104/EC on temporary agency work further emphasises the equal treatment principle and covers broadly 'all workers' who are legally employed through temporary work agencies defined as 'any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers to assign them to user undertakings to work there temporarily under their supervision and direction' (Article 3(1)). Any worker, who is in an employment relationship through such agencies is, thus, foreseen to be under the protection of the framework set by this directive. The directive regulates a set of rights for temporary agency workers in the domains of access to wage guarantees, access to employment, access to vocational training, and access to collective facilities at the workplace. It also sets a host of minimum standards of work conditions and related sanctions in the case of the violation of such regulations. In addition to the equal treatment provisions and prohibitions of voluntary restrictions from the side of member states, the directive explicitly states and puts to force non-discrimination of workers based on 'sex, race or ethnic origin, religion, beliefs, disabilities, age or sexual orientation' (Article 5(1)). As this report also shows in the section presenting the quantitative analysis of the TCN workers in the construction sector, temporary employment agency recruitment occurs at a substantively higher rate when it comes to workers coming outside of the EU when compared with EU/EFTA nationals and native workers (Section 5.2.2). Furthermore, given the need for flexible employment and contracts needed in the construction sector, such regulation carries an important weight for the TCNs who may be recruited into the sector.

Lastly, it is the Posting of Workers Directive 96/71/EC amended by Directive (EU) 2018/957 that regulates the free movement of the provision of services in the European labour market, which is discussed in detail below in section 4.3.

3.2.2 NATIONAL MIGRATION REGIMES

Among all other sectors, legal entry, and recruitment of TCNs in the construction sector also fall mainly under the purview of national legislation. Unlike the guaranteed free mobility of EU citizens, residence and work permit availability of TCNs are limited to categories and routes created by each Member State's immigration policy regime. According to the Directive 2003/109/EC, Member States can limit the number of workers to be granted the right of residence and work at the national level. Therefore, when looking at the legal frameworks that determine the regulations for TCN workers in the construction sector, national migration regimes are undoubtedly the most crucial area. In this respect, each country is free to determine the volume and characteristics of TCN worker supply that they wish to select in their labour market.

As the construction sector requires workers from all skill levels, EU Member States are free to target whichever group of jobs, skills, and occupations that they would like to be supplied by TCN workers. Looking at the past decade's trends, EU Member States have been the most active in legislating migration regulations that can target specific skilled and highly-skilled TCNs – depending on the particular labour market needs of each country (Czaika, 2018).

A recent review study on the assessment methods of the labour market needs for workers in the construction sector in the EU highlighted that the Member State national legislations for governing TCN worker flows often rely on different instruments for identifying areas of shortages, such as focusing on studies on shortage occupations, sectoral analyses, employer surveys, forecast and qualitative analyses (Brucker Juricic et al., 2021: 8). Across the EU, in many European Member States, annual or bi-annual shortage lists are then created with specific quotas, creating a demand-side based immigration regime that allows entry of TCNs into the EU labour markets.

These types of demand-side legal entry into work are also often tied either directly to the employer that hires the worker, or the worker is

allowed only to be employed in the specific sector and occupation through which the immigration occurred (Cerna, 2016). Such reliance on a single employer or a limited employment scheme puts TCN workers in a comparatively precarious and vulnerable position as their status is tightly controlled and monitored. Work-related disputes or job loss could automatically imply the loss of the work and residence status.

However, research and analysis of such limited and precise channels of TCN worker recruitment have been criticised because of the hurdles they generate for both the employers and the workers (Czaika and Parsons, 2017). This narrow form of legal access to employment, particularly in a highly mobile sector that is mostly based on short to medium duration projects, such as the construction sector, makes it difficult to sustain and satisfy the labour market shortages through these kinds of national immigration regimes. Therefore, many have pointed to the risks inherent in such limited legal access routes for workers from all skill levels to create an irregular and precarious employment trend for construction workers. More often, this is shown to occur through TCN workers entering the EU labour market with a different visa but then staying and working because of the lack of a more accessible channel. This puts the workers in a uniquely vulnerable position in terms of work precarity and creates an increasing presence of undeclared work within the EU.

To facilitate some of these recruitment efforts of TCNs, some countries have used bilateral agreements with non-EU countries or made special regulations for workers from certain countries. In 2019, various Member States signed bilateral agreements with third countries, namely Belgium with Morocco, Nigeria and Senegal (mainly involving graduates in the ICT sector); Bulgaria with Georgia; Estonia with Hong Kong; France with Bosnia and Herzegovina, Angola, Georgia, Australia, Kenya, Ghana and Morocco; Lithuania with Ukraine; Malta with Tunisia (for skilled workers); Slovenia with Serbia; plus working holiday agreements signed between Luxembourg and Canada, the Netherlands and Hong Kong and between Sweden and Japan (EMN, 2020). In 2020, Slovakia

also signed a bilateral agreement with Argentina on a Working Holiday Scheme to promote youth mobility for citizens of both countries aged 18–35 to be employed on simplified work permit procedures (EMN, 2021d). Currently, Romania is also in the process of negotiating and finalizing a labour agreement with Nepal, while in the last seven years the government has been approving a quota for the number of foreign workers that they accept in the country per year, which increased from 5500 in 2016 to 100 000 in 2022. In addition, some Member States publish a list of shortage occupations, which means that employers do not need to pass the so-called labour market test to engage third-country national workers in these occupations. The Member States that have such lists include Walloon region in Belgium, Lithuania, Poland, and Slovenia. Below, we present a more detailed account on a select number of Member States and their recent agreements.

The Bulgarian government has signed agreements for the regulation of labour migration with Armenia, Moldova, and Georgia, has approved the texts of the agreements with Albania and Turkmenistan, and is at the final negotiation stages with Ukraine and Belarus, and has received the mandate to negotiate and conclude Bilateral Agreements with Azerbaijan, Kyrgyzstan, and Uzbekistan. These agreements allow certain categories of workers from both parties to work without a work visa in the respective countries (EMN, 2021b).

The Czech government issued regulation No. 556/2020 Coll., in which it sets new quotas for the year 2021 for the Highly Skilled Employee Programme and the Key and Scientific Personnel Programme as well as the Skilled Employee Programme. The quotas for the migration of highly skilled workers were increased by 30% and the quotas for the migration of medium and low skilled labour force were doubled for the citizens of the Philippines and Belarus. Earlier “residual quota” for reception of applications for Employee Cards from citizens of Ukraine, India and Kazakhstan were cancelled, therefore workers from these countries are now allowed to enter the country through the same general economic migration programmes as other TCNs (EMN, 2021c).

Slovenia has two active bilateral agreements with its neighbouring countries: one on the employment of Bosnian nationals (Official Gazette 92/2012, Implementation Protocol 29/2017) and one on Serbian nationals (Official Gazette 38/2019). These agreements distinguish nationals of Bosnia and Herzegovina and Serbia from the rest of the third-country nationals that would like to work in Slovenia by creating a special procedure, which involves the Employment Services of both countries as facilitators of the process of recruitment and favours workers from these countries compared to other TCNs (Vah Jevšnik, Cukut Krilić and Toplak, 2022).

Poland, on the other hand, does not have bilateral agreements in place, but has applied special rules for the so-called entrustment of work for the citizens of six former soviet republics, namely Ukraine, Belarus, Russia, Armenia, Georgia, and Moldova. The access to the Polish market for these workers is based on the Polish Act on Employment Promotion and Labour Market Institutions in conjunction with the Regulation of the Minister of Family, Labour and Social Policy of 8 December 2017 on the countries to whose nationals, certain provisions on the seasonal work permit and on the declaration of entrusting the performance of work to a foreigner shall apply (Journal of Laws 2017.2349). Originally the law allowed Polish employers to apply with expedited procedures (i.e., no work permit application obligation) for the entrustment of work to the citizens of these countries for a temporary period of six months within twelve months, which has been recently revised from six to twenty-four months with the possibility of extending it another twenty-four months as of January 2022 (Kiełbasa et al., 2022).

3.3 REGULATORY FRAMEWORK ON NON-EU POSTED WORKERS' ACCESS TO THE EU MARKET

The posting of workers is regulated through the following regulatory framework:

- Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services;
- Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (Text with EEA relevance); and
- Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').

Third-country service providers and third-country workers are mentioned only in paragraph (20) of the preamble of Directive 96/71/EC:

Whereas this Directive does not affect either the agreements concluded by the Community with third countries or the laws of Member States concerning the access to their territory of third-country providers of services; whereas this Directive is also without prejudice to national laws relating to the entry, residence and access to employment of third-country workers;

As this paragraph indicates, the rules of the Directive respect Member States' rules of access to their territory for service providers from third countries through bilateral agreements concluded between themselves and third countries, and it respects national laws relating to entry and access to employment for workers from third countries. The definitions of the Directive for posted workers and workers

(Article 2) are relevant here because a posted worker is 'a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works'; whereas 'the definition of a worker is that which applies in the law of the Member State to whose territory the worker is posted'. A contradiction could arise here, as any person who normally works in one EU Member State, regardless of their nationality, could be posted from that country, while the understanding of who is a worker depends on the receiving countries legal definitions and could potentially exclude certain categories of third-country nationals who would otherwise be employable in the sending EU country.

And indeed, the question has been raised whether third-country nationals could be posted. The Court of Justice of the EU (CJEU) has addressed this question in a series of cases, e.g., the Vander Elst case, C-91/13 Essent, C-18/17 Danieli, or C-477/17 Balandin. From the first court case, the Vander Elst, the CJEU interpreted the Directive to allow for the posting of TCN workers, who reside and are employed legally in the EU country where they are posted from, without requiring them to have a work permit to provide services in the country where they are posted to. This ruling has been generally accepted by the Member States, although each country has stipulated their own conditions of acceptance (see Mazzeschi, 2014). Differently from other EU countries, Germany requires TCN posted workers to receive the so-called Vander Elst visa prior to being posted to Germany. The Vander Elst visa is a simplified bureaucratic procedure according to which posting undertakings and the third-country workers they intend to post to Germany need to apply for a visa at a German embassy or consular service to be able to provide a service in this country. The CJEU's ruled in C-244/04 Commission v Germany and the subsequent case law, e.g., the Court's judgments in C-168/04 Commission v Austria and C-219/08 Commission v Belgium, that Member States

should no longer request the Vander Elst visa. However, Germany continues to make it a requirement for posted TCNs it receives.

Direct posting from third countries in the frame of the provision of services should technically not be possible without the issuing of a work permit for the workers involved. An exception appears to occur with the workers coming from candidate countries to the European Union. In the process of approximation of their legislation with the EU *Acquis Communautaire*, the countries of Albania, Montenegro, North Macedonia, and Serbia have already transposed the Directive 96/71/EC. While the Directive should enter into force only when these countries become full Members of the European Union, there is already posting happening from North Macedonia and Serbia as a result of a few bilateral agreements that allow workers from these two countries to work, at least temporarily and under certain conditions, in the EU countries with which the agreements are made (Danaj et al., 2019). While the numbers of posted workers from North Macedonia remain in the hundreds per year (Ilijevski and Iloska, 2021), the number of workers posted from Serbia has reached tens of thousands per year (Stanić and Matković, 2021).

While the issue of posting TCNs among Member States is generally permissible under certain conditions, another point of contention has been that of the terms and conditions under which TCN workers are posted and the risk of social dumping. The risk was higher under the rules of Directive 96/71/EC and a few CJEU rulings that stipulated sending country pay rates as the basis for the payment of posted workers. However, Directive (EU) 2018/957 introduced the equal pay principle in paragraph (6) of its Preamble by explicitly not allowing discrimination on grounds of nationality (regardless of whether it is an EU or non-EU nationality), when it comes to equal treatment in general and equal pay in particular between posted workers and locally hired workers:

The principle of equal treatment and the prohibition of any discrimination on grounds of nationality have been enshrined in Union law since the founding Treaties. The principle of equal pay has been implemented through secondary law not only between women and men, but also between workers with fixed term contracts and comparable permanent workers, between part-time and full-time workers and between temporary agency workers and comparable workers of the user undertaking. Those principles include the prohibition of any measures which directly or indirectly discriminate on grounds of nationality. In applying those principles, the relevant case-law of the Court of Justice of the European Union is to be taken into consideration.

Except for the posting directives, the posting of workers in the EU is also regulated via the Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems. Based on Article 12 of the Regulation, a posted worker continues to be subject to the legislation of the sending Member State during the time of their posting (for up to 24 months), whereas Article 13 stipulates that persons with economic activity (employment and/or self-employment) in two or more EU countries, will be subject to the legislation of the country where a substantial part of their activity takes place or where their business is registered.

According to Regulation 883/2004, the country of residence is the fundamental criteria for entitlements related to social security, which included TCNs resident in any EU Member State. The Regulation replaced earlier EU regulations such as (EEC) No 1408/71 and Regulation (EEC) No 574/72, which, although otherwise repealed, remain in force for the purposes of Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72¹¹ to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality. These two regulations

11 Repealed by Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, but remains in force and shall continue to have legal effect for the purposes of Council Regulation (EC) No 859/2003

(883/2004 and 859/2003) in combination with any bilateral agreements individual Member States might have in force with various third countries provide the legal basis for the social security coverage and coordination for third-country nationals residing and working in the EU.

The review of the posting and other related regulation indicates that for third-country nationals to be posted, they should already be residing and working in an EU Member State. Without a work permit from an EU country or alternatively a work visa, they could not be posted from one EU country to another. And in the case of Germany, regularly employed third-country nationals would need a Vander Elst visa to be posted from their EU country of residence to Germany.

4 QUANTITATIVE ANALYSIS

This chapter presents a quantitative analysis of the number and characteristics of third-country construction companies, construction workers, and posted construction workers in the EU using cross-nationally comparable data.

The opening section (5.1) provides insight into the presence and role of non-EU owned enterprises in the construction sector across Member States of the EU, including information on their main countries of residence. It also offers a statistical assessment of non-EU companies' access to the EU market through participation in public procurement tenders by

analysing publicly available data on contract award notices with a focus on construction. Section 5.2 presents results from EU-LFS data on the number, and demographic and work characteristics of third-country nationals (TCN) employed in the EU construction sector. Finally, section 5.3 closes the chapter with an analysis of administrative data on TCN workers posted across the EU.

At the start of each section, the reader will find a text box with key concepts and definitions related to the topic of the analysis and the data used.

4.1 NON-EU COMPANIES IN THE EU CONSTRUCTION SECTOR

4.1.1 NON-EU CONTROLLED COMPANIES IN THE EU CONSTRUCTION SECTOR

The analysis presented in this section draws on data collected by Eurostat as part of the structural business statistics (SBS) framework and pertaining to the so-called Inward FATS (Foreign Affiliates Statistics) which provides information on foreign-controlled enterprises in the European economy. The main statistical concepts and definitions related to the measurement of foreign (non-EU) controlled companies and their use in this analysis are presented in Text Box 1. The analysis is restricted to the construction sector only, using the NACE Rev.2 classification (see Annex 1 for more detail on this).

In 2018, the latest year for which data are available, enterprises with a foreign ownership accounted for 0.5% of all enterprises in the

construction sector in the EU (Figure 1). Almost one-third (29.1%) originated from enterprises whose owners were located outside the EU.

While the presence of non-EU owned enterprises measured as a share of all enterprises in the construction sector in the EU was very small (amounting to just 0.1% in 2018), their weight appeared to be somewhat larger when considering economic and employment characteristics. As shown in Table 3, non-EU owned enterprises accounted for 1.2% of turnover generated by the construction sector in the EU and 1.4% of value added. Their share of the total number of persons employed in the EU construction sector was 0.7%. Considering only foreign owned construction enterprises, where the share of non-EU enterprises was 29.1%, non-EU enterprises were responsible for 15.4% of turnover, 19.0% of value added and 17.6% of persons employed.

**TEXT BOX 1 DEFINITION AND MEASUREMENT
OF FOREIGN (NON-EU) CONTROLLED COMPANIES.**

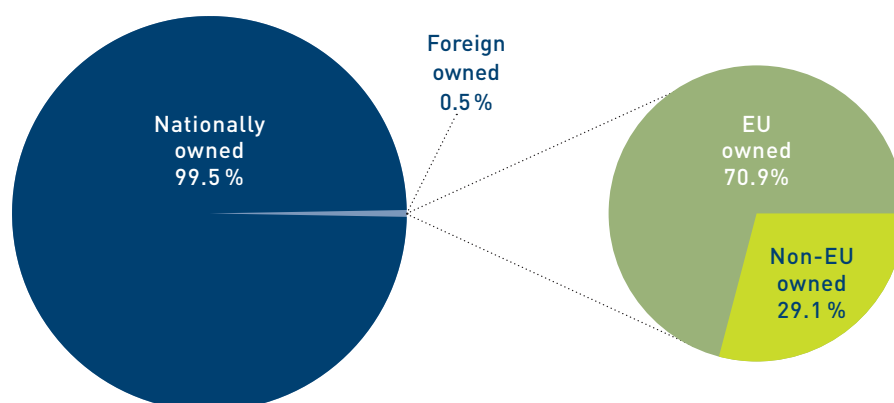
In the framework of Inward FATS, a *foreign controlled enterprise* is defined as an enterprise that is resident in a country over which another entity who is resident in a different country has control. *Control* is defined as the ability to determine the general policy of an enterprise by choosing appropriate directors, for instance. *Control* is determined by the controlling entity owning more than half of the voting shares or otherwise controlling more than half of shareholders' voting power in the controlled enterprise. For the sake of simplicity, in this report, we use the term 'owner' or 'ownership' instead of the more technically correct term of 'control', but the underlying concept remains the location of control.

In line with the aforementioned concepts and definitions, when we refer to the terms below, we mean the following:

- **Foreign owned enterprise:** controlled by an entity located in another country.
- **Non-EU owned enterprise:** controlled by an entity located in a non-EU country.
- **EU-owned enterprise:** controlled by an entity located in an EU country other than the country where the controlled enterprise is located.
- **Nationally owned enterprise:** controlled by an entity located in the same country where the controlled enterprise is located.

Throughout the report we use the terms 'enterprise' and 'company' interchangeably.

FIGURE 1 SHARE OF ENTERPRISES IN THE CONSTRUCTION SECTOR BY OWNERSHIP IN THE EU (%), 2018



Source: Own calculations
based on Eurostat Database:
FATS inward (fats_g1a_08)

TABLE 3 KEY STATISTICS OF FOREIGN OWNED ENTERPRISES IN THE EU CONSTRUCTION SECTOR, 2018

	FOREIGN OWNED	EU OWNED	NON-EU OWNED
Number of enterprises	13,664	9,691	3,973
As a share of all construction enterprises (%)	0.5	0.3	0.1
As a share of foreign-owned construction enterprises (%)		70.9	29.1
Turnover (million euro)	106,473.1	90,099.2	16,374.1
As a share of all construction enterprises (%)	7.6	6.4	1.2
As a share of foreign-owned construction enterprises (%)		84.6	15.4
Value added (million euro)	421,239.1	27,956.5	6,574.1
As a share of all construction enterprises (%)	7.6	6.1	1.4
As a share of foreign-owned construction enterprises (%)		81.0	19.0
Number of persons employed	422,578	348,263	74,315
As a share of all persons employed in construction (%)	3.8	3.1	0.7
As a share of persons employed by foreign-owned construction enterprises (%)		82.4	17.6

Source: Own calculations based on Eurostat Database: FATS inward, (fats_g1a_08)

Notes: Turnover refers to market sales of goods and services supplied to third parties, including non-deductible taxes, duties, and charges. Value added refers to gross income from operating activities after adjusting for operating subsidies and indirect taxes rebates and discounts. Number of persons employed refers to average yearly headcount of persons employed and paid by the observation unit including unpaid workers and persons absent for a short time. Data refer to 2017 for turnover and value added and to 2016 for persons employed.

Number of non-EU owned construction companies across the EU

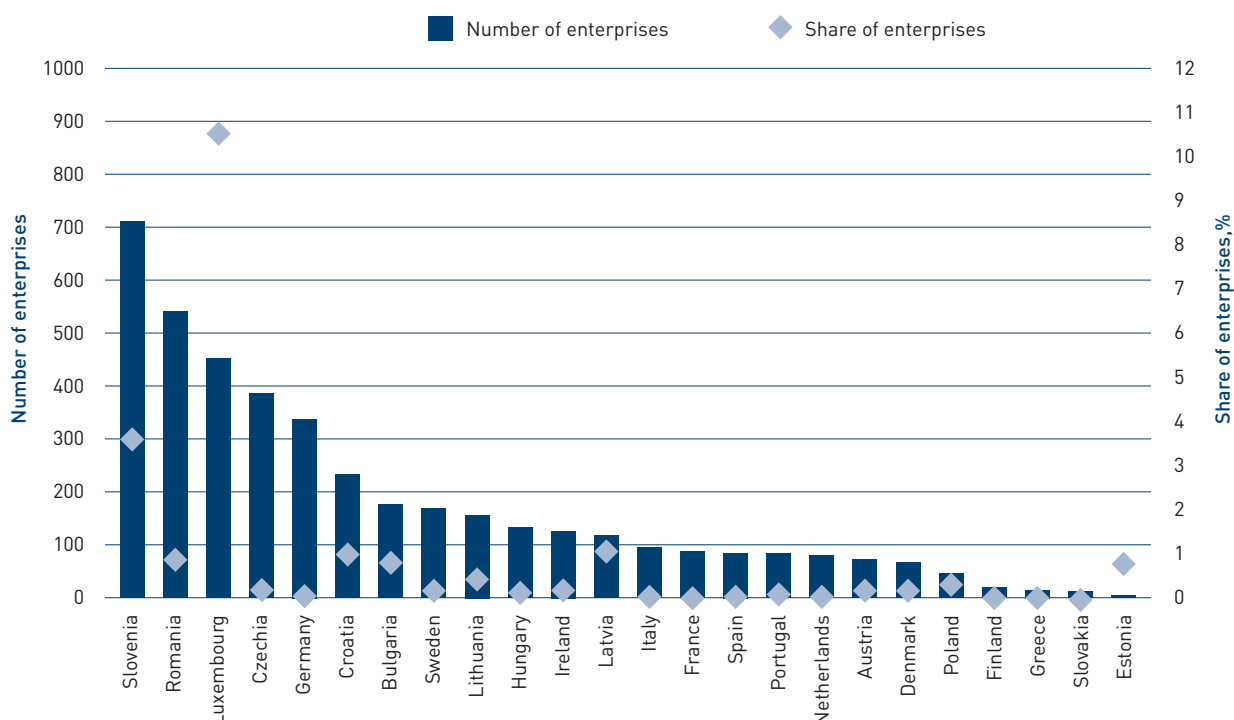
Across the EU, the country with the highest number of non-EU owned construction enterprises in 2019, was Slovenia where these companies also had a considerable share in the total national construction economy (3.6%) relative to most other EU countries (Figure 2). Luxembourg stands out with the highest share of 10.6%. In Romania, Croatia, Bulgaria, and Latvia and Estonia, they accounted for around 1.0% of construction companies, while in the remaining countries their share was well below 1.0%.

Figure 3 shows the share of EU and non-EU companies among companies with a foreign owner. The share of foreign owned construction companies with an ownership outside the EU

was highest in Slovenia with 67.9%, followed by Germany and Lithuania (48.2% and 42.7% respectively), and the Czech Republic, Croatia, Latvia, Bulgaria, and Luxembourg (all over 30%). Their share was lowest (below 12%) in Finland, Greece, France, and Slovakia. Apart from Slovenia, in all EU countries, the majority of foreign owned construction companies had an owner located in another EU Member State.

Trends in the share of foreign non-EU owned companies over time (presented in Annex 2, Table A1) indicate smaller changes in most EU countries. Notable exceptions include the Czech Republic and Lithuania which recorded a significant increase between 2013 and 2019, and Slovenia where the share of non-EU companies among the foreign owned decreased during the same period.

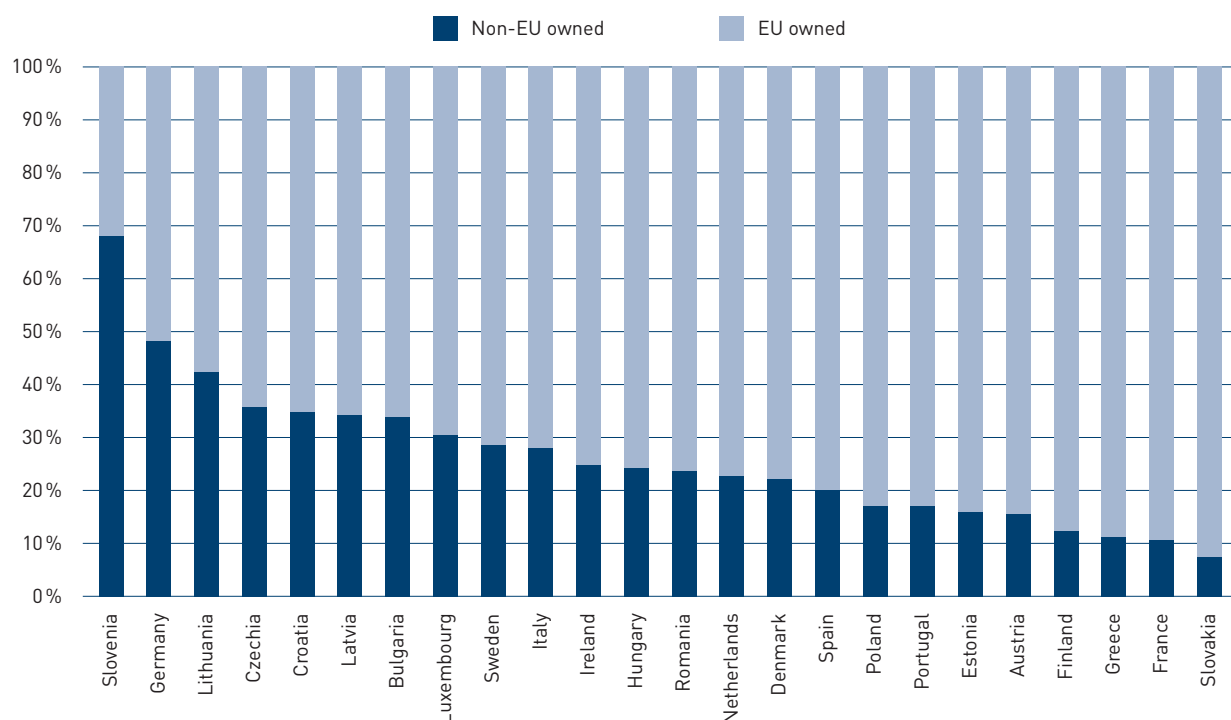
FIGURE 2 NUMBER AND SHARE OF NON-EU OWNED ENTERPRISES IN THE NATIONAL CONSTRUCTION SECTOR (%), 2019



Source: Own calculations based on Eurostat Database: FATS inward (fats_g1a_08)

Notes: No data available for Belgium, Cyprus, and Malta. Data for Greece refer to 2017. In the case of Estonia and Poland, the number (and share) of companies is likely to be significantly underestimated as these countries include only larger enterprises.

FIGURE 3 SHARE OF EU AND NON-EU OWNED ENTERPRISES IN FOREIGN OWNED CONSTRUCTION (%), 2019



Source: Own calculations based on Eurostat Database: FATS inward (fats_g1a_08)

Notes: No data available for Belgium, Cyprus, and Malta. Data for Greece refer to 2017.

TABLE 4 NON-EU OWNED CONSTRUCTION ENTERPRISES – VALUE ADDED AND PERSONS EMPLOYED (%), 2019

	VALUE ADDED		PERSONS EMPLOYED	
	In total construction	In foreign owned construction	In total construction	In foreign owned construction
Belgium	3.1	36.4	1.0	21.4
Bulgaria	1.1	20.8	0.8	23.0
Czechia	0.7	5.9	0.4	6.5
Denmark	1.4	18.1	1.0	16.6
Germany	1.4	23.2	0.8	20.4
Ireland	4.6	44.2	3.0	42.6
Greece	0.0	0.6	0.0	3.7
Spain	1.2	39.1	0.6	29.2
France	0.5	20.1	0.3	22.2
Croatia	2.4	36.0	1.6	36.5
Italy	0.8	32.2	0.4	31.5
Latvia	0.9	10.9	0.7	12.8
Lithuania	1.3	13.7	1.2	20.5
Luxembourg	5.5	17.5	5.1	16.5
Hungary	3.3	28.7	0.5	12.2
Malta	0.4	45.0	:	:
Netherlands	1.1	14.1	0.7	12.1
Austria	1.3	24.1	0.8	20.3
Poland	2.7	13.1	1.3	10.3
Portugal	1.2	16.3	1.0	24.8
Romania	2.4	19.0	0.9	15.4
Slovenia	4.4	48.1	5.1	61.8
Slovakia	2.5	14.2	0.5	9.5
Finland	1.3	14.9	1.2	14.5
Sweden	2.3	32.3	2.0	31.6

Source: Own calculations based on Eurostat Database: FATS inward (fats_g1a_08)

Notes: No data available for Estonia and Cyprus. Data for Malta and Slovenia refer to 2018. Data for Greece refer to 2017.

Value added and persons employed

In 2019, the country that recorded the highest share of non-EU ownership in the construction sector in terms of value added was Luxembourg where non-EU companies accounted for 5.5% of total value added generated in the sector (Table 4). In Slovenia, 48.1% of value added generated by foreign owned construction companies was accounted for by non-EU companies. Considering the share of persons employed by non-EU owned construction companies, the country with the largest such share was Slovenia. Non-EU owned companies there accounted for 5.1% of off all persons employed in construction and for 61.8% of persons employed by foreign owned construction companies.

Table 5 presents the top five ranked EU Member States with the largest share of non-EU owned companies in construction based on the number, value added, and persons employed. In the first 3 columns, countries are ranked according to the share of said characteristics in the country's total construction. The second three columns pertain only to foreign owned construction, which is country rankings are based on the number, value added, and persons employed of non-EU owned construction companies as a share of foreign owned construction companies in the country.

There are two main observations to be made based on the rankings presented in Table 5. Firstly, the characteristic on which basis the importance of non-EU owned companies is

assessed across Member States matters. For instance, Croatia ranks third when measured by the number of construction companies (in total construction), but only fifth based on persons employed and has a lower position in the full country ranking (8th) in terms of value added. In contrast, Ireland ranks relatively low (11th) among EU countries based on the number of companies, but its position in the top five in terms of value added and persons employed suggests that the size and weight of non-EU owned companies in the construction sector is larger in Ireland than in most EU Member States. Secondly, country rankings differ whether the total or only the foreign construction is considered. The difference stems from the former measuring the importance of non-EU owned companies in relation to all construction companies in the country including those nationally owned. Taking Luxembourg and Lithuania as examples, non-EU owned companies in Luxembourg accounted for 10.6% of all construction companies (in terms of numbers) which is the highest in the EU, as opposed to Lithuania where the corresponding share was only 0.5%, which is reflected in their rankings (1st vs 7th). In Luxembourg, foreign owned companies accounted for a considerably higher share of all construction companies (33%) than in Lithuania (1%), but within these non-EU owned companies dominated much more in Lithuania (43%) than in Luxembourg (31%) resulting in Lithuania's higher position in the ranking (3rd vs 8th for Luxembourg).

TABLE 5 EU MEMBER STATES WITH THE LARGEST SHARE OF NON-EU OWNERSHIP IN TOTAL AND FOREIGN OWNED CONSTRUCTION, 2019

Number	Value added	Persons employed	Number	Value added	Persons employed
IN TOTAL CONSTRUCTION			IN FOREIGN OWNED CONSTRUCTION		
1. Luxembourg	1. Luxembourg	1. Luxembourg	1. Slovenia	1. Slovenia	1. Slovenia
2. Slovenia	2. Ireland	2. Slovenia	2. Germany	2. Malta	2. Ireland
3. Latvia	3. Slovenia	3. Ireland	3. Lithuania	3. Ireland	3. Croatia
4. Croatia	4. Hungary	4. Sweden	4. Czechia	4. Spain	4. Sweden
5. Romania	5. Belgium	5. Croatia	5. Croatia	5. Belgium	5. Italy

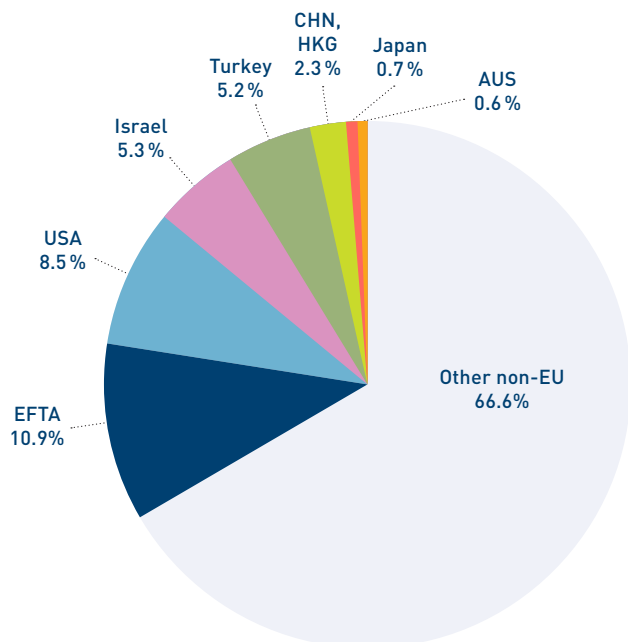
Non-EU owned enterprises in EU construction by country of ownership

Information on the main countries of ownership of non-EU owned construction enterprises in the EU is presented in Figure 4 below. It is important to note that Eurostat currently provides information on foreign ownership origin by detailed economic sector only for a select number of countries that are deemed to be the most relevant. For companies with a non-EU ownership, these include the four EFTA countries (Iceland, Liechtenstein, Norway, Switzerland), the United States (USA) Canada (CAN), Israel, Turkey, the Russian Federation, China (CHN), Hong Kong (HKG), Japan, Australia (AUS) and New-Zealand (NZL).¹² Moreover, data for a number of foreign owners are not reported by Eurostat due to confidentiality. The number of foreign owners is therefore likely to be under-estimated which also affects their order of importance.¹³

Looking at data at the level of EU Member States (Figure 5) reveals that there was large variation in the number of non-EU owners reported by the different countries in 2019:

- EFTA countries, mainly Norway and Switzerland, accounted for more than 70% of all non-EU owned construction companies in Sweden and Denmark. Their share was also high (over 50%) in Austria. In the case of Sweden, most of these companies had an owner in Norway, while in Denmark ownership from Norway and Switzerland was equally represented. Companies with an ownership in Switzerland dominated in Austria. There was also a relatively high share of companies with owners from Switzerland in Italy and France.
- The United States was the most important non-EU owner in the Netherlands and Finland with around 40%, as well as in France, Italy, Hungary, Spain and Poland.

