



EMN FOCUSSED STUDY 2016

Illegal employment of Third-Country Nationals in the EU

Estonian national report

Tallinn 2017

Illegal employment of Third-Country Nationals in the EU

Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the EMN Focussed Study on Illegal Employment of Third-Country Nationals in the EU. The contributing EMN NCP have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN NCPs' Member State.

This document was produced by Silver Stõun the expert of EE EMN NCP. This report was compiled based on public and available information. Furthermore, experts of this topic were consulted.

*Estonian national contact point
Tallinn University
Narva mnt 25
10120 Tallinn
emn@tlu.ee*



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1 STUDY AIMS AND RATIONALE

Illegal employment of third-country nationals (TCNs) (i.e. contravening immigration or labour law) is a source of concern in the EU, both for economic and migration-related reasons. At macro-economic level, illegal employment decreases tax revenues and thus, may increase the welfare expenditure, posing a threat to the social security system of the (Member) State; at micro-economic level, it distorts competition among economic actors and creates social dumping.¹ In general, “undeclared work tends to obstruct growth-oriented economic, budgetary and social policies”² and, therefore, fighting it is an **economic policy objective**.³ Counteracting illegal employment is also a **migration policy objective**, specifically in the context of reducing irregular migration. Since it is considered that “the possibility of funding undeclared work is a key pull factor encouraging illegal immigration”,⁴ counteracting illegal employment becomes an instrument to reduce the incentives to irregular migration. Last but not least, fighting illegal employment of TCNs is also a **social policy and fundamental rights objective**, as it is common that the rights of illegally employed workers are violated.

On the causes of illegal employment, the scale of informal economy certainly affects the opportunities of illegal employment (for nationals and non-nationals). It is widely held that taxation and social security contributions are the main causes of the increase of the informal economy;⁵ however, not much evidence has been collected on the causal relationship between the regulatory framework on migration and illegal employment. Illegal employment can be attractive to employers as it provides less costly and more flexible labour force. To limit illegal employment, three types of actions are deemed to have a positive impact: employers’ sanctions, facilitating legal immigration, and reforming the labour market to increase the employment participation rate and enforce the labour standards.⁶

As illegal employment is a hidden and complex phenomenon, making reliable **estimates of its magnitude** is by definition challenging. Researchers have devised different methods to estimate the magnitude of illegal employment, ranging from indirect methods using proxy indicators, and/or statistical discrepancies, to direct survey methods. In the majority of cases, the available estimates do not distinguish between illegal employment of EU nationals and third-country nationals. Overall (including EU nationals), the Special Eurobarometer 402 ‘Undeclared work in the European Union’⁷ reports that in 2013, 4% of respondents carried out undeclared activities in addition to any regular employment in the previous 12 months. A much larger share, 32%, reported to personally know people who did not declare (part of) their income to tax and social security institutions. In relation to GDP, it has been estimated that, in 2013, undeclared work in the EU was worth € 2.15 trillion, amounting to 18.5% of EU GDP.⁸

The aim of this Focussed Study is to map and analyse the measures in place at (Member) States level to fight illegal employment by TCNs, possible problematic areas and obstacles in this field and strategies and good practices to overcome them. In particular, the Study will begin by briefly looking into the contextual situation regarding illegal employment in the (Member) States in general to investigate the extent to which illegal employment of TCNs is an issue in the country (Section 1). The Study will then look into each stage of the ‘illegal employment’ cycle for TCNs:

★ **prevention** measures and incentives for employers and employees to avoid illegal employment practices and risk assessment analysis carried out by national authorities (Section 2);

¹ European Commission, 2007. Stepping up the fight against undeclared work. COM(2007) 628 final. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0628>

² Ibidem.

³ While the statement is true for all forms of illegal employment, in this Study the focus will be on illegal employment of third-country nationals.

⁴ Ibidem.

⁵ Schenider, F., 2000. Illegal activities, but still value added ones (?): size, causes, and measurement of the shadow economies all over the world. CESifo Paper.

⁶ Sumption, M., 2011. Policies to Curb Unauthorized Employment. Migration Policy Institute

⁷ Special Eurobarometer 402, 2014. Undeclared work in the European Union. Available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_402_en.pdf

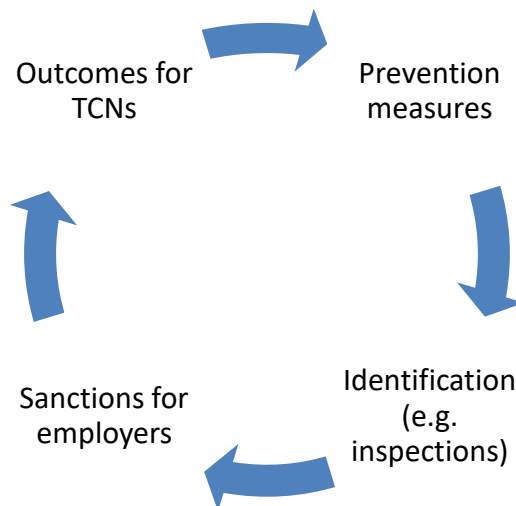
⁸ Visa Europe, Schneider, F., A.T. Kearney 2013. The Shadow Economy in Europe, 2013. Available at <https://www.atkearney.com/documents/10192/1743816/The+Shadow+Economy+in+Europe+2013.pdf>

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- ★ national authorities and organisations involved in the **identification** of illegal employment of TCNs and their cooperation between different players, and measures and techniques used to carry out inspections (Section 3);
- ★ **sanctions** for employers illegally hiring irregularly and regularly residing third-country nationals, for instance criminal sanctions or administrative sanctions (Section 4);
- ★ **outcomes** for third-country nationals found to be working illegally (e.g. return decisions, period of voluntary departure) and protective measures (e.g. back payment of salaries and taxes, access to justice, facilitation of complaints) (Section 5);

Figure 1 below depicts the different steps of illegal employment policy in a cyclical manner. Firstly, the prevention measures are depicted as a first step in the policy cycle, which focus on incentives for employers and information campaigns. This is followed by identification of illegal employment through inspections and other measures which leads in itself to sanctions and outcomes for migrants. The first one is prevention (positive measures – incentives for employers, information campaigns), which is followed by identification leading to sanctions and outcomes for migrants. It is recognised that the various steps do not necessarily follow chronologically from each other; however, the notion of a cycle is used in the Study for organisational purposes, as it helps to highlight the different aspects which the analysis will focus on.

Figure 1: Illegal employment policy cycle



The Study also aims to provide a **descriptive overview**, when available at the national level, of illegal employment of third-country nationals, with particular emphasis on:

- ★ the **magnitude** of the phenomenon in terms of the estimate number of illegally employed TCNs,
- ★ the **sectors** where irregular third-country nationals are mostly employed,
- ★ the **profiles** of third-country nationals working illegally (if available, nationality, age, sex of the TCN, entry to the country, basis for stay etc.).

The **target audience** of the Study is composed of migration policy makers and policy makers in charge of formulating and applying employment law in (Member) States and the European Commission. Practitioners (such as police and border guard officers, tax offices) as well as researchers and the general public could also be interested in this Study.

2 SCOPE OF THE STUDY

The scope of this Focused Study is illegal employment of TCNs. The forms of employment of TCN that fail to comply either with employment or with migration law are defined by the general term of **'illegal employment'**. There are different types of illegal employment and not all of them are subject of this Study. The object of the employment activity can be licit or illicit. **'Undeclared work'** refers to a licit activity and is defined as "any paid activities that are lawful as regards to their nature but not declared to public authorities, taking into account differences in the

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regulatory system of (Member) States".⁹ Employment can be illegal because different forms of irregularities are present: these can concern employees or self-employed persons, employment carried out in the (Member) State or in another (Member) State (for instance, as posted workers). Moreover, the employment activities can be totally undeclared or only partially undeclared (for instance, when the working hours, the salary or the paid social contributions are not as specified in the official employment contract) and this difference may be taken into account by authorities in dealing with illegal employment. The types of illegal employment can be conceptually divided **by status** of the TNC and **by type of employment**, as shown in Table 1 below.

Regarding status of TCNs, they can enter the (Member) State via legal or illegal routes, and therefore can have a regular or irregular status. When illegally employed, they can be also regularly or irregularly residing. The position of third-country national workers engaged in illegal employment thus depends on their visa or residence permit and on the rights attached to it. Similarly, the extent to which their employment activity is illegal depends both on general employment conditions laid down in labour law (e.g. compliance with the employment contract) and in the specific conditions attached to their residence permit, as laid down in migration law.

This study focuses on the illegal (either totally or partially undeclared) employment of the following categories:

- ★ Third-country nationals regularly residing on the territory of the (Member) State working illegally – for example, without right to access to the labour market (for instance, tourists or some asylum seekers) or who contravene restrictions on their access to labour market, (e.g. students working above permitted hours)
- ★ Irregularly residing third-country nationals, i.e. persons who do not, or do no longer, meet the conditions to stay in the country. These include third-country nationals who arrived outside the legal channels of migration and third-country nationals who overstayed after their permit or visa expired.

Illegal employment of third-country nationals carrying out self-employment and posted work activities and posted workers is not covered by the Study.

⁹ European Commission, 2007. Stepping up the fight against undeclared work. COM(2007) 628 final. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0628>

Table 1: Typology of status and type of employment of TCNs

Status of third-country nationals		Type of employment (performed by TCNs)	
When entering the (Member) State	At time of illegal employment	Type of work	Type of irregularities
Legally (visa, residence permit)	Regular (workers, students, family members, refugees, asylum seekers, regularised persons)	Licit (undeclared work)	Totally undeclared OR Partially undeclared (difference in working hours, salary, social contributions from the work contract) OR working in a sector or profession in which s/he is not authorised.
Illegally	Irregular (over-stayers, persons who never received the permit)	<i>Illicit (goods smuggling, drug dealers, etc.) (*)</i>	National OR cross-borders (when the employed activity is performed in the Member State the person is registered or in another Member State) Employees OR self-employed (*) (whether the person is employed or carries out self-employment activities)

(*) Outside the scope of the Study

3 DEFINITIONS

The following key terms are used in the Common Template. The definitions are taken from the EMN Glossary.

'Asylum': is a form of protection given by a State on its territory, based on the principle of non-refoulement and internationally or nationally recognised refugee rights and which is granted to a person who is unable to seek protection in their country of citizenship and/or residence, in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

'Back payments': any outstanding remuneration and any outstanding taxes and social security contributions that the employer should in pay to the third-country nationals for the work which they have undertaken (Directive 2009/52, recital (14))

'Economic migrant': a person who leaves their country of origin purely for economic reasons that are not in any way related to the refugee definition, in order to seek material improvements in their livelihood.

'Employer Sanction': in the context of migration, penalties, including fines, repayments to victims/the State and incarceration, imposed on employers by the (Member) State for breaking employment and/or migration rules.

'Employment': the exercise of activities covering whatever form of labour or work regulated under national law or in accordance with established practice for or under the direction and/or supervision of an employer.

'Family reunification': the establishment of a family relationship which is either: i) the entry into and residence in a (Member) State, in accordance with Council Directive 2003/86/EC, by family members of a third-country national residing lawfully in that (Member) State ('sponsor') in order to preserve the family unit, whether the family relationship arose before or after the entry of the sponsor; or ii) between an EU national and third-country national established outside the EU who then subsequently enters the EU.

'Legal entry': in the global context, the entry of an alien into a foreign country in compliance with the necessary requirements for legal entry into the receiving State. In the Schengen context, and for a stay not exceeding 90 days within 180 days consecutive, the entry of a third-country national into a Schengen (Member) State in compliance with Art. 6 of the Schengen Borders Code.

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'Illegal employment': economic activity carried out in violation of provisions set by legislation.

'Illegal employment of a regularly staying third-country national': employment of a legally staying third-country national working outside the conditions of their permit or document which states the legal basis for the foreigners stay on the territory of a Member State. This is subject to each (Member) State's national law.

'Illegal employment of an irregularly staying third-country national': the employment of an illegally staying third-country national.

'Irregular migrant': in the global context, a person who, owing to irregular entry, breach of a condition of entry or the expiry of their legal basis for entering and residing, lacks legal status in a transit or host country. In the EU context, a third-country national present on the territory of a Schengen State who does not fulfil, or no longer fulfils, the conditions of entry as set out in the Schengen Borders Code, or other conditions for entry, stay or residence in that (Member) State.

'Posted worker': a worker who, for a limited period, carries out his/her work in the territory of a Member State other than the State in which they normally work.

'Principle of equal treatment': the principle that there shall be no direct or indirect discrimination based on racial or ethnic origin, sex, religion or belief, disability, age or sexual orientation.

'Overstayer': in the global context, a person who remains in a country beyond the period for which entry was granted. In the EU context, a person who has legally entered but then stayed in an EU (Member) State beyond the allowed duration of their permitted stay without the appropriate visa (typically 90 days or six months), or of their visa and/or residence permit.

'Right to family unity': in the context of a refugee, a right provisioned in Art. 23 of Directive 2011/95/EU and in Art. 12 of Directive 2013/33/EU obliging (Member) States to ensure that family unity can be maintained.

'Schengen Borders Code': the rules governing border control of persons crossing the external EU borders of the (Member) States of the European Union.

'Single Permit': a residence permit issued by the authorities of a (Member) State after a single application procedure allowing a third-country national to reside legally in its territory for the purpose of work.

'Smuggling of migrants': the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the irregular entry of a person into a (UN) (Member) State of which the person is not a national or a permanent resident.

'Social dumping': the practice whereby workers are given pay and/or working and living conditions which are sub-standard compared to those specified by law or collective agreements in the relevant labour market, or otherwise prevalent there.

'Social partners': bodies representing employers, workers and governments when meeting for the purpose of consultations and negotiations on labour, social and economic practices, policies and legislation.

'Student': in the EU migration context, a third-country national accepted by an establishment of higher education and admitted to the territory of a (Member) State to pursue as their main activity a full-time course of study leading to a higher education qualification recognised by the (Member) State, including diplomas, certificates or doctoral degrees, which may cover a preparatory course prior to such education according to its national legislation.

'Temporary protection': a procedure of exceptional character to provide, in the event of a mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection to such persons, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation, in the interests of the persons.

'Undeclared work' is a specific form of illegal employment defined as "any paid activities that are lawful as regards to their nature but not declared to public authorities, taking into account differences in the regulatory system of (Member) States".¹⁰

¹⁰ European Commission, 2007. Stepping up the fight against undeclared work. COM(2007) 628 final. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0628>

EMN FOCUSSED STUDY 2016**Illegal employment of Third-Country Nationals in Estonia**Top-line "Factsheet" (National Contribution) [maximum 1 page]

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

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

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

Current study focuses on the illegal employment of third-country nationals (TCNs) in Estonia.

As it is difficult to determine the scale of grey and informal economy in Estonia, it is also difficult to determine the exact scale of illegal employment of TCNs in Estonia. Nevertheless, illegal employment exists as shown by the few surveys and studies done in the field, as well as reports from the Police and Border Guard Board (PBGB).

Since Estonia has joined the Schengen zone, citizens from the illegal immigration source countries have started to show up bigger interest in Estonia. To many TCNs, the main aim is to receive the Schengen visa that shall provide them with the right to enter the territory of all member states of Schengen visa area, not only Estonia.

Some TCNs who work illegally have used legal possibilities like tourism, transit transportation, studying, personal contacts as well as contacts related to work in order to travel to Estonia. The first alarming indicator of attempt of illegal migration could be that people are in a hurry to receive the visa and wish to come to Estonia very quickly. In many cases, when the visa has been issued, TCNs will use Estonia as a transit country to other Western-European countries. Nevertheless, there are those who stay in Estonia and try to find employment here. Citizens from Asia, Africa, Middle East and the former Soviet Union are the category of people who most often use the visa request in order to migrate to the country illegally.¹¹

With the aim to give personal and trustworthy advice on migration to Estonia and minimise illegal employment cases, a consultation service is offered by the PBGB to foreigners, employers and organisations who wish to employ foreigners. The service is available to foreigners who already live in Estonia or who are planning to live in Estonia, as well as to employers, universities, NGOs etc. Furthermore there is a general helpline on which it is possible to ask assistance or additional information.