FIGURE 4 NON-EU OWNED CONSTRUCTION ENTERPRISES BY COUNTRY OF OWNERSHIP IN THE EU (%), 2018



Source: Own calculations based on Eurostat Database: FATS inward (fats_g1a_08)

Notes: No EU-level aggregate is available for Canada, New Zealand, Norway, and the Russian Federation. EFTA refers to Iceland, Liechtenstein, and Switzerland. Companies controlled by Offshore Financial Centres (OFCs) are not included. For easier interpretation, some of the countries are grouped together (i.e., EFTA, CHN and HKG). The category "Other non-EU" contains the remaining non-EU owned construction companies with no information about the country of ownership.

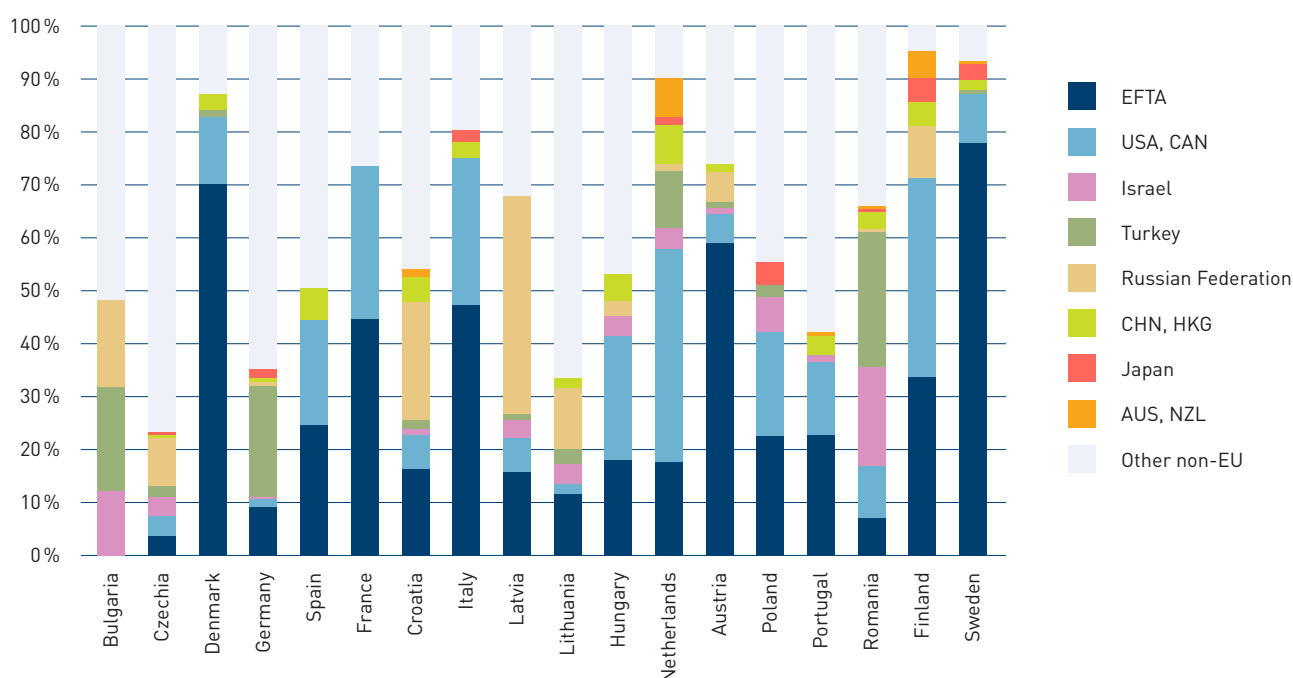
¹² Due to the limited level of breakdown by country of ownership, it is not possible to account for the presence of Developed Asia (e.g., India) or Gulf Cooperation Countries (e.g., United Arab Emirates, Qatar, Saudi Arabia) whose increasing business acquisition activities in the EU have been noted in the literature (European Commission, 2019).

¹³ Data confidentiality affects not only the level of detail at which information by country of ownership can be provided, but also trends over time. It is not possible to present information on trends by country of ownership neither in terms of the number of companies nor by other characteristics (e.g. value added, persons employed) even at the EU level (see Table A3 in Annex 2).

- Construction companies with owners located in the Russian Federation comprised a considerable share of non-EU owned companies in the construction sector in Latvia (41%), as well as Croatia (22%), Bulgaria (16%) and Lithuania (12%).
- The number and share of Turkish-owned companies were highest in Romania (26%), Germany (21%) and Bulgaria (20%), followed by the Netherlands with 11%.
- Owners from Israel accounted for 19% of non-EU owned companies in Romania and 12% in Bulgaria.
- In 2019, the greatest presence of companies owned by China and/or Hong-Kong were observed in the Netherlands (7%) and Spain (6%), followed by Hungary, Finland, Croatia and Portugal (5%) and to a lesser extent in Denmark, Italy, and Romania.
- Finally, Japanese owned construction companies were present in Poland and Finland mainly, and there was also a relatively small share of Australian companies in the Netherlands and Finland.

Geographical proximity, common language, and cultural similarities (e.g., commonalities in management and working practices, administrative, legal, and educational systems) play a significant role in determining the distribution of ownership (European Commission, 2001). For instance, it is not surprising to find the large presence of EFTA owners in the Nordic countries of Denmark and Sweden or in Austria, France, and Italy. Proximity and historical ties are likely to explain the higher number of Turkish owned companies in Romania and Bulgaria or of Russian owned companies in Latvia. The greater presence of USA owned companies is likewise not unexpected considering its strong economic and trade relations with and their access to the EU market in general. Beyond these more qualitative-type factors, decisions of foreign entities to establish their presence are greatly influenced by economic criteria, such as country specificities regarding the national regulatory context, quality of infrastructure, human capital, labour costs and tax rates, which can facilitate non-EU companies' access to these markets (European Commission, 2001; 2019). As Figure 4 and Figure 5 show,

FIGURE 5 NON-EU OWNED CONSTRUCTION ENTERPRISES BY COUNTRY OF OWNERSHIP (%), 2019



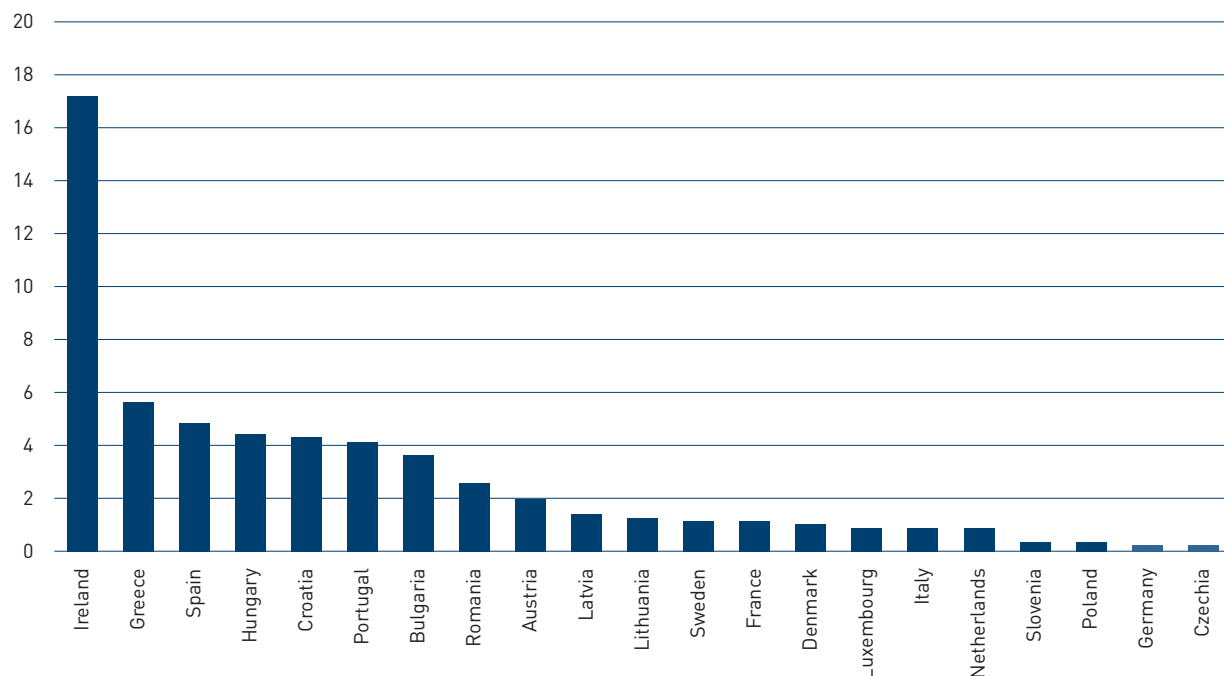
Source: Own calculations based on Eurostat Database: FATS inward (fats_g1a_08)
Notes: See Figure 4.

there is considerable number of non-EU companies whose country of origin is not known (see category 'Other non-EU') in every Member State. Although based on the presented data it is not possible to accurately capture the extent to which China and Hong-Kong are present in the construction markets of EU Member States, their growing influence – including through acquiring ownership – in specific economic sectors, such as manufacturing, had previously been documented (European Commission, 2019).

Construction companies in the EU controlled by Offshore Financial Centres

In addition to the above discussed countries of origin, Eurostat provides data on foreign companies controlled by Offshore Financial Centres (OFCs).¹⁴ The share of such companies among the foreign owned EU construction varied greatly among the Member States (Figure 6). Ireland recorded by far the largest share of these companies (17.2%).¹⁵ In Greece, Spain, Hungary, Croatia, Portugal and Bulgaria, OFC controlled companies accounted for between 6% and 4% of foreign owned construction companies. In the remaining countries, the figure varied between 3% in Romania and 0.1% in the Czech Republic.

FIGURE 6 SHARE OF FOREIGN OWNED CONSTRUCTION ENTERPRISES CONTROLLED BY OFCs (%), 2019



Source: Own calculations based on Eurostat Database: FATS inward (fats_g1a_08)

Notes: No data available for Cyprus and Malta. Belgium, Estonia, Slovakia, and Finland reported no OFC controlled companies in construction. Data for Greece refer to 2017.

¹⁴ Defined according to IMF (2000) available at <https://www.imf.org/external/np/mae/oshore/2000/eng/back.htm>

¹⁵ In Ireland, these companies accounted for 28.5% of value added generated and 36.5% of persons employed by foreign owned companies in the Irish construction sector.

4.1.2 NON-EU COMPANIES IN EU PUBLIC PROCUREMENT MARKETS

Another way of assessing third-country companies' access to and activities in the European construction labour market is to look at contracts awarded through public procurement. In this section, we analyse data on published public contract award notices from the TED database covering the period 2011–2020 to provide information on the number of contracts awarded, the value of the contracts, as well as other characteristics such as the type of public tendering procedure used. Our analysis is restricted to contracts awarded to companies from outside the EU for execution of construction work/projects (i.e., excluding other types of contracts related to supplies or services).

Based on data from contract award notices published between 2011 and 2020, there were 347 contracts awarded to companies located outside the EU for construction work in a total amount of 8.8 billion euro. As can be seen in Table 6, both the number of contracts and the

awarded value amount increased over time. The number of awarded contracts varied between 17 in 2015 to 65 contracts in 2019. In terms of value, the largest amount was awarded in 2020 (3.1 billion) and the lowest in 2011 with 'only' 19 million euro.

Of all the contracts awarded to non-EU companies for construction during 2011–2020, 67 were awarded to a group, 98 out of the 347 contracts involved subcontracting and 81 received financing from EU funds (see Table A2 in Annex 2). Open

TEXT BOX 2 DEFINITION AND MEASUREMENT OF NON-EU COMPANIES IN PUBLIC PROCUREMENT

The TED dataset on contract award notices provides information on the country of the winning tenderer, which is the variable we rely on to identify contracts awarded to non-EU companies. The data mainly cover contracts which are above the EU procurement threshold level and are required to be published on TED, but it also includes a non-negligible number of below threshold contracts awarded.

TABLE 6 NUMBER AND VALUE OF CONTRACTS AWARDED TO NON-EU COMPANIES, 2011–2020

	NUMBER OF CONTRACTS AWARDED	AWARDED VALUE (MILLION EURO)
2020	45	3,094.1
2019	65	2,213.2
2018	46	1,742.4
2017	36	309.6
2016	26	326.6
2015	17	284.2
2014	33	270.2
2013	34	250.0
2012	23	275.8
2011	22	19.0
Total	347	8,785.1

Source: TED Contract award notices 2011–2020 (csv subset)

Notes: Data refer to contracts awarded to a company located outside the EU (including EFTA countries). It also includes contracts awarded to a non-EU company as part of a group (there were 67 such contracts awarded during the period 2016–2020). As no information is available how the value is divided between the group the whole value amount is used. The awarded value of the contracts is expressed in million euro (excluding VAT).

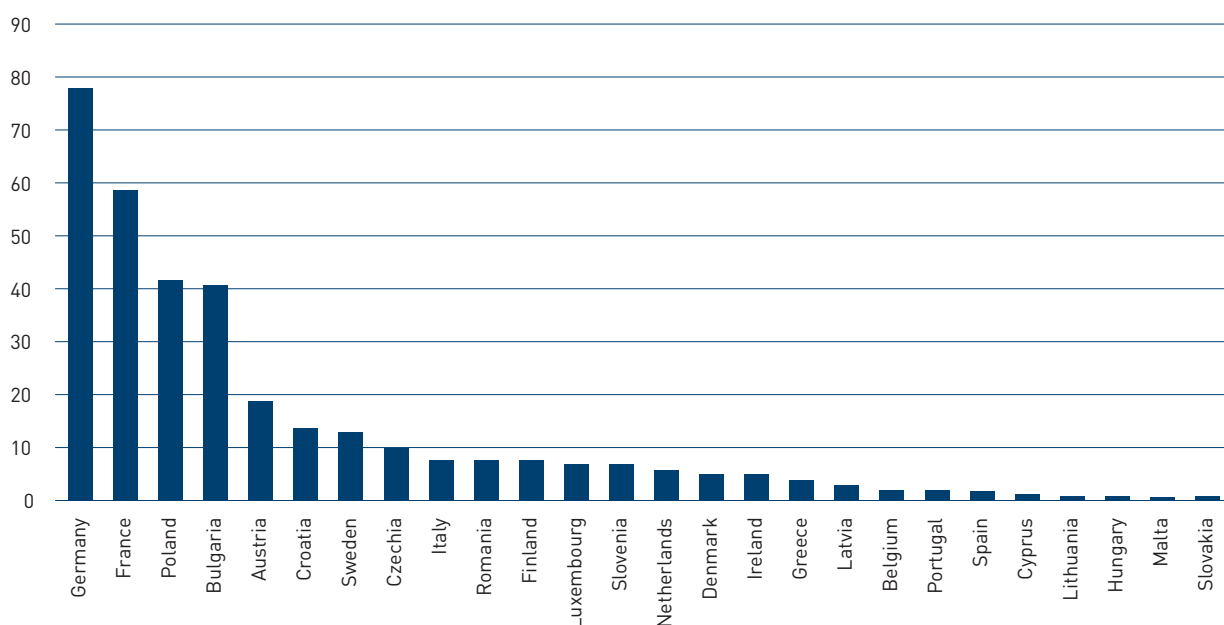
procedure (i.e., when anyone may submit a full offer) was the most frequent type of public tendering procedure used. 69% of contracts were awarded following such procedure (Table A3). Contracts with a competitive negotiated procedure accounted for 21% of all contracts awarded and 7% had a restricted procedure.¹⁶

Number and value of contracts awarded by EU Member State

Looking at the number of contracts awarded across the EU between 2011 and 2020 reveals large variation between EU Member States. The country with the largest number of awarded contracts was Germany with 78 contracts, followed by France (59), Poland (42) and Bulgaria (41). In the remaining countries, the number ranged between 19 in Austria to 1 in Spain, Cyprus, Lithuania, Hungary, Malta, and Slovakia. Information about the number and value of contracts awarded in each year by country is provided in Table A5 in Annex 2.

Although Germany awarded the most contracts (almost twice as many as in the case of Poland), these were lower in their value than in a number of EU Member States. Contracts awarded by Poland had by far the highest total amount with around 5 billion euro, followed by Bulgaria (close to one and half billion). The awarded value was also substantial in Croatia and Romania amounting to between 800-700 million in total. Slovenia awarded a relatively low number of contracts (7 over the period under observation), but three of these were large in value: 98 million to a Turkish company in 2020, 53 million to a Russian-Slovenian consortium in 2019 and 46 million to a company from Bosnia and Herzegovina in 2016. Another example is Portugal who awarded only two contracts over the period 2011–2020, but one of these was in the value of 47 million to a company in China for construction work for electricity power lines. In ten out of the 26 countries, the total value of awarded contracts did not exceed 10 million including Finland, Ireland Spain, and Slovakia, where the amount was less than 1 million euro.

FIGURE 7 NUMBER OF CONTRACTS AWARDED BY EU MEMBER STATES BETWEEN 2011 AND 2020



Source: TED Contract award notices 2011–2020 (csv subset)

Notes: See Table A5. Data for Estonia are not presented as there were no contracts awarded to non-EU companies for construction during the 2011–2020 period.

¹⁶ In competitive negotiated procedures, anyone can participate, but only those that are pre-selected are invited to submit initial tenders and to negotiate. When the procedure is restricted, it means that anyone may ask to participate, but only those who are pre-selected can submit tenders.

TABLE 7 EU MEMBER STATES GROUPED BY VALUE AWARDED BETWEEN 2011 AND 2020

<100 million		Between 10-50 million		Between 1-10 million		>1 million	
PL	5,025.74	PT	47.00	LV	9.10	FI	0.36
BG	1,430.34	DK	41.06	CY	5.00	IE	0.20
HR	799.41	MT	38.90	AT	3.83	ES	0.03
RO	707.56	LT	38.02	GR	3.60	SK	0.02
SI	203.58	NL	31.84	HU	3.45		
CZ	123.46	LU	23.28	IT	1.50		
DE	111.86	FR	17.10				
SE	106.69	BE	12.16				

Source: TED Contract award notices 2011–2020 (csv subset).
Notes: See Table A6.

Number and value of contracts awarded to non-EU companies by region

Information on the location of the companies to whom contracts were awarded during 2011–2020 is presented in Table 8. For reasons of practicality, countries are grouped by economic area (e.g., EFTA) or main geographical location. The only two country specific categories refer to the US and Canada, and China (including Hong Kong). The largest number of contracts were awarded to companies located in an EFTA country (mostly to Switzerland and Norway), followed by European countries outside the EU (e.g., Albania, Serbia, North Macedonia, Ukraine, Moldova, Russia). The region with the third highest number of contracts awarded was Asia (China and Hong Kong excluded).

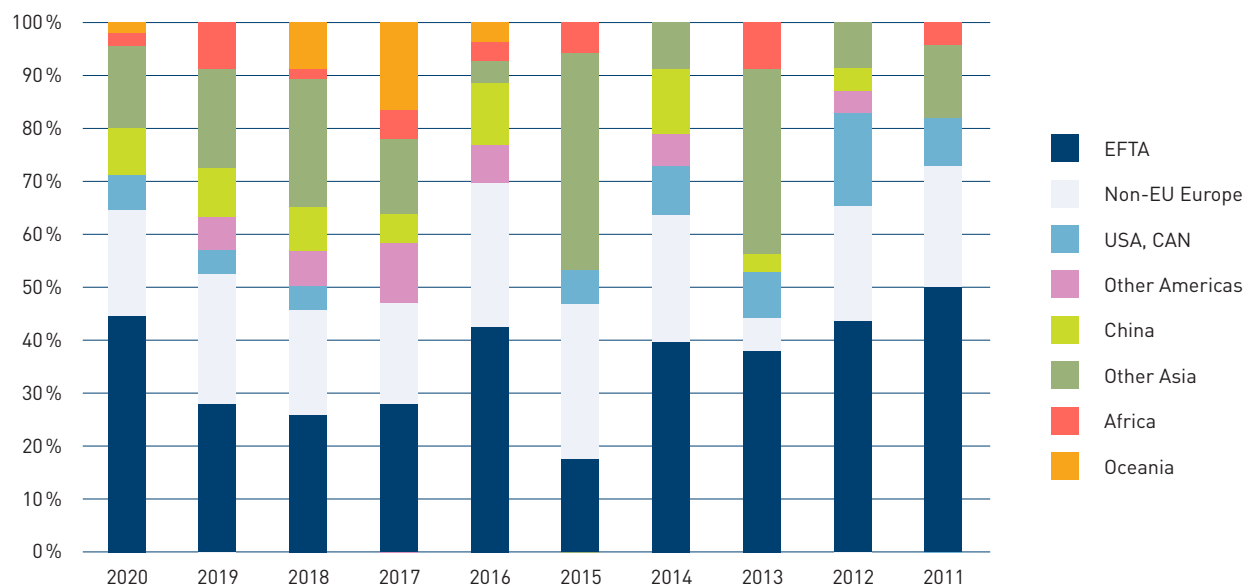
Companies located in the US or Canada had together 21 contracts awarded to them. However, the highest awarded value during the said period went to companies in Asia in a total of 6.6 billion euro of which 1.9 billion was to China (and Hong Kong) and 4.7 billion to other Asian countries, mainly to companies in Turkey, South Korea, and Japan. While companies established in EFTA countries accounted for 'only' 1.4 billion euro of the total 8.8 billion awarded to non-EU companies during 2011–2020, the figure should be interpreted with caution. Information regarding the amounts of the contracts awarded were not always reported in the data and this was particularly the case for those awarded to companies from EFTA countries.

TABLE 8 NUMBER OF CONTRACTS AND VALUE AWARDED (MILLION EURO) BETWEEN 2011 AND 2020 BY REGION

	EFTA	NON-EU EUROPE	USA CAN	OTHER AMERICA	CHINA	OTHER ASIA	AFRICA	OCEANIA
No. of contracts	121	73	21	16	25	63	16	12
Awarded value	1,430.6	508.8	95.5	80.5	1,952.5	4,693.2	7.0	17.1

Source: TED Contract award notices 2011–2020 (csv subset)
Notes: See Table A7. Data for China includes Hong Kong. The group "Other Asia" refer to all Asian countries other than China and Hong Kong. "Other America" includes countries of Latin America.

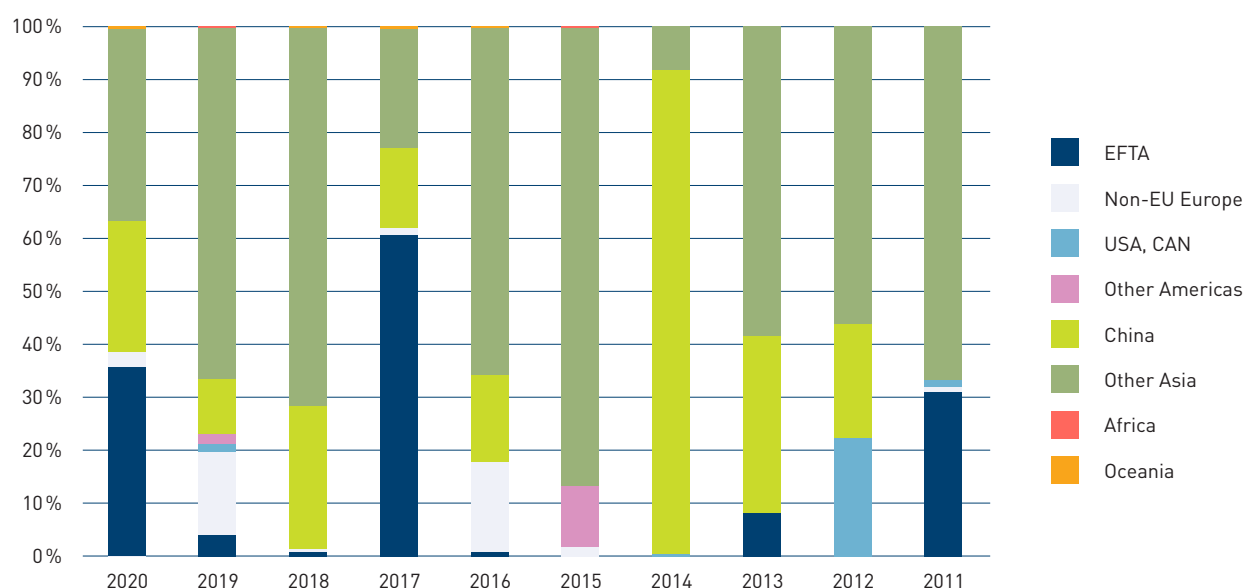
FIGURE 8 NUMBER OF CONTRACTS AWARDED BY REGION, 2011 – 2020



Source: TED Contract award notices 2011–2020 (csv subset),

Notes: See Table A7. Data for China includes Hong Kong. The group "Other Asia" refer to all Asian countries other than China and Hong Kong. "Other America" includes countries of Latin America.

FIGURE 9 AWARDED VALUE BY REGION, 2011 – 2020



Source: TED Contract award notices 2011–2020 (csv subset),

Notes: See Table A8. Data for China includes Hong Kong. The group "Other Asia" refer to all Asian countries other than China and Hong Kong. "Other America" includes countries of Latin America.

The value of awarded contracts was substantially lower for the US and Canada (95.5 million) as well as for Latin America, and very small for Africa and Oceania.¹⁷

When looking at the number and value of awarded contracts in each year by region, presented in Figures 8 and 9, no overall pattern emerges. The figures tend to fluctuate greatly over time.

17 In Latin America, the main countries concerned were Venezuela, Suriname and Caribbean islands (e.g. Bermuda, Virgin Islands, Dominica). In Africa, countries included South Africa, Algeria, Burundi, Benin, Ghana, Botswana, DRC, CAF, Djibouti, Gambia, Tanzania, Uganda, and Somalia, while for Oceania, Australia and a few Pacific Island nations, however the amounts tended to be very small.

Contracts awarded to companies in China

Between 2011 and 2020, there were 25 contracts awarded to a company located in China or Hong- Kong for construction projects in a total value of 1.9 billion euro. The Table below lists all the contracts awarded during this period by year with information on the 'buyer' (country which awarded the contract), the location of the company (or group of companies) that won the contract and the awarded value. The country awarding the largest number of contracts was Poland (16 out of 25), followed by Germany (3) and Greece (2). Cyprus, Portugal, Croatia, and Romania each had one contract awarded by them. In most cases, the contract was awarded to a company located in China. Two contracts went to a company in

Hong Kong and there were five contracts won with a company (or companies) from China being part of a consortium (two of which were led by China). The contract with the highest value was awarded by Poland in 2020 in the amount of 757.6 million euro. The total value of contracts awarded by Poland to companies in China between 2011 and 2020 amounted to 1.3 billion euro.

Altogether, 13 of the 25 contracts awarded involved subcontracting and 8 related to a project that had financing through EU funds. Regarding the type of procurement procedure, open procedure was the most frequently used (in 13 out of 25) (see Table A10 in Annex 2).

CONTRACTS AWARDED BY YEAR, AWARDING COUNTRY, RECIPIENT, AND VALUE (MILLION EURO), 2011–2020

YEAR	AWARDING COUNTRY	RECIPIENT	VALUE
2020	Cyprus	China-China-Greece-China	5.0
2020	Germany	Hong Kong	0.1
2020	Germany	Hong Kong	1.8
2020	Poland	China-China-Poland	757.6
2019	Greece	Greece-China	0.2
2019	Greece	Greece-China	0.1
2019	Poland	China	137.0
2019	Poland	China	27.3
2019	Poland	China	18.8
2019	Portugal	China	47.0
2018	Croatia	China	345.4
2018	Poland	China	33.9
2018	Poland	China	18.7
2018	Poland	Poland-Poland-China	69.7
2017	Poland	China	18.0
2017	Poland	China	29.0
2016	Poland	China	0.8
2016	Poland	China	17.2
2016	Poland	China	35.5
2014	Germany	China	:
2014	Poland	China	1.5
2014	Poland	China	25.6
2014	Romania	China	219.5
2013	Poland	China	83.4
2012	Poland	China	59.5

Source:
TED Contract award
notices 2011–2020
(csv subset).
Notes: See Table A9.

4.2 NON-EU CONSTRUCTION WORKERS IN THE EU LABOUR MARKET

The analysis presented in this section draws on data collected by Eurostat as part of the European Labour Force Survey (EU-LFS) data from 2010 until 2020 for 26 EU Member States where relevant data is available.¹⁸

When looking at the period 2010–2020, as shown in Table 9, while a non-negligible share of the workforce in the construction sector is composed of foreign workers, there has not been a steady growth of TCN workers when we look at the EU average in this period. In fact, when looking at the period after 2010–2011, we observe a decline in the share of TCN workers in the EU construction sector. From 2014 onwards, however, we can follow an increasing trend in the percentage of TCN workers, reaching its highest level in our latest data observation point in 2020. The trends of EU/EFTA national foreign workers, on the other hand, have been relatively

stable in this period, except for the recent drop in 2019–2020. While overall, when we look at the construction sector, the share of TCNs seems modest compared to the native workers, the

TEXT BOX 3 DEFINITION AND MEASUREMENT OF FOREIGN (NON-EU) WORKERS

For examining foreign workers in the construction sector, we broadly look at two main groups of origin: EU/EFTA nationals and non-EU nationals i.e., third-country national (TCN) workers. In this report, we use the terms non-EU nationals and TCNs/TCN workers interchangeably. The analysis in this section concentrates on foreign workers in the EU member states, broadly defined, and not specific to the cases of posted workers, which is discussed in the next section below.

TABLE 9 SHARE OF TCNs, EU/EFTA NATIONALS, AND NATIVE WORKERS IN THE CONSTRUCTION SECTOR, EU AVERAGE (2010–2020)

	TCNs		EU/EFTA		NATIVE	
	Frequency	%	Frequency	%	Frequency	%
2010	796,110	5.60	648,895	4.57	12,761,875	89.83
2011	754,427	5.54	552,505	4.05	12,320,064	90.41
2012	622,060	4.72	624,195	4.73	11,939,737	90.55
2013	570,674	4.49	642,434	5.06	11,495,553	90.45
2014	555,334	4.41	641,279	5.09	11,400,110	90.50
2015	590,232	4.70	640,208	5.09	11,340,395	90.21
2016	596,289	4.69	703,841	5.54	11,403,000	89.77
2017	631,532	4.82	734,380	5.60	11,742,338	89.58
2018	699,061	5.31	822,495	6.24	11,651,745	88.45
2019	756,954	5.62	802,246	5.96	11,900,548	88.42
2020	750,178	5.83	649,967	5.05	11,462,862	89.11

Source: Own calculations based on EU-LFS 2010–2020.

Note: Frequency weights used.

¹⁸ Malta is excluded from the analysis entirely because of lack of information on the TCNs in the EU-LFS sample.

construction sector is still a relatively important area in which TCNs are employed. In 2010, among all TCN workers, about 12.34% were employed in the construction sector. The proportion of construction as an employment sector for TCNs is comparable to those of the EU/EFTA nationals but seems higher compared to the native workers. As expected, given the observations in Table 9, this share has declined from 2010 onwards, and it remains to be around 8.5%. This means that despite the decline in employment in the construction sector, this sector remains a critical job destination for TCNs in the EU labour markets.

4.2.1 SHARE OF FOREIGN WORKERS IN THE EU CONSTRUCTION SECTOR

To further gauge the trends of TCN and EU/EFTA workers in the construction sector, we also look at the trends of their presence in the EU labour market and concentrate on temporal changes within each country. Figure 10a displays these trends for four Southern European countries (Greece, Cyprus, Spain, and Portugal), three CEE countries with a high share of foreign workers) and Ireland. Countries displayed in Figure 10a, comprise a cluster of Member States with the highest volume of either TCN or EU/EFTA national workers in their labour markets.