The employment of illegally staying third country nationals can be considered as an activity which is contrary to law, public order and good morals. According to the Aliens Act¹² an employer is required to verify that a third-country national who is employed by the employer, would have a legal basis for the stay and employment in Estonia. All the natural and legal persons providing employment are required to register the persons employed by them in the employment register, hence this data is a basis for all work related benefits offered by Estonian Health Insurance Fund, Estonian Unemployment Insurance Fund, Social Insurance Board etc. The employee

¹¹ PBGB webpage. Illegal migration. Available at: <https://www.politsei.ee/et/nouanded/ebaseaduslik-sisseranne/>

¹² Aliens Act, Article 286, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

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himself can check from the register, if his working has been registered and if the payments have been declared and taxes paid.

The main actor responsible for preparing risk assessments and identifying illegal employment of TCNs is the Police and Border Guard Board. Nevertheless, PBGB works in very close cooperation with Labour Inspectorate and Tax and Customs Boards, with whom joint raids are carried out in order to detect undeclared and/or illegal workers. The risk assessment system and targeted inspection system of Estonia can be considered as a good practice. The three above mentioned institutions have a cooperation agreement and they share information for risk analysis purposes and plan joint targeted actions in order to use the resources effectively and cover all different areas (illegal employment of TCNs, human trafficking related offences, tax frauds, labour inspections). Occasionally other state institutions are included in the process on an ad-hoc basis.

Enabling employment to a TCN who is staying in Estonia without legal basis if the employer has failed to perform obligations provided by law is punishable by a fine¹³ or criminal sanctions¹⁴. The same act, if committed by a legal person, is punishable by a fine of up to 3,200 euros.¹⁵ The act of providing work to a TCN who is staying in Estonia without legal basis is only punishable in case the employer has failed to perform the obligation of notification, the obligation of verification whether the TCN has a legal basis for the stay and employment in Estonia and the obligation to preserve the documents that prove the legality of stay and employment of the TCN.

In addition to identifying illegally staying TCNs PBGB is also responsible for relevant following procedures including fines and return procedures. If the illegally employed TCN is identified as illegally staying third-country national and there are no elements of human trafficking, the TCN is issued a return decision and is subject to return. Before issuing a return decision the PBGB shall notify the TCN of the obligations of the employer provided for in Aliens Act and of the possibilities to resolve labour disputes and receive state legal aid. The TCN can also apply for a residence permit under general procedure and receive a right to work thereof. In accordance with Aliens Act the temporary residence permit with the permission to work may be issued to victims of human trafficking and to employees who have been working illegally in aggregating circumstances.

Executive Summary (Synthesis Report) [maximum 3 pages]

Executive Summary of the Synthesis Report: this will form the basis of an EMN Inform, which will have EU and national policymakers as its main target audience.

¹³ Up to 300 fine units.

¹⁴ Accordingly to Penal Code.

¹⁵ Aliens Act, Article 300, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

*Illegal employment of Third-Country Nationals in the EU***Section 1: Contextual overview of the general situation regarding illegal employment in the (Member) States [maximum 1 page]**

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

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

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

Please specify the reference/source of the information.

Q1a. According to Estonian Institute of Economic Research, the economic impact and share of grey economy in Estonia is steadily declining, since a growing number of entrepreneurs and employees value working under official contracts and paying taxes.¹⁶

The concept and boundaries of grey and informal economy are diffused. Surveys and studies are done by different institutions, whereas different methodologies are used, therefore the share of grey economy in Estonia can vary from 3 to 26%.

Statistics Estonia estimates the presence of grey economy to be between 3 and 4%. They try to evaluate financial transactions as part of grey economy, which main elements are illegal labour, trafficking, undeclared wages (so-called "envelope wages") and tax frauds. Estonian Institute of Economic Research focus in their consumer panel surveys¹⁷ mostly on undeclared wages and private consumption. They have estimated the scale of grey economy in total expenditures of people in the last five years to be from 6 to 9%. Stockholm School of Economics in Riga (SSE Riga) conducts surveys among entrepreneurs in order to detect, how entrepreneurs in Baltic countries recognize the existence of grey economy in their own field. According to their findings, the majority of grey economy consists of undeclared wages, hidden labour force and hidden revenues of businesses. In 2014 they estimated the share of grey economy to be 13,2% out of the Estonian GDP.¹⁸ According to SSE Riga, grey economy in Estonia grew 1,7 percentage points last year and thus was accounted for 14,9% of GDP.¹⁹

Q1b. Fighting illegal employment is a priority issue to the supervisory authorities in conjunction with other issues, such as labour exploitation and possible trafficking in human beings. For example, this topic can be found in the

¹⁶ Ministry of Economic Affairs and Communications webpage. Latest news. Estonian Institute of Economic Research: Grey economy in Estonia is declining. Available at: <https://www.mkm.ee/et/uudised/konjunkturiinstituut-varimajandus-eestis-langustrendis>

¹⁷ Estonian Institute of Economic Research. (2015) Grey economy in Estonia in 2014 (according to the estimation of citizens). Available at: https://www.mkm.ee/sites/default/files/varimajandus_eestis_2014_elanike_hinnangute_alusel_.pdf

¹⁸ Statistics Estonia webpage. How big is Estonian grey economy? 12.10.2015. Available at: <https://statistikaamet.wordpress.com/2015/10/12/kui-suur-on-eesti-varimajandus/>

¹⁹ Pealinn website. The grey economy in Estonia has risen. 30.06.2016 Available at: <http://www.pealinn.ee/newset/uuring-eestis-on-varimajanduse-osakaal-kasvanud-n171991>

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Violence Prevention Strategy for 2015-2020²⁰. Undeclared and/or illegal worker has a significantly higher risk of falling victim of labour exploitation or trafficking.²¹

Q1c. There have been no public or policy debates, however related issues are still on the agenda.

Q1d. In 2015 and 2016 the Labour Inspectorate participated in raids together with Tax and Customs Board and Police and Border Guard Board. During the raids a number of unregistered and workers staying illegally in Estonia were identified. In 2016, Labour Inspection officials participated in 18 such joint raids alongside PBGB officials and in total 91 different businesses and it's staff were controlled.²² Also in 2016, the number of construction workers from Ukraine has increased, though most of them were working in Estonia on the basis of a Polish national visa.

Q1e. The main institution providing research on the main routes to an irregular employment situation is PBGB's information analysis division, according to whom, the main routes of irregular migration to Estonia are from neighbouring states, mainly Russian Federation, Republic of Belarus and Ukraine. In 2016, the majority of illegal employment cases were those of Ukrainian workers. Other isolated cases detected were those of Egyptian, Moldovan, Nepalese and Nigerian nationals.²³

Q1f. In January 2017 amendments to the Aliens Act came into force according to which the directive 2014/36/EU of the European Parliament and of the Council on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers was transposed to Estonian legislation. With these amendments the conditions for registration of short-term working, the same way as the conditions of residence permits for working, are stipulated in order to avoid possible abuses and ensure the protection of Estonian labour market. The registration conditions are stipulated for the alien as well as the employer. The company in which the person is to be employed, has to be registered in Estonia. If necessary, the Police and Border Guard Board has the right to demand relevant documents in order to control that the conditions are met.²⁴ The obligations of the employer are in addition stipulated in accordance with the directive 2009/52/EU of the European Parliament and of the Council. In addition, the responsibilities of subcontractors recruiting TCNs illegally staying in the country was also clarified in Aliens Act in 2015.²⁵

The digital employment register was created with the Taxation Act's amendment, which entered into force on 1st of July 2014. According to the amendment, all natural and legal entities who are providing work must register their employees in the Tax and Customs Board register. The employee can check from the register, if his working has been registered and if the payments have been declared and taxes paid.²⁶

Q1g. According to the risk analysis established (annually) by the Police and Border Guard Board the main sectors for illegal employment are construction and agriculture. The Labour Inspectorate conducts its raids according to the risk analysis established by the PBGB.