Figure 11b visualises these trends of the share of foreign workers in the construction sector for nine Western and Northern European Member States (Austria, Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, and Sweden). In this second cluster, whereas the Western European economies seem to host higher to medium levels of foreign workers in the workforce, there are markedly lower shares of foreign workers in the Northern European economies. Finally, Figure 12c presents the final cluster of eight CEE and new member state countries, which all have the common

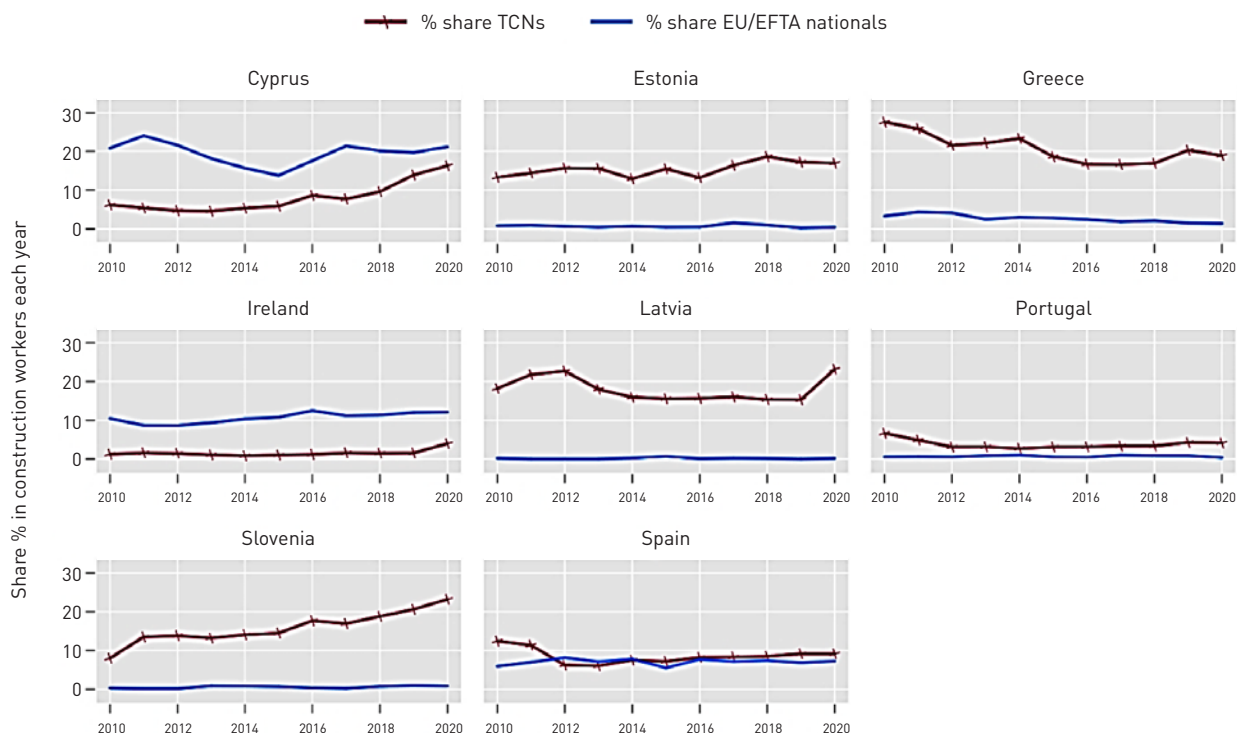
characteristic of very few and the lowest shares of foreign workers in the region in the construction sector.

According to the calculations from the EU-LFS data, Slovenia (23.30%), Latvia (23.17%), Greece (18.95%), Estonia (16.94%) and Cyprus (16.68%) had the highest share of TCNs (citizens of non-EU/EFTA countries) working in construction in 2020. In most cases, the trends over time seem relatively stable, with the increasing trends of the share of TCN workers in Slovenia and the Czech Republic and a relatively minor decline in Greece after 2014.

Turning to the share of EU/EFTA nationals, Luxembourg (71.73%)¹⁹, Cyprus (21.18%), Belgium (14.53%), Austria (13.42%), and Ireland (12.11%) are the leading top 5 EU member states in which this group of foreign construction workers were the highest in 2020. Likewise, the trends of the share of EU/EFTA nationals' mobility in the construction sector seem to be similar to those of the TCN workers in the 2010–2020 period, demonstrating a relatively stable trend to a minor increase in their share in the workforce.

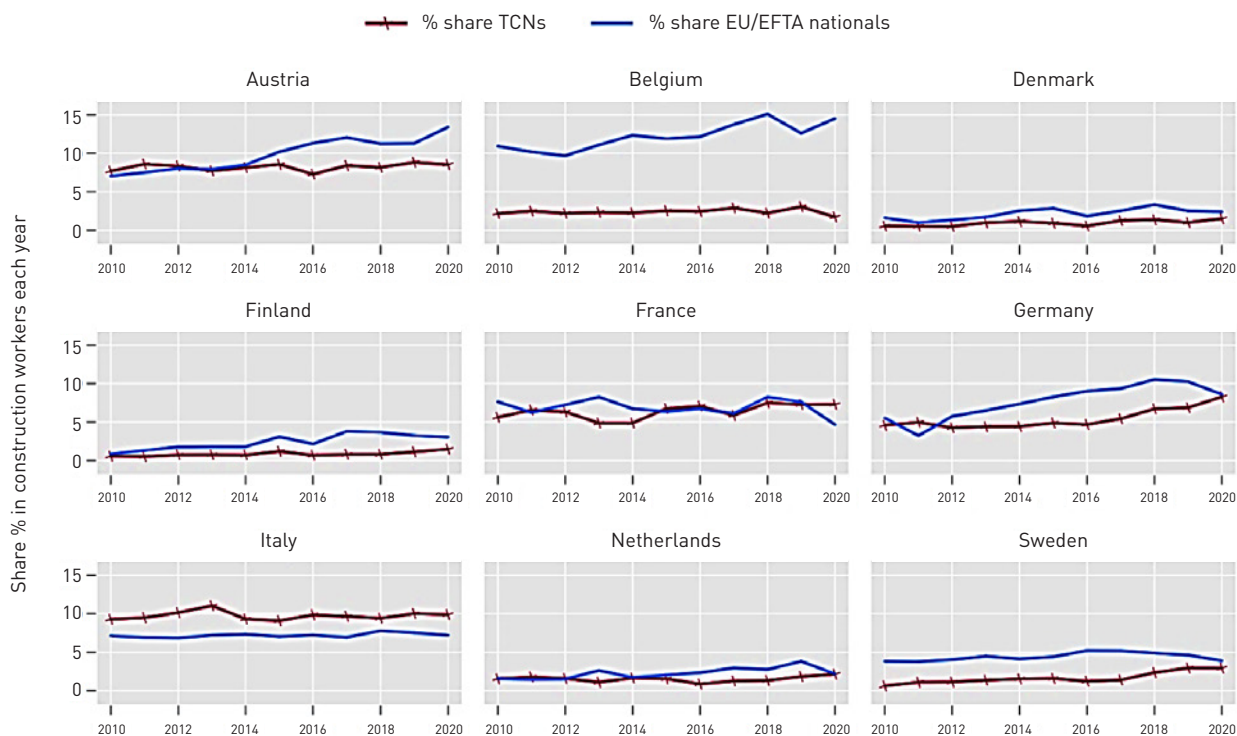
19 Luxembourg is not shown in the figures. It is an outlier country case where the share of foreign workers far exceeds the native population in the labour markets. For instance, in 2020, the share of TCN workers constituted 5.68% and the EU/EFTA national constituted 71.73% of the workforce in the construction sector in the country with a remarkably low share of native workers (21.94%).

FIGURE 10a SHARE OF TCNs AND EU/EFTA NATIONAL WORKERS IN THE CONSTRUCTION SECTOR, 2010–2020



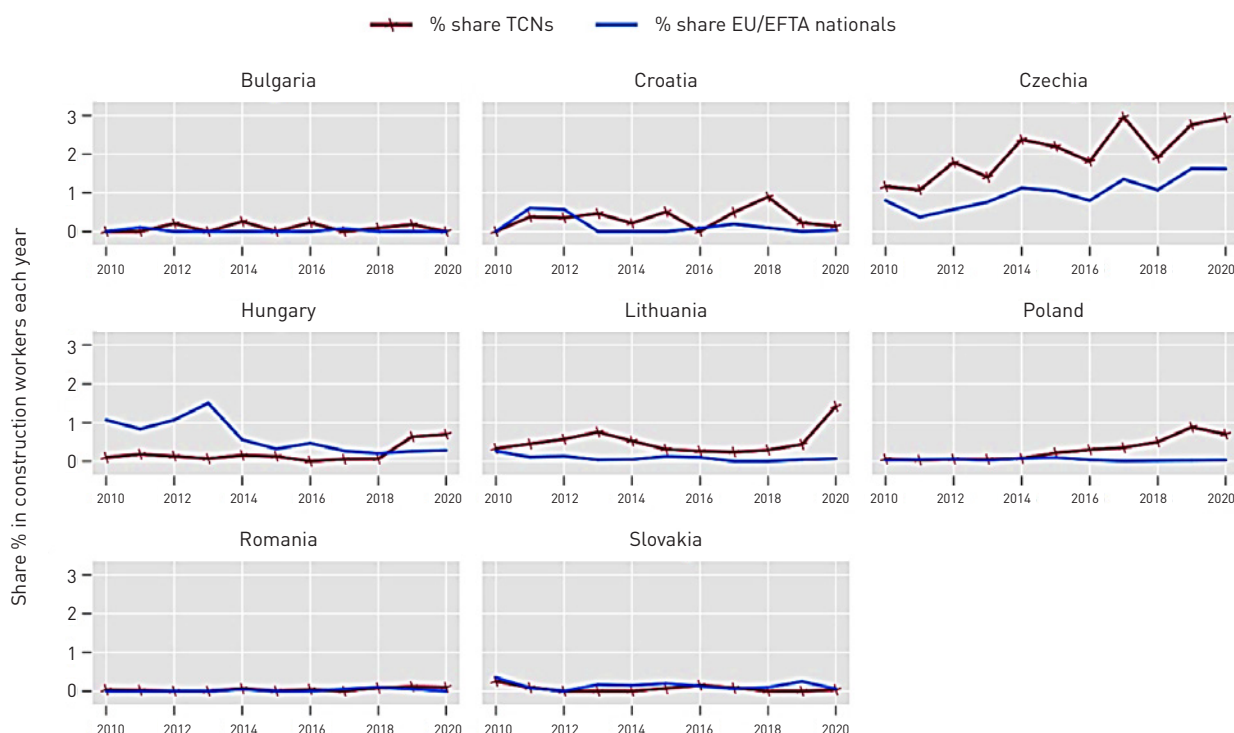
Source: Own calculations based on EU-LFS 2010–2020.
Note: Frequency weights used.

FIGURE 11b SHARE OF TCNs AND EU/EFTA NATIONAL WORKERS IN THE CONSTRUCTION SECTOR, 2010–2020



Source: Own calculations based on EU-LFS 2010–2020.
Note: Frequency weights used.

FIGURE 12c SHARE OF TCNs AND EU/EFTA NATIONAL WORKERS IN THE CONSTRUCTION SECTOR, 2010–2020



Source: Own calculations based on EU-LFS 2010–2020.
Note: Frequency weights used.

4.2.2 CHARACTERISTICS OF THE TCN WORKERS IN THE EU LABOUR MARKET

After introducing the over-time and between-country differences in the foreign workforce in the EU construction sector, in this part of the report, we focus more closely on the demographic and socio-economic characteristics of the TCN workers. For this, we continue using the EU-LFS data but instead concentrate on the most recent five waves (2016–2020). We pool the EU-LFS sample for foreign workers because they are underrepresented in such survey projects, and it would otherwise be difficult to examine the disaggregated characteristics, especially in smaller EU Member States.²⁰ In this sub-section,

we investigate seven characteristics (regions of origin, age, education, occupation, work hours and contract duration, recruitment method, and employment type) of the TCN workers in 22 EU Member States and compare with the native and EU/EFTA national workers wherever relevant.

Regions of origin

The majority of the foreign construction workers in the EU labour markets come from other EU/EFTA country nationals. Table 10 below presents the share of each worker group, including native workers, in the EU Member States. The EU-LFS records the nationality information of respondents in the anonymised micro-data based on clusters of regions due to confidentiality considerations.²¹

²⁰ Despite such pooling, for our analysis here we exclude Romania, Malta, Slovakia, Croatia, and Bulgaria when conducting between-country analysis, due to the low cell sizes. Thus, we report our results only for countries where the total number of cases in each country reaches or exceeds at least $n=25$.

²¹ Middle East & Africa is created by collapsing North Africa, Other Africa, and Near and Middle East categories; Asia is created by collapsing East Asia and South and Southeast Asia; America covers both North, Central, and South America. Other indicates Australia and Oceania or categories where more than one region is indicated.

Table 10 lists the EU Member States starting with those with the highest share of foreign workers in the construction sector to the lowest. While Luxembourg and Cyprus are the countries with the highest share of foreign workers, a large proportion of these workers are EU/EFTA nationals. On average, in the EU, 5.69% of the construction workers come from EU/EFTA

countries, and 2.94% come from European countries that are not the EU Member States or members of the EFTA. While relatively small in absolute numbers, among TCN workers who are coming from outside of the European region, 1.48% of all construction workers are from the Middle East & North Africa, 0.63% from America and 0.2% are from Asia.

TABLE 10 NATIONALITIES OF WORKERS IN THE CONSTRUCTION SECTOR (SHARE %), BY COUNTRY (2016–2020)

COUNTRY	NATIONAL	EU/EFTA	OTHER EUROPE	MIDDLE EAST & AFRICA	ASIA	AMERICA	OTHER
LU	23.25	71.71	2.64	1.33	0.12	0.94	0
CY	68.2	20.09	1.38	10.09	0.24	0	0
SI	79.81	0.63	19.56	0	0	0	0
AT	79.85	11.88	7.42	0.41	0.35	0.08	0.01
GR	80.29	1.83	16.48	0.79	0.6	0	0.01
LV	82.66	0.12	16.64	0.58	0	0	0
EE	82.8	0.72	16.17	0.18	0.11	0	0.03
IT	82.88	7.35	6.24	2.46	0.36	0.69	0.01
BE	83.89	13.62	1.02	1.11	0.02	0.34	0
ES	84.03	7.27	1.08	3.13	0.23	4.26	0
DE	84.08	9.58	4.69	1.1	0.38	0.15	0.03
IE	86.21	11.82	1.01	0.21	0.19	0.4	0.15
FR	86.32	6.68	2.36	4.0	0.19	0.44	0.01
EU	89.06	5.69	2.94	1.48	0.2	0.63	0.01
SE	93.06	4.74	0.63	0.9	0.28	0.31	0.07
PT	95.65	0.69	0.31	1.18	0.05	2.11	0
NL	95.71	2.81	0.59	0.62	0.1	0.14	0.03
FI	95.83	3.19	0.67	0.16	0.12	0	0.04
CZ	96.22	1.3	2.42	0.06	0	0	0
DK	96.29	2.55	0.49	0.34	0.2	0.09	0.04
HU	99.4	0.29	0.31	0	0.01	0	0
LT	99.43	0.04	0.46	0.06	0	0	0
PL	99.43	0.02	0.55	0	0	0	0

Source: Own calculations based on EU-LFS 2016–2020 pooled sample.
Note: Frequency weights used.

As shown in Table 10, focusing on the TCN workers only, we observe that non-EU member countries in Europe is the largest group of construction workers, constituting considerable shares of the workforce in the sector in Slovenia (19.56%), Greece (16.48%), Latvia (16.64%), Estonia (16.17%), Austria (7.42%) and Italy (6.24%). Only in Cyprus and Portugal, the largest group of TCN workers are coming from the Middle East & Africa region, 10.09% and 1.18%, respectively. Concerning the Middle East & Africa region, countries with relatively higher shares of workers coming from this region are Cyprus (10.09%), France (4.0%), Spain (3.13%), and Italy (2.46%).

Age composition

Another critical aspect of the TCN workforce in the construction sector is the age composition, which is indicative of the potential social investment, training, as well as healthcare and ageing-related needs from the side of social insurance schemes. It is also crucial to get an idea of the demographic trends in the EU construction sector both currently and in the future. According to our calculations of the EU-LFS data, the largest group of TCN workers are within the 35-44 age bracket (35.73% among all TCN construction workers). As Table 11 shows, such a distribution of the age composition is in line with the age demographics of the native and EU/EFTA national groups. One specific

characteristic of the TCN workers, distinct from the other two groups, is that the distribution of the age composition tends to be younger. Indeed, the share of older workers is lower among TCN workers. For example, while 17.06% of native workers and 11.26% of EU/EFTA nationals are 55 – 64 years old, this group's share is only about 7.90% among TCN workers.

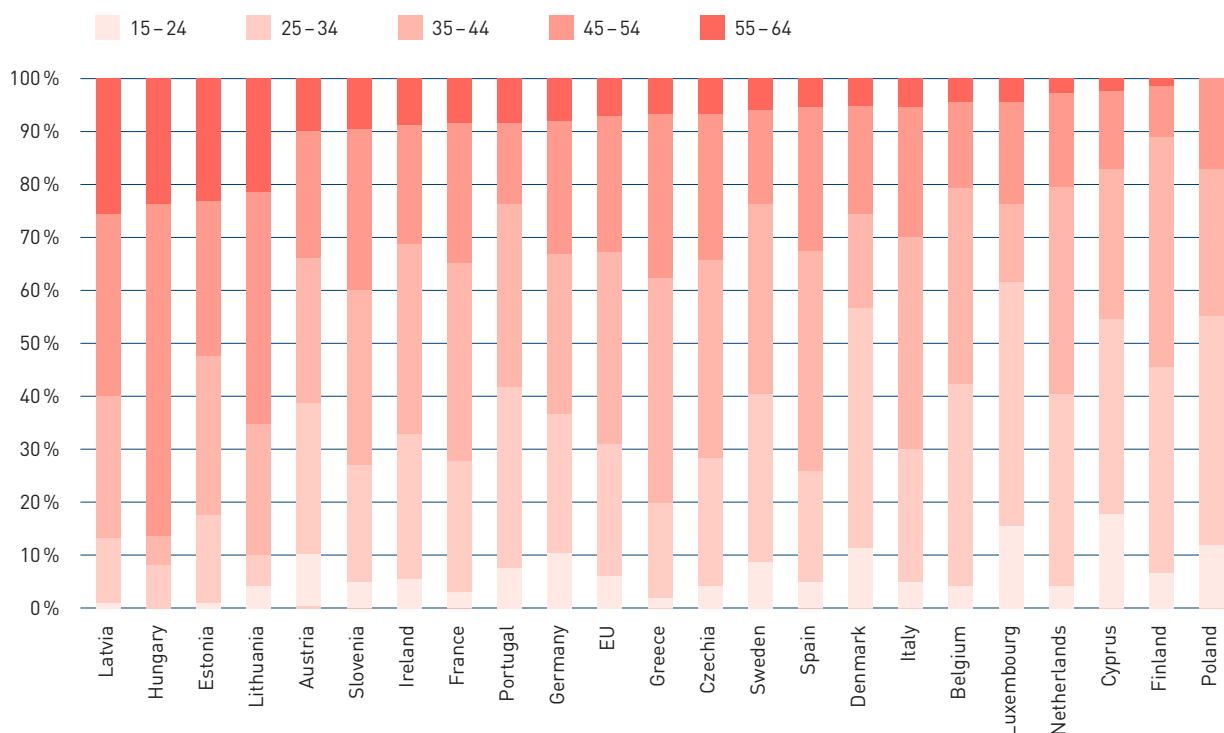
Looking at the age distribution of the workforce between countries also shows some interesting variation. As visualised in Figure 13, going from left to right (ranked from those with older to the younger workforce), the age composition of TCN workers varies widely in the host EU Member State. When we look at the spectrum across the EU Member States, countries such as Latvia (59.78%), Hungary (86.71%), Estonia (52.89%) and Lithuania (65.3%) have the largest shares of older age TCN workers who are either in the 45-54 or 55-64 age brackets. Conversely, the demographic composition of the TCN workforce seems to be the youngest in Poland (54.89%), Finland (45.03%), Cyprus (54.21%), the Netherlands (40.54%) and Luxembourg (61.12%), where the TCN workers in the construction sector are mostly 15 – 24 or 25 – 34 years old.

TABLE 11 AGE COMPOSITION OF THE CONSTRUCTION WORKFORCE IN THE EU (2016 – 2020)

	NATIVE		EU/EFTA		TCNs	
	Frequency	%	Frequency	%	Frequency	%
15–24	4,490,303	7.86	185,349	5.02	202,529	5.93
25–34	12,056,640	21.12	816,327	22.11	853,459	24.98
35–44	15,014,530	26.30	1,275,795	34.55	1,220,625	35.73
45–54	15,790,505	27.66	999,437	27.07	869,692	25.46
55–64	9,742,470	17.06	415,696	11.26	269,950	7.90

Source: Own calculations based on EU-LFS 2016–2020 pooled sample.
Note: Frequency weights used.

FIGURE 13 AGE GROUPS (AS SHARE %) AMONG THE TCN WORKERS IN THE CONSTRUCTION SECTOR (2016–2020)



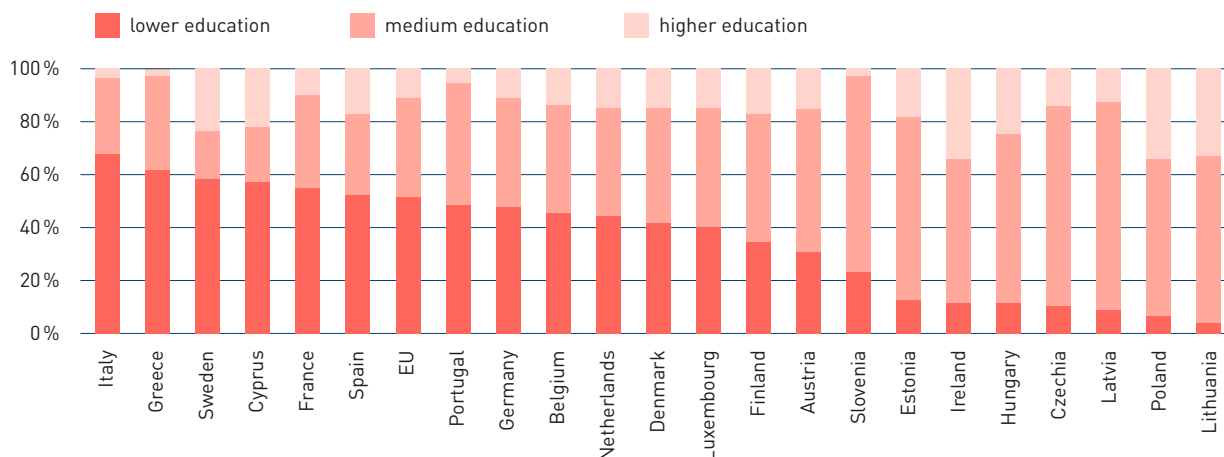
Source: Own calculations based on EU-LFS 2016–2020 pooled sample.
Note: Frequency weights used.

Education levels

Next, we look at the educational attainment of the TCN workers in the construction sector indicative of both the socio-cultural and socio-economic position of these individuals as well as to give an idea of which skill level shortages may be experienced among the native workforce. The

majority of TCN construction sector workers in the EU have a “lower” level of educational attainment (50.82%). Yet, it seems to be the case that half of the TCN workers in the construction sector have either medium or higher-level educations. In the 2016–2020 period, on average, about 38.44% of the TCN in construction have a

FIGURE 14 TCN CONSTRUCTION WORKERS BY EDUCATION LEVELS (2016–2020)



Source: Own calculations based on EU-LFS 2016–2020 pooled sample.
Note: Frequency weights used.

“medium” level and approximately 10.74% have obtained higher education. Figure 14 presents this educational distribution among TCN workers in the 2016–2020 period across different EU countries. The “lower” educational attainment indicates workers who have completed less than or equivalent to primary school or lower secondary education. Those classified in the “medium” level attainment have either upper secondary education or any post-secondary training and degree that does not give access to tertiary education (such as vocational training). Finally, those with a “high” education level mean any worker with a tertiary degree or higher.²² Overall, this indicates an important correction to the impressions of TCN workers as “low-skilled”, revealing that TCN workers in the EU labour market also provide necessary middle and high skill to the job demands in the EU Member States.

While the majority of the TCN construction workers have lower educational attainment, this does not seem to be uniformly the case when we look at the workforce in each country. As Figure 14 demonstrates, in the several EU Member States (such as Latvia with 78.79%, Slovenia with 74.62%, Estonia with 68.67%, Hungary with 65.02%, Poland with 58.97% and Austria with 55.05%), medium-skilled workers with either upper secondary high school degrees or vocational training are the largest group among TCN construction workers. Whereas many Central and Eastern European Member States seem to have the highest share of educational attainment among their TCN construction workforce, Southern European countries’ labour markets seem to have the lowest.

Occupation

We also explore the jobs that are performed by the TCN workers in the construction sector. To do so, we use the ISCO-08²³ 1-digit occupational categories based on task and skill characteristics of jobs. Table 12 presents the top three most frequent occupational tasks done by TCNs in the construction sector. A clear picture emerging from Table 12 is that the ISCO-700 category “crafts and related trade workers” seem to be the largest group of jobs being taken up by TCNs. The share of this occupation among the TCNs varies from the lowest in Ireland (49.14%) to the highest in Hungary (87.24%). In all EU Member States, half of the TCN workers in the construction sector perform jobs under this larger category of the ISCO-700. To illustrate, some of these jobs are extraction and building workers (including builders, plumbers, mechanics, carpenters etc.), metal, machinery, and related workers (including toolmakers, engine and machine repairers etc.), electronics-related workers, including mechanics, and woodworkers, upholsterers and other craft-related workers.

Next, the second largest occupation group among the TCNs in the construction sector in the EU is the ISCO-900 group “elementary occupations”. With the exceptions of France, Lithuania, the Netherlands, and Sweden, elementary-skilled workers seem to be another important group with one of the highest shares among TCN construction workers. This group of occupational classification indicates jobs that require lower skills and training, such as cleaners and helpers, labourers in mining and construction without specific skills and training, and maintenance workers in the construction industry. The share of such TCN workforce is the highest in Ireland (25.91%), Latvia (24.45%) and Portugal (21.08%).

When looking at the job tasks done by the TCNs in the construction sector, there is also a substantial part of the workforce involved in

22 This classification is based on ISCED-2011 categorisation of educational attainment. Lower education category is composed of ISCED 0–2 coding, medium education is composed of ISCED 3–4, and workers in ISCED 5–8 categories are coded as higher education attainment.

23 International Standard Classification of Occupations 2008 version.

TABLE 12 MOST FREQUENT OCCUPATIONS OF TCNs IN THE CONSTRUCTION SECTOR

% SHARE AMONG ALL TCN WORKERS IN EACH COUNTRY IN THE CONSTRUCTION SECTOR			
	1st	2nd	3rd
IE	ISCO-700 (49.14 %)	ISCO-900 (25.91 %)	ISCO-600 (10.97 %)
LV	ISCO-700 (52.93 %)	ISCO-900 (24.45 %)	ISCO-100 (11.15 %)
DE	ISCO-700 (58.24 %)	ISCO-900 (18.41 %)	ISCO-800 (7.58 %)
PL	ISCO-700 (58.39 %)	ISCO-900 (16.29 %)	ISCO-300 (13.06 %)
LU	ISCO-700 (61.00 %)	ISCO-900 (18.36 %)	ISCO-800 (10.33 %)
AT	ISCO-700 (64.14 %)	ISCO-900 (19.66 %)	ISCO-300 (6.62 %)
PT	ISCO-700 (66.20 %)	ISCO-900 (21.08 %)	ISCO-800 (4.04 %)
FR	ISCO-700 (66.64 %)	ISCO-300 (15.16 %)	ISCO-900 (9.36 %)
LT	ISCO-700 (69.32 %)	ISCO-100 (10.41 %)	ISCO-200 (8.1 %)
EU	ISCO-700 (69.45 %)	ISCO-900 (14.83 %)	ISCO-300 (5.77 %)
EE	ISCO-700 (69.59 %)	ISCO-800 (7.86 %)	ISCO-100 (7.73 %)
ES	ISCO-700 (69.77 %)	ISCO-900 (23.68 %)	ISCO-400 (2.09 %)
FI	ISCO-700 (70.52 %)	ISCO-900 (16.04 %)	ISCO-200 (5.69 %)
BE	ISCO-700 (70.55 %)	ISCO-900 (10.49 %)	ISCO-100 (4.97 %)
NL	ISCO-700 (70.80 %)	ISCO-400 (8.67 %)	ISCO-300 (7.24 %)
SE	ISCO-700 (70.91 %)	ISCO-300 (10.56 %)	ISCO-900 (8.16 %)
DK	ISCO-700 (71.18 %)	ISCO-900 (13.71 %)	ISCO-300 (13.22 %)
SI	ISCO-700 (74.40 %)	ISCO-900 (8.32 %)	ISCO-800 (7.91 %)
CY	ISCO-700 (76.46 %)	ISCO-900 (16.62 %)	ISCO-100 (1.54 %)
CZ	ISCO-700 (78.24 %)	ISCO-900 (6.85 %)	ISCO-100 (4.55 %)
GR	ISCO-700 (85.07 %)	ISCO-900 (10.16 %)	ISCO-800 (2.37 %)
IT	ISCO-700 (85.35 %)	ISCO-900 (9.5 %)	ISCO-800 (1.76 %)
HU	ISCO-700 (87.24 %)	ISCO-900 (7.61 %)	ISCO-400 (2.95 %)

Source: Own calculations based on EU-LFS 2016–2020 pooled sample.

Notes: Frequency weights used. ISCO-100: Managers, senior officials, and legislators; ISCO-200: Professionals; ISCO-300: Technicians and associate professionals; ISCO-400: Clerks; ISCO-500: Service and sales workers; ISCO-600: Skilled agricultural, fishery, and forestry workers; ISCO-700: Craft and related trades workers; ISCO-800: Plant and machine operators and assemblers; ISCO-900: Elementary occupations.

higher-skill occupations – particularly in certain EU Member States. In six EU Member States, the ISCO-300 category of “technicians and associate professionals” (such as scientific and engineering technicians, business and administrative associates, and ICT support technicians etc.) comprise one of the three largest groups of TCN workforce in the construction sector. Likewise, in several countries such as Latvia, Lithuania, Estonia, Finland and Belgium, ISCO-100 (“managers and senior officials” such as construction managers) and ISCO-200 (“professionals” such as science and engineering professionals and ICT experts) task groups are among the top 3 occupation groups within the TCN workers. Overall, we observe that there is a wide range of different jobs and tasks that are covered by the TCN workers in the construction sector in the 2016–2020 period.

Work hours and contract duration

When considering the functioning of the European construction workforce from the perspective of the TCN workers, one other key aspect of interest is the work time arrangements and employment hours. Table 13 shows the average work hours for native, EU/EFTA national, and TCN workers in part-time and

full-time work arrangements. On average, TCNs are more frequently employed in part-time work contracts. This is especially the case when compared with native workers, where there is about a 2 per cent difference of less part-time employment when compared with TCNs in the construction sector. Estimating the average work hours per week for part-time workers, we see that the native and EU/EFTA workers have similar average work hours, whereas TCNs in part-time employment relations work about 1 hour less – compared to the other two groups in the construction sector. The average work hours differences for TCNs seem to be smaller for those working full-time jobs.

Between the EU Member States, the rates of part-time and full-time employment among TCNs or native workers, for instance, do not seem to be uniform either. Figure 15 visualises the share percentages of part-time work contracts in the construction sector among TCNs, EU/EFTA nationals and native workers in side-by-side bar graphs for each country in the 2016–2020 period. Going from left to right, Figure 15 ranks the EU Member States with the lowest to the highest share of part-time employment among TCNs. The share % of part-time work among TCNs is higher in Cyprus, the Netherlands, Greece, Lithuania, and Germany. In contrast, it is the lowest in the Czech Republic, Luxembourg, Poland, Slovenia, and Portugal.²⁴

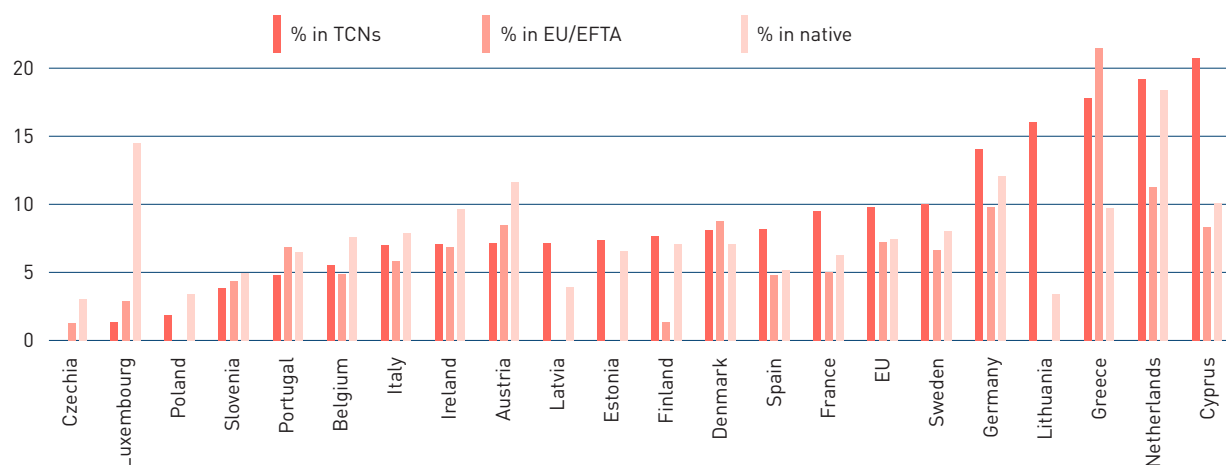
TABLE 13 EMPLOYMENT HOURS OF WORKERS IN THE CONSTRUCTION SECTOR IN THE EU

	PART-TIME			FULL-TIME		
	Frequency	%	Avg. work hours per week	Frequency	%	Avg. work hours per week
Native	4,333,505	7.45	17.97	53,822,545	92.55	36.02
EU/EFTA	266,485	7.18	17.63	3,446,384	92.82	36.22
TCN	337,179	9.82	16.97	3,096,704	90.18	36.53

Source: Own calculations based on EU-LFS 2016–2020 pooled sample.
Note: Frequency weights used.

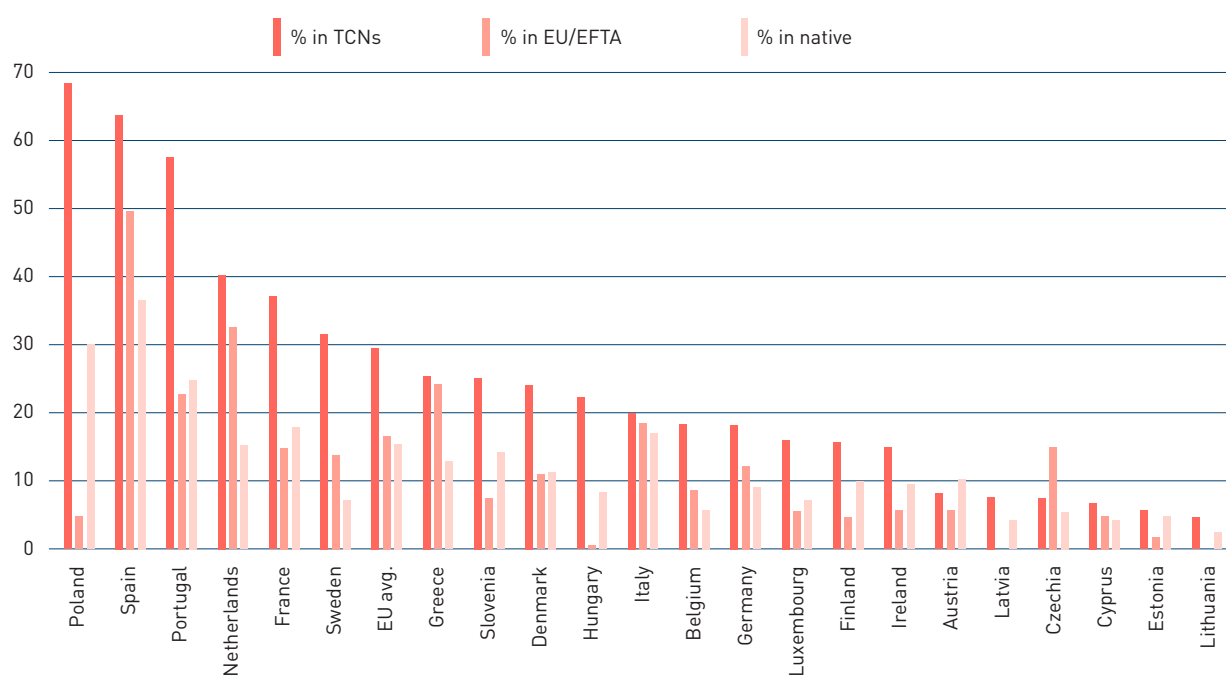
24 In the EU-LFS sample there are no TCN workers in the construction sector employed part-time in the Czech Republic, which is indicative of a very low part of the workforce in this relationship. However, it is important to highlight the low sample sizes in smaller population countries.

FIGURE 15 % SHARE OF PART-TIME WORK IN THE CONSTRUCTION SECTOR ACROSS EU MEMBER STATES



Source: Own calculations based on EU-LFS 2016–2020 pooled sample.
Note: Frequency weights used.

FIGURE 16 % SHARE OF TEMPORARY WORK CONTRACTS IN THE CONSTRUCTION SECTOR ACROSS EU MEMBER STATES



Source: Own calculations based on EU-LFS 2016–2020 pooled sample.
Note: Frequency weights used.

Next, we gather information regarding contract duration in the construction sector in the three groups of workers. Figure 16 below visualises the share of temporary employment contract prevalence across EU Member States in the 2016–2020 period. When looking at Figure 16, we see that in almost all countries, TCNs are employed in temporary employment contracts at a remarkably higher rate than either EU/EFTA nationals or native workers in the construction. In this latest period, on average, about 29.7% of TCNs in the construction sector are employed with a contract that has a temporary and limited duration, whereas this rate is about 16.6% for EU/EFTA nationals and 15.63% for native workers. Going from left to right Figure 16 ranks the countries where TCNs have the highest share of temporary contracts among the EU Member States. It is, however, important to note the limitations regarding the EU-LFS data collection methods, which we outline in the relevant section below. Most important here is the fact that some of the temporary – and more precarious employment – may not be captured by the EU-LFS data collection methods considering the types of households that get contacted and would answer this survey.

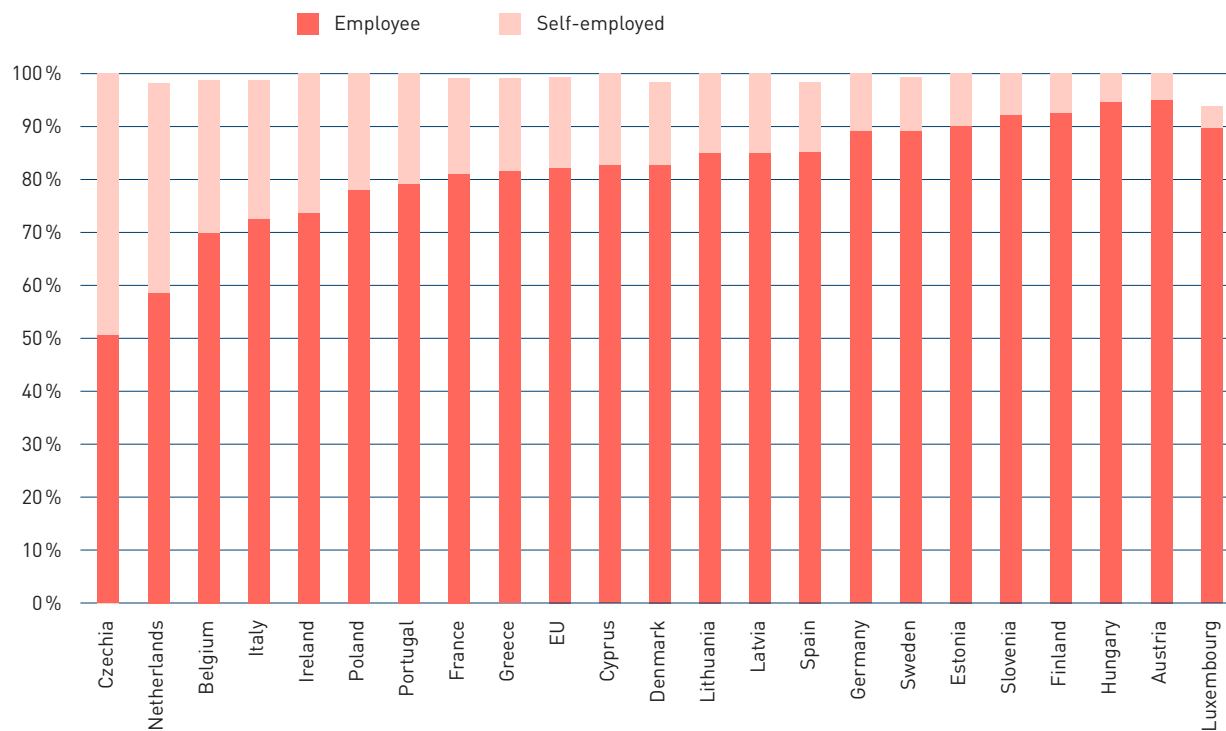
Finally, when we look at other forms of atypical work that have been asked about in the EU-LFS, namely, shift work, evening work, night work, and working on Saturday and Sunday, we find that there are no frequencies of observing such forms atypical work that are more present among TCN workers. While the number of observations limits our ability to look at these trends for each EU Member State, what we observe when looking at these as an EU average does not suggest that these forms of atypical employment are particularly of concern for TCNs. In contrast, jobs with temporary contracts seem to be a particular concern among TCNs in the construction sector.

Employment type

TCNs in the construction sector are predominantly employees, and the rate of self-employment is low in the 2016–2020 period. On average, in the EU, 82.41% are employees. 17.07% are self-employed, and 0.52% are classified as family workers. Figure 17 presents the distribution of such employment type characteristics of TCN workers in the construction sector by each EU Member State, focusing on the employees and the self-employed TCNs. The share of self-employment is the highest for TCNs in the Czech Republic, the Netherlands, Belgium, and Italy, whereas TCNs in the construction sector are predominantly employees in Luxembourg, Austria, Hungary, Finland – and most other EU Member States.

Focusing on the self-employment rates in the construction sector within each Member State, Figure 18 visualises the share percentages of self-employed individuals in the construction sector among natives, EU/EFTA nationals, and TCNs in side-by-side bar graphs for each country in the 2016–2020 period. Going from left to right places the EU Member States with the highest to the lowest share of self-employment among TCNs – and in many cases also some of the highest percentages of self-employment for the other two groups. Looking at Figure 18, we observe that the trend of self-employment is highly correlated among these three groups where TCNs seem to be in higher shares of self-employment in countries where, more broadly, this type of employment status appears to be higher and *vice versa*.

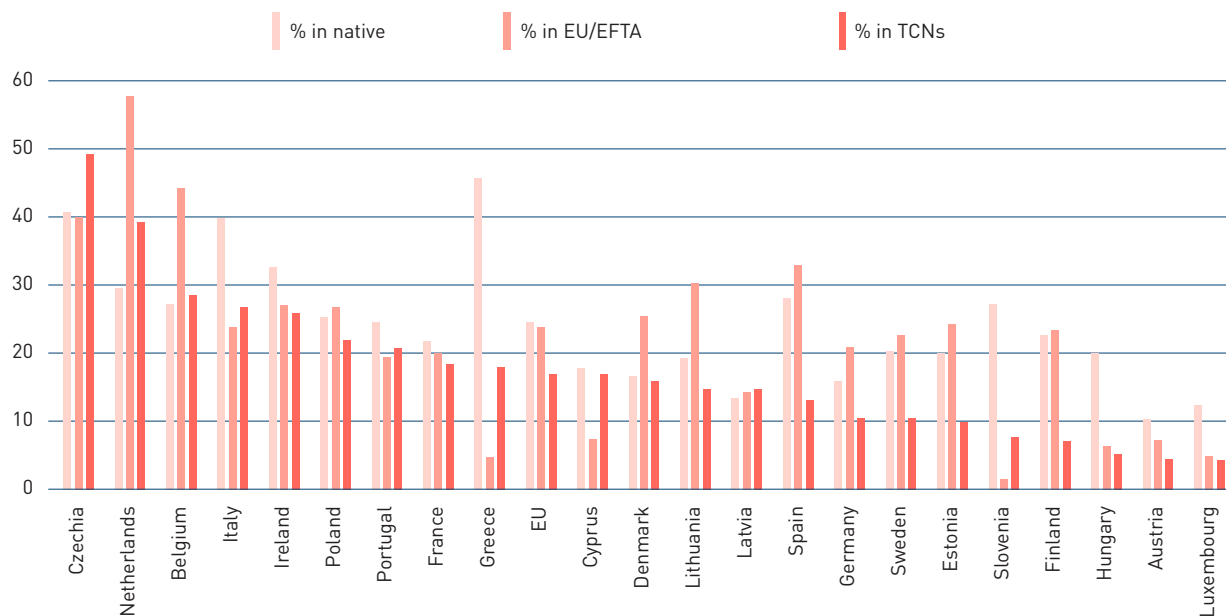
FIGURE 17 COMPOSITION OF THE TCN WORKERS IN THE CONSTRUCTION SECTOR BY EMPLOYMENT TYPE



Source: Own calculations based on EU-LFS 2016–2020 pooled sample.

Note: Frequency weights used. Not shown here, the remaining share of the sample in each country are employed in family companies.

FIGURE 18 % SHARE OF SELF-EMPLOYMENT IN THE CONSTRUCTION SECTOR ACROSS EU MEMBER STATES



Source: Own calculations based on EU-LFS 2016–2020 pooled sample.

Note: Frequency weights used.

Recruitment channels: public employment offices and temporary employment agencies

While it is difficult to estimate and get a comprehensive account of the recruitment channels into which TCN workers in the EU Member States find jobs in the construction sector, EU-LFS contains two question items which allow us to target two types of recruitment methods. The first one of these focuses on the involvement of public employment offices in host countries in finding the employment in which the respondent worker is currently working (given the specific survey year wave). Table 14 (top panel) reports the calculations from the EU-LFS from the three origin groups on whether they have received any support or involvement from the public employment offices. While the share of those workers who have found their jobs through public employment offices is modest in absolute numbers, the percentage of such workers is about 1% higher than other groups among TCN workers.

Next, the second recruitment channel that we can inspect using the EU-LFS is the temporary employment agencies. Table 14 (bottom panel) reports our estimations for the three groups. Unlike the more minor differences in the case of public employment offices, here we see that

when compared with natives and EU/EFTA nationals, TCNs have a larger share of workers who found their job through contracts with a temporary employment agency. More broadly, the picture emerging from Table 14 points to the relevance of both public offices but, more importantly, the temporary employment agencies as a recruitment channel for TCNs when compared to native and EU national workers – even if, overall, the number of such methods seems small.

TABLE 14 INVOLVEMENT OF PUBLIC EMPLOYMENT OFFICES OR TEMPORARY EMPLOYMENT AGENCIES IN THE CONSTRUCTION SECTOR

	NATIVE		EU/EFTA		TCNs		TOTAL
Involvement of the public employment office in finding the present employment...							
	Frequency	%	Frequency	%	Frequency	%	Frequency
Yes	356,356	5.3	29,267	5.51	47,287	6.4	432,910
No	6,369,202	94.7	501,512	94.49	691,362	93.6	7,562,076
Contract with a temporary employment agency used in finding the present employment...							
	Frequency	%	Frequency	%	Frequency	%	Frequency
Yes	1,090,086	2.63	134,690	4.91	188,170	6.89	1,412,946
No	40,330,585	97.37	2,608,348	95.09	2,543,542	93.11	45,482,475

Source: Own calculations based on EU-LFS 2016–2020 pooled sample.
Note: Frequency weights used.

4.3 TCN CONSTRUCTION WORKERS POSTED ACROSS THE EU

The analysis presented in this section draws on data collected through national prior notification tools (see De Wispelaere & Pacolet, 2018; De Wispelaere, De Smedt & Pacolet, 2021). Prior notification tools are used by all EU countries and require companies to declare postings in advance in accordance with Directive 2014/67/EU, however, only 12 countries have reported figures of TCN workers posted to their country through the prior notification tools.

The construction sector is one of the economic sectors in which posting is most prominent (De Wispelaere, De Smedt & Pacolet, 2021). In addition, there is evidence of the posting of third-country nationals in construction (Cukut Krilić, Toplak & Vah Jevšnik, 2020). Recent studies identified three “posting flows” of TCN construction workers: citizens of Western Balkan countries (Bosnia and Herzegovina, Serbia, North Macedonia) are posted via Slovenia to Austria and other EU countries; Ukrainians are posted via Poland to the Nordic and other EU countries; and Tunisians and Moroccans as well as other non-EU European workers are posted via Italy to central and western European countries

TEXT BOX 4 DEFINITION AND MEASUREMENT OF POSTED WORKERS

The posting of workers describes the process of a company in one EU country sending an employee to another EU country to provide a service for a limited period. Following De Wispelaere, De Smedt & Pacolet (2021), we measure the extend of the posting of workers by counting the number of posted workers as indicated in national prior notification tools. Thereby, a posted worker is defined as a worker who worked at least one day in the reference year as a posted worker in another EU country. The same individual may be posted several times per year.

(Cillo, 2020; Danaj et. al., 2020; Kall et. al. 2020; Cukut Krilić, Toplak & Vah Jevšnik, 2020). In particular, the number of third-country nationals posted by Poland and Slovenia has increased significantly between 2018 and 2020 (Vah Jevšnik, Cukut Krilić & Toplak, 2022; Kietbasa et al., 2022). In Belgium, Bulgaria, France, Italy, Luxembourg, Austria, Slovakia, and Sweden, third-country nationals account for more than 10% of all incoming posted workers (De Wispelaere, De Smedt & Pacolet, 2022 forthcoming).

While quantitative data is limited, Table 15 provides the number of posted construction workers by receiving country in 2017 and 2019 for those EU countries for which data is available. There is significant variation between countries: while France, Belgium, Austria, Sweden, Luxembourg, and Denmark received between 12,000 and 85,000 posted construction workers in 2019, Italy and Slovakia received less than five thousand and Bulgaria, Slovenia, Romania (2017) and Malta received less than one thousand.

Unfortunately, there is no data on how many of the posted construction workers are citizens of third countries. However, we can provide a rough estimate based on the number of posted construction workers and the share of third-country nationals among *all* posted workers for individual countries.²⁵ The numbers estimated in this way again show significant variation across countries. Among those EU countries for which data is available, Belgium, France, and Austria received the highest number of posted TCN construction workers in 2019 in total numbers with between 3,8 and 24 thousand incoming workers. Denmark, Italy, Luxembourg, Slovenia, and Slovakia each received several hundred TCN construction workers. Romania received an estimated 146 TCN construction workers (2017 data), while the number for Bulgaria and Malta is (close to) zero.

25 This calculation assumes that the share of third-country nationals among posted construction workers is equal to the share of posted workers in other industries. This assumption may not hold, and the share of third-country nationals may be higher or lower. However, given the limited data available, the presented numbers provide our best estimate.

TABLE 15 POSTED WORKERS IN CONSTRUCTION BY RECEIVING COUNTRY, 2017–2019 (2020/2021)

RECEIVING COUNTRY	POSTED WORKERS IN CONSTRUCTION		SHARE OF TCN POSTED WORKERS		ESTIMATE: POSTED TCN CONSTRUCTION WORKERS		ESTIMATE: SHARE OF POSTED TCN IN TOTAL CONSTRUCTION	
	2017	2019 (20/21)	2017	2019 (20/21)	2017	2019 (20/21)	2017	2019 (20/21)
BE	n.d.	67,630 (93,827)**	9.1%	18.4% (26%)**	n.d.	12,444 (24,395)**	n.d.	4.34%
BG	142	114	10.9%	12.8%	15	15	0.01%	0.01%
DK	12,396	12,880	4.3%	4.1%	536	528	0.29%	0.28%
FR	45,024	86,735	13.7%	18.5%	6,148	16,046	0.36%	0.89%
IT	2,797	4,413 (825)*	12.7%	10.6% (13%)*	356	468 (107)*	0.02%	0.03% (0.01%)*
LU	12,472	15,144	n.d.	5.7%	n.d.	863	n.d.	1.80%
MT	n.d.	6	n.d.	3.9%	n.d.	0	n.d.	0.00%
AT	22,919	20,136 (18,144)*	6.1%	19.0% (23.8%)*	1,409	3,826 (4,324)*	n.d.	1.24% (1.40%)*
RO	736	n.d.	19.8%	n.d.	146	n.d.	0.02%	n.d.
SI	n.d.	918	n.d.	23.5%	n.d.	216	n.d.	0.29%
SK	6,679	1,962	5.6%	28.3%	373	555	0.22%	0.30%
SE	43,596	19,228	n.d.	n.d.	n.d.	n.d.	n.d.	n.d.

Source columns 2 and 3: (De Wispelaere & Pacolet, 2018; De Wispelaere, De Smedt & Pacolet, 2021)

Source column 4: Own calculation based on columns 2 and 3.

Source column 5: Own calculation based on column 4 and employment data by Eurostat (nama_10_a64_e).

* 2020 data from the Posting.Stat country reports Austria (Geyer, Premrov & Danaj, 2022) and Italy (Dorigatti, Pallini & Pedersini, 2022)

** 2021 data from the Posting.Stat country report Belgium (De Wispelaere et al., 2022)

In addition, to gauge the relevance for the national labour markets of the receiving countries, we divided the estimated number of posted TCN construction workers with the total number of construction workers in each country (De Wispelaere, De Smedt & Pacolet, 2021). As share of total construction sector employment, our estimates for 2019 show that posted third-country nationals play only a small role. Belgium is the only receiving country in which posted third-country nationals account for a significant share (4.34%) of total construction sector employment. After Belgium, the three receiving countries with the highest share of TCN posted workers in total construction are Luxembourg

(1.8%), Austria (2019: 1.24%; 2020: 1.4%), and France (0.89%). In all other countries for which data is available, posted TCN workers account for less than 0.5% of all construction workers.

The lack of available data makes it difficult to discern general developments. However, a careful comparison between the years 2017, 2019 and 2020 suggests that there is no clear trend regarding the number of posted construction workers: their number increased in three countries (BE, FR, LU), decreased in another three (AT, SK, SE), and remained roughly on the same level in two (BG, DK). In Italy, the numbers increased significantly between 2017 and 2019, before falling in 2020. However, the overall share

of third-country nationals among posted workers appears to be increasing with five countries (BE, BG, FR, AT, SK) recording higher shares in 2019 and 2020 than in 2017. Only Denmark experienced a (marginal) decline. This upward trend is also visible in the increasing number of TCN workers posted from Slovenia and Poland (Vah Jevšnik, Cukut Krilić & Toplak, 2022; Kietbasa et al., 2022). The number of posted TCN construction workers increased in four countries (AT, FR, IT, SK) and remained stable in two (BG, DK) indicating a slight upward trajectory. However, given the described heterogeneity in posting across EU countries, the findings for these six countries should not be interpreted as indicative of an EU-wide trend.

As the extent of the analysis suggest the data on the posting of third-country nationals from one EU country to another are still scarce. The limited statistical information does not allow for an EU-level assessment of the trends and patterns of their presence in the EU. Qualitative data as well as individual country studies indicate an increase in the number of TCN posted workers from certain EU countries. More accurate data would be necessary to measure this trend in general, and in the construction sector in particular.

5 CASE STUDIES

5.1 THIRD-COUNTRY COMPANIES IN THE BULGARIAN CONSTRUCTION AND PUBLIC PROCUREMENT MARKET

5.1.1 FOREIGN COMPANIES' ACCESS TO THE BULGARIAN CONSTRUCTION MARKET

There are no legal limits on foreign ownership or control of firms in Bulgaria. One exception is for companies registered in offshore jurisdictions with more than 10 percent foreign participation. Unless the physical owners of the parent company are Bulgarian citizens, such companies are banned from doing business in Bulgaria, including participating in government procurement procedures.²⁶ Bulgaria also belongs to a small group of EU Member States which have not implemented a national screening mechanism for FDI despite guidance from the European Commission (EC, 2022).²⁷ Nor does it have any publicly reported consultative or legislative initiative underway to adopt such a mechanism. However, there are plans to set up a working group for establishing a national screening mechanism (EC, 2022). Foreign entities and their investments are not screened or otherwise restricted in Bulgaria, at least as far as the construction sector is concerned (there are some industry-specific restrictions with screening or limit applied to investments or acquisitions with respect to foreign nationals and firms in certain sectors e.g., agriculture and energy). However, merger control mechanisms

apply to foreign and domestic mergers regardless of the sector.²⁸ In Bulgaria, the public body responsible for safeguarding national competition, including the approval, or blocking of notifiable mergers, is the Commission for Protection of Competition (CPC).

As of March 2022, there were 6,203 construction companies registered in the Central Register of Professional Builders at the Bulgarian Construction Chamber (BCC), out of which 6,140 were Bulgarian legal entities and 63 foreign companies (FIEC, 2022). As for the number of third-country companies, figures from Eurostat indicate that they accounted for around one-third of construction companies with a foreign ownership in Bulgaria in 2019 (the latest year with available data at the time of writing). Of these, Turkish-owned construction companies comprised a considerable share with 20%, followed by Russia (16%) and Israel (12%). 48% had an owner in other non-EU countries for which no further breakdown by country is available in Eurostat. While there is no information with respect to the size and value of non-EU-owned construction companies by country of ownership, on average, third-country companies accounted for around 1% of value generated and 0.8% of persons employed in the total national construction sector, which is relatively low in European comparison.

26 Offshore Company Act, 2014 (amended in 2016).

27 While the 2019 EU FDI Screening Regulation does not require Member States to set up a national screening mechanism, it encourages Member States to do so (EC, 2022).

28 Protection of Competition Act.

5.1.2 FDI IN THE CONSTRUCTION SECTOR

Bulgaria experienced a significant fall in foreign direct investment in the non-financial sector from 2007.²⁹ While it has since recorded increases – mainly led by the industry and service sectors – FDI remains at a low level in the construction sector (NSI, 2021). Moreover, the relative share of FDI in the construction sector decreased between 2020 and 2021. Although foreign direct investments from non-EU countries showed a significant increase in 2019, both in terms of flows and stocks, their value was still considerably lower compared to previous years. Notable countries with a positive inflow to the sector at the end of 2019 included Turkey, Russia, and the US (Eurostat, 2022). In 2019, Chinese investments to Bulgaria, in total (i.e., not only in construction), amounted to 11.1 million euros, but in 2020, the figure turned negative (–8.8 million euros) (Habova, 2022).

5.1.3 BILATERAL INVESTMENT AGREEMENTS, STRATEGIC PARTNERSHIPS, AND OTHER FORMS OF BILATERAL BUSINESS RELATIONS

One channel through which foreign investment and third-country companies access the Bulgarian market are bilateral investment agreements. Bulgaria has signed agreements with 25 non-EU countries (as of 2019), not including EFTA countries. From 2012, the EU regulates the rules and conditions for such agreements between EU Member States and non-EU countries to make sure they are consistent with EU law.³⁰ The rules apply not only to new agreements, but also to those currently in force or when amending these. Since March 2020, Bulgaria has maintained in force under Union law, amended, or opened negotiations to conclude bilateral investment agreements with a number of non-EU countries including, among

others, Turkey, Israel, UAE, Saudi Arabia as well as with Western Balkan countries (Montenegro, Kosovo, Bosnia and Herzegovina). Beyond such agreements, Bulgaria has also established strategic partnerships for instance with China, when the two countries agreed to upgrade their 2014 “comprehensive friendly cooperative partnership” to a strategic one in 2019 (Habova, 2022:23). Other examples for enhancing business relations with non-EU companies include establishing bilateral business organisations, which act as interlocutors assisting foreign companies’ entry to Bulgaria. According to Shopov (2022), a number of such organisations with a focus on Chinese businesses have been established in recent years (e.g., Bulgaria-China Chamber of Commerce and Industry, the Bulgarian-Chinese Business Development Association, the Bulgarian-Chinese Chamber for Industrial Development, the Council on Economic and Diplomatic Relations), which seek to facilitate economic, business and investment ties between the two countries.

5.1.4 CROSS-BORDER PUBLIC PROCUREMENT

Another way for third-country companies to access the Bulgarian construction market is through public procurement. The main legislation regulating the system of public procurement and transposing the related EU directives into Bulgarian law is the Public Procurement Law (PPL), which came into force in 2004 and which was amended substantially in 2006 when the country became a member of the EU (it has since been amended several times) (EC, 2016). The main body responsible for public procurement is the Public Procurement Agency (PPA). Its main tasks include drafting of public procurement regulations, providing methodological and other guidance, supervision and monitoring of public

29 Although not discussed here, in addition to FDI, foreign companies in Bulgaria can also invest in local businesses through portfolio investment e.g., buying shares without controlling that company.

30 Regulation (EU) No 1219/2012 of the European Parliament and of the Council of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries.

procurement procedures including those involving EU funds, and maintaining the Public Procurement Register (PPR). Another important body in the Bulgarian procurement procedure is the aforementioned CPC. The CPC is the first instance review body that examines and decides claims with regards to irregularities in public procurement and imposes sanctions for non-compliance.³¹

Bidding modes

A recent EU survey that looked into companies' opinions regarding bidding modes when participating in public procurement abroad found that bidding directly as a sole participant was viewed as the most effective (EC, 2021). Forming a consortium with a local company or through a local subsidiary was also considered to be a good strategy while bidding, whereas including local sub-contractors or sub-contracting to a local contractor were considered the least effective options. In the case of non-EU companies who tend to be less familiar with local rules and contexts, involving a local company or subsidiary might be a more useful strategy to rely on.

Chinese construction companies in Bulgaria, for example, appear to increasingly adopt such a strategy in case of bidding for larger infrastructure works, even taking the role of

junior partner in a consortium (Shopov, 2022). Moreover, in Bulgaria, where Bulgarian construction companies have a dominant position and are the main contractors for the execution of local infrastructure projects, third-country companies, particularly relative late-comers, like those from China, have also less embedded lobbies and interests than Turkish or Russian companies with a more established presence in the Bulgarian construction market. In fact, surveyed companies in Bulgaria, that also covered the construction sector, reported Russia and Ukraine as the most frequent third countries with whom they formed a consortium when bidding for public contracts during 2016–2019 (EC, 2021). Also, only 1 out of 23 contracting authorities (both national and regional ones) surveyed from Bulgaria, stated to have received bids in public procurement tenders from foreign countries involving only bidders from outside the EU (third countries excluding UK and EFTA).

Awarded public contracts

In 2021, there were 3,259 concluded public contracts in Bulgaria for the execution of works (building, construction, civil engineering), that is 13% of all concluded public contracts. In terms of value, they accounted for around a third of all awarded public contracts (BGN 2,723 million) (Public Procurement Agency, 2022).

TABLE 16 NUMBER OF CONCLUDED PUBLIC CONTRACTS AND VALUE FOR WORKS IN BULGARIA (2020–2022)

	UP TO 270,000 BGN		FROM 270,000 TO 10,000,000 BGN		ABOVE 10,000,000 BGN	
	Count	Overall value	Count	Overall value	Count	Overall value
2022*	1483	160,123,842	703	1,013,659,313	24	1,077,484,243
2021	2175	229,946,882	1060	1,251,908,002	24	1,140,925,847
2020	495	50,774,976	120	139,388,280	4	202,065,531

Source: Public Procurement Agency
*As of 27 September 2022.

31 The Supreme Administrative Court is the second and final instance for review of disputes concerning public procurements in Bulgaria.

In relation to awarded contracts to non-EU companies, data from TED show that there were 41 contracts awarded in Bulgaria between the period 2010–2020 for the execution of works with the total value of these contracts amounting to EUR 1,430 million. These numbers, however, include only direct cross-border procurement (i.e., companies located in a non-EU country) and do not account for contracts that were awarded to companies located in Bulgaria, but controlled by companies in a non-EU country (as in the case of subsidiaries established in Bulgaria). Figures for such indirect cross-border procurement awards are not available for the construction sector, but a report by the European Commission (2021) suggests that contracts awarded in indirect cross-border procurement are more frequent (albeit estimates also show that Bulgaria had the lowest shares of indirect cross-border contracts awarded among EU countries).³²

There is also some evidence for increased participation of third-country companies, such as those from China, in public procurement at the sub-national level (Shopov, 2022). While public procurement in Bulgaria has been relatively centralised, the number of contracting authorities has grown substantially in recent years, and an increasing number of public contracts are now under the control of municipal officials who often lack experience and expertise in procurement procedures (EC, 2016).

5.1.5 CHALLENGES IN PUBLIC PROCUREMENT: THE CASE OF THE AWARDED BID FOR THE “MODERNISATION OF RAILWAY SECTION ELIN PELIN – KOSTENETS”

To shed some light on the challenges in public procurement in which third-country companies are involved, we analyse the case of a public contract which was awarded by the National Railway Infrastructure Company (contracting authority) for the “Modernisation of railway section Elin Pelin-Kostenets,” specifically for Lot 3 of said tender. The project, which is co-financed from the EU’s Cohesion Fund and realised under the Operational Programme Transport and Transport Infrastructure 2014–2020 (OPTTI), is one of the largest transport infrastructure projects in Bulgaria contributing to an important national strategic transport objective aiming at the improvement of the Bulgarian rail network to EU standards and its integration in the European TEN-T network.³³ The tender was published in 2017 (with the value for Lot 3 estimated at 354 million BGN).³⁴ The contract was initially awarded to the “Bullrail-2018” consortium whose bid was ranked first by the contracting authority. The consortium was comprised of the Bulgarian company “Trace-Sofia” and “China Communication Construction Company.” On appeal by one of the competing consortiums, “Strabag-GP Rail 2017”, which was ranked second, the case was reviewed by the Commission for Protection of Competition (CPC). In its decision, the CPC (2019) cancelled the awarded contract which was then subsequently awarded to the “Strabag-GP Rail 2017” consortium. The value of the contract is 394.5 million BGN (EUR 201.7 million).³⁵

The CPC (2019) based its decision to annul the initially awarded contract on the following claims brought forward and argued by the “Strabag-GP Rail 2017” consortium in its appeal: ³⁶

32 Data for Bulgaria show that between 2016 and 2019 the share of indirect cross-border procurement in terms of the number of contracts awarded to foreign companies (including EU and non-EU) was 10.5% as opposed to 0.3% for direct ones.

33 <https://www.rail-infra.bg/en/249>

34 Contract notice 2017/S 128-260109.

Available at: <https://ted.europa.eu/udl?uri=TED:NOTICE:260109-2017:TEXT:EN:HTML&tabId=5&tabLang=en>

35 Contract award notice 2020/S 144-353283. Available at: <https://ted.europa.eu/udl?uri=TED:NOTICE:353283-2020:TEXT:EN:HTML>

36 It should be noted that there were more claims in the appeal, but the CPC found those either unfounded or not clearly argued.

- The ESPD³⁷ submitted by the China Communication Construction Company was not signed with a qualified electronic signature (QUES) in accordance with Art 25(3) of EU Regulation 910/2014 and within the meaning of Art 3 of the Electronic Document and Electronic Certification Services Act. The Evaluation Committee failed to carry out an assessment in this regard before admitting the participant to the next stage of the bid procedure, namely the examination of its technical proposal.
- Inconsistencies in the technical and financial proposal of the “Bullrail-2018” Consortium (e.g., sequence of activities, execution of work) which do not comply with technical specifications laid down in the tender documentation.
- The evaluation and review of the technical proposal of the “Bullrail-2018” consortium by the evaluation committee and the contracting authority did not comply with conditions of publicity and transparency as enshrined in Art 2 of the Public Procurement Law.
- The written justifications submitted by the consortium for its method of price formation was accepted by the evaluation committee without providing relevant and adequate reasons for doing so. As laid down in Art 72(1) of the Public Procurement Law, it is mandatory for the contracting authority to request a detailed written justification from the tenderer when the price offered in the proposal is more than 20% more favourable than the average value of the offers of the other tenderers. This was established to be the case by the contracting authority. While a written justification was submitted by the consortium for its method of price formation as requested, the CPC found that it was not evident from the recorded minutes of the committee how it came to its decision to accept the submitted justification.³⁸

The reasons, cited in the CPC’s decision for cancelling the initial contract, are interesting as they tend to illustrate challenges both in terms of the correct application of the law by contracting authorities, and companies’ compliance with tender specifications.