Q1h. Foreigners: TCNs with little knowledge of (Estonian) language, mostly males. Within Estonia: the lack of proficiency in Estonian, who hence have limited opportunities in the labour market, mainly young people or people approaching retirement age.²⁷

Q1i. Other related issues are mostly labour exploitation and possible trafficking in human beings.²⁸

²⁰ Violence Prevention Strategy for 2015-2020. Available at: https://valitsus.ee/sites/default/files/content-editors/arengukavad/vagivalla_ennetamise_strateegia_2015-2020_kodulehele.pdf

²¹ Response of the Labour Inspectorate to the EMN's inquiry, 15.02.2017.

²² Response of the Labour Inspectorate to the EMN's inquiry, 15.02.2017.

²³ Response of the PBGB expert to the EMN's inquiry, 03.03.2017.

²⁴ Draft Amendment Act (252 SE) to the Aliens Act, RT I, 03.01.2017, 3, available at: riigiteataja.ee

²⁵ Draft Amendment Act (809 SE) to the Aliens Act, RT I, 03.01.2017, 3, available at: riigiteataja.ee

²⁶ Tax and Customs Board site: Working register. Available at: <http://palk.emta.ee/tootajaregistri>

²⁷ Response of the Labour Inspectorate to the EMN's inquiry, 15.02.2017.

²⁸ Markina, A and K. Soo (2015). The Hidden Face of Labour Migration: Estonian Human Labour Exploitation Experience Abroad. Available at: http://www.cbss.org/wp-content/uploads/2012/11/Report_Estonian.pdf

*Illegal employment of Third-Country Nationals in the EU***Section 2: Prevention measures [maximum 5 pages]**

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

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

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

Measure/incentives for employers	<p align="center"><i>Irregularly staying and illegally working TCNs</i></p> <p align="center"><i>*Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. **Please specify if these measures are established to tackle illegal employment or are general incentives.</i></p>	<p align="center"><i>Regularly staying and illegally working TCNs</i></p> <p align="center"><i>*Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. **Please specify if these measures are established to tackle illegal employment or are general incentives.</i></p>
<p>a.1. Information campaigns targeted at employers</p> <p><i>Outreach/awareness-raising activities to inform employers on the criteria by which they can hire TCNs</i></p> <p>For each campaign that has been run in your MS indicate:</p> <ul style="list-style-type: none"> - Which sectors were targeted? - How the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.) 	<p>YES</p> <p>Seminars are organized regularly in order to share relevant information to employers of TCNs. The seminars are organized by the Police and Border Guard Board and they focus on the legal aspects of employment of third -country nationals. Also the topic of employment of irregularly staying third-country nationals is touched upon during the seminars – namely measures to prevent the employment of irregularly staying third country nationals and possible consequences and sanctions.</p>	<p>YES</p> <p>Seminars are organized regularly in order to share relevant information to employers of third-country nationals. The seminars are organized by the Police and Border Guard Board and they focus on the legal aspects of employment of third country nationals.</p>
<p>a.2. Information support for employers</p> <p><i>Simplification of administrative procedures and information support for employers recruiting TCNs (e.g. helpline, information on government website etc.)</i></p>	<p>YES</p> <p>There is relevant information available on the webpage of Police and Border Guard Board. Furthermore there is a general helpline running on which it is possible to ask assistance or information.</p>	<p>YES</p> <p>There is relevant information available on the webpage of Police and Border Guard Board. Furthermore there is a general helpline running on which it is possible to ask assistance or information.</p> <p>Starting from 01.03.2017 a consultation service is offered by the PBGB with the aim to give personal and trustworthy advice on migration to Estonia to foreigners, employers and organisations who wish to employ foreigners. The service is available to foreigners who already live in Estonia or who are planning to live in Estonia, as well as to employers, universities, NGOs etc. In addition to written queries and phone calls, it is possible to come for a consultation, receive consultations</p>

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		on Skype or send the documents related to migration process to ex-ante verification. ²⁹
<p>a.3. Partnership agreements and initiatives by Social Partners</p> <p><i>Conclusion of agreements between trade unions and employer organisations in the same sector (e.g. construction industry) establishing bilateral agreements of actions to curb illicit activities.</i></p>	NO	NO
<p>a.4. Obligation of the employer to notify the authorities about employing a TCN</p>	<p>YES</p> <p>An employer is required to notify the Police and Border Guard Board:³⁰</p> <ul style="list-style-type: none"> • of the commencement of employment by an alien for the employer, • of a failure to conclude a contract forming a basis for work relations with the alien who has registered short-term employment, • of a failure of an alien to commence employment, • of any change in the conditions of employment determined in the temporary residence permit for employment, • of the premature termination of the contract forming the basis for work relations and • of the actual termination of employment of an alien <p>In case the short-term employment of a third-country national as a seasonal worker has been registered and the accommodation of the alien is ensured by or through the employer, the employer is required to notify the PBGB of the change of the location and conditions of the accommodation of the alien.</p>	<p>YES</p> <p>An employer is required to notify the Police and Border Guard Board</p> <ul style="list-style-type: none"> • of the commencement of employment by an alien for the employer, • of a failure to conclude a contract forming a basis for work relations with the alien who has registered short-term employment, • of a failure of an alien to commence employment, • of any change in the conditions of employment determined in the temporary residence permit for employment, • of the premature termination of the contract forming the basis for work relations and • of the actual termination of employment of an alien. <p>In case the short-term employment of a third-country national as a seasonal worker has been registered and the accommodation of the alien is ensured by or through the employer, the employer is required to notify the Police and Border Guard Board of the change of the location and conditions of the</p>

²⁹ Ministry of Interior webpage. Latest news. Available at: <https://www.siseministeerium.ee/et/uudised/siseministeerium-ning-politsei-ja-piirivalveamet-tootavad-valja-migratsioonialase>

³⁰ Aliens Act, Article 285, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

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	<p>The employer has no notification obligation as stated above concerning the data which the employer has registered in the employment register.</p> <p>The research and development institution is required to immediately notify the Police and Border Guard Board of the termination of the hosting contract concluded with an alien.</p>	<p>accommodation of the alien.</p> <p>The employer has no notification obligation as stated above concerning the data which the employer has registered in the employment register.</p> <p>The research and development institution is required to immediately notify the PBGB of the termination of the hosting contract concluded with an alien.</p>
a.5. Other measures/incentives for employers	<p>According to the Aliens Act³¹ an employer is required to verify that a third-country national who is employed by the employer would have a legal basis for the stay and employment in Estonia.</p> <p>An employer is prohibited to enter into an employment contract with an alien who lacks a legal basis for the stay or employment in Estonia.</p> <p>An employer is required to terminate the contract with an alien who lacks a legal basis for the stay or employment in Estonia.</p> <p>An employer is required to preserve during the employment of an alien and within ten years after termination of the employment of an alien the copies of the data and documents that prove the existence of the legal basis for employment in Estonia of an alien during recruitment and employment.</p> <p>All the natural and legal persons providing the work are required to register the persons employed by them in the employment register. Employments of all natural persons through whose working a tax liability will be created in Estonia, irrespective of the form of a contract, must be recorded in the employment register.³²</p>	<p>According to the Aliens Act³³ an employer is required to verify that an alien who is employed by the employer would have a legal basis for the stay and employment in Estonia.</p> <p>An employer is prohibited to enter into an employment contract with an alien who lacks a legal basis for the stay or employment in Estonia.</p> <p>An employer is required to terminate the contract with an alien who lacks a legal basis for the stay or employment in Estonia.</p> <p>An employer is required to preserve during the employment of an alien and within ten years after termination of the employment of an alien the copies of the data and documents that prove the existence of the legal basis for employment in Estonia of an alien during recruitment and employment.</p> <p>All the natural and legal persons providing the work are required to register the persons employed by them in the employment register. Employments of all natural persons through whose working a tax liability will be created in</p>

³¹ Aliens Act, Article 286, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

³² Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

³³ Aliens Act, Article 286, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

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		Estonia, irrespective of the form of a contract, must be recorded in the employment register.
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b. **Measures and incentives for employees from third countries:** Please indicate which measures and incentives for employees from third countries exist in your (Member) State and describe the measures.