Furthermore, the above case highlights the importance of guidance and training for contracting authorities as well as for tender evaluators to ensure full compliance with the law. In the described bid, the consortium who was first awarded the contract requested that information contained in the ESPD, parts of the technical proposal, and the breakdown of the proposed price was considered confidential and that it did not wish this information to be disclosed by the contracting authority, unless provided otherwise by law. While the evaluation committee did set out facts from the technical proposal that the tenderer identified as confidential information, the CPC found that this did not allow to examine and evaluate the proposal in its completeness and specificity and was in breach of the principle of transparency as laid down in the Public Procurement Law.

Additionally, the relatively complex and frequently changing public procurement legislation in Bulgaria should be mentioned as it also has an impact on monitoring and enforcement (EC, 2016). Moreover, it affects compliance with legal and administrative requirements not only on the part of contracting authorities, but also of companies, especially those outside of the EU who are less likely to be familiar with the national legal public procurement framework. This is important as knowledge of the specific legal context of the country issuing the tender is reportedly the most important barrier for foreign (both EU and non-EU) bidders from the perspectives of companies as well as contracting authorities (EC, 2021). Finally, insufficient human resources and administrative capacity

37 Stands for European Single Procurement Document, which is a self-declaration form used in public procurement procedures.

38 According to the PPL, the tenderer should set out and justify the circumstances to which the more favourable conditions for the proposed price are due. Art. 72(2) sets out five circumstances that the justification may refer to: the economic peculiarities of the production process of the provided services or the public works method; the chosen technical decision or presence of extremely favourable conditions for the participant for provision of products or services or for fulfilment of public works; original offered decision of the participant in relation to public works, supplies or services; observation of the obligations under Art. 115; the possibility for the participant to receive state aid.

faced by the public procurement agency and contracting authorities alike affects companies' access to procurement information. All the above puts fair competition at risk.

5.1.6 CONCLUSIONS

Increased competition in cross-border public procurement, including the participation of bidders from third countries, have benefits both in terms of price and quality (e.g., transfer of specialised knowledge, technology, innovation).

At the same, it is crucial that the bidding and awarding process complies with regulations upholding principles of equal treatment and transparency, and circumventing practices that distort competition for instance through abnormally low bids. Addressing current weaknesses in public procurement, as highlighted in the above case, for example by strengthening administrative capacity, expanding awareness-raising and training to contracting authorities and increasing transparency in the procurement process, is therefore critical in order to ensure a level-playing field among potential suppliers with benefits for the wider economy and society.

5.2 THIRD-COUNTRY TURKISH CONSTRUCTION COMPANIES IN SLOVENIA: THE CASE OF THE DIVACA-KOPER RAILWAY PROJECT

5.2.1 INTRODUCTION AND BACKGROUND

The Slovenian construction sector and public procurement

Even though the Slovenian construction sector has been adversely affected by the 2008 crisis, which led to many construction companies to shut down, since mid-2010s, the sector has returned to an increasing level of economic activity. While the Chamber of Commerce and Industry of Slovenia (Gospodarska zbornica Slovenije) is cautious about the rising construction costs and prices due to the pandemic and the ongoing Ukrainian war, the demand for investment and labour in the construction sector in Slovenia remains stable.³⁹ Along with several other state-funded social and housing constructions in Slovenia, the largest public construction project in the last decade has been the Divaca-Koper railway track. In this case study, we concentrate on the bid procedure, companies implementing the project, and the current conditions of the Divaca-Koper railway project undertaken by a Slovenian-Turkish consortium.

Since 2014, Slovenia's public procurement legislation has been harmonised with EU legislation through the Public Procurement Acts⁴⁰ that regulate contracts on the supplies of goods, services, and construction work.⁴¹ Public contracts are also mandated to comply with the applicable national environmental, social, and labour laws. In Slovenia, any construction procurement tender above the threshold of 100.000 Euro in value is subject to the public procurement laws and must apply the public procurement contract procedure.

Foreign bidders can participate in Slovenian public contracts in three ways: independently, jointly with a Slovenian partner, or with the assistance of an advisory company. Yet, the publication of public contract announcements is only made in Slovene.⁴² Therefore, while foreign bidders can submit and enter the market independently, due to language barriers, a widely used practice is to connect with a local company and offer a joint bid. Likewise, another possibility is to engage an advisory company, which examines the tender in the original language, prepares the proposal in Slovene and submits the bid on behalf of the foreign company. Notably, Slovenian legislation foresees equal treatment of foreign company bids with local ones. The legislation strictly forbids any form of discrimination.

Lastly, the criteria for awarding the bid in public procurement is typically based on the tender documentation published, and the primary selection is made based on the most economically advantageous offer. One key characteristic of note here is that if the contracting authority believes that one of the bid prices is abnormally low, it can require the company or companies submitting the low bid to explain the accounting. If the contracting authority deems the proposal unusually low in terms of cost, then it may reject the lowest bid and select another offer, which is in line with Article 69 of the EU Directive on Public Procurement.

39 Glas Gospodarstva Gradnje (EN: The Voice of the Construction Industry), July 2022 issue, p.7, commentary by Gregor Ficko, published by the Chamber of Commerce and Industry of Slovenia (Gospodarska zbornica Slovenije).

40 Legal Protection in Public Procurement Procedures Act (ZPVPJN) and Public Procurement Act (ZJN-3).

41 Information is retrieved from the Slovenian Business Portal (CMSR): <https://poslovniportal.si/en/doing-business-slovenia/vi-public-procurement> (accessed on 18 November 2022).

42 Even though the actual procurement is only published in Slovenian, tenders with higher values are also made available in English in the TED – Tenders electronic daily in line with the EU regulations. However, this publication does not constitute the official bid application procedure.

5.2.2 METHODOLOGY

This case study concentrates on the fieldwork from Slovenia and especially on discussions of the second part of the Divaca-Koper railway construction project. For the data collection, we have conducted semi-structured interviews with four stakeholders related to the project, including representatives from the two companies implementing the project, the Slovenian Chamber of Commerce, and civil society organisations that work on worker rights in Slovenia (see Table 1 below for a complete list of interviews conducted). In the project, Kolektor and Yapi Merkezi are the two large partners. Therefore, the fieldwork conducted for the study concentrates on these two companies. Interviews were conducted in English and Turkish and were done online. In addition, secondary resources and material provided by the interviewed respondents were also used in the study, as well as media sources and existing studies on the topic. We note here a limitation in our data collection in that we did not get a positive response for an interview from the national labour inspectorate.

5.2.3 TURKISH COMPANIES' ACCESS TO THE SLOVENIAN CONSTRUCTION MARKET

The Divaca-Koper project was awarded as a public contract by the 2TDK⁴³ (the project company established by the government of the Republic of Slovenia in March 2016 for the development of the second track the Divaca-Koper project) as part of the country's infrastructure development. The project has been won and is currently being implemented by a Turkish-Slovenian consortium of three companies: one Slovenian and two Turkish. The second phase of the project for the second tack is expected to be completed from 2021 until 2024. The Slovenian Partner company, Kolektor CPG, is one of the largest construction companies in Slovenia. According to the statistics from 2022, Kolektor CPG is the second-largest Slovenian construction company, with a total revenue of 145,021,000 EUR per year and employs about 391 employees.⁴⁴ The second partner company in the consortium is the Turkish Yapi Merkezi Construction and Industry Inc. (abbreviated as Yapi Merkezi thereof). Yapi Merkezi is a large international construction company from Turkey which has realised the construction of a wide variety of buildings, heavy construction, and railway projects both in Turkey and abroad, such as in the United Arab Emirates, Saudi Arabia, Sudan, Algeria, Morocco and Ethiopia. One of the most important aspects of Yapi Merkezi is that the company is specialised and has expertise in national and international projects in transportation systems, rail systems, tunnels, and broad infrastructure projects.

TABLE 17 STAKEHOLDERS INTERVIEWED FOR THE CASE STUDY

CODE	ROLE	INTERVIEW DATE
Interviewee 1	Chamber of Commerce representative	09.09.2022
Interviewee 2	Local company representative	05.10.2022
Interviewee 3	Foreign company representative	25.10.2022
Interviewee 4	Representative of a civil society organisation focused on worker rights	15.10.2022

43 The official website of the public tender contracting company 2TDK: <https://drugitir.si/> [accessed on 18 November 2022].

44 Information retrieved from the official websites of the two Turkish companies in the consortium: <https://yapimerkezi.com.tr/> and <https://www.ozaltin.com.tr/anasayfa> (both accessed on 3 October 2022).

Likewise, the third partner, Özalpin construction, is also a company from Turkey that specialises in infrastructure and superstructure projects.

The Kolektor CPG- Yapi Merkezi and Özalpin joint venture is implementing 2TDK's tender for the 1st (LOT 1) and 2nd (LOT 2) sections of the Divaca-Koper Railway 2nd phase. The Divaca-Koper Railway LOT1 has a contract value of 403,613,000 Euros and covers tunnels with a total length of 25 463 metres. The first part of the project is planned to be completed in 40 months. The contract value of Divaca-Koper Railway LOT 2 is 224.7 million Euros. The project will be completed in 36 months and will include the construction of 6 tunnels and two viaducts. Given its size and importance for Slovenia's infrastructure, the project receives strong public interest and is covered frequently in the media (further discussed below). Based on our fieldwork, we have identified three key aspects of the entry of the third-country, Turkish, company into the Slovenian labour market. First, the scale of this project and the specificity of the tasks require expertise in infrastructure projects, particularly in tunnels, and a workforce with previous experience working in tunnel construction projects. In this respect, our respondents have reported that no local Slovenian company could take on such a project alone and that the infrastructure-building expertise among local construction companies would not be sufficient to implement this project (Interview 2). Regarding this, the representative of the local consortium partner has explained the formation of the venture with the Turkish partner as necessary and reported that they had looked for a big company with experience in tunnel construction. While there were other companies in consideration, including an Italian one, the local company representative said that the Kolektor and Yapi Merkezi discussions were successful, and the two companies were able to build a relationship of trust (Interview 2). Our interviews with the company representatives suggested that the local and foreign companies formed this joint venture to mutually benefit from each other's technical skills and work capacity combined with knowledge of the local language, legislation, and ability to coordinate the work in Slovenia.

Next, the representative of the local partner emphasised that another important aspect in their choice of partner was the ability to provide workers with the necessary skills because of the overall shortage of construction workers in the European labour market- particularly with these special skills in tunnel work (Interview 2). Therefore, the local Slovenian construction companies lack the required comprehensive expertise in tunnel building in railway structures and the medium-skill level workforce with the technical knowledge and experience in this area. This labour shortage seems to be the case both in the Slovenian local workforce and the broader European labour market (Interview 3). In the project, the work is split roughly evenly between the two large partners and Yapi Merkezi has supplied the workforce mainly from Turkey. Our interviews have reported that 80% of the workers employed in the Yapi Merkezi side of the tunnel construction are from Turkey, and the other 20% are recruited from Slovenia or other countries such as Bosnia and Serbia (Interview 2; Interview 3).

Finally, considering the necessity of having local know-how in the Slovenian context and the fact that this particular project was Yapi Merkezi's first work in this market, the company's entry was facilitated by their partnership with the local company. Furthermore, Yapi Merkezi has also worked with the local Slovenian branch of an advisory consulting company, Adecco, to facilitate their entry and to manage their employer branding and corporate identity strategies. This communications strategy support has been instrumental in both the bid preparation and building a positive public image for the company in the Slovenian public and the construction industry (Interview 1).

5.2.4 BID PROCEDURE, TERMS OF CONTRACT, AND IMPLEMENTATION

Since the Divaca-Koper project is a public contract awarded by TDK2, both the contracting and bid selection procedure and the implementation process are subject to the public procurement legislation in Slovenia. Therefore, the contract

terms are under Slovenian legislation, including labour and social protection laws. The project's first and second phases were open to bids separately; in the first phase, multiple bids were offered. In the bidding for the project's first phase, among others, there were bids from Chinese companies. However, the decision made by the State Audit Mission in Slovenia has excluded these offers on the grounds of reciprocity, as Slovenia does not currently have a bilateral agreement with a public procurement clause with China. Therefore, among accepted bids, in addition to the Kolektor – Yapi Merkezi joint venture, there was a competing bid from the Austrian construction company Strabag.⁴⁵ After the award of the first phase of the project to the Slovenian-Turkish consortium, in the second phase of the bid procedure, the consortium did not have any other competing bids (Interview 2, Interview 3).

Our respondents from the fieldwork, both company representatives, reported that combining local expertise with the technical skills and workforce that the Turkish company brings to the joint venture had been the winning strategy in their bid. The local company representative also said that since every market has its particularities in the legislation, it would have been exceedingly difficult for a foreign company to win such a large project without a local partner. However, he also emphasised that, given the scale of the project and even with Turkish partners, undertaking such a project involved risks due to the resources required. While the Turkish companies provide workforce at different skill and occupation levels, resources such as concrete and cement, for instance, are all used from local Slovenian material. Our interviewee explained that this is because of the Slovenian legislation on material qualities, certification requirements, and assessments of environmental impact in Slovenia. The local partner confirmed that without knowledge of the Slovenian context and language, this would be exceedingly difficult for a foreign company to undertake independently (Interview 2).

At the time of the fieldwork for this case study (July-November 2022), the implementation of the project has been ongoing, and the companies in the joint venture have been working successfully for about two years. The joint venture company representatives said that while the working languages in each section of the implementation sites are Turkish and Slovenian, both sides have employed engineers and managers who are internationally oriented and speak English, facilitating cooperation between the two companies (Interview 2, Interview 3).

The project implementation is on track according to the proposed timeline in the bid and is foreseen to be completed on time. The implementation of the work has been split between two companies about evenly, where Kolektor and Yapi Merkezi are constructing four tunnels each (Interview 2, Interview 3).

Based on the interviews we conducted with the local stakeholders, there have been no particular issues vocalised from the perspective of increasing competition in the industry due to the entry of this third-country company in the market. Both Kolektor's representative and the representative from the Slovenian Chamber of Commerce characterise the collaboration as an excellent opportunity to learn from the Turkish partner's expertise.

While the general public opinion and the industry view of the venture are positive, there have been some media reports that included some negative press regarding the entry of a foreign Turkish company into the Slovenian market. Although this is Yapi Merkezi's first project in the country, other Turkish companies have previously been awarded bids in the construction sector, such as the Karavanke tunnel completed by the Cengiz construction company. This trend seems to be the cause of some of the contentious media reporting of the Turkish companies increasingly taking a role in construction projects in Slovenia.

45 Delo newspaper (13.04.2021) reporting (by Janez Tomažič) on the bidding process for the public tender <https://www.delo.si/gospodarstvo/novice/odprijanje-ponudb-za-gradnjo-prvega-dela-drugega-tira/#!> [accessed on 27 September 2022].

Next, the Turkish workforce (and all other workers) employed by Yapi Merkezi work under Slovenian work contracts and have Slovenian work and residence permits. Therefore, the labour and social protection that applies to these workers are under Slovenian legislation (Interview 3). In general, the Turkish company has also been seen as an “exemplary employer” in the wages and salaries being paid to the workers employed by the company (Interview 1). Regarding working hours, the workers in the tunnel construction sites work in 8-hour shifts where each day, two or three shifts are conducted, or two 12-hour shifts are conducted depending on the technical requirements of the work. The workers also work 10 days with 5 days off periodically (Interview 3).

5.2.5 CHALLENGES TO THE ENFORCEMENT OF EU STANDARDS FOR NON-EU COMPANIES

In this section, we discuss the challenges faced by social partners, local residents, enforcement agencies, as well as the particular difficulties experienced by the companies undertaking the project during the process for the implementation. First, the Slovenian local partner company Kolektor is a member of the Slovenian Chamber of Commerce whereas the two Turkish companies are not. This means that Kolektor is part of the organised business and is represented by the relevant interest group as one of the largest actors in the Slovenian construction industry. Furthermore, the Chamber of Commerce is also informed by private consulting companies (such as Adecco) on the employer branding strategies which they work on for the foreign companies (such as Yapi Merkezi), entering the market in Slovenia (Interview 1).

Regarding the perspective of social partners, there have been some media reports about the work practices and shift hours at the construction

site where a number of political parties and trade unions vocalised some concerns.

Furthermore, social partners have also raised concerns about the psycho-social conditions of the works accommodating in the Orehek village due to the tensions with the local community.⁴⁶ Our civil society representative interviewee has reported that there is a need for inspections also in the living conditions of the workers (Interview 4).

Relatedly, a challenge raised by our interviewed respondents was concerning the accommodation building for Turkish workers by Yapi Merkezi near the Orehek village next to the construction work site (Interview 1). The construction of the accommodation site took about one and a half years, which is a considerably long time for the project due to permit issues with local authorities and bureaucracy (Interview 3). The case was also widely reported in the media, and there have been reports of an adverse reaction by the local public to the arrival of the workers.⁴⁷ The issue was explained by one of our respondents due to the small local community and its homogenous demography. In this respect, the problem has been resolved with the cooperation of the local project partner and a process of negotiation with the local authorities and by following the bureaucratic procedures (Interview 2, Interview 3).

Next, since the Divaca-Koper is a large-scale public project with wide media and public attention, respondents from the fieldwork have reported that any extensive violations of the regulations are unlikely to occur in such a high-salience project (Interview 4). On average, the construction sites get frequent inspections from the labour inspectorate (Interview 2) and, currently, OSH and working conditions of workers seem to be in line with the regulations. Overall, regarding enforcement, there do not seem to be any reports based on our fieldwork that indicate a serious challenge to enforcement in the case under study. However, it is important to note a limitation in our data collection as no interviews with the labour inspectorate

⁴⁶ Information obtained from the official website of the Slovenian political party Levica (published on 4 June 2021) <https://www.levica.si/drugi-tir-orehek-cengiz/> (accessed on 20 September 2022).

⁴⁷ Reporting from the news sources (published on 28 January 2021) <https://www.24ur.com/novice/slovenija/turki-z-gradbenim-dovoljenjem-za-delavsko-naselje-pri-orehku.html> (accessed on 20 September 2022).

representatives were conducted. The labour inspectorate informed us that due to potential conflict of interest in their activities, they did not agree to be interviewed for the case study.

Lastly, one challenge experienced at the start of the project implementation was regarding the work permits. The local company representative reported that obtaining work permits in Slovenia could take a long time. In this project, some delays were experienced due to these processing times (Interview 1, Interview 2).⁴⁸ The representative from Yapi Merkezi also confirmed this. Given the scale and the large number of workers that needed to be sent to Slovenia to start the project, the public authority for permit issuance seems to have needed to take a long time to complete the work permit documents for all these employees (Interview 3). Our interviews revealed that it took an average time of 60-120 days for the permits to be issued, considering the importance of the project. Still, the average waiting time for a Slovenian work permit is said to take even longer, on average, up to 6 months. In the end, the issue seems to have been resolved at the current stage, and the work is reportedly on track. However, one thing pointed out was that most of the longer delays in work permits seem to be caused by the documentation required to demonstrate the equivalence of the vocational education that the workers have. Since foreign countries have different documentation and certification for vocational education, translations, the procedure of proofs and confirmations of the equivalence of the schooling of workers are reportedly the reason for the backlog in the work permit issuance (Interview 2).

5.2.6 CONCLUSIONS

The Slovenian construction market has recovered relatively well from the 2008 crisis, yet the size and capacity of the local companies seem to fall behind when it comes to undertaking large-scale infrastructure projects. All the stakeholders interviewed in our case study reported that there is an acute shortage of skilled workforce in the construction sector not just in Slovenia but also in the larger European labour market. In this respect, it seems that the entry of TCN companies is increasingly used as a way to compensate for this expertise, resource, and workforce gaps in Slovenia. We also find that language and local knowledge are deemed essential for construction projects in Slovenia from the bid procedure to project implementations. Therefore, while it is a possibility in Slovenian legislation, most TCN companies enter the market through joint ventures with a local company or through the facilitation by an advisory consulting company. Overall, in the Divaca-Koper project case studied here there were no extensive enforcement difficulties of compliance with the EU legal framework, from the side of the TCN company.

48 Delo newspaper (11.01.2022) reporting [by Boris Šuligoj] on the obstacles related to the permit for the construction of a workers' settlement at Oreško, see: <https://www.delo.si/gospodarstvo/novice/turki-so-pricakovali-hitrejse-odlocitve-uradnikov/> [accessed on 3 October 2022].

5.3 CHINESE CONSTRUCTION COMPANY IN SWEDEN: THE CASE OF THE STOCKHOLM METRO EXPANSION PROJECT

5.3.1 INTRODUCTION AND BACKGROUND

In this case study, non-EU companies' presence in the Swedish construction sector is investigated focusing on contracts awarded to a Chinese company for works in a large-scale public transport infrastructure project in the city of Stockholm. The project, which involves several contractors, is the city's largest investment in public transport since the 1970s and involves the building and extension of metro lines and stations.⁴⁹ The project is a joint initiative financed by the government, the city of Stockholm, the municipalities of Nacka, Solna and Järfälla, and Region Stockholm, which is responsible for the entire development. Construction work started in 2019 with work currently ongoing at eight different construction sites to be completed overall by 2034.

Up to now, 53 contracts were awarded in total for the project of which 33 are for works (i.e., build-only or design and build contracts).⁵⁰ While construction of the metro lines is still in progress,

procurements for civil construction works have by now been mostly completed and new and upcoming tenders mainly concern other types of works (e.g., installations, electricity, telecommunications, artistic works etc.).⁵¹

Given its massive scale, the project involves working with several contractors. Based on information on contracts awarded (for works only) so far⁵², companies with whom a contract was agreed include both local (i.e., Swedish) construction companies and companies from other European countries (e.g., the Czech Republic, Finland, Germany, Italy, Spain) as well as one Chinese company. In most cases, contracts were awarded to the companies' local branches in Sweden.

The Chinese company is the only third-country company to be awarded a contract and it is CRTG Engineering (Sweden) AB. It was established in 2018 in Stockholm as the Swedish branch and European headquarter of China Railway Tunnel Group (CRTG), which is the largest engineering enterprise specialized in tunnelling and

TABLE 18 EXPANSION OF THE STOCKHOLM METRO SYSTEM

WORK	YEAR OF COMPLETION
Extension of the blue line, 2 new stations	2026
Building of a new yellow line, 3 new stations	2028
Further extension of the blue line, 6 new stations, new platform	2030
Expansion of service depot	2025
Building of a new line with 6 new stations	2034

Source: <https://nyatunnelbanan.se/en/stockholms-nya-tunnelbana/>

49 In addition to the metro building, the project also involves the construction of around 130 thousand new homes in the metro area.

50 Information on awarded contracts is published on Region Stockholm's website and includes information on the type of assignment, the name of the company, the amount awarded and the date of award.

See: <https://nyatunnelbanan.se/en/awarded-contracts/> (Accessed on 10 Nov 2022).

51 Video of 2022 Supplier Day: <https://nyatunnelbanan.se/en/procurement/supplier-day/>

52 <https://nyatunnelbanan.se/en/awarded-contracts/> (Accessed on 10 Nov 2022).

underground works in China. CRTG is a subsidiary of China Railway Group Limited (CRG) whose parent company, China Railway Engineering Group Company Limited (CREC) is fully owned by the state.⁵⁴ For CRTG, the awarded contracts in 2019 were the first it won for an infrastructure project in Sweden and as an independent contractor “in accordance with EU bidding procedures and EU standards and specifications”.⁵⁵

The decision to award the contract to CRTG received media attention in Sweden. Specifically, the second-ranked company in the tender criticised the low price offered by CRTG which was approximately 40% lower than the second lowest offer received.⁵⁶ The Swedish Construction Workers’ Union also considered the offer under-priced raising concerns about possible wage dumping and poor working conditions.⁵⁷ The media articles also highlighted that CRTG was a state-owned company. As a response, Region Stockholm issued a statement where they reiterated that they evaluated all bids in an equal way and in accordance with the existing regulations, and that – as long as it is not decided by legislators at national or EU level – they do not exclude suppliers from any country

from submitting tenders.⁵⁸ The statement also refuted claims that the winning price was too low for the work required, saying that while CRTG had offered the lowest price among the bidders, it was close to their own cost calculations and therefore did not consider the offer below-price.⁵⁹ It further noted that CRTG was highly experienced in carrying out the type of work for which the contract was awarded and there were many requirements that companies had to meet in their bids for the contract. In addition, they stated that there were two other contracts, for which CRTG also submitted a bid, which went to other companies. As a final point, the statement mentioned that the other bidders could still appeal against the decision as no contract had been signed. To our knowledge, no formal appeal was submitted. Since then, CRTG has been awarded two more contracts for the Stockholm metro extension project (see below).

Against this background, we next look in more detail at the contracts won by CRTG, the procurement process, and the status of the works carried out under these contracts including difficulties or challenges that may have arisen during their execution.

TABLE 19 AWARDED CONTRACTS FOR WORKS (UNTIL JUNE 2022)

YEAR	NUMBER OF AWARDED CONTRACTS	VALUE OF AWARDED CONTRACTS (SEK)
2018	2	120,741,588
2019	7	881,618,030
2020	10	4,913,333,645
2021	8	5,113,678,478
2022	6	4,970,000,000

Source: Based on information published on Region Stockholm website ⁵³

⁵³ <https://nyatunnelbanan.se/en/awarded-contracts/> [Accessed on 10 Nov 2022]

⁵⁴ <https://www.fitchratings.com/research/corporate-finance/fitch-affirms-china-railway-group-at-a-outlook-stable-09-06-2021>

⁵⁵ <https://www.crtg.eu/2019-12-17>

⁵⁶ <https://www.thelocal.se/20191002/chinese-company-wins-million-kronor-bid-to-help-build-stockholm-metro/>

⁵⁷ <https://www.byggindustrin.se/affarer-och-samhalle/politik/kinesiska-crtg-svarar-pa-kritiken/>

⁵⁸ Available in Swedish only: <https://www.regionstockholm.se/verksamhet/kollektivtrafik/aktuella-projekt/Nya-tunnelbanan/Nyheter/2019/10/manga-fragor-om-upphandling-av-tunnlar/>

⁵⁹ *ibid*

5.3.2 AWARDED CONTRACTS

There were three contracts awarded to CRTG in 2019 for the construction of three work tunnels for the extension of the metro's blue line (the contracts were signed in Dec 2019). The projects are located in Nacka and concern the construction of a 550 meters long tunnel with two 20-metre-long platform rooms and two 20-metre-long service tunnels (Contract No. 87131), a 460-metre-long tunnel with two 20-metre-long platforms and two 20 meters long service tunnels (Contract No. 87132), and a 360-metre long tunnel, two 20-metre-long train tunnels and two 20-metre long service tunnels (Contract No. 87133).⁶⁰ All three projects were completed in 2021.

In addition, CRTG has two contracts for which work is ongoing. One was awarded in 2021, for the construction of rock shaft for rail tunnel and station areas in the Nacka area (Contract No. 8714). CRTG won the contract with the lowest price.⁶² The other contract, awarded in 2022, includes the construction of a roughly 1,000-metre-long rail tunnel, holding tracks, station spaces, concreting works and connecting earth works (Contract No. 8715). The estimated value of these contracts is 932 and 600 million SEK (around 90 and 58 million EUR) respectively.

5.3.3 PROCUREMENT PROCEDURE

In Sweden, public procurement is regulated in the Public Procurement Act (LOU), the Act on Public Procurement in the Utilities Sectors (LUF), the Act on Procurement of Concessions, and the Defence and Security Procurement Act. The provisions of the EU procurement directives are transposed by these Acts. There are separate chapters in these Acts that regulate procurements that fall under the scope of the EU Directives (i.e., above threshold contracts), and those below the threshold where national rules apply and where contracting authorities can use a simplified procedure. According to the aforementioned LOU, suppliers, whether they are from Sweden, other EU Member States or third countries, have the same rights to participate in public procurement tenders. At the same time, Swedish legislation also transposes Art 69 of EU Directive 2014/24 regarding abnormally low tenders and by thus doing also setting the exclusion criteria.⁶³

The main body responsible for supervision of public procurement is the Swedish Competition Authority whose main task is to ensure compliance with competition rules.⁶⁴ Another important body is the National Agency for Public

TABLE 20 CONTRACTS AWARDED TO CRTG FOR THE STOCKHOLM METRO EXPANSION

YEAR	AWARDED CONTRACTS	ESTIMATED VALUE (SEK)	STATUS OF WORK
2019	87131: Work tunnel Sickla Värmdövägen	82 million	Completed
2019	87132: Work tunnel Järla Östra	99 million	Completed
2019	87133: Work tunnel Nacka Skönviksvägen	77 million	Completed
2021	8714: Civil works Sickla station	932 million	Ongoing
2022	8715: Civil works Järla station	600 million	Ongoing

Source: Based on information published on Region Stockholm website⁶¹

⁶⁰ <https://www.crtg.eu/projects-6-1>

⁶¹ <https://nyatunnelbanan.se/en/awarded-contracts/> [Accessed on 10 Nov 2022]

⁶² The second lowest price was 969.6 million SEK.

<https://www.byggnadsarbetaren.se/nytt-storkontrakt-till-kinesisk-jatte-vann-senast-med-underbud/>

⁶³ While the Swedish legislation provides no definition of an abnormally low bid, rules on the evaluation of abnormally low bids (i.e., written justification, grounds for exclusion) correspond to those in the EU Directive.

⁶⁴ Its powers to oversee competition were recently strengthened thanks to a legislative amendment in 2021.

See: <https://www.konkurrensverket.se/en/news/strengthened-powers-for-the-swedish-competition-authority/>

Procurement which provides support and guidance to contracting authorities, suppliers, and other public procurement actors. It also promotes socially and environmentally sustainable procurement and acts as a hub for innovative procurement practices.

Region Stockholm's procurement for the metro expansion project adheres to the Act on Public Procurement in the Utilities Sectors (LUF) which applies to contracting entities in the fields of water, energy, transport, and postal services. Procurements are open to international competition. Open and planned contracts for tenders are listed in a procurement timetable published on their website and updated every two months. Moreover, there is a Supplier Day organised every year where potential contractors, mainly from the construction and civil engineering sectors, can receive information on upcoming procurements for the Stockholm metro expansion project as well as on other future business opportunities. Companies interested in submitting a tender can do so by first registering at an online qualification system which is used for selecting suppliers that meet the legal, financial as well as technical and professional requirements for carrying out the works to be procured. Only companies pre-qualified by this system are invited to submit a tender. Tenders can be submitted via an e-procurement platform after registering an account. Here, companies can find invitations to tender and links to accompanying documents with information about the terms and conditions of the contract, technical specifications etc. During the tender period, companies can ask questions and have the possibility to participate in project reviews and site viewings.

5.3.4 STATUS OF THE WORKS, WORKING CONDITIONS, AND IDENTIFIED CHALLENGES

Tunnel excavations for all three projects awarded in 2019 were completed by the end of June 2021. A key challenge faced by the company at the beginning was to meet the tight schedule for completing these projects and particularly to overcome delays in the works caused by the COVID-19 pandemic. In addition to the short construction timeline, there were strict contractual requirements for sustainable project implementation that had to be met including compliance with labour law (i.e., legislation on minimum wage, social protection), ensuring safe working conditions (occupational health and safety), and environmental conditions (e.g., noise, environmentally hazardous activities, etc.) and sustainable supply chains. These requirements were already specified in the tenders with a clear emphasis on environmental and social sustainability relating to all deliverables and working methods.

To ensure compliance with work environment requirements, the company employed a work environment coordinator who was present at the construction site and worked closely with the contracting authority's work environment manager for instance by carrying out joint inspections every two weeks.⁶⁵ Monitoring of the projects and compliance of procedures and requirements has also been carried out in coordinated audits by public authorities such as the Swedish Work Environment Authority. For example, during an inspection of the Nacka project, the aforementioned authority noted some safety incidents necessitating a number of improvements both for the contractor and the contracting authority (i.e., the client).⁶⁶ A report by the contracting authority also highlighted an increased number of serious incidents including work accidents, but without mentioning the specific sites where these occurred.⁶⁷

⁶⁵ <https://nyatunnelbanan.se/samarbetet-nyckel-for-god-arbetsmiljo/>

⁶⁶ <https://nyatunnelbanan.se/wp-content/uploads/2022/04/Hallbarhetsredovisning-2021.pdf>

⁶⁷ *ibid*

Audits of main contractors on labour conditions also revealed problems with long supply chains especially poor working conditions throughout the chain, albeit these are mentioned more generally and not specifically related to the company.⁶⁸ CRTG has relied on local subcontractors to supply them with materials and equipment for their works with whom they have worked together in previous projects in China.⁶⁹ In order to improve compliance with labour law conditions, the contracting authority has made such requirements clearer. Together with the social partners, an appendix of terms and conditions for labour law contracts has been developed as part of all contracts and include updated information on collective agreements pertaining to minimum wages, working time and time off for construction and civil engineering professionals.⁷⁰

Regarding the execution of the completed work tunnels, the company was awarded the highest rating (i.e., excellent) by the contracting authority for the Nacka project.⁷¹ As mentioned before, works for the other two tunnelling projects (awarded in 2021 and 2022) are currently still ongoing.