Measure/incentive for employees	<i>Irregularly staying and illegally working TCNs</i> <i>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</i>	<i>Regularly staying and illegally working TCNs</i> <i>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</i>
<p>b.1. Financial incentives for employees</p> <p><i>Financial and fiscal incentives, including social security incentives – i.e. any social security incentives aimed at encouraging employers to legally register their employees</i></p>	<p>YES</p> <p>All the natural and legal persons providing work are required to register the persons employed by them in the employment register. Employments of natural persons whose working will create a tax liability in Estonia, irrespective of the form of a contract, must be recorded in the employment register. This data is a basis for all work related benefits offered by Estonian Health Insurance Fund, Estonian Unemployment Insurance Fund, Social Insurance Board etc.³⁴</p>	<p>YES</p> <p>All the natural and legal persons providing work are required to register the persons employed by them in the employment register. Employments of all natural persons through whose working a tax liability will be created in Estonia, irrespective of the form of a contract, must be recorded in the employment register. This data is a basis for all work related benefits offered by Estonian Health Insurance Fund, Estonian Unemployment Insurance Fund, Social Insurance Board etc.</p>
<p>b.2. Information campaigns targeted at employees(potential or current)</p> <p><i>(including pre-departure campaigns and post-departure campaigns in third countries)</i></p> <p>For each campaign that has been run please:</p> <ul style="list-style-type: none"> - Provide detail of the campaigns, including who are the target groups; what country, type of workers, etc. - Explain how the campaign was conducted? (e.g. through advertising, 	<p>NO</p>	<p>NO</p>

³⁴ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

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visits and talks by government officials visits, etc.)		
<p>b.3. Information support for employees from third countries</p> <p>(e.g. One-stop shop information points)</p>	<p>YES</p> <p>There is a one stop employment portal with useful information about employment in Estonia.</p> <p>http://www.workinestonia.com/for-employers/employment-register/</p>	<p>YES</p> <p>There is a one stop employment portal with useful information about employment in Estonia.</p> <p>http://www.workinestonia.com/for-employers/employment-register/</p> <p>Starting from 01.03.2017 a consultation service is offered by the PBGB with the aim to give personal and trustworthy advice on migration to Estonia to foreigners, employers and organisations who wish to employ foreigners. The service is available to foreigners who already live in Estonia or who are planning to live in Estonia, as well as to employers, universities, NGOs etc. In addition to written queries and phone calls, it is possible to come for a consultation, receive consultations on Skype or send the documents related to migration process to ex-ante verification.³⁵</p>
<p>b.4. Other measures/incentives for employees (incl. obligation of TCN to notify the authorities about any changes in employment conditions)</p>	<p>YES</p> <p>A TCN is required to notify the PBGB of any change in the conditions of employment determined by the temporary residence permit for employment, of the termination of the contract and the end of work relations.³⁶</p> <p>As a general rule a third-country national and other person concerned have the obligation to notify the PBGB of the change in and cessation of the facts relevant to granting, possession, extension and revocation of the legal basis for temporary stay, residence and employment in Estonia. The notification obligation includes, inter</p>	<p>YES</p> <p>An alien is required to notify the Police and Border Guard Board of any change in the conditions of employment determined by the temporary residence permit for employment, of the termination of the contract and the end of work relations.</p>

³⁵ Ministry of Interior webpage. Latest news. Available at: <https://www.siseministeerium.ee/et/uudised/siseministeerium-ning-politsei-ja-piirivalveamet-tootavad-valja-migratsioonialase>, 01.02.2017.

³⁶ Aliens Act, Article 280 (3), RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

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	alia, the duty of TCN and other person concerned to notify an administrative authority during the conduct of the proceedings of the changes in facts, including the changes in his or her contact details or of a representative, which may affect the conduct of the proceedings. ³⁷	
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³⁷ Aliens Act, Article 20, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

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

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

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

If **Yes**, please describe:

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

Yes, the risk assessment is based on different methods and tools combined. The risk assessment takes into account the following:

- most popular sectors in relation to legal migration related employment;
- characteristics of different sectors which make the illegal employment more probable (no contact with clients, higher volume of cash flow etc);
- previously detected cases of illegal employment;
- changes in the structure of employment market (sudden increases in one sector etc)

Based on the previously highlighted characteristics the risk assessment is carried out and possible risk sectors identified.³⁸

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

Regarding the risk assessment of illegal employment of third-country nationals the main actor is Estonian Police and Border Guards Board in cooperation with Estonian Tax and Customs Board and Labour Inspectorate.

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

The identified risk sectors are used for more targeted inspections. Police and Border Guard Board has an annual work plan which also includes specific targeted actions in identified risk sectors with a main aim to detect possible illegal employment.³⁹

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

The strengths of prevention measures of illegally employed TCNs in Estonia are the following:

- obligation to register every employee;
- regular and apprehensive risk analysis and targeted inspections based on the risk analysis;
- Relatively small number of migrants.

The weaknesses of prevention measures of illegally employed TCNs in Estonia are the following:

- Significant number of businesses and employers due to the very easy and fast business creation mechanism.
- Tendency to have multi sector businesses.

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

The risk assessment system and targeted inspection system of Estonia can be considered as a good practice. For the creation of risk assessment and carrying out the following targeted inspections three different state institutions (Police and Border Guard Board, Tax and Customs Board and Labour Inspectorate) have a cooperation agreement. The three different institutions share information for risk analysis purposes and plan joint targeted actions in order

³⁸ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

³⁹ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

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to use the resources effectively and cover all different areas (illegal employment of TCNs, human trafficking related offences, tax frauds, labour inspections). Occasionally other state institutions are included in the process.

Another good practice is the launch of digital employment register. Since 1st of July 2014 all natural and legal persons providing the work are required to register the persons employed by them in the employment register. This method and obligation makes the targeted controls possible and enables a digital control of different employers.

Section 3: Identification of illegal employment of TCNs [maximum 7 pages]

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

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

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

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

The main institution specifically tasked to identify illegally employed TCNs is the Police and Border Guard Board. Additionally other state institutions are able to detect and identify illegally employed TCNs - namely the Estonian Tax and Customs Board and Labour Inspectorate. In order to increase the know-how of other state institutions Police and Border Guard Board organizes regularly seminars to officials of other state institutions.

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

No.

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

In the perspective of Labour Inspectorate, workers from Estonia, EU member states or TCNs are not differentiated. The question however, is in the scope of competence and options of intervention.

Monitoring is primarily focused on the establishment of working conditions of the workers of companies registered in Estonia as well as foreign companies whose workers are temporarily posted to Estonia in terms of posted workers directive or if the work extends to the contractual relationship under Estonian law (accordingly to the principles of international private law).

Labour inspector-lawyers of the labour relations department of Estonian Labour Inspectorate are dealing with undeclared labour relations and are supervising the implementation of conditions stipulated in the Employment Contracts Act⁴⁰. They carry out monitoring and control whether the employee is aware of their employment related issues. In the same manner they control workers who are posted to Estonia accordingly to the Working Conditions of Employees Posted to Estonia Act⁴¹. If the legal requirements are not met, the demand for their fulfilment will be made to the employer.

⁴⁰ Employment Contracts Act, RT I, 07.12.2016, 12, available at: www.riigiteataja.ee

⁴¹ Working Conditions of Employees Posted to Estonia Act, RT I, 07.12.2016, 2, available at: www.riigiteataja.ee

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In case of doubt that the person is in the country illegally, the information is transmitted instantly to the Police and Border Guard Board.