5.3.5 CONCLUSIONS

CRTG is a relatively new player in the European construction market and the projects awarded for the metro expansion projects can be considered as a key milestone in the company's plan to further extend its presence in Europe. The contracts awarded to CRTG, in particular the price with which they won these contracts, raised concerns not only among local competitors, but also from the trade union representing workers in the construction sector. For the company, there were strict requirements already at the procurement stage that had to be met which appear to have been regularly monitored by the contracting authority in collaboration with public authorities responsible for ensuring compliance in areas of labour law and work and environmental conditions. While audits and inspections revealed a number of problems related to work safety, supply chains and labour conditions, these applied more generally to the whole metro construction project and not in relation to the said company.

⁶⁸ ibid

⁶⁹ <https://www.byggindustrin.se/affarer-och-samhalle/politik/kinesiska-crtg-svarar-pa-kritiken/>

⁷⁰ <https://nyatunnelbanan.se/wp-content/uploads/2022/04/Hallbarhetsredovisning-2021.pdf>

⁷¹ The contracting authority uses the CEEQUAL sustainability certification system, which was specifically developed to measure the performance of infrastructure projects and includes both environmental and social aspects relevant for construction projects.

5.4 FROM BOSNIA AND HERZEGOVINA TO AUSTRIA VIA SLOVENIA

5.4.1 INTRODUCTION

Slovenia serves as an important hub for the posting of non-EU construction workers to other EU countries, including for Bosnia and Herzegovina (BiH)-nationals posted to Austria (Danaj, Geyer, Cukut Krilić, Toplak, & Vah Jevšnik, 2020; De Wispelaere, De Smedt, & Pacolet, 2022).

As mentioned in chapter 5.3, in 2020 18,144 construction workers were posted to Austria, an estimated 4,374 of which were citizens of a non-EU country (third-country nationals – hereinafter TCN). Unfortunately, the available Austrian data is not comprehensive enough to analyse exactly how many TCN construction workers came to Austria, let alone from which countries. However, estimates can be derived by combining different sets of data. In 2020, 2,972 construction workers were posted from Slovenia to Austria (De Wispelaere, De Smedt, & Pacolet, 2022a) and 49% of *all* construction workers posted from Slovenia in the same year were citizens of BiH (Vah Jevšnik, Cukut Krilić, & Toplak, 2022) suggesting that about one-third (~1,500) of the estimated 4,437 TCN construction workers were BiH citizens. An analysis by the Construction Workers' Annual Leave and Severance Pay Fund (BUAK) for the year 2021 suggested that an even higher share of construction workers posted from Slovenia to Austria are BiH nationals, namely 65%.⁷²

The posting of workers from BiH via Slovenia to Austria is driven by 'push' and 'pull' factors. Political instability and lack of economic opportunities in BiH act as 'push' factors resulting in extensive outgoing migration from the country (Danaj et. al., 2020, p. 22). The primary 'pull' factor to the destination countries is economic.

Employment opportunities and wages in the neighbouring Slovenia are better than in BiH, while workers posted to Austria are entitled to the wages and benefits stipulated in the applicable collective agreements which tend to be significantly higher than the wages in both Slovenia and Bosnia and Herzegovina. For example, the average monthly gross earning for individuals employed in the BiH construction sector in May 2022 was 1,216 KM⁷³ (Agency for Statistics of BiH, 2022), i.e. about 622€. In contrast, the Slovenian minimum wage was 1,074€;⁷⁴ meanwhile the negotiated minimum monthly wage for unskilled laborers in the Austrian construction sector was 2,472€.⁷⁵ Furthermore, the Austrian construction sector has experienced strong growth over the last decade and has increasingly relied on posted and migrant workers (Danaj et. al., 2020). For example, in 2019, posted workers accounted for about 5.2% of employment in this sector (Geyer, Premrov, & Danaj, 2022, p. 29). On the other hand, the migratory pathway of workers from BiH to Slovenia and their onward posting to Austria is also facilitated by public and private actors (see section 5.4.2).

Drawing on literature, administrative data and background interviews with Austrian trade union officials and one person providing counselling and support for workers posted from Slovenia, this case study describes how posting flows are supported by the existing legal framework and actors in the home (i.e. BiH) and sending country (i.e. SI), how, despite legislative efforts in Austria, posted workers are often paid less than they deserve, and the challenges faced by enforcement agencies in trying to protect posted workers' rights.

⁷² BUAK counted the number of postings, i.e. each instance in which a person is sent to another country to provide services, involving BiH nationals, whereas the data by De Wispelaere, De Smedt, & Pacolet (2022a) and Vah Jevšnik, Cukut Krilić, & Toplak (2022) refers to the number of individuals posted at least once during the observation period. The numbers are not directly comparable because one person can be posted more than once per year. Nevertheless, both statistics show that a substantial number of construction workers posted from Slovenia to Austria are citizens of Bosnia and Herzegovina.

⁷³ https://bhas.gov.ba/data/Publikacije/Saopštenja/2022/LAB_05_2022_05_1_BS.pdf

⁷⁴ <http://www.gov.si/teme/minimalna-placa/>

⁷⁵ <https://www.wko.at/service/kollektivvertrag/lohnordnung-baugewerbe-bauindustrie-arbeiter-2022.html>

5.4.2 BiH WORKERS' ACCESS TO THE EUROPEAN CONSTRUCTION MARKET

Data provided by Austrian authorities does not indicate from which countries BiH nationals in Austria were posted and in which sector they work. However, data from other EU countries suggests that most are construction workers posted from Slovenia, which has developed into an important hub for posted construction workers that are third-country nationals.

According to the latest available data, Slovenia has the highest number of posted workers relative to its labour force (De Wispelaere, De Smedt, & Pacolet, 2022b). In 2020, 60,503 persons were posted from the country which is equivalent to 6.8% of total employment in Slovenia in the same year (Vah Jevšnik, Cukut Krilić, & Toplak, 2022). The share of third-country nationals in general, and of Bosnians in particular, among workers posted from Slovenia is exceptionally high. In 2020, BiH nationals accounted for 38% of posted workers, exceeding the share of Slovenian nationals (34%). In construction, which represents roughly a quarter of all postings from Slovenia, the presence of third-country nationals is particularly strong. BiH nationals alone account for around half of all postings in this sector (Vah Jevšnik et al., 2022). In the same year, Austria was the second largest recipient of posted workers from Slovenia, around 60% of which are construction workers (Vah Jevšnik et al., 2022).

The migratory pathway from BiH via Slovenia to other EU countries is facilitated by several factors. Next to geographical proximity and strong historical ties between the two countries, a bilateral agreement signed in 2012 facilitates BiH nationals' access to the Slovenian labour market. Accordingly, BiH nationals can apply for renewable 3-year work and residency permits in Slovenia if they register with the employment office in BiH, there is a justifiable demand for labour in Slovenia, and a Slovenia employer offers them employment. The worker must spend the first year with the same employer,

otherwise the permit is annulled. Thereafter, the person has free access to the Slovenian labour market. The process is carried out in cooperation between the Slovenian Employment Service and the Labour and Employment Agency of BiH. The number of work permits granted based on this agreement increased from 15,418 in 2017 to 36,383 in 2020 (Vah Jevšnik et al., 2022).

Private actors similarly support Slovenia's role as a posting hub. In addition to the formal hiring process through public employment agencies, companies in Slovenia hire workers from Western Balkan countries – like BiH – through informal channels like personal acquaintances or family ties, sometimes deliberately for the purpose of posting to other EU countries (Danaj et al., 2020). Communication through social media, for example through Facebook groups, provides another recruitment channel. Furthermore, public officials and trade unionists in Austria describe a 'posting industry' of specialised service providers which provide posting companies in Slovenia as well as Austrian companies seeking to hire posted workers from the former with the technical and legal advice on the posting process (Danaj et al., 2020).

Finally, it has been argued that the Slovenian state subsidises postings by minimising the social security contributions to be paid for workers posted from the country. According to current legislation, the basis for calculating the social insurance contributions of workers posted under Article 12 of Regulation 883/2004 is not the actual wage paid. Instead, the hypothetical wage paid for comparable work in Slovenia, is used as a reference and this tends to be lower because most postings from Slovenia are into higher-wage countries. This practice has been criticised as 'social dumping' – i.e. providing posting companies with an unfair competitive advantage by lowering their social insurance contributions and, hence, labour costs (Gagawczuk, 2019) – and the European Federation of Building and Woodworkers (EFBWW) and the Austrian construction workers union (GBH) launched an official complaint with the European Commission against Slovenia for providing state aid in February 2019.⁷⁶ However,

⁷⁶ See EFBWW's press release 'Social irregularities in Slovenia' 24 May 2019, available at: <https://www.efbww.eu/publications-and-downloads/press-releases/donec-euismod-mollis-purus-tincidunt-finibus/129-a> (last accessed 25 October 2022).

the complaint is still pending and in June 2022, EFBWW and GBH voiced their disappointment about the slow moving process.⁷⁷ Vah Jevšnik, Cukut Krilić and Toplak (2022) point out that the relevance of this controversial practice may be declining because, since 2017, workers posted from Slovenia are increasingly posted under Article 13 of Regulation 883/2004, which means that their social insurance contributions are calculated based on their actual wage received. For example, in 2020 43.7% of BiH citizens posted from Slovenia were posted according to Article 13. However, they also note that the Slovenian Chamber of Commerce and Industry lobbies for postings according to Article 13 to be treated the same as according to Article 12 i.e., that the social insurance contributions of these workers too should be calculated based on the 'comparable wage' principle (Vah Jevšnik et al., 2022).

5.4.3 WORKERS' TERMS AND CONDITIONS

Workers posted to Austria are entitled to the same wages as locally employed workers. Even before the 2018 revision to the Posting of Workers Directive introduced the equal pay principle at the European level, equal pay was guaranteed under the Austrian Anti-Wage and Social Dumping Act which entered into force in 2011. However, there is substantial evidence on posted workers being paid less than they are entitled too and third-country nationals in the construction sector appear to be most affected (Geyer et al., 2022).

Multiple illegal practices have been documented, including the non-payment of benefits like holiday or sick pay, the classification of skilled

workers as unskilled to avoid surcharges guarantee by collective agreement in the construction sector, companies illegally deducting 'expenses' or underreporting work hours (Schmatz & Wetzel, 2014; Danaj, Hollan, & Scoppetta, 2020; Gagawczuk, 2019; Hollan & Danaj, 2018; Krings, 2019). While it is difficult to assess precisely how many posted workers are affected, one in ten posting companies inspected overall, and four in ten inspected posting companies in the construction sector, are suspected of underpaying their workers (Finanzpolizei, 2020; Geyer et al., 2022). Furthermore, an analysis of Austrian administrative data showed that posting companies in the construction sector are about 30-times more likely to be suspected of underpaying their workers than companies located in Austria (Geyer et al., 2022).⁷⁸

In addition, the legal status of posted third-country nationals is more precarious than that of their European counterparts. While EU citizens have the right to work in each EU member state, this is not the case for many posted third-country nationals who, like BiH citizens who received a work permit for Slovenia under the earlier mentioned bilateral agreement, are only legally permitted to work in Slovenia. Being posted allows them to work on a temporary basis in another EU country in the frame of service provision without a work permit issued by the authorities in the country where they are posted to.⁷⁹ However, if they do not follow all applicable laws, third-country nationals may be found to be working illegally which carries the risk of deportation and, under the EU Return Directive,⁸⁰ a re-entry ban of up to five years for all countries within the Schengen Area. In short, the consequences of improper posting documentation can be much more severe for third-country nationals than for EU citizens. One of our interviewed stakeholders presented

⁷⁷ <https://www.efbww.eu/news/efbww-and-gbh-regret-the-delays-in-the-process-against-slovenian/3362-a>

⁷⁸ Differently from the Belgian case study, we did not find evidence of wage hierarchies based on ethnicity.

⁷⁹ According to the European Court of Justice case law, e.g. the Vander Elst case, C-91/13 Essent, C-18/17 Danieli, C-477/17 Balandin, or the recent C-540/22 SN, TCN workers residing legally in an EU Member State are allowed to be posted from that Member State to another without a work permit from the receiving EU country.

⁸⁰ DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

the threat of deportation as another point of vulnerability for posted TCN workers that could lead to their compliance to the employers' terms and their fear of the repercussions might lead to their hesitation to collaborate with the authorities (see also Kahlert and Danaj, 2020).

Finally, posted workers can be exposed to occupational health and safety risks, for example by receiving insufficient safety instructions and/or equipment. In addition, workers posted from Slovenia are usually paid per hour, not per month. This creates an incentive to work very long hours which increases the risk of accidents (Hollan & Danaj, 2018; Danaj, Hollan, & Scoppetta, 2020).

Third-country nationals like BiH citizens are particularly vulnerable to exploitation and health and safety risks because, as outlined next, they face significant challenges in enforcing their rights.

5.4.4 CHALLENGES TO THE ENFORCEMENT OF LABOUR STANDARDS FOR TCN WORKERS

One primary problem for posted workers, and for posted third-country nationals particularly, relates to information on their rights in the receiving country. Efforts have been made at several levels to provide this information in an accessible format. The Enforcement Directive (2014/67/EU) requires EU countries to set up national websites in multiple languages informing companies and workers about posting procedures and posted workers' rights. Therefore, both Slovenia⁸¹ and Austria⁸² have both set up national posting websites. Other public institutions in each country also contain information on posting related to their own responsibilities, for example BUAK contains information on posted workers' holiday pay and severance.⁸³ Social partners also provide information on posting. The EFBWW set up the website constructionworkers.eu with detail

information on the wages that construction workers are entitled to in 36 different EU and candidate countries. The Austrian construction sector trade union GBH operates an information point at the Slovenia-Austrian border informing posted and migrant workers about their rights and the wages they are entitled to in Austria and supports workers whose rights have been violated in litigations. Posted workers encountering problems with employers while in Austria can also contact the Chamber of Labour (*Arbeiterkammer*) for legal advice. Unlike workers employed in Austria by Austrian companies, posted workers do not have right to free legal advice, but the Chamber tends to provide free advice to posted workers involved in labour disputes nevertheless (Gagawczuk, 2019a).

However, these services are often offered only in EU languages. For example, the Austrian posting website (entsendeplatform.at) offers information in German, English, Hungarian, Slovenian, Slovakian, Czech, and Polish, and does not offer information in any third-country languages. In addition, posted third-country nationals may not be aware of these services. As one person counselling workers posted from Slovenia explained, workers from non-EU countries are lured by the promise of earning more than in their home country. Provided with the opportunity to earn a higher hourly wage than at home, most of these workers have little motivation to investigate whether the promised wage is also in line with the regulations and collective agreements in the receiving country. Rather, most workers only approach support services once they encounter serious problems, for example if the promised wages are not paid at all.

Another problem maybe intimidation efforts by employers or intermediaries. The number of BiH citizens contacting Austrian trade unions for support and advice has significantly declined recently and there is anecdotal evidence of workers being pressured not to talk to unions. Therefore, there is a significant risk of posted

81 <https://www.napotenidelavci.si/en/>

82 https://www.postingofworkers.at/cms/Z04/Z04_10/home

83 https://www.buak.at/cms/BUAK/BUAK_10.4/posting-to-austria

third-country nationals being unaware of their rights and, hence, accepting sub-standard terms and conditions. Other reasons for posted third-country nationals to accept such terms are strong differences in wages and workplace safety standards between the home country and the receiving country, which make even employed below Austrian superior to employment offered in their home country (Danaj & Geyer, 2020).

Furthermore, enforcing the equal payment provision is marred with difficulties. Under Austrian law, workers must sue for underpayment within eight weeks after they were supposed to be paid; a period which in practice means that many claims expire. Another problem is posting through letterbox companies which declare bankruptcy once they are sued (Gagawczuk, 2019; Gagawczuk, 2019a).

In 2017, Austria introduced chain liability regulations for the construction sector through a reform of the Anti-Wage and Social Dumping Act (LSD-BG) (Gagawczuk, 2019a). According to § 9 LSD-BG, a contractor is liable for the full wages, in line with the applicable laws and collective agreements, of posted workers employed by the contracted company. In other words, posted workers who are paid less than they are entitled too or not paid at all by the company which posted them to Austria can sue the contracting party in Austria for the outstanding wages. However, the law sets significant hurdles for workers which makes it difficult for workers to succeed. Specifically, workers must provide information on their employer, their work contract and the work provided and bring their charges within a period of eight weeks after the wages should have been paid. In practice, posted workers are often employed by companies at the end of long subcontracting chains and may not even know who the contracting party is. These subcontracting chains make it difficult for posted workers to understand whom to sue if they are not paid or are incorrectly paid and to do so within the short period, they are able to bring claims under Austrian law.

Lastly, there has been a debate on the appropriate level of fines for companies underpaying their workers. In 2019, the European Court of Justice ruled that a 2017 provision in Austria's Anti-Wage and Social Dumping Act imposing high, cumulative fines on companies for each instance of underpaying workers is incompatible with the freedom of services guaranteed under European law.⁸⁴ In response, Austria reformed its law in 2021 abolishing the cumulation principle. This decision was criticised by trade unions and social democratic politicians arguing that lower fines can make it economically rational for companies to cheat and pay posted workers less than they are entitled too (Danaj & Kahlert, 2021). As the revised legislation is rather recent, more time and data are needed to evaluate the effect of this reform on posting companies' behaviours. However, underpayment was already widespread when the cumulation principle was still in force (Geyer et al., 2022). Hence, while it is unlikely that lowering fines will reduce underpayment, high fines alone appear insufficient to prevent underpayment as well.

5.4.5 CONCLUSIONS

Construction workers from Bosnia and Herzegovina posted from Slovenia to Austria face significant risks of exploitation and exposure to dangerous working conditions. Nevertheless, political instability and limited opportunities in BiH and significantly higher wages in Austria work as strong push and pull factors resulting in labour migration to Slovenia and the inclusion of this segment of the workforce in the posting industry. The illegal underpayment of posted workers represents a form of wage dumping which may put downward pressure on the wages of construction workers in Austria, creating problems for Austrian and posted workers alike. One major problem in this respect is that posted workers from third countries often do not claim their rights under

84 Joined Cases C-64/18, C-140/18, C-146/18 and C-148/18 Zoran Maksimovic and Others v Bezirkshauptmannschaft Murtal and Finanzpolizei.

Austrian laws and collective agreements and that they only contact information and support services once they encounter problems with their employers. In addition, it continues to be challenging for underpaid workers to take effective legal actions against their employers or the contracting company. Without reforms and/or additional efforts by enforcement agencies and other stakeholders, it appears likely that third-country nationals posted to the Austrian construction sector will continue to face a high risk of being underpaid.

5.5 TCN CONSTRUCTION WORKERS FROM UKRAINE IN BELGIUM

5.5.1 INTRODUCTION AND BACKGROUND

In Belgium, production in the construction sector has remained relatively stable in growth throughout the 2010s. Despite the economic crisis, the positive macroeconomic trends in the Belgian construction sector have been well reflected in employment rates and job availability. The production volume in the construction sector increased steadily until 2020, and the number of enterprises in the construction sector increased by 20.7 % between 2010 and 2020 (European Commission, 2021). Therefore, the Belgian construction sector needs skills and a labour force to accommodate the strong demand from the market.

In the past two decades, intra-EU migration, TCN migrant workers, and the posting of workers have been the primary channels to address the labour shortages in the construction sector. Along with France and Germany, Belgium has been one of the most critical cases of transnationalisation of the labour market organisation in the construction industry (Cillo, 2021). Considering the stringent immigration rules for the TCNs in accessing the Belgian labour market, posting has been one of the principal manners in which the construction sector has been recruiting workers to conduct work temporarily (Mussche and Lens, 2018). From 2015 to 2021, most foreign posted construction workers in Belgium came from the Netherlands, followed by Poland, Germany, France, and Portugal. Notably, the total number of posted workers increased in this same period by about one-third (De Wispelaere, De Smedt, Munoz et al., 2022). According to the mandatory registration database LIMOSA⁸⁵, in 2021, counting for both employees and self-employed posted workers, there has been a total of 87,470

foreign posted workers, 63,530 employees and 23, 940 self-employed (De Wispelaere et al., 2022, p.36).

In this case study, we concentrate on currently the largest TCN foreign worker group in Belgium, i.e., the Ukrainian workers, most of whom come through or from Poland. As Table 21 below demonstrates, Ukrainians have increasingly become one of the largest non-EU nationalities among posted foreign workers in Belgium and have almost doubled in share from 2019 to 2021 (Cukut Krilić, Toplak and Vah Jevšnik, 2020). This trend is explained not just by the labour demand from the Belgian side but also has to do with the economic and labour force trends in Ukraine. In Ukraine, the construction sector remains one with elevated levels of precarious and informal employment with difficulties in wage security (Santos, 2020), despite the improvements in the working conditions and wages, which was on track to catch up to Polish standards.

Two significant developments are also key in explaining the prevalence of Ukrainian workers in the EU. First, before the first Russian offensive in 2014, a large majority of Ukrainian construction workers travelled to Russia to work in construction. However, after the developments in 2014, due to security concerns, such flows have been redirected mainly towards the bordering EU countries. Concerning this, Ukrainian workers, along with citizens of 5 other former USSR republics: Belarus, Russia, Armenia, Georgia, and Moldova, can obtain declarations of entrustment of work that allows them to work in Poland relatively quickly (Kietbasa, Szaraniec, Mędrala et al., 2022). Additionally, as part of the EU "Visa Liberalisation Dialogues" with the three Eastern Partnership countries, in 2017 Ukraine successfully completed a series of reforms related to border security and management,

⁸⁵ Registration in the LIMOSA database is a specific rule of the Belgian posted worker system where employers sending workers to Belgium and self-employed individuals working in Belgium must declare their employment and payslip in the LIMOSA registry database. This is different from the PD-A1 forms issued by the employers or the self-employed individuals that certify the registration of the posted worker in the social insurance system in the sending country.

TABLE 21 SHARE % OF NATIONALITIES OF POSTED WORKERS IN BELGIUM

2019		2020		2021	
Netherlands	15.81%	Netherlands	15.25%	Netherlands	13.72%
Portugal	14.79%	Portugal	14.99%	Portugal	13.15%
Poland	13.99%	Poland	13.53%	Poland	11.83%
Romania	10.21%	Romania	8.63%	Romania	11.49%
Ukraine	5.22%	Ukraine	7.20%	Ukraine	10.14%
Bulgaria	4.85%	Bulgaria	4.38%	Bulgaria	4.48%
Brazil	3.98%	Brazil	4.11%	Brazil	3.61%
Germany	3.78%	Germany	3.63%	Germany	3.16%
France	2.88%	Belgium	3.18%	Belgium	3.06%
Belgium	2.62%	France	3.07%	France	2.41%

Source: LIMOSA, Belgium

migration and asylum policies, and document security.⁸⁶ The travel visa liberalisation in 2017 has allowed Ukrainians to easily enter the EU, giving them three months to stay in the EU without a visa, which some of them also use to participate in the European labour market. Such developments have resulted in Ukrainians establishing networks and, in some cases, companies, such as in Poland, to facilitate the increasing number of Ukrainian posted workers within the EU labour market.

5.5.2 METHODOLOGY

This case study concentrates on the fieldwork from two regions in Belgium: Antwerp and Charleroi and gathered data through semi-structured interviews with stakeholders active in these two regions, as well as respondents who are experts in Ukraine and Ukrainians living in Belgium (see Table 22 below for a complete list of interviews conducted). Interviews were conducted in English and French and were done online. The interviews indicated on the same

date in Table 22 were conducted as group interviews with the respondents. In addition, secondary resources and material provided by the interviewed respondents were also used in the study, as well as media sources and existing literature on the topic.

As emblematic cases of posted workers' difficult work conditions and status in Belgium, this case study is oriented by and uses examples from two accidents that have occurred on the construction sites in these two regions, similar to previous research on the case of *Rive Gauche* (Cillo, 2021). Stakeholders interviewed have informed the study by using examples from some of the practices in these two incidents to describe the work and life conditions of TCN Ukrainian workers in Belgium. However, the interviews were also used to answer questions beyond these incidents, which make up part of this study, to capture a broader understanding of the migratory pathways, worker profiles, formal and informal intermediaries facilitating mobility, and the challenges faced by workers, social partners, and regulatory institutions in Belgium.

The first illustrative case is the incident in Antwerp, where the building of a public school

⁸⁶ https://home-affairs.ec.europa.eu/policies/international-affairs/collaboration-countries/visa-liberalisation-moldova-ukraine-and-georgia_en

TABLE 22 **STAKEHOLDERS AND EXPERTS INTERVIEWED FOCUSING ON THE CASES OF ANTWERP AND CHARLEROI**

CODE	ROLE	INTERVIEW DATE
Interviewee 1	Union representative (Antwerp)	10.06.2022
Interviewee 2	Union representative (National)	30.06.2022
Interviewee 3	Union representative (Charleroi)	04.07.2022
Interviewee 4	Union representative (Charleroi)	04.07.2022
Interviewee 5	Lawyer (Charleroi)	04.07.2022
Interviewee 6	Lawyer (Antwerp)	05.07.2022
Interviewee 7	Union representative (Antwerp)	05.07.2022
Interviewee 8	Civil society organisation representative (National)	05.07.2022
Interviewee 9	Union representative (Antwerp)	05.07.2022
Interviewee 10	Union representative (Antwerp)	05.07.2022
Interviewee 11	Union representative (Charleroi)	11.07.2022
Interviewee 12	Journalist/activist (Charleroi)	11.07.2022
Interviewee 13	Union representative (Ukraine)	13.09.2022
Interviewee 14	Labour inspectorate advisor (National)	27.09.2022
Interviewee 15	Labour inspectorate – social dumping division (National)	05.10.2022
Interviewee 16	Employers' association representative (National)	20.12.2022

was contracted by the local government of Antwerp on 18 June 2021. In this case, the site's owner was a Belgian contractor company, DEMOCO, where most workers were Portuguese, Moldovan, and Romanian/Moldovan origin. Many workers involved in the accident were of TCN origin and reportedly did not have access to social protection and formal labour contracts. The second case is the incident at the GHDC hospital's construction site in Gilly, Charleroi, on 27 September 2021. In this case, the contractor company was Polish, ALFA HR, and most of the workers on the site were of Ukrainian origin, including the two deceased workers due to the accident.

We note that the findings presented in the case study concern experiences that are particular to the Ukrainian workers in the two incidents selected here and are not generalisable to the experiences of all TCN workers or all Ukrainian workers employed in or posted to Belgium.

5.5.3 **WORKERS' ACCESS TO THE BELGIAN CONSTRUCTION MARKET**

Ukrainian workers in Belgium enter the labour market through multiple channels. According to our interviews, arrival from Poland is the principal pathway for workers from Ukraine (Interview 1, Interview 15, Interview 16). Most individuals get information about accessing the labour market through informal networks and intermediaries in Ukraine or Poland (discussed further in section 3.1.c). In addition to Poland, the interviewees have cited the Czech Republic for Ukrainian workers, Portugal for Brazilian workers, and Romania for Moldovan TCN workers. In the case of Ukrainian workers, given the visa liberalisation, entry into the EU seems not to be a problem. In most cases, formal work employment and posting pathways are still managed by companies in the sending EU countries such as

Poland and the Czech Republic, which determine Ukrainian workers' visa and work permit status. Furthermore, except for the construction site managers who Belgian companies directly employ, most TCN construction workers are not directly employed by a Belgian employer but arrive in the country through intermediary companies and sub-contracting (Interview 14).

In several cases, Ukrainian workers are reported as company employees in Poland. However, this employment is often not 'genuine' in practice. For instance, in the case of the Charleroi construction site, workers progressively arrived at the city, working in various other locations in Belgium managed by the same company. However, none of the workers had an actual work relationship with the sub-contracting companies and were not hired as contracted workers.

These workers, thus, sometimes did not fit within the legal framework of posting and did not have ties to the social security system in Poland (Interview 3). In the case of Antwerp, the lead contracting company used various sub-contracting companies to recruit workers. At the site of the incident in Antwerp, up to 200 sub-contracting companies were involved in recruiting workers.⁸⁷ As research has also shown, sub-contracting chains cause difficulties for labour inspectors to detect and identify the companies involved in the chain and their relationship with each other (Borelli, 2022). The interviewees reported that starting a company as an enterprise is easy and creates the pathways through which workers are brought to sites. A substantial number of workers use this facility to set up an enterprise both in Belgium and Poland to self-employ themselves without work contracts with another company and can work in Belgium (Interview 1, Interview 11). This also means that the principal contractor company in Belgium often does not have complete information on the characteristics of the companies along the sub-contracting chain (Interview 16).

Interviewees reported that the ongoing war in Ukraine has impacted the flows and will

significantly affect the worker shortages in Belgium (Interview 2). While the flows have reduced considerably, it has not stopped, and Ukrainian workers continue to arrive and aim to work in the EU labour market. In these cases, however, the migration and legal work arrangements have been facilitated due to the change in legislation for Ukrainians in the EU and immediate access to work permits (Interview 13, Interview 8). Ukrainian workers who have arrived since the war and have been working under this special employment permit are reported to have been directly employed, enabling them to have access to stronger positions regarding wage and social conditions (Interview 16).

Based on our interview data, Ukrainian workers in Belgium are typically in the range of 30 – 50 years old males with some experience in the sector and various skills addressed to the sector's needs (Interview 3, Interview 5). However, the group is not so homogenous as interviewees also said that some of the workers who arrived from rural areas in Ukraine might not have had too much experience with construction work previously (Interview 13) but chose to do so for the possibility of higher wages. Some of the Ukrainians in Belgium also have double nationalities with Romania or Hungary for those coming from Ukraine's regions close to the border areas (Interview 12).

The workers' main pull factors and motivations are wage differentials and the preponderance of skill shortages in Belgium (Interview 3, Interview 4). In such cases, there are significant salary improvements compared to what they could earn in Ukraine. To illustrate, many workers in construction in Ukraine earn 5 Euro per hour, and in some cases, as low as 2,5 – 3 Euros in the construction sector (Interview 13).

Regarding access to information about job opportunities and employment conditions in Belgium, it has been reported that most Ukrainians learn about the vacancies through friends, neighbours, friends of friends, relatives, and ex-colleagues. Often, workers from a

⁸⁷ The number of sub-contractors here does not indicate a vertical chain of 200 levels but rather the numerous different companies that have contracted workers on site.

specific village or from neighbouring villages get information about the jobs distributed within these networks and move together to the EU (Interview 13). In previous work, such reliance on informal information channels (friends or family networks in the destination country) has been well documented in the case of prospective migrants from Ukraine. However, this also means that many workers may not know the requirements, procedures, and legal ways a work can be classified as legal or posting (cf. Arnholtz and Lovelady, 2022). This has also reportedly been the case with the Ukrainian workers in the Charleroi incident, as reported by our interviewees (Interview 3, Interview 4). Overall, the foreign intermediary labour supply companies organise the employment and the subsequent social contribution documentation for TCNs (Interview 15). Particularly the first-time entrants into the EU labour market have little negotiation power or information about the correct documentation and procedure for posting and, thus, follow the instructions of the foreign agency or the company which manages their arrival and employment in the construction sites in Belgium.

In Ukraine, employment agencies, travel agencies, and intermediaries help prospective migrants with entry and employment in Poland and other EU countries (Kall, Brzozowska, Lillie, et al., 2020). Given the prevalence and the duration of the migratory flows, several Ukrainians have also founded their own companies in Poland that specialise as labour intermediaries. They also manage the recruitment of Ukrainian workers in construction sites in Belgium (Interview 12). These companies and agencies help facilitate the recruitment and migration of Ukrainian workers within the EU.

Other sources of information about job opportunities are informal social media networks such as Facebook groups/pages and chat groups such as Viber and WhatsApp applications (Interview 12, Interview 13). Most Ukrainian workers look for "legal construction job ads" on these online sources. However, the documents provided by these intermediaries often neither adhere to the rules of posting (even if the workers are provided with a portable document A1 certificate attesting their social

security coverage in the sending country (PD A1) nor to the (sometimes expired) Polish residence and work permit rules in Belgium. As the findings from our interviews showed, the PD A1 form is one of the most important documents within the posting regime. It gives foreign individuals entitlement rights in a foreign country and the ability to control and enforce their social protection. However, the legality and applicability of this document is contingent upon the enforcement agency's ability to track down the country responsible, i.e., the country where the workers are posted from. Furthermore, even though some workers may have A1 documents, there have been many PD A1 form falsifications among TCN workers in Belgium arranged by the intermediary companies or the self-employed workers themselves (Interview 15). The employers' association representative respondent has reported that Belgian primary contracting companies do not have the mandate or the resources to conduct inspections on the authenticity of the PD A1 forms of workers (Interview 16). Checking the authenticity of the PD A1 forms falls under the mandate of the public inspectorate, which has been reported as a challenging task that we elaborate below in Section 3.3 (Interview 15).

5.5.4 WORKERS' TERMS AND CONDITIONS

The work and living terms and conditions of Ukrainian workers in Belgium depend on the route and visa they have been able to enter the EU market with and their work contract (Interview 11). In this regard, three types of work relations significantly determine their conditions: posted workers as employees, self-employed workers (posted or non-posted), and undocumented workers. Some TCN workers, including Ukrainians, are employed with labour contracts in temporary posts for the projects, which grant them labour law protection and social protection access from the EU country they were posted from. Thus, they are afforded some protections through the Posting of Workers Directive and have the same

employment protections as EU citizens. For instance, EU citizens such as Portuguese and Romanian workers in Belgium, employed with work contracts, have social security in their own country and, when posted. However, in the cases of some TCNs, predominantly the Moldovans and Ukrainians in the Belgian construction industry, this does not seem to be the case.