Regarding individuals who are not entered to the working register, but for whom there is a presumption that they are the employees of an Estonian employer and therefore have to be entered in the register, monitoring data shall be forwarded to the Estonian Tax and Customs Board.⁴²

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

For the creation of risk assessment and carrying out the following targeted inspections three different state institutions (Police and Border Guard Board, Tax and Customs Board and Labour Inspectorate) have a cooperation agreement. The three different institutions share information for risk analysis purposes and plan joint targeted actions in order to use the resources effectively and cover all different areas (illegal employment of TCN, human trafficking related offences, tax frauds, labour inspection).

Cooperation with other institutions is carried out on an ad-hoc basis.⁴³

Q5e. Please provide **statistics on the number of staff/inspectors** involved in identification/inspections on illegal employment per authority and if available, per sector for 2015 (or if not available for latest available year). Please specify if the staff is specifically dedicated to identifying illegally employed TCNs or are involved in general checks on illegal employment.

Police and Border Guard Board – 306 is the staff number available for all migration surveillance related proceedings and inspections, including identifying illegally employed TCNs.⁴⁴

As of 2015, the Labour Inspectorate has 9 supervisory officials or labour inspector-lawyers who carry out joint raids and perform operations in order to detect undeclared and/or illegal workers.⁴⁵

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

As the main actor in the field is the Estonian Police and Border Guard Board then different identification measures are used, including inspections, border checks, checks of premises by migration officials, digital checks based on tax and employment registry data etc.⁴⁶

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

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

More specifically, please answer the following questions:

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

Employers are selected based on the following:

- risk analysis – based on annual risk assessment and risk sectors identified within it every regional prefecture (Police and Border Guard Board has 4 Prefectures) identifies possible employers in the risk sectors. Based on the information a preliminary elimination is carried out. It is done based on digital

⁴² Response of the Labour Inspectorate to the EMN's inquiry, 15.02.2017.

⁴³ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

⁴⁴ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

⁴⁵ Response of the Labour Inspectorate to the EMN's inquiry, 15.02.2017.

⁴⁶ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

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information available for the employer. After that concrete targets are selected for carrying out targeted inspections.

- Notifications – there might be also targeted inspections carried out based on hints and notifications obtained from general public or state institutions.
- Intelligence – there are also targeted inspections carried out based on information gathered during different police proceedings.⁴⁷

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

Big part of the targeted inspections are carried out based on risk assessment. Police and Border Guard Board has an annual work plan which also highlights different goals in important fields of work including identification of illegal employment of TCN. Every Prefecture plans its targeted inspections based on the annual risk assessment. Urgent inspections are carried out on an ad-hoc basis.⁴⁸

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

- a) Yes
- b) Yes

There is no illegal employment based hotline nevertheless Labour Inspectorate and Police and Border Guard Board general infolines are used for that purposes as well.⁴⁹

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

All the above-mentioned authorities are independent in organizing their work. Nevertheless the inspections based on risk assessment are usually shared among the three mentioned institutions and the inspections are carried out in cooperation where possible and necessary.⁵⁰

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

Every employer has a unique profile and the elements needed to check are drawn upon based on the employers' profile. If the inspections are carried out in cooperation many different elements are checked:

- Employment registry information
- Information about legally working TCNs
- Legal basis for stay
- Legal basis for employment
- Employment contracts
- Workers present
- Working logs
- Logs of access systems
- Employer records
- Tax information
- Working conditions

⁴⁷ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

⁴⁸ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

⁴⁹ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

⁵⁰ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

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- Etc⁵¹

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

The main actor responsible for identifying illegal employment of TCN-s is the Police and Border Guard Board. Nevertheless Police and Border Guard Board works in very close cooperation with Labour Inspectorate and Tax and Customs Boards.

Labour inspectors are entitled to enter premises according to the Law Enforcement Act⁵². However due to the lack of rights using special equipment and enforcing other special measures, cooperation with the Police and Border Guard Board is essential in cases where companies deny access to the premises. If cases of illegal employment of TCNs/exploitation is detected by labour inspectors, it is immediately reported to the police.⁵³

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

Annually an action plan is prepared by PBGB and Labour Inspectorate. Inspections are carried out based on risk assessment as well as on an ad-hoc basis.

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

All different policing tactics and methods are used including physical checks, digital checks, interviewing personnel, checking personnel etc.

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

In order to carry out targeted inspections variety of technical tools and methods are used:

- live access to relevant databases while carrying out physical checks (employment registry, tax information, police information, information about legal basis for stay etc).
- In case of big areas and big employers planning maps are used.
- PBGB has an operational manual for identifying illegally staying TCN-s and illegal employment of TCN-s.
- There is a draft script for interviews in use by the Police and Border Guard Boards.
- Every targeted control is protocolled.

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

Strengths: Possible to have access to relevant online information in different databases; Cooperation between different institutions.

⁵¹ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

⁵² Law Enforcement Act, Section 50 subsection 1 and 2, RT I, 22.03.2011, 4, available at: www.riigiteataja.ee

⁵³ Response of the Labour Inspectorate to the EMN's inquiry, 15.02.2017.

Section 4: Sanctions for employers [maximum 5-10 pages]

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

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

Sanctions for employers	<u>Irregularly staying and illegally working TCNs</u> <i>*Please indicate if this sanction is imposed in your (Member) State (Yes/No), and if yes in which cases</i> <i>** Please provide reference to the specific legal provisions</i>	<u>Regularly staying and illegally working TCNs</u> <i>*Please indicate if this sanction is imposed in your (Member) State(Yes/No), and if yes in which cases</i> <i>** Please provide reference to the specific legal provisions</i>
Fines (e.g. fines imposed per illegally hired employee)	<p>Yes</p> <p>Enabling employment to an alien who is staying in Estonia without legal basis if the employer has failed to perform obligations provided by law is punishable by a fine of up to 300 fine units. The same act, if committed by a legal person, is punishable by a fine of up to 3,200 euros.⁵⁴</p>	<p>Yes</p> <p>If an employer enables violation of conditions of employment in Estonia of an alien, including employment of an alien that is not in compliance with the conditions determined on the legal basis, it is punishable by a fine of up to 300 fine units. The same act, if committed by a legal person, is punishable by a fine of up to 3,200 euros.⁵⁵</p> <p>In case the person providing work has not registered the commencement of employment of a person in due time or has failed to register the termination of employment, the tax authority may set an additional term for registration and issue a warning to the effect that penalty payment may be applied upon failure to register the obligation. If a person providing work has not complied with the obligation imposed by an administrative act thereon by the term noted in the warning, the penalty payment set out in the warning shall be paid thereby. The tax authority shall submit a claim for payment of penalty payment to the obligated person by an order, setting the term of payment therein and shall issue a warning that upon failure to pay the penalty payment</p>

⁵⁴ Aliens Act, Article 300, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

⁵⁵ Aliens Act, Article 301, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

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		by the term the claim shall be subject to compulsory execution. A penalty payment to enforce the performance of the obligation to register commencement and termination of employment shall not exceed 3,300 euros, thereby 1,300 euros for the first time and 2,000 euros the second time. ⁵⁶
Imprisonment of employers (Please indicate the aggravating circumstances)	Yes According to the Criminal Code ⁵⁷ the provision of employment by an employer in Estonia for an alien staying in Estonia without legal basis is punishable by a pecuniary punishment or up to three years' imprisonment if: 1) the act is committed systematically; 2) employment is provided for three or more aliens; 3) employment is provided for a minor alien; 4) employment is provided for an alien victim of a crime relating to human trafficking; or 5) this causes a danger to the life or health of the alien or the alien is subject to inhuman or degrading treatment;	No
Confiscation of financial gains (e.g. share of profit or revenue of the employer)	Yes Penal code provides that a court shall confiscate of the assets acquired through an offence object if these belong to the offender at the time of the making of the judgment or ruling.	Yes In case of human trafficking a court shall confiscate of the assets acquired through an offence object if these belong to the offender at the time of the making of the judgment or ruling. ⁵⁸

⁵⁶ Taxation Act, Article 25⁸, RT I, 10.11.2016, 11, available at: www.riigiteataja.ee