In the context of the two case studies, we concentrate on here, many TCN workers, even if seemingly working as posted workers, do not have their registrations in the sending posting country's social security system and do not qualify as posted workers. This means that TCN workers in such a situation are entitled to social protection in neither the sending nor the receiving EU member state. In both the long and the short term, this results in their exclusion from social rights. In addition to exacerbating the vulnerability of TCN workers, this undeclared or under-declared work by posted workers weakens the social system within the EU Member States. The sending country does not receive the social contributions that it is meant to get according to the EU Regulation on the coordination of social security systems in the EU (Regulation No 883/2004), and the receiving country faces the risk of social dumping.

Another type of employment is hiring through "bogus" self-employment, meaning workers are given a contract but not a contract as a worker but instead as owners of a "company" in which they themselves are the only worker. This means that such 'bogus' self-employment operates as if TCN workers are employing themselves as another company in the subcontracting chain of posting. These workers do not profit from this company but rather give labour and earn their wages. This results in a lack of protection and rights they would otherwise receive if they had an actual status of a worker on contract (Interview 1). Considering these drawbacks of working under this 'bogus' self-employed status, it is important to highlight that TCN workers often use this channel of entry into the EU labour market due to the difficulty of obtaining a work and residence permit in Belgium as a direct

"employee" (Interview 15). Likewise, given the ease at which a person can declare themselves as self-employed in either Poland or Belgium, 'bogus' self-employed appears to be one of the quickest and easiest ways of entering the EU labour market as a short-term construction worker (Interview 14).

In Poland, TCNs can acquire an "independent worker" contract based on Polish work law, allowing them to move to Belgium as a worker but not under the legal framework of a contracted worker. This also excludes them from the scope of the Posting of Workers Directive (Interview 3; see also Arnholtz and Lovelady, 2022) because in the specific definition of the posting framework, individuals are required to have been employed in the sending country for a certain amount of time and should be paying social contributions there. However, workers entering as a 'sole trader', i.e., a self-employed individual providing services, do not qualify as "employees", thus, do not have the same protection as other workers a company employs. Thus, the "bogus self-employment" arrangement circumvents labour and social security laws and makes individuals more vulnerable to exploitation. This is particularly the case for TCNs that do not have social protection or the labour law system that protects them in their country of residence.

Regarding working conditions, one of the most crucial issues is wage inequality. In Belgium, 15 euros per hour is the minimum collective bargaining wage for a construction worker (Interview 14).⁸⁸ In most cases, however, independent/self-employed workers earn less, and the differences are not just in the salaries but are also driven by transportation allowances, unpaid social benefits, accommodation costs etc. (Interview 9). In addition, there is a strong racial bias and a hierarchy of ethnic groups in the workplace (Interviews 8). Ukrainians are disadvantaged compared to EU nationals, but Middle Eastern, North African, and sub-Saharan African workers are often in even worse situations. Even when undocumented, Ukrainians get about 11–13 euros per hour – very close to the

⁸⁸ The information is based on the minimum collectively agreed wage for construction workers in Belgium at the time of the interview, 27 September 2022.

minimum wages similar to Belgian workers. However, this can drop to 7 for workers from the Maghreb and as low as 2–5 euros for those from sub-Saharan Africa. So, overall, based on the estimation of our interviewed expert, for TCN workers in Belgium, an average of 6 or 7 euros per hour is a widespread salary that they see in their inspections (Interview 14).

An important issue with the wages of the TCN posted workers is that many have little information about the gross salary calculations and the payment structure for overtime and weekend work. According to the inspectors at the construction sites, most workers only know their net salaries but not their gross salaries. The workers are clearly underpaid if missed social contributions are also considered (Interview 14). Moreover, even in cases where some gross and net salaries are made explicit on the pay slips, only the Belgian minimum wage is indicated on the pay slip, and the rest of the payments may be made informally. Therefore, lower social contributions are paid, and the work is under-declared if declared at all (Interview 15).

Regarding working time, the regular working time in Belgium is 40 hours a week in the construction sector, and for some (exceptional) cases, this can be up to 50 hours a week or so, including some night shifts, etc. (Interview 9). In construction sites in Belgium, the workers generally work about 10–11 hours per day. The work organisation in the construction site is on a fixed schedule decided by the foreman and is not flexible. There is no calculation of overtime. Based on our interviews, we find that in Belgium, workers not only work 10–11 hours per day, but it is also prevalent that they also work for about 5–6 hours on the weekend. However, neither the overtime calculation of their salaries nor the 150% wage per hour for Saturday work is given to the workers (Interview 14). If they work, they are paid and if not, they earn nothing (reported by the experts in the case of Charleroi). However, the respondents from our case study point to the fact that very few workers actually come to Belgium to work only 8 hours for 5 days. Therefore, workers' agency also plays a role in

accepting work above the standard working hours in Belgium (Interview 14).

Finally, regarding OSH, interviewed respondents said the working conditions are often in line with OSH standards and that labour inspectorates conduct normal controls at the sites along with unions. However, OSH conditions have been scrutinised in light of the cases of the two accidents as part of currently ongoing judiciary cases (Interview 5).

In the case of the Ukrainian workers in Charleroi, the workers pay for accommodation (around 250–300 Euros per person per month). They also pay for their travel to Ukraine and food without the employer's intervention (Interview 3, Interview 4). According to our interviews with the labour inspectorate, broadly, collective accommodations provided for the TCN workers are reported as being in poor condition (Interview 14), and infrastructure problems have been frequently reported by the inspectors.

5.5.5 CHALLENGES TO THE ENFORCEMENT OF LABOUR STANDARDS FOR TCN WORKERS

Due to their status as TCNs in the EU labour market, such workers including Ukrainians, face various vulnerabilities and are at risk of exploitation. First, in the case of infringements of the law in Belgium or accidents such as in the two instances of Antwerp and Charleroi, subcontracting chains make it less clear for workers for whom they work and whom they need to hold responsible. Furthermore, they also face an aggravated problem in the case of social protection and accident and health insurance access. Their access to social protection is often not ensured, neither in the sending EU country nor in Belgium, where the work is conducted. For instance, in the Charleroi case, union inspectors (OSH shop stewards) discovered that workers had travel insurance but not accident insurance for a workplace.⁸⁹

89 <https://www.vrt.be/vrtnws/nl/2022/06/16/getuigenis-victor/>

Given the difficulty in litigation, as in the cases of the two accidents in Belgium, the lawyers we interviewed report that the judicial processes take a long time to be concluded (Interviews 5 & 6). Thus, workers do not easily receive compensation and need to continue working even in cases of physical and psychological damages they may have faced during their work.⁹⁰ To enforce the rules and effectively sanction companies, it is essential to access witness and victim testimonies, which seems to be challenging because the workers could be difficult to track. This is mainly because they are either sent back to their origin country or on other sites. So, it is not easy, given the length of the judicial period and that the duration of an investigation goes on for five years (Interview 5). Thus, litigation processes also seem to be an area in which amelioration is needed for supporting TCN workers and reinforcing EU labour standards.

Next, in many cases, TCN workers do not have proper residence and work permits. They are neither within the correct framework of legal migrant workers nor the Posting of Workers Directive. For instance, in the case of posted TCNs, some do not have valid and legal work permits that would allow them to be legal workers in Poland to be posted to Belgium. One of the experts from our fieldwork reported that out of 10–12 Ukrainian workers, there are often 3–4 who are not legal residents and do not have the correct work permit documentation (Interview 12). Such reliance on the company that hires TCNs creates high levels of exposure to potential exploitation and, in some cases, effectively leads to human trafficking. In July 2022, the Labour Audit and inspectorate in Belgium uncovered 55 workers from the Philippines and Bangladesh as victims of human trafficking working on the work site for the Borealis company in Kallo.⁹¹ In this one case, Turkish and Ukrainian nationals have also been later discovered as victims of human trafficking, meaning that at least 138 workers have already been identified as victims of human trafficking, making this the largest

case of human trafficking and economic exploitation in Belgium. This and our interview results demonstrate that such risks of exploitation due to status irregularity are one of the biggest challenges faced by TCN workers.

The number of inspectors and inspections focusing on the fight against cross-border social fraud does not match its prevalence. In Belgium, the enforcement system consists of a complex structure with multiple institutions operating at both national and regional levels to inspect the labour market. In this respect, the main agencies in charge are the labour inspectorate division in charge of controlling working time, wage and other employment conditions, the division of the occupational safety and health (OSH) inspections, the services at the regional level which check for the legality of the work permits, and the social security office within the inspectorate that controls for the PD A1 forms and conduct other social inspections (Interview 14).

Most of the experts in our findings cited sub-contracting chains as one of the most important challenges faced by enforcement agencies in posting cases. Yet, some degree of sub-contracting has been reported as crucial in order to fill the necessary workforce needs across skill levels, particularly in a highly specialised sector such as construction (Interview 16). In this respect, our respondents have pointed out that better inspections and enforcement of the standards along the vertical chain of contractors is key. Enforcement agencies and social partners try get information about the list of everyone on construction sites and the contracting agencies – such as in the case of a school building accident in Antwerp. Still, there are close to 200 subcontractors working on that site only. Currently in Belgium, in public procurement projects, sub-contracting chains can only go up to the third level, and there needs to be a special permit if the chain goes to the fourth level and above (Interview 1).⁹² Yet, our respondents reported that the main

90 <https://www.7sur7.be/belgique/victor-a-survecu-a-l-effondrement-d-une-ecole-d-anvers-mon-avenir-est-completement-fichu-aabdd792/>

91 <https://efbww.tothedot.be/publications/press-releases/another-case-of-severe-exploitation-of-migrant-construction-work/2017-a>

92 In the case of Antwerp, this framework has not yet been implemented at the time of the contract.

contracting companies often evade any condemnation because of the complex chains (Interview 6; Interview 15) and that inspections may fail to detect the full scope of the vertical chains.

The interviewed respondent from an employers' association has explained that Belgian companies do not have access to a centralised system of identifying foreign companies that may be involved in social contribution or wage disputes to avoid including them in the sub-contracting chains (Interview 16). While this is the case for some companies, representatives we interviewed from trade unions have reported that some companies, on the other hand, know well how the system works and will often say that they did not realise that there were, in fact, other companies underneath with the primary goal of obtaining the most profit on the construction site. Therefore, a better system of inspections on the sub-contracting chain numbers and the characteristics of the foreign companies have been vocalised by both employer associations and union representatives.

Both inspections on the pay slips and for the PD A1 forms are conducted at the work sites, and enforcement agencies often require cooperation with other EU and non-EU Member States to verify contracts and social contributions. Our interviewees from the inspection offices have reported that this process of collaboration and information sharing often occurs very slowly, and, in some cases, the responses may be difficult to get (Interview 14; Interview 15). The unified system of EESSI is seen as an important step to ameliorate the conditions for inspection. However, one of our interviewees reported that while inspections are often conducted at the construction site level, the information entered in the system is at the individual level. This makes controls and checks slower, thus, pointing to a mismatch between the needs on the ground and the structure of the EESSI (Interview 15).

Regarding social partners, our interviews showed that one of the most important challenges is to fight the non-genuine posting of workers who fall outside the legal framework of the EU posting regulations as defined in the 2014 Enforcement Directive. Certain undertakings take advantage of the fact that it is difficult to control the legality of the working relationship and the payment of social security contributions (Interview 2). Likewise, the risks of wage and social dumping in the Belgian economy due to the irregular and unregulated employment of TCN workers make the construction industry undesirable (Interview 3, Interview 4).

This is important for social partners because wage and social dumping negatively affect employment. They report that "at present, the sector has 155,000 temporary workers and 56,000 seconded self-employed workers. We are not against the arrival of workers from other countries. But [they should be employed] at the same wages and expect the same working conditions. Social dumping kills over 20,000 construction jobs".⁹³

Lastly, one of the challenges facing unions is difficulties in language and communication with the workers for information and assistance. In Belgium, there is free legal assistance, but the system is poorly funded, understaffed, and therefore insufficient in case of lengthy legal procedures (Interview 9). Moreover, TCN workers often do not trust trade unions. Thus, unions sometimes provide legal assistance and communicate with workers through independent NGOs, such as FairWorks.

5.5.6 CONCLUSIONS

Our case study using interviews with 16 stakeholders, focused on the two incidents in Antwerp and Charleroi, demonstrated that some Ukrainian workers in the construction sector are exposed to various forms of irregularities in the

⁹³ <https://www.7sur7.be/belgique/ils-sont-venus-de-tout-le-pays-pour-manifester-a-charleroi-les-juges-ne-peuvent-enqueter-comme-ils-le-souhaiteraient-a8998459/?referrer=https%3A%2F%2Fwww.google.com%2F>

labour market, which go against the labour and social protection laws in Belgium. Among these, overworking and underpayments, lack of social contributions and subsequent inability to access social protection, and dependence on the sub-contracting employer for legal status seem to be the most prevalent. Moreover, the lack of accident insurance coverage in construction sites, such as in the two incidents studied here, exacerbates the difficulty these vulnerable workers face when such events occur, leaving them to cover their own health expenses even in situations where these accidents negatively impact physical and mental conditions.

Considering the structural labour market shortages in the Belgian construction sector across all skill levels, neither the Ukrainian nor other TCN worker flows seem to be on track to decline, also given the ongoing wage differentials between these countries of origin and Belgium. First, even though multiple workforce sources may be required to address the special skills needed in each construction project, shorter and, more importantly, better-inspected sub-

contracting chains are needed to control employment contracts, determine liabilities, and sanction guilty parties quicker to alleviate the workers' situation. Second, there also needs to be better EU-wide and international cooperation on information sharing. While the EESSI seems to be a good start for the coordination of social security documents, more communication between EU member states is essential to ensure that the employment and social right conditions of workers are met in the host country. In addition, a centralised system of accessible company registries could help authorities and companies to check the background of foreign and local companies to reduce the risk of hiring unreliable companies (cf Borelli, 2022). Finally, considering the labour market shortages, facilitated access for construction workers to acquire work permits in Belgium for a temporary duration would eliminate the incentives for bogus self-employment and companies' fraudulent practices along the sub-contracting chains when posting workers to Belgium.

5.6 ROMANIA – AN EMERGING COUNTRY FOR THIRD-COUNTRY CONSTRUCTION WORKERS

5.6.1 INTRODUCTION AND COUNTRY BACKGROUND

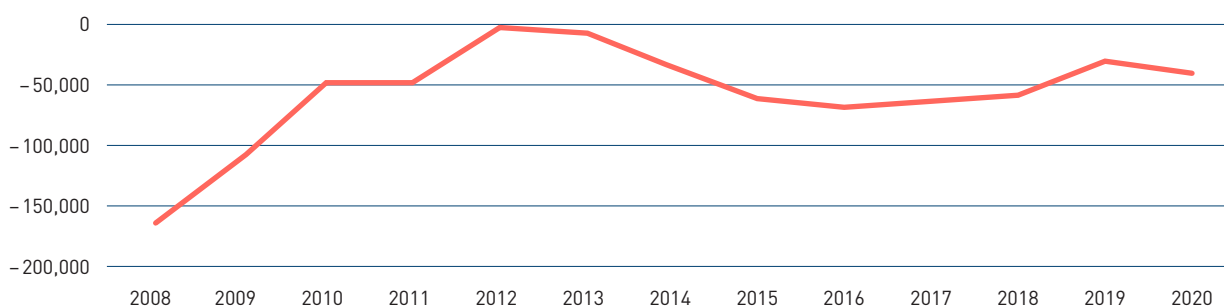
As Romania shifts from being a transit country to a country of destination, immigration to Romania is becoming an emerging phenomenon (Alexe, 2021; Oltean and Găvrus, 2018). The country has long witnessed negative net migration (Figure 1), which has created labour shortages across all industries. The latest data available show that by mid-2020, the total number of emigrants, i.e., Romanian citizens that had left the country, was 4 million, while the total number of international migrants in the country was only 705.3 thousand. The increase in the number of immigrants to Romania is observed starting at a slower pace since 2005 but it has been growing more rapidly since 2015 (UN DESA, 2020).

The growth can be attributed to government policies that aim to attract foreign labour through a policy referred to by the Romanian government as *contingency*, which is a quota for the number of third-country national (TCN) workers that would be admitted in the country annually. The contingency number has been growing exponentially from 5,500 in 2016 to 100,000 in 2022, indicating the Romanian government's intention to use this policy measure in response to the growing labour demand in the country.

In the Romanian construction sector, labour shortages are reportedly acute (Romania Insider, 2017). The shortages are explained by the low wages that make the sector unattractive, large-scale emigration predominantly to western European countries, and the lack of vocational establishments that would prepare the next generation of construction workers in Romania. Meanwhile, the demand for labour in the sector has also been growing. The country's GDP has increased by 35.3% from 2010 – 2020 (although it declined by 3.9% from 2019 due to the COVID-19 pandemic), the volume index of production in the broad construction sector has grown by 28.8% between 2015 and 2020, and the country is implementing a Recovery and Resilience Plan (RRP) of EUR 29.2 billion, where construction projects are quite significant:

- EUR 2.6 billion for building infrastructures such as new social housing and retirement homes, hospitals and healthcare facilities, and pre-school programmes
- EUR 3.9 billion towards the modernisation of railway infrastructure
- EUR 1.8 billion on green and secure urban mobility transport
- EUR 2.7 billion for the energy-efficient renovation and seismic renovation of multi-family buildings and public buildings (ECSO, 2022).

FIGURE 19 ROMANIA: ANNUAL NET MIGRATION



Source: Eurostat data on immigration [migr_imm8] and emigration [migr_emi2]

The combined effects of the increasing labour market demand and government policy to facilitate labour migration into the country have attracted not only workers from neighbouring non-EU countries like Turkey, Moldova, Serbia, and Ukraine, but also a significant number of Southern and South-eastern Asian workers. In the case of the latter, it is observed that recruitment via intermediaries is the predominant migratory pathway.

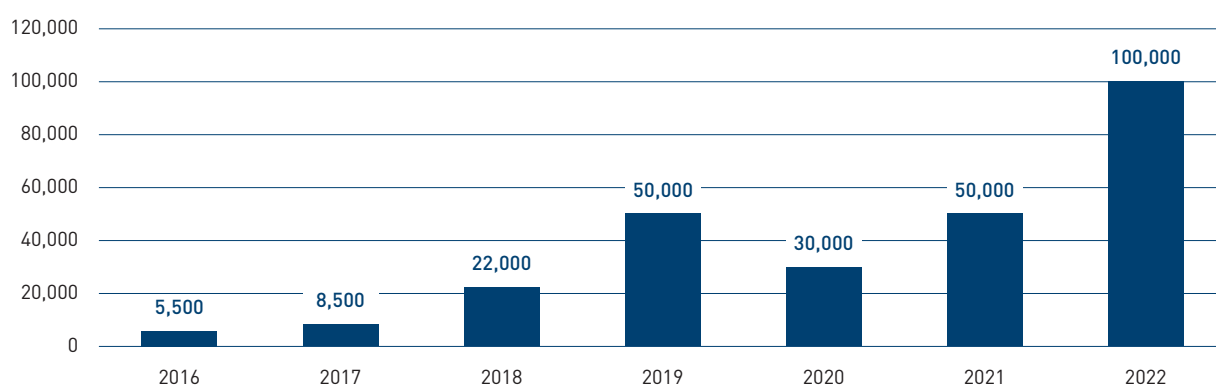
Drawing on administrative data, secondary literature, media articles and two background interviews with a union representative and the ELA national liaison officer for Romania, in this case study we discuss the recruitment patterns and working conditions of TCN workers in the Romanian labour market with a special focus on Nepalese and Vietnamese workers in the construction sector. As an emerging receiving country, we observe several vulnerabilities experienced by third-country nationals that move and work in Romania, which have further increased during the COVID-19 pandemic.

5.6.2 ASIAN WORKERS' ACCESS TO THE EUROPEAN CONSTRUCTION MARKET

Since 2016, the Romanian government has been approving a growing contingency quota for the number of TCN workers they are willing to admit in their national labour market (Figure 20).

To work in the country, most TCN workers would still need a job offer from an employer based in Romania and fulfil a set of criteria. More recently, in response to the growing labour shortages, the Romanian government has complemented the contingency quota system with simplified conditions for the recruitment of foreign workers. Romanian employers have used these opportunities to recruit workers not only from the neighbouring non-EU countries but also from other parts of the world, especially Southern and Southeast Asia. In 2018, the Romanian government signed a Memorandum of Understanding (MoU) with the Vietnamese Labour Ministry for collaboration in labour and social protection (Romania Insider, 2018)⁹⁴ and has negotiated a bilateral agreement with the Nepalese Ministry of Labour, which as of December 2022 has not yet been finalised (myRepública, 2021). In early 2022, the Romanian government changed its policy regarding workers from Moldova, Serbia, and Ukraine, who now can work without a work

FIGURE 20 FOREIGN LABOUR QUOTAS (CONTINGENT) IN ROMANIA



Source: Veleanu, ECMIN Romania presentation, 2022.

⁹⁴ The text of the agreement is available here: http://mmuncii.ro/j33/images/Documente/Relatii-internationale/Vietnam_Memorandum_de_intelegere_EN_2018.pdf [last accessed 08 December 2022].

permit in Romania for a maximum of nine months if they have a full-time employment contract (General Inspectorate for Immigration, 2022). Other TCNs continue to require a work permit in order to be able to work in Romania.

Despite efforts to attract foreign workers, the Romanian construction sector had one of the lowest shares of foreigners, including EU/EFTA citizens and TCNs, among all EU countries between 2010 and 2020 (as discussed in Chapter 5.2.1 of this report). Official statistics also show that the number of temporary work permits granted to TCN workers in the last years remains lower than the approved contingency (Romanian National Institute of Statistics). The number of temporary work permits granted dropped from 2019 to 2020, most likely due to the global pandemic, but has increased again since. The largest number of TCN labour migrants to Romania are male (nearly 4 in 5) and come mainly from Turkey, Nepal, Sri Lanka,

Vietnam, India, and Moldova (see Table 23). They are also reported mostly low/medium skilled workers (Alexe, 2021).

Although data on the sectoral distribution of the whole stock of TCN workers are not available, the data reported in the ECMIN conference for 2021 show that construction (38%), restaurants (16%), and manufacturing (9%) are the main sectors of activity in which TCNs are employed in Romania (Veleanu, ECMIN Romania presentation, 2022).

A more recent survey conducted with 400 Asian workers in Romania in 2022 by the EWL Group, a recruitment and staffing agency based in Poland, interviewed workers from many countries, but construction was the main sector with 39% of the respondents, followed by services (14%) and logistics, transport and warehouse management (11%). The survey provides some interesting findings on the profile of TCN workers in Romania. So, 95% of the respondents had not

TABLE 23 NUMBER OF TEMPORARY WORK PERMITS ISSUED TO THIRD-COUNTRY NATIONALS IN ROMANIA BY COUNTRY OF ORIGIN, 2018 – 2022

COUNTRY OF ORIGIN	2018	2019	2020	2021	2022*	TOTAL BY COUNTRY OF ORIGIN
Turkey	1,636	3,140	3,980	4,262	2,328	15,346
Nepal	1,081	3,840	3,667	2,696	2,190	13,474
Sri Lanka	847	2,954	3,521	1,731	2,236	11,289
Moldova	440	2,978	2,172	3,912	1,844	11,346
India	656	3,618	3,431	2,038	1,230	10,973
Pakistan		501	730	770	673	2,674
Bangladesh	178	956	1,630	932	670	4,366
Vietnam	3,982	6,080	2,790	994	436	14,282
Ukraine	152	852		1,050	426	2,480
Philippine	442	855		372	304	1,973
China	750	1,339	807	563	345	3,804
Others	1,956	4,652	4,169	9,100	5,156	25,033
Total by year	12,120	3,1765	26,897	28,420	17,838	

Source: Romanian National Institute of Statistics.

Note: *Data available only for the first six months of 2022.

workers abroad prior to moving to Romania, 39% chose Romania based on a recommendation of friends or family, 29% through a state or private employment agency, 21% said they found the employer themselves, and 13% through an NGO. In terms of education, 83% had secondary education and 11% primary education. English was the main language of communication (78%), 40% also claimed to know some Romanian although 52% of the respondents also said they are studying Romanian, and 49% said they communicate in their native language at work. Their average monthly net earnings by sector ranged from 777 USD for those employed in IT and Communication to 517 USD for those employed in education, scientific and technical activities. In construction, average monthly earnings were 557 USD, i.e., is below the overall average monthly net earnings of 572 USD. 49% of the workers reported that they would stay up to 2 years in Romania (EWL, 2022).

Formal and informal intermediaries play a key role in facilitating Asian workers' migration to Romania. Certain countries, such as Nepal, rely heavily on foreign employment, which is the primary source of income for many households. Remittances sent from Nepalese workers to their relatives in Nepal account for 24.3% of the country's GDP (The World Bank, n.d.).

The government of Nepal has supported the labour migration of their own nationals through the development of measures and policies to promote the provision of labour from Nepal to other countries. According to the ILO country profile on the recruitment of migrant workers from Nepal, the Nepalese government has reached out to European labour markets to expand the destination choices for Nepalese labour migrants. While the Gulf Cooperation Council countries and Malaysia have for a long time been the main target countries for Nepalese workers, in 2018 the Ministry of Labour mandated a task force to find new labour destination countries. The task force recommended the diversification of the targeted labour markets recommending nineteen countries, including six European ones, namely Portugal, Romania,

Poland, Sweden, Denmark, and the Czech Republic, where Nepalese workers could work in service, agriculture and manufacturing (Mandal, 2018). These recommendations seem to have been taken into consideration, as Nepal has signed a new Bilateral Labour Agreement (BLA) with Mauritius, increased the number of work permits for countries such as Turkey, Cyprus, Malta, Romania, Macau SAR, China, and Japan, and is pushing for the finalisation of the bilateral labour migration agreement with Romania (ILO, 2021; myRepública, 2021).

Providing Nepalese labour abroad has developed into a lucrative business undertaken by numerous recruiting agencies in Nepal giving life to the so-called 'foreign employment sector.' ILO reported 827 agencies were active in Nepal in 2021 (ILO, 2021), whereas the Nepal Association of Foreign Employment Agencies (NAFEA) an umbrella organisation for international labour market intermediaries reported representing 853 recruiting agencies operating in Nepal in 2022. According to their self-description, the organisation's primary aim is to "ensure the safe migration by defending the rights of both workers and member organisations." The organisation also claims to have formulated a code of conduct for "combating anomalies and unhealthy competition in the foreign employment sector" and lobbied the government to sign bilateral agreements and MoUs to "protect the rights of Nepali migrant workers."⁹⁵ NAFEA's website is in English and explains the different types of recruitment, which they categorise based on the types of charges the employer is willing to take over (see Table 24).

The first and the second types are promoted as the best options in that they are "lessening the overall departure cost of poor migrant workers who are compelled to maintain migration cost by borrowing money from the landlord. This will release them from financial strain and provide opportunity to concentrate on their duties. This will fasten the migration process (deployment) as the workers do not have to arrange massive amount of money."⁹⁶

⁹⁵ <http://nafea.org.np/introduction>

⁹⁶ <http://nafea.org.np/recruting/detail/types-of-recruitment>

TABLE 24 NEPALESE AGENCIES RECRUITMENT TYPOLOGY ACCORDING TO NAFEA

TYPE OF RECRUITMENT	DESCRIPTION OF CHARGES COVERED BY THE EMPLOYER	DESCRIPTION OF CHARGES COVERED BY THE EMPLOYEE
Free recruitment	Joining Air Ticket, Service Charge, Mofa Cost (KSA), Online Medical Payment (KSA), Visa Stamping Charge (KSA), Medical Expenses, Orientation Cost, Insurance Cost, Welfare Fund, Advertisement Cost, and other charges if any (other charges may apply as per country variation)	None
Visa and joining air ticket provided by employer	The company agrees to provide the Visa free of cost and Joining Air tickets	Service Charge, Mofa Cost (KSA), Online Medical Payment (KSA), Visa Stamping Charge (KSA), Medical Expenses, Orientation Cost, Insurance Cost, Welfare Fund, Advertisement Cost, and other charges if any (other charges may apply as per country variation)
Only joining air tickets provided by employer	The company agrees to provide only the Joining Air Tickets	Service Charge, Mofa Cost (KSA), Online Medical Payment (KSA), Visa Stamping Charge (KSA), Medical Expenses, Orientation Cost, Insurance Cost, Welfare Fund, Advertisement Cost and other charges if any (other charges may apply as per country variation)
Joining air tickets not provided by employer	None	Ticket Cost, Service Charge, Mofa Cost (KSA), Online Medical Payment (KSA), Visa Stamping Charge (KSA), Medical Expenses, Orientation Cost, Insurance Cost, Welfare Fund, Advertisement Cost, and other charges if any (charges may apply as per country variation)

Source: NAFEA website

These agencies promote their services to foreign employers through their websites and the specific job postings to Nepalese workers through national daily newspapers. The advertising is framed as an opportunity not only to move to Romania (or Poland, or the Czech Republic), but as an opportunity to move to Europe, implying onward migration to higher income EU countries is possible for aspiring migrants (Leduc, 30 October 2020).

Foreign employment is regulated by a set of laws and measures at the national level (ILO, 2021) and state authorities are involved in the process of recruitment, which is formalized with the pre-approval of the Department of Foreign Employment. Once the request of an agency to advertise a job offer in another country is pre-approved, it is then followed by the job advertisement published in the national daily newspaper, the pre-screening of the candidate by the agency, an interview with the employer, a medical test, an orientation on the laws and regulations of the receiving country, the visa

application, and once that is issued, the Department of Foreign Affairs has to provide the final approval before the person is allowed to travel to the destination country. There is no indication on the NAFEA's website how long the whole process takes, except for stating that deployment, i.e., the travel to the destination country, occurs within 45 days after the final official approval.⁹⁷ The EWL survey (2022), however, indicated that for 66% of the respondents, it took 1–2 months to go through the hiring and visa process, although we cannot distinguish between Nepalese workers and other nationalities.

Apart from formal recruiters, informal brokers are also reportedly involved in the process. They might intervene at different stages and act as intermediaries between the potential employer and the worker, but also in terms of providing the financial support necessary to complete the process in the many cases when the prospective employer does not cover all expenses but might limit themselves to the joining airline ticket and the visa expenses. NAFEA's own formulation suggests that all types of recruitment occur, which means that except for the so-called 'free recruitment', in all other forms, the worker would need to cover most expenses themselves. Media sources state that even when the employer covers travel and visa expenses, the workers still need to pay the agencies a commission for the service, and another commission to the sub-agent, i.e., the person who finds the persons that would like to migrate for work. It is estimated that workers pay up to 6000 USD (~5500 EUR) to all those involved in facilitating their labour migration. And considering that minimum wage in Nepal is around 100 EUR, many of these workers go into debt with money lenders and sometimes with the agencies themselves to be able to go abroad for work (Leduc, 30 October 2020; Joshi, Mandal and Leduc, 29 November 2020). The Nepalese government has taken legal measures to

prohibit workers' paying fees to be sent abroad, however, they have not been able to implement this measure in practice (ILO, 2021).

Recruitment from Vietnam is also facilitated by recruitment agencies based in Vietnam.⁹⁸ There are cases reported in Romanian media about agencies that charge workers, for example, according to an investigative journalism article, the Vietnamese recruitment agency charged workers 2800 USD (~2600 EUR) plus expenses for working outfits (250 Romanian Leu or 50 EUR) (Florea, 2019). However, differently from the Nepalese agencies, Vietnamese agencies act as employers of the Vietnamese workers, who post them to Romania. Upon recruitment, these agencies offer short English language courses and give a presentation on the experience in the receiving country which as reported in the media is sometimes misrepresented (Florea, 2019, see section below on workers' conditions).

Finally, in addition to sending country intermediaries, there are also Romanian or international recruitment agencies that offer staffing services not only from one but from various Asian countries.⁹⁹ These agencies typically offer recruitment services for workers from countries like Indonesia, India, Philippines, Nepal, Sri Lanka, Thailand, or Vietnam. They offer workers in multiple sectors, including construction. The Romanian and international recruitment agencies operate through their national partners in the country of origin to find these workers. However, once the worker arrives in Romania, Romanian or international agencies are no longer involved in the management of the employment relation of the TCN worker.

⁹⁷ See <http://nafea.org.np/recruting/detail/process>

⁹⁸ For e.g., Tamax JSC <https://vietnammanpowerservice.wordpress.com/about/>

⁹⁹ For example: Indica Recruitment Agency (<https://indica7.eu/services/recruitment-of-asian-workers/>); International Work Finder (<https://work-finder.eu/en/>); JR Worldwide Recruitment (<https://www.jordanriver.eu/>)

5.6.3 WORKERS' TERMS AND CONDITIONS

The information on the working conditions of Southern and South-eastern Asian workers in Romania is scarce. What we can find is mostly based on media articles in both the sending and the receiving countries, a couple of research studies, and the EWL survey. Most of these sources indicate that some Asian workers can be quite vulnerable and face unequal terms and condition. We outline these below.

There are two types of contracts that TCN workers from Asia are offered in Romania. For those hired through recruitment agencies, workers are usually offered two-year contracts. As they pay for the recruitment and travel of Asian workers to Romania, employers prefer such employment contracts not to be short-term. Work permits are issued for two years and tied to the original contract, which makes workers dependent on the employers who bring them to Romania and leave them vulnerable. If their contract is interrupted, they may be deported if they are not able to find another job within a relatively short period of three months. Whereas TCN workers who are on the payroll of the agencies that recruit and post them from their own country to Romania, are usually on one-year contracts. These workers are also bound to the agencies that bring them to Romania, therefore exposed to additional pressures not to report their precarious conditions as that might threaten their stay in Romania without having a chance to shift to direct employment. Some media articles in countries of origin like Nepal also claim certain employers have held workers' passports to leverage them into compliance (see Joshi, Mandal and Leduc, 29 November 2020).