⁵⁷ Penal Code, Article 260¹, RT I, 31.12.2016, 14, available at: www.riigiteataja.ee

⁵⁸ Penal Code, Article 83 (1), RT I, 31.12.2016, 14, available at: www.riigiteataja.ee

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Ineligibility for public contracts	<p>Yes</p> <p>The contracting authority will not award a public contract to a person and will exclude from a procurement procedure a tenderer or who or whose legal representative has been convicted based on §§ 133–133³, § 175 or § 260¹ of the Penal Code and whose conviction data has not been deleted from the criminal records database in accordance with the Criminal Records Database Act.⁵⁹</p>	<p>Yes</p> <p>It applies also in cases, when the person has been punished in a crime related with human trafficking.</p>
Temporary or definitive closure of company or worksite	<p>Yes</p> <p>In accordance with the Section 40 of the General Part of the Civil Code Act the Ministry of the Interior has right to submit to a court the petition for compulsory dissolution of a legal person whose actions are against law, public order or good morals. The employment of illegally staying third country nationals can be considered as an activity which is contrary to law, public order and good morals.⁶⁰</p>	<p>Yes</p> <p>In accordance with the Section 40 of the General Part of the Civil Code Act the Ministry of the Interior has right to submit to a court the petition for compulsory dissolution of a legal person whose actions are against law, public order or good morals. Human trafficking can be considered as an activity which is contrary to law, public order and good morals.⁶¹</p>
Confiscation of equipment/property	<p>Yes</p> <p>The objects of confiscation may be all assets, rights and other benefits that may be subjects of law. In case of occurrence of conditions stipulated by law, it is possible to confiscate assets, which belong to a third person.⁶²</p>	<p>Yes</p>
Suspension of activity	<p>No</p>	<p>No</p>
Withdrawal of trading license/disbarment of activity	<p>No</p>	<p>No</p>
Withdrawal of residence permit if the employer is a TCN	<p>Yes</p>	<p>Yes</p>

⁵⁹ Public Procurement Act Article 38 (1) 11, RT I, 25.10.2016, 20, available at: www.riigiteataja.ee

⁶⁰ Response of the Ministry of Interior to the EMN's inquiry, 27.02.2017.

⁶¹ Response of the Ministry of Interior to the EMN's inquiry, 27.02.2017.

⁶² Penal Code Articles 83-85, RT I, 31.12.2016, 14, available at: www.riigiteataja.ee

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	<p>Temporary residence permit shall be cancelled if a circumstance which is a prerequisite for the issue of a residence permit to an alien or extension thereof is not complied with.</p> <p>The issue of a temporary residence permit for employment shall be refused if the employer or user undertaking or host entity has been punished for a criminal offence provided for in §§ 133- 133³, § 175 or § 260¹ of the Penal Code and whose data concerning punishment have not expunged from the criminal records database pursuant to the Criminal Records Database Act.⁶³</p>	<p>There is a ground to doubt the trustworthiness of the employer or user undertaking or host entity for any other reason.⁶⁴ (Human trafficking cases)</p>
Other sanctions	<p>Yes</p> <p>The issue of a temporary residence permit for employment shall be refused if the employer or user undertaking or host entity has been punished for a criminal offence, human trafficking or illegal employment in aggregating circumstances</p> <p>(2) The issue of a temporary residence permit for employment may be refused if:</p> <ol style="list-style-type: none"> 1) the salary or wages of an alien does not guarantee his or her subsistence in Estonia; 2) the employer or user undertaking or host entity has tax arrears; 3) the employer or user undertaking or host entity has a criminal record for the misdemeanours related to illegal employment 4) the employer or user undertaking or host entity has failed to perform the notification obligation provided for by law; 5) there is a ground to doubt the trustworthiness of the employer or user undertaking or host entity for any other reason. 	<p>Yes</p> <p>(Human trafficking)</p>

⁶³ Aliens Act, Article 180 (1), RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

⁶⁴ Aliens Act Article 180 (2), RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

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

If the employer has followed in good will the obligation to notify Police and Border Guard Board according to law and the obligation to check the legal basis of stay and work of an employee and has preserved the relevant information as stated in law then the employer cannot be held responsible of providing illegal employment.⁶⁵

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

The return decision is issued to any third country national staying illegally in Estonia.

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

Criminal sanctions for employers	Description <i>*Please indicate if this sanction is imposed in your (Member) State, and if yes in which cases</i> <i>** Please provide reference to the specific legal provisions</i>
(a) the infringement continues or is persistently repeated	Yes (Penal Code Article 260 ¹)
(b) the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	Yes (Penal Code Article 260 ¹)
(c) the infringement is accompanied by particularly exploitative working conditions	Yes (Penal Code Articles 260 ¹ and 133)
(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings	Yes (Penal Code Article 260 ¹)
(e) the infringement relates to the illegal employment of a minor	Yes (Penal Code Articles 260 ¹ and 175)

Q12b. Has you Member States amended legislation on sanctions for illegally employed TCN since July 2014⁶⁶? If so, please provide details.

Yes.

The most significant change is related to the characteristics of illegal employment. Previously the Aliens Act stipulated that if the employer provides employment to TCN who did not have legal basis to take employment in

⁶⁵ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

⁶⁶ The European Commission issued implementation report on the Employers' Sanctions Directive on 22 May 2014. This EMN study aims to examine whether/and if so – to what extent there has been new legislation/practices following that date.

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Estonia it is punishable by a fine. Since 01.01.2016 the same provision stipulates that if the employer enables work to a TCN who is staying in Estonia without legal basis, it is punishable. Another change in this regulation is that the act of providing work to a TCN who is staying in Estonia without legal basis is only punishable in case the employer has failed to perform the obligation of notification, the obligation of verification whether the TCN has a legal basis for the stay and employment in Estonia and the obligation to preserve the documents that prove the legality of stay and employment of the TCN.⁶⁷

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

No specific strengths or weaknesses could be highlighted.

Section 5: Outcomes for TCNs found to be working illegally [maximum 5-10 pages]

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

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

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

The Police and Border Guard Board is also responsible for identifying illegally staying TCNs and relevant following procedures including the return procedures.

If the illegally employed TCN is identified as illegally staying third-country national and there are no elements of human trafficking, the TCN is issued a return decision and is subject to return. Before issuing a return decision the Police and Border Guard Board shall notify the alien of the obligations of the employer provided for in Aliens Act and of the possibilities to resolve labour disputes and receive state legal aid.⁶⁸

Q14b. *is granted a period for voluntary departure*

In most cases the return decision is accompanied with a period of voluntary departure up to 30 days with the possibility for extension. The period of voluntary departure may be refused if the TCN poses a risk of absconding.⁶⁹

Q14c. *has received an entry ban*

The issuing of an entry ban is based on individual circumstances and it cannot be assessed based on general circumstances. The entry ban is accompanied in case of removal of a third country national.⁷⁰

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

The employment in Estonia by an alien who is staying in Estonia without legal basis is punishable by a fine of up to 300 fine units or by detention.

⁶⁷ Aliens Act, Article 300, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

⁶⁸ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

⁶⁹ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

⁷⁰ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

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The violation of the conditions of employment in Estonia, including taking employment that is not in compliance with the conditions determined on the legal basis by an alien is punishable by a fine of up to 300 fine units or by detention.⁷¹

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

The administrative detention for up to 48 hours is decided by the Administrative Court.

In case the TCN is found illegally staying and working in Estonia, he or she could be detained according to the Obligation to Leave and Prohibition on Entry Act. According to this act a TCN may be detained if the surveillance measures cannot be applied efficiently. The detention shall be in accordance with the principle of proportionality and upon detention relevant circumstances related to the TCN are taken account.⁷²

A TCN may be detained if the application of surveillance measures do not ensure the efficiency of the compliance with the obligation to leave and, primarily, in the case:

- 1) there is a risk of escape of the alien;
- 2) the alien does not comply with the obligation to co-operate or
- 3) the alien does not have documents necessary for the return or the obtaining thereof from the receiving state or transit state is delayed.

The Police and Border Guard Board or the Estonian Internal Security Service may detain an alien on the above mentioned basis and taking account of the principles specified above for up to 48 hours without the authorisation of the administrative court. For detaining a TCN longer than 48 hours, it can only be done with a permission from the Administrative Court for up to two months.⁷³ The administrative court shall extend the term of detention in the detention centre of the person to be expelled by four months but for no longer than 18 months.⁷⁴

Q14f. *receives work permit*

The TCN can apply for a residence permit under general procedure and receive a right to work thereof. In accordance with Aliens Act the temporary residence permit with the permission to work may be issued to victims of human trafficking and to employees who have been working illegally in aggregating circumstances.⁷⁵

Q14g. *receives residence permit*

In accordance with Aliens Act the temporary residence permit with the permission may be issued to victims of human trafficking and to employees who have been working illegally in aggregating circumstances.⁷⁶

In exceptional circumstances an alien may be granted a temporary residence permit issued for settling permanently in Estonia if the alien is staying in Estonia and in the course of the proceedings concerning the entry of an alien into Estonia, his or her temporary stay, residence and employment in Estonia and the obligation to leave Estonia of an alien it has become evident that it would be clearly unduly burdensome to him or her, the alien lacks the possibility of getting the residence permit in Estonia on another basis and the alien does not constitute a threat to public order and national security.⁷⁷

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

An alien identified as a victim of trafficking of human beings may be issued a temporary residence permit for participation in criminal proceedings for assistance in the ascertaining of the facts of the subject of proof of a criminal offence.⁷⁸

⁷¹ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

⁷² Obligation to Leave and Prohibition to Entry Act, Article 15 (1), RT I, 03.01.2017, 16, available at: www.riigiteataja.ee

⁷³ Obligation to Leave and Prohibition to Entry Act, Article 23, RT I, 03.01.2017, 16, available at: www.riigiteataja.ee

⁷⁴ Obligation to Leave and Prohibition to Entry Act, Article 25 (2), RT I, 03.01.2017, 16, available at: www.riigiteataja.ee

⁷⁵ Aliens Act, Article 203, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

⁷⁶ Response of the Ministry of Interior to the EMN's inquiry, 27.02.2017.

⁷⁷ Aliens Act, Article 210³, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

⁷⁸ Response of the Ministry of Interior to the EMN's inquiry, 27.02.2017.

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In case a TCN is identified as a victim of trafficking of human beings, he or she is entitled to victim support services according to Victim Support Act.

Q14i. *Other sanctions/outcomes*

N/A

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

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

TCNs, who are residing in Estonia on the basis of a residence permit, are, in general, permitted to work in Estonia. Starting from 01.09.2013 separate work permits are not issued in Estonia any more. The residence permit may be revoked if an alien does not use the residence permit purposefully.

Q15b. *the illegal work is tolerated or regularised*

Third country national staying and working in Estonia must follow the conditions of employment in Estonia.

Q15c. *fined*

A third-country national who has violated the conditions of employment in Estonia, including taking employment that is not in compliance with the conditions determined on the legal basis is punishable by a fine of up to 300 fine units or by detention.⁷⁹

Among other facts, the TCN is obliged to notify the PBGB of any change in the conditions of employment determined by the temporary residence permit for employment, of the termination of the contract and the end of work relations.⁸⁰ In case the third-country national fails to perform the notification obligation provided by law, it is punishable by a fine of up to 300 fine units.⁸¹

Q15d. *detained*

Legally staying third country nationals cannot be detained under administrative law.

Q15e. *issued a return decision*

Return decision cannot be issued to legally staying third country nationals.

Q15f. *Other sanctions/outcomes*

A visa or a temporary residence permit may be cancelled if an alien does not use it purposefully.⁸²

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

⁷⁹ Aliens Act § 304, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

⁸⁰ Aliens Act § 280 point 3, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

⁸¹ Aliens Act § 306 (1), RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

⁸² Response of the Ministry of the Interior to the EMN's inquiry, 27.02.2017.

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The period of stay may be terminated prematurely if there is doubt to believe that the alleged purpose of the entry into the territory of the member states of the Schengen Convention of an alien does not correspond to the actual purpose.⁸³

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

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

(i) outstanding remuneration

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

In case a irregularly staying TCN was enabled employment in Estonia, the employer is required to pay the total remuneration unpaid to the TCN, including the taxes and payment withheld from the wages and salaries under the law and where necessary, the expenses which are related to the sending of the remuneration to the alien who has returned or been removed. Upon recovery of the remuneration and taxes and payments withdrawn from remuneration it is presumed that the alien was employed by the employer for at least three months unless otherwise proved by the employer or employee.⁸⁴

An alien who was enabled employment in Estonia by an employer may claim the remuneration pursuant to the procedure provided for in the Individual Labour Dispute Resolution Act.⁸⁵

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

Yes, according to the Aliens Act if the employer of an alien was a subcontractor who enabled employment in Estonia of an alien, the main contractor may be required to bear solidarity with the employer the expenses related to the compulsory execution of the obligation to leave, the expenses related to unpaid remuneration and payment of remuneration. The main contractor and the immediate subcontractor thereof and each successive subcontractor with whom the employer has no contractual relations, may be required to bear solidarily the above-mentioned costs if they knew that the employer enabled employment in Estonia of an alien who was staying illegally in the state. This responsibility shall not be applied if the employer had forwarded to the main contractor a written confirmation before the employee commenced employment that the employer shall perform the notification obligations and verification if the TCN has a legal ground and the obligation to preserve the documents and data that prove the legal ground for employment in Estonia of the TCN.⁸⁶

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

N/A

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

Yes.⁸⁷

The costs related return of a TCN shall not be claimed if the employer has performed the obligations of notification, obligation to verify if the TCN has a legal ground to stay and work in Estonia, the obligation to keep the documents and data verifying the legal grounds and the employer was not aware that the document proving the right of employment or the right of stay of a TCN was falsified.

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

⁸³ Aliens Act, Article 52 (1) 3, RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

⁸⁴ Aliens Act, Article 286¹(1), RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

⁸⁵ Aliens Act, Article 286¹ (8), RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

⁸⁶ Aliens Act, Article 286¹(4-6), RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

⁸⁷ Aliens Act, Article 286¹(2), RT I, 03.01.2017, 5, available at: www.riigiteataja.ee

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Yes. An alien who was enabled employment in Estonia by an employer may claim the remuneration pursuant to the procedure provided for in the Individual Labour Dispute Resolution Act.

For example, a claim for unpaid wages is possible according to the Aliens Act and can be submitted to the Estonian labour dispute committee as well as to the court. In such cases the law provides specifications of conditions enabling stay in the country. According to Aliens Act Article 208 (3), if an alien proves that he has the right to demand unreceived remuneration for employment in Estonia from the employer, the Police and Border Guard Board may extend the temporary residence permit for participation in criminal proceedings until payment of remuneration in the case the stay in Estonia of the alien contributes to the performance of the obligation to pay remuneration.⁸⁸

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

Employee who is working illegally can issue a claim for unpaid wages on an equal basis with legal workers to the Estonian labour dispute committee as well as to the court accordingly to the Individual Labour Dispute Resolution Act and/or to the civil procedure code.⁸⁹

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

Only if they have representation agreement. The right to use an authorized representative derives from the law and is also enabled to individuals who have worked illegally.⁹⁰

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

-

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

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

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

Yes, the obligation to provide information to illegally employed TCNs is foreseen in legislation.⁹¹

Q19b. Have any of measures referred to under questions 17-19 been introduced in your legislation after July 2014⁹²? If yes, which ones?

Yes – Q17 and Q19a.

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

-

Q21. Case studies

In order to better understand the different procedures used when authorities detect illegal employment of third-country nationals, five hypothetical case studies have been designed. It is recognised that outcomes for TCNs may largely differ depending on their particular situation. In this respect, the case studies will help to illuminate the elements which exist for national authorities to use discretion in response to this. For each of the case studies