In terms of wages, according to a couple of media articles, workers are mostly paid minimum Romanian wages plus accommodation and food (Joshi, Mandal and Leduc, 29 November 2020; Florea, 2019). The EWL study also confirms that the average monthly earnings of Asian workers in Romanian construction are 557 USD, i.e., 15 USD less than the overall average monthly net earnings. These media reports indicate that many of these workers are promised good salaries by the recruiters, but when they arrive

in Romania, they find out salaries are lower than expected. Most workers are paid within Romanian wage levels, but cases of abuse have also been reported. There was a case reported by an online media outlet in 2019 where 200 Vietnamese workers worked longer hours of up to 9 hours per day 6 days per week for a monthly salary of 650 USD during winter, while in spring the working time increased to ten hours and the salary by another 100 USD. Although Romanian labour law stipulates a maximum of 48 hours of labour per week including overtime, the contracts signed by the Vietnamese workers in questions stated that they had to work 54 hours per week in the period December-February, and 60 hours per week in the period March-November. And, if the workers did not work all the hours, their salaries would be deducted. In addition, their agreements also included an illegal clause in which workers agreed not to participate in strikes. The media article that reported this case claimed that the workers did not have any choice but to accept, especially considering that the received salaries were still three times higher than back home in Vietnam (Florea, 2019). Other media articles have also reported extended working time for Nepalese workers without proper over-time compensation (Joshi, Mandal and Leduc, 29 November 2020). The EWL results show a different view: although their survey did not ask about the pay, they asked if the duties at work coincided with the ones discussed during the recruitment process, which 28% answered 'yes, completely' and 54% answered 'mostly yes'. While the duties might significantly coincide for 82% of the respondents, it is unclear if the wages they receive are as promised or less, which is what the media sources claim.

In terms of living conditions, diverse academic and media sources report that Asian migrant workers in Romania often find themselves living in overcrowded accommodations with poor hygiene (Alexe, 2021; Florea, 2019; Leduc, 2020; Roşca, 2021). The aforementioned Vietnamese workers were housed in small containers that were about the size of a studio apartment in groups of twelve persons on the outskirts of Bucharest. The 200 workers shared six toilets and nine showers in poor conditions. The

company provided the meals, but they were reportedly the same every day and of low nutritious values. Even transport from the accommodation to the construction sites was offered by the employer, however, workers were crammed together. Finally, the safety outfits were also inappropriate (Florea, 2019). In this specific case, once the journalist contacted the company to confront them about the conditions reported by the workers, they tried to identify the persons who spoke to the journalist and increased the surveillance on workers by installing cameras in the containers area.

The COVID-19 pandemic seems to have further marginalised migrant communities in Romania as government policies aimed at containing the virus did not consider the multiple vulnerabilities these workers faced prior to the pandemic. As a result of their living in crowded accommodations with poor hygiene conditions located in poor peripheric neighbourhoods with limited access to health services and care, there have been many Asian workers getting infected during the outbreak (Roşca, 2021). Lockdowns and isolation measures during the pandemic also led to depression and other mental health issues (Leduc, 2020). Leaflets were distributed by international organizations such as IOM and UNHCR as well as local NGOs with information in various languages about the pandemic and the protection measures.

Apart from health vulnerabilities, during the pandemic migrant workers faced employment-related vulnerabilities such as suspended contracts, unpaid salaries, and job loss, which had implications also for their accommodation and food which are often included in the salary, as well as for their migration status as loss of contract jeopardized their residence status (Alexe, 2021). In addition, media articles reported that employers in the Romanian hospitality sector had considered the idea of sending workers back to their home countries without pay. However, after negotiations between the Nepalese consul and a group of employers, it was agreed that the workers would not be sent home but would instead agree to a pay cut. In the construction sector, some Nepalese workers were paid 75% of their original salary during the first wave of the pandemic in 2020 (Mandal,

2020). There were also media reports of some of them being cheated out of their salaries by being asked to sign documents supposedly to receive their pay, which they did not receive for months, when in fact they were declaring they had received it (Leduc, 2020).

Despite the reported challenges, different earlier and recent sources report that at least a third of the workers intend to stay. So, in a 2018 study (Oltean and Găvruş, 2018) it was reported that 32% of the employed TCNs intended to stay in Romania, whereas the EWL survey results published in November 2022 indicate that 30% of the workers are planning to have their families join them, which can be interpreted as a plan to stay for longer periods of time in Romania. Others would also recommend Romania as a country to work for friends and family (14% 'definitely yes' and 39% 'rather yes'). From the survey we cannot tell if these are respondents working in the construction industry or not.

5.6.4 CHALLENGES TO THE ENFORCEMENT OF LABOUR STANDARDS FOR TCN WORKERS

The relatively recent increase in immigration as a phenomenon and the issues faced by labour migrants in Romania have brought new challenges for Romanian institutions and social partners. One of the main risks that foreign workers face is that of human trafficking. The US Department of State report for 2022 informs that Romanian human traffickers exploit domestic and foreign victims in Romania as well as victims from Romania abroad. Most victims are Romanian citizens, but national NGOs claim that the number of foreign victims is underestimated because 'the authorities did not screen asylum-seekers and foreign migrants for trafficking indicators and were reluctant to identify them because of the significant time and resources that an investigation would entail.' (US Department of State, 2022) The report also states that migrants from East Asia working in the construction and hospitality industries are 'at a particular risk of trafficking due to the lack of access to information in their native language

and deceptive practices by employers' (Ibid). In addition to Romanian traffickers, screening the Facebook pages of the Nepalese community in Romania revealed warnings for fellow Nepalese against deceptive offers of certain individuals'/ Facebook profiles that promised to smuggle people from Romania to Portugal or other EU countries.

According to the US Department of State report, more institutional efforts were noticed in 2022 in terms of prosecuting traffickers, prevention, and protection of victims or those at risk of trafficking, such as amending the criminal code eliminating the statute of limitations for trafficking crimes, investigating more trafficking cases, prosecuting and convicting more traffickers, developing procedures for the identification of victims of trafficking and their referral to protection structures, and implementing pilot programs funding local NGOs to provide victim services. Moreover, the government amended the labour law on the protection of Romanian citizens working abroad to include a broader definition of temporary and seasonal workers and workers' rights, additional regulations for recruiting agencies, and increased fines for labour law violations (US Department of State, 2022). Yet, the screening has not been applied for foreign migrant workers and a lack of monitoring of their terms of employment and working conditions have repeatedly been denounced by media reporting (Florea 2019; Leduc, 2020). The authorities have reported their own challenges in monitoring the conditions of foreign workers in Romania related to human resources, particularly staff shortages and language barriers, indicating that they are not prepared to address the problems faced by TCN workers in the Romanian labour market.

Another challenge Asian workers face is that of lack of information about their labour rights, protection, and representation. Despite the results of the EWL survey, in which a considerable number of workers communicate in English and/or Romanian, language barriers have been

reported as combined with the dependence on the employer make many of Southern and South-eastern Asian workers reluctant to report potential abuse by the recruiting agencies or their employers. In addition, some of these countries, such as Nepal, do not have consulates or embassies in Romania, but only one honorary consul, who found himself from one day to the other addressing many issues he was not prepared for and has no resources to rely on (Leduc, 2020). Language barriers influence both Asian workers' ability to find out about their rights in Romania as well as communicate with the authorities and the trade unions to report any violations they experience (Roşca, 2021). Sometimes even the contracts are only in Romanian and in English but not in their own language. While some workers might understand English as the EWL study finds, not all do, and not knowing what entitlements they have adds to the challenge of demanding that their rights are respected. Recently, flyers that summarise labour law and workers' labour rights have been made available in 10 languages, including Romanian, English, Ukrainian, Serbian, Turkish, Arabic, Hindi, Vietnamese, Chinese and Sri Lankan. However, access to these flyers online is not user-friendly: one must navigate the Labour Inspectorate's website¹⁰⁰ in another language than their own, find under the News section the link to a document¹⁰¹ that needs to be downloaded, and in that document find the links for the flyers in every language available.

Trade unions also have limited direct access to the workers and unless a worker approaches them, it is difficult for them to monitor working conditions without workplace representation. Language barriers are also a challenge for Romanian unions in their efforts to engage with migrant workers, especially from Asia. Furthermore, violations and abuse must be reported to the authorities along with the evidence that substantiates workers' claims, which the workers might not always have (e.g. pay slips to evidence underpayment). However,

100 <https://www.inspectiamuncii.ro/acasa>

101 https://www.inspectiamuncii.ro/documents/66402/200730/linkuri_lucratori+straini+non+UE+in+RO.pdf/b7b2865b-b576-46d8-a4aa-4a7ca6b31933

fear of retaliation and the threat of being returned home, results in Asian workers reluctance to come forward. In 2022, The General Federation of Trade Unions FAMILIA (FGS Familia) has signed a protocol of cooperation with the National Agency against Trafficking in Persons, along with the labour inspectorate and a few non-governmental organisations, to join forces in the fight against human trafficking and exploitation at work. The initiative is at its start, so results are to be assessed in the future.

5.6.5 CONCLUSIONS

Romania is emerging as a new destination for immigration. This development is bringing forth new challenges for policymakers, enforcement agencies and social partners that require policy solutions and proper interventions.

As an emerging country of destination, the conditions of TCN workers in Romania are under-researched. The few sources available indicate that there are situations when immigrants find themselves in precarious working and living conditions. There is a risk of trafficking and exploitation and some media reports from 2019 and 2020 provide a number of stories of immigrants from Nepal and Vietnam whose wages, working and living conditions were in some cases below minimum standards.

In the case of TCN immigration from South and South-East Asia, labour market intermediaries, such as staffing and recruitment agencies based in the home as well as the receiving countries, play a dominant role. While this pattern of recruitment facilitates regular labour migration, it also exposes potential migrants to

vulnerabilities such as dependence on the recruiters and the risk of exploitation. Many immigrants are on temporary work permits of one or two years, which also makes them dependent on their employers for the renewal of their permits. Research in other country contexts has already indicated that immigrant workers' dependence on the employers for the renewal of their stay in the host country can make them compliant to precarious working conditions (Anderson, 2010), which some Romanian publications also suggest has happened in certain cases in Romania (Alexe, 2021; Florea 2019; Leduc, 2020; Roșca, 2021). While this might not be the experience of all Asian workers in Romania as the EWL study (2022) indicates, the problematic examples outlined in this case study draw the attention to the vulnerabilities migrant workers face in host countries.

The case study also suggests that Romanian public institutions and social partners seem to have limited access to these workers and the conditions they experience. Language barriers make it difficult for the workers to report abusive employers and make it difficult for the Romanian stakeholders to communicate with the workers in their attempts to monitor their conditions. Informative leaflets distributed by public authorities and non-governmental organizations are a small step towards providing the most-needed access to information on labour and social rights workers are entitled to. More needs to be done to protect these workers. As a relatively new phenomenon, TCN migration is changing the Romanian labour market and is also providing the opportunity for a learning process that requires the collaboration of public authorities, social partners, and civil society.

6 CONCLUSIONS

This study addressed the access and participation of third-country companies and workers in the European construction sector. The findings were presented in three parts: a critical analysis of the EU regulatory and policy framework on the access of non-EU companies and workers to the European market (Chapter 3); a quantitative analysis of the number and characteristics of third-country construction companies, construction workers, and posted construction workers in the EU (Chapter 4); and six case studies, three on third-country companies' and three on third-country workers' access and participation in the EU construction market (Chapter 5).

The findings show that economic operators' activity is regulated at the international, EU and national level, whereas the third-country nationals' access to the European labour market is regulated at the EU and national levels. While the EU regulations outline the broader frameworks for companies' and workers' access, national level institutions remain the main responsible authorities for defining the inclusion and exclusion criteria as well as admission and screening procedures. Bilateral trade and labour agreements between EU Member States and third countries play an important role providing access. In addition to laws and regulations, the case studies show that geographical proximity, historical background, and cultural similarities influence where in Europe third-country construction workers and companies are active, as is the case of Turkish companies on the Balkan peninsula or the presence of Ukrainian workers in Poland and Bosnian workers in Slovenia. A third set of factors are the sending and, most importantly for the objectives of this study, receiving EU countries' labour market needs and characteristics. The case studies on

third-country companies showed that these companies are involved in large scale projects, where experience and expertise have played a significant role in the award criteria, as the case of the Turkish company in Slovenia indicates. For the participation of third-country workers the case studies suggest that skills shortages and labour demand are the main pull factors.

The three parts of the study also revealed several challenges related to third-country companies' and workers' access and participation in the European construction.

The regulatory framework and monitoring measures regarding the participation of third-country companies in public procurement, such as the methods used for identifying abnormally low tenders and procedures for verification by contracting authorities, differ across national legislations. Differences across Member States exist also on exclusion criteria. In some countries, for example in the case of Slovenia, the national state audit has excluded companies from countries with no bilateral/EU-level agreement. Therefore, the importance of convergence on inclusion/exclusion criteria which might help guarantee a level-playing field across the EU is highlighted. The need for more emphasis on environmental and social sustainability in public procurement by making them more prominent criteria in the evaluation and awarding of public tenders has also been identified.

Furthermore, contracting authorities often lack the mandate and/or resources to verify information provided by bidders in cases when the offer appears abnormally low such as whether the bidding company receives state aid. Public authorities in some EU countries like Germany and Austria use a pre-qualification system to ensure that companies meet the legal,

financial, and professional requirements like a proof of payment of taxes and social contributions and adherence to environmental, labour and social standards. Only accredited companies are then able to submit tenders. For example, the contracting authority in the Swedish case study uses an internet-based supplier registration and qualification system. Such a pre-qualification system could be expanded EU-wide.

The protection of labour standards and TCN workers' labour rights is another challenge. Our case study findings indicate that TCN workers employed through intermediaries, such as temporary work agencies and recruitment agencies, or those at the end of the subcontracting chain, such as posted workers or the (bogus) self-employed, are particularly exposed to the risk of exploitation. For TCN workers with temporary work permits, the dependence on the employers or intermediaries for the renewal of the right to work and reside in an EU country can be an additional risk. The monitoring and enforcement of labour standards for TCNs also presents challenges as public authorities, social partners, and workers themselves face language barriers. In the case of posted TCNs, cross-border information exchange and cooperation needs to be adjusted to the specific complex circumstances of these workers.

Finally, the analysis revealed data gaps that need to be addressed to improve the understanding of the activities of third-country construction companies and workers in European countries. EU-level data on third-country companies are

generally limited both in terms of the level of detail on issues like company characteristics and ownership and the timeliness of data. Similarly, data on posted and TCN workers in the EU are available to researchers only for a limited number of countries and the share of posted third-country nationals in construction can only be estimated. The lack of more detailed data on posted workers is particularly disappointing because such data is collected through prior notification tools in many EU countries, but often not made available to researchers. Accurate and more up-to date administrative data on TCNs residing in every EU Member States could also be collected and made available at the EU level. TCNs and migrants in general are also under-represented in large scale surveys like LFS, therefore there is room there for more targeted surveys and research that would enable the in-depth quantitative analysis of the conditions of this category of workers in the European labour market.

The challenges listed here are used as the basis for the social partners at the EU level, namely EFBWW and FIEC to draft their recommendations, which is the final objective of the FELM project. The results of the study, however, are useful to diverse audiences such as EU institutions, national public authorities, social partners at the national level, and the research community, who can access them to stir policymaking, design policies, enact monitoring and enforcement practices, and conduct further research.

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ANNEXES

ANNEX 1 **METHODOLOGICAL NOTES**

The NACE Rev.2 used in the statistics presented in section 5.1 and 5.2 of the report includes the following activities under Construction (Code F):

F41	Construction of buildings
F411	Development of building projects
F412	Construction of residential and non-residential buildings
F42	Civil engineering
F421	Construction of roads and railways
F422	Construction of utility projects
F429	Construction of other civil engineering projects
F432	Electrical, plumbing and other construction installation
F433	Building completion and finishing
F439	Other specialised construction activities

ANNEX 2 ADDITIONAL STATISTICS

TABLE A1-25 NUMBER AND SHARE OF FOREIGN OWNED COMPANIES WITH AN OWNERSHIP OUTSIDE THE EU. 2013-2019

	2013	2014	2015	N 2016	2017	2018	2019		2013	2014	2015	% 2016	2017	2018	2019
Belgium	8	10	11	5	:	:			18%	21%	26%	22%	:	:	:
Bulgaria	228	179	132	108	179	187	176		39%	36%	27%	28%	34%	33%	34%
Czechia	135	129	114	111	199	301	390		17%	17%	16%	17%	24%	30%	36%
Denmark	20	16	43	54	61	63	64		24%	25%	23%	24%	23%	23%	22%
Germany	119	149	149	183	224	86 ^b	340		18%	21%	21%	21%	23%	25% ^b	48%
Estonia	5	2	3	3	2	2	3		20%	8%	15%	14%	10%	11%	16%
Ireland	:	50	14	23	44	137	128		:	34%	12%	21%	29%	27%	25%
Greece	:	8	:	:	14	:	:		:	13%	:	:	11%	:	:
Spain	81	84	46	43	70	70	85		16%	18%	19%	18%	19%	20%	21%
France	119	110	155	156	93 ^b	87	87		13%	12%	12%	12%	12% ^b	12%	11%
Croatia	181	167	181	193	170	219	235 ^b		32%	32%	35%	35%	34%	34%	35% ^b
Italy	200	188	189	236	242	97 ^b	97		36%	35%	35%	40%	39%	27% ^b	28%
Cyprus	:	:	:	:	:	:	:		:	:	:	:	:	:	:
Latvia	145	132	154	148	128	132	121		42%	38%	39%	37%	35%	39%	34%
Lithuania	39	46	46	54	66	150	158		23%	23%	24%	28%	34%	45%	43%
Luxembourg	400	340	362	320	329	376	454		33%	28%	29%	24%	23%	26%	31%
Hungary	152	155	178	127	127	175 ^b	135		23%	24%	27%	23%	23%	29% ^b	24%
Malta	0	:	0	:	:	:	:		:	:	:	:	:	:	:
Netherlands	61	55	53	59	66	78	81		18%	16%	18%	19%	20%	23%	23%
Austria	52	61	66	68	66	76	73		14%	15%	15%	16%	15%	16%	16%
Poland	19	20	26	26	28	36 ^b	45		7%	8%	10%	10%	10%	13% ^b	17%
Portugal	46	56	54	54	62	63	85		15%	15%	15%	15%	17%	16%	17%
Romania	497	560	509	523	578	605	542		20%	20%	19%	20%	23%	23%	24%
Slovenia	816	949	987	1 110	872	790	713		77%	78%	78%	77%	72%	70%	68%
Slovakia	6	7	:	8	10	16	12		6%	6%	:	6%	6%	10%	7%
Finland	10	11	10	15	13	21	21		13%	13%	10%	13%	12%	12%	12%
Sweden	125	149	145	149	165	174	169		33%	36%	35%	33%	35%	36%	28%

Source: Eurostat Database: FATS inward (fats_g1a_08)

Notes: In some countries data are not directly comparable over time due to a break in the time series (b). This is the case for Croatia for 2019, in Germany, Italy, Hungary and Poland for 2018, and for 2017 data in France.
: = No data are available. In the case of Estonia and Poland, the number (and share) of companies is likely to be significantly underestimated as these countries include only larger enterprises.

TABLE A2-26 NUMBER OF CONTRACTS AWARDED BY SELECT CHARACTERISTICS, 2011 – 2020

	NUMBER OF CONTRACTS AWARDED	OF WHICH			AVERAGE NUMBER OF TENDERS RECEIVED ⁴
		Awarded to a group ¹	Involve subcontracting ²	Use EU funds ³	
2020	45	13	9	18	4
2019	65	20	19	19	5
2018	46	19	12	6	4
2017	36	11	6	9	4
2016	26	4	8	7	4
2015	17	:	4	3	4
2014	33	:	14	7	5
2013	34	:	9	8	5
2012	23	:	8	4	5
2011	22	:	9	:	5
Total	347	67	98	81	5

Source: TED Contract award notices 2011-2020 (csv subset)

Notes: See Table 6. No data available on contract awarded to a group prior to 2016.

1 Awarded to a group of economic operators.

2 Likely to be subcontracted.

3 Related to a project and/or programme financed by European Union funds.

4 Unweighted average.

TABLE A3-27 NUMBER OF CONTRACTS AWARDED BY TYPE OF PROCEDURE, 2011-2020

	NUMBER OF CONTRACTS AWARDED	TYPE OF PROCEDURE					
		Open	Restricted	Negotiated with a call for competition	Negotiated without a call for competition	Award without prior publication of a contract notice	Competitive dialogue
2020	45	28	0	12	3	2	0
2019	65	42	4	16	1	1	1
2018	46	34	5	6	1	0	0
2017	36	30	2	4	0	0	0
2016	26	18	1	4	2	0	1
2015	17	11	3	1	0	2	0
2014	33	22	2	5	4	0	0
2013	34	27	1	4	0	0	2
2012	23	13	6	1	3	0	0
2011	22	15	0	5	1	0	1
Total	347	240	24	58	15	5	5

Source: TED Contract award notices 2011-2020 (csv subset)

Notes: See Table 6.

TABLE A4-28 EU MEMBER STATES ORDERED BY NUMBER AND VALUE OF CONTRACTS AWARDED BETWEEN 2011 AND 2020

COUNTRY	NUMBER OF CONTRACTS AWARDED	COUNTRY	AWARDED VALUE (MILLION EURO)
Germany	78	Poland	5,025.74
France	59	Bulgaria	1,430.34
Poland	42	Croatia	799.41
Bulgaria	41	Romania	707.56
Austria	19	Slovenia	203.58
Croatia	14	Czechia	123.46
Sweden	13	Germany	111.86
Czechia	10	Sweden	106.69
Italy	8	Portugal	47.00
Romania	8	Denmark	41.06
Finland	8	Malta	38.90
Luxembourg	7	Lithuania	38.02
Slovenia	7	Netherlands	31.84
Netherlands	6	Luxembourg	23.28
Denmark	5	France	17.10
Ireland	5	Belgium	12.16
Greece	4	Latvia	9.10
Latvia	3	Cyprus	5.00
Belgium	2	Austria	3.83
Portugal	2	Greece	3.60
Spain	1	Hungary	3.45
Cyprus	1	Italy	1.50
Lithuania	1	Finland	0.36
Hungary	1	Ireland	0.20
Malta	1	Spain	0.03
Slovakia	1	Slovakia	0.02

Source: TED Contract award notices 2011-2020 (csv subset)
Notes: See Table 6.

TABLE A5 – 29 NUMBER OF CONTRACTS AWARDED BY EU MEMBER STATES, 2011–2020

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	TOTAL
Belgium									2		2
Bulgaria						3	12	11	13	2	41
Czechia							3	1	1	5	10
Denmark		1	1						2	1	5
Germany	6	3	10	10	4	6	7	6	15	11	78
Ireland		1	1	1				1	1		5
Greece								1	2	1	4
Spain	1										1
France	6	7	9	9	3	5	5	4	5	6	59
Croatia								3	5	6	14
Italy	1		1				2	1	1	2	8
Cyprus										1	1
Latvia		1		1		1					3
Lithuania								1			1
Luxembourg					2			2	2	1	7
Hungary							1				1
Malta									1		1
Netherlands		1			3			1	1		6
Austria	4		1	7		4		1	2		19
Poland	1	2	8	4	1	4	4	10	5	3	42
Portugal								1	1		2
Romania	1	3		1	1					2	8
Slovenia			2		1	1			2	1	7
Slovakia						1					1
Finland					2		1	1	3	1	8
Sweden	2	4	1			1	1	1	1	2	13
Total	22	23	34	33	17	26	36	46	65	45	347

Source: TED Contract award notices 2011–2020 (csv subset)

Notes: See Table 6.

TABLE A6-30 VALUE AWARDED (MILLION EURO) BY EU MEMBER STATES, 2011-2020

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	TOTAL
Belgium									12.16		12.16
Bulgaria						0.76	2.24	13.89	1395.22	18.24	1,430.34
Czechia							65.51	1.98	46.14	9.83	123.46
Denmark		:	:						40.18	0.88	41.06
Germany	0.13	0.74	1.09	0.27	0.04	0.44	0.54	1.74	103.97	2.90	111.86
Ireland		0.05	:	:				:	0.15		0.20
Greece								1.11	0.26	2.23	3.60
Spain	0.03										0.03
France	0.13	0.52	2.25	1.17	0.63	2.77	2.87	0.87	0.40	5.49	17.10
Croatia								354.93	50.81	393.67	799.41
Italy	0.48		:				0.84	0.12	:	0.06	1.50
Cyprus										5.00	5.00
Latvia		:		:		9.10					9.10
Lithuania								38.02			38.02
Luxembourg					9.87			:	13.33	0.09	23.28
Hungary							3.45				3.45
Malta									38.90		38.90
Netherlands		:			31.52			0.07	0.24		31.84
Austria	0.29		:	:		0.05		0.00	3.49		3.83
Poland	0.28	214.29	226.22	49.26	147.22	267.39	186.19	1329.67	407.34	2197.89	5,025.74
Portugal								0.00	47.00		47.00
Romania	12.46	60.08		219.54	88.60					326.88	707.56
Slovenia			0.18		6.17	46.02			52.67	98.55	203.58
Slovakia						0.02					0.02
Finland					0.14		0.06	0.00	0.14	0.02	0.36
Sweden	5.18	0.15	20.23			:	47.95	:	0.76	32.43	106.69
Total	19.0	275.8	250.0	270.2	284.2	326.6	309.6	1,742.4	2,213.2	3,094.1	8,785.1

Source: TED Contract award notices 2011-2020 (csv subset)

Notes: See Table 6.

TABLE A7-31 NUMBER OF CONTRACTS AWARDED BY REGION, 2011-2020

	EFTA	NON-EU EUROPE	USA, CAN	OTHER AMERICA	CHINA	OTHER ASIA	AFRICA	OCEANIA	TOTAL
2020	20	9	3	0	4	7	1	1	45
2019	18	16	3	4	6	12	6	0	65
2018	12	9	2	3	4	11	1	4	46
2017	10	7	0	4	2	5	2	6	36
2016	11	7	0	2	3	1	1	1	26
2015	3	5	1	0	0	7	1	0	17
2014	13	8	3	2	4	3	0	0	33
2013	13	2	3	0	1	12	3	0	34
2012	10	5	4	1	1	2	0	0	23
2011	11	5	2	0	0	3	1	0	22
Total	121	73	21	16	25	63	16	12	347

Source: TED Contract award notices 2011-2020 (csv subset)

Notes: See Table 6.

TABLE A8-32 VALUE AWARDED (MILLION EURO) BY REGION, 2011-2020

	EFTA	NON-EU EUROPE	USA, CAN	OTHER AMERICA	CHINA	OTHER ASIA	AFRICA	OCEANIA	TOTAL
2020	1,108.16	85.90	0.06	-	764.44	1,122.28	0.00	13.31	3,094.15
2019	91.71	342.07	34.73	46.23	230.37	1,462.05	6.00		2,213.17
2018	10.88	14.54	0.09	2.25	467.77	1,245.32	0.00	1.54	1,742.40
2017	188.02	3.23		0.38	46.96	69.17	0.32	1.56	309.64
2016	3.09	55.26		0.13	53.48	213.91	0.02	0.66	326.55
2015	0.03	6.30	0.01	31.52	-	245.69	0.63		284.18
2014	0.53	0.71	0.17		246.58	22.23			270.23
2013	21.32	0.18	:		83.38	145.08	0.00		249.96
2012	0.91	0.50	60.13	0.01	59.47	154.83			275.84
2011	5.96	0.08	0.30			12.65			18.99
Total	1,430.61	508.76	95.49	80.53	1,952.46	4,693.21	6.98	17.07	8,785.11

Source: TED Contract award notices 2011-2020 (csv subset)

Notes: See Table 6.

TABLE A9-33 CONTRACTS AWARDED TO CHINA (AND HONG KONG) BETWEEN 2011 AND 2020

YEAR	AWARDING COUNTRY	AWARDING AUTHORITY	RECIPIENT	AWARDED VALUE ¹	USE OF EU FUNDS	SUB-CONTRACTING	WORK TO BE CARRIED OUT	NUMBER OF TENDERS RECEIVED	TYPE OF PROCEDURE
2020	Cyprus	Utilities sector	CN---CN---GR---CN	5.0	Yes	No	Construction work for the oil and gas industry	4	OPE
2020	Germany	Other	HK	0.1	No	No	Glazing work	9	OPE
2020	Germany	Other	HK	1.8	No	No	Glazing work	6	OPE
2020	Poland	Utilities sector	CN---CN---PL	757.6	Yes	Yes	Construction work	3	OPE
2019	Greece	Utilities sector	GR---CN	0.2	No	No	Substation construction work	5	OPE
2019	Greece	Utilities sector	GR---CN	0.1	Yes	No	Substation equipment	3	OPE
2019	Poland	Ministry or other authority	CN	137.0	Yes	Yes	Road construction work	10	OPE
2019	Poland	Other	CN	27.3	No	Yes	Construction for water project	4	RES
2019	Poland	Other	CN	18.8	No	Yes	Construction for water project	4	RES
2019	Portugal	Utilities sector	CN	47.0	No	No	Construction work for electricity power lines	2	NOC
2018	Croatia	Body governed by public law	CN	345.4	:	Yes	Road bridge construction work	3	RES
2018	Poland	Other	CN	33.9	Yes	No	Construction work for water projects	5	RES
2018	Poland	Other	CN	18.7	Yes	No	Construction work for water projects	5	RES
2018	Poland	Utilities sector	PL---PL---CN	69.7	:	Yes	Construction work for pipelines, communication and power lines, for highways, roads, airfields and railways; flatwork	6	OPE
2017	Poland	Utilities sector	CN	18.0	No	Yes	Construction work for pipelines, communication and power lines, for highways, roads, airfields and railways; flatwork	11	OPE
2017	Poland	Utilities sector	CN	29.0	No	Yes	Construction work for pipelines, communication and power lines, for highways, roads, airfields and railways; flatwork	8	RES
2016	Poland	Utilities sector	CN	0.8	No	Yes	Construction work for pipelines, communication and power lines, for highways, roads, airfields and railways; flatwork	6	OPE
2016	Poland	Utilities sector	CN	17.2	No	Yes	Site preparation work	7	OPE
2016	Poland	Utilities sector	CN	35.5	Yes	Yes	Construction work for pipelines, communication and power lines, for highways, roads, airfields and railways; flatwork	11	OPE
2014	Germany	Ministry or other authority	CN	:	:	:	Construction work	1	NOC
2014	Poland	Utilities sector	CN	1.5	No	Yes	Construction work	7	OPE
2014	Poland	Utilities sector	CN	25.6	No	No	Construction work	4	OPE
2014	Romania	Utilities sector	CN	219.5	No	No	Desulphurisation plant construction work	1	NIC
2013	Poland	Utilities sector	CN	83.4	No	Yes	Construction work for pipelines, communication and power lines, for highways, roads, airfields and railways; flatwork	5	OPE
2012	Poland	Other	CN	59.5	Yes	:	Construction work for water projects	7	RES

Source: TED Contract award notices 2011-2020 (csv subset)

Notes: See Table 6.

¹ million euro

OPE: Open

RES: Restricted

NIC: Negotiated with a call for competition

NOC: Negotiated without a call for competition

ANNEX 3 BRIEF PROFILE OF THE THIRD-COUNTRY COMPANY IN THE DECISION CONCERNING AWARDED PUBLIC PROCUREMENT CONTRACT FOR THE “MODERNIZATION OF THE RAILWAY SECTION ELIN PELIN – KOSTENETS”

China Communications Construction Company (CCCC)¹⁰² is one of the largest contractors for transportation infrastructure projects globally. In 2021, the company was ranked as the largest transportation contractor and as the world’s fourth largest engineering and construction (E&C) company. As of 2021, CCCC employed 136,772 people.

CCCC is a subsidiary of China Communications Construction Group (CCCCG), which is fully owned by the state, namely, China’s State-owned Assets Supervision and Administration Commission (SASAC). State control over CCCC is thus exercised via CCCG. CCCC receives regular state subsidies and is also supported by preferential tax rates, although the level of state support is believed to be ‘moderate’. CCCC has more than 60 fully owned or controlled subsidiaries.

CCCC has been present in the European region for over 10 years most actively in Eastern and Central Europe.¹⁰³ Its first large infrastructure project in Europe was the construction of the Zemun-Borca or Pupin Bridge in Serbia which was completed in 2014. Since then the company has been awarded and implemented large infrastructure projects in Croatia (Pelješac bridge)¹⁰⁴, Montenegro (e.g., Smokovac-Matesevo highway including tunnels and bridges) and Serbia (e.g., Preljina-Pozega motorway section). CCCC is one of the contractors for the currently running reconstruction of the Serbian section of the Budapest-Belgrade railway line, with a contract worth of 1.7 billion euros, which is expected to be completed by end of 2024.

102 The information on the company profile is based on the following sources:

Fitch Ratings (2022). Rating action commentary. Available at: <https://www.fitchratings.com/research/corporate-finance/fitch-affirms-china-communications-construction-company-at-a-stable-13-05-2022>

Company website of CCCC: <http://en.ccccltd.cn/>

European Construction Industry Federation (2022). Third Country State-Owned Enterprises in the European Procurement Market. Available at: <https://soes-in-europe.eu/>

103 Within Europe, CCCC has businesses in 11 EU countries (Bulgaria, Croatia, France, Germany, Italy, Latvia, Luxembourg, Malta, Netherlands, Romania, Spain) as well as in the UK, Norway, Montenegro, Serbia, Turkey, Ukraine, Belarus and Russia.

104 The contract for the project, which received EU funding (85% of total construction costs), was awarded in 2019 to and completed in 2022 by the China Road and Bridge Corporation (CRBC), a subsidiary of CCCC.



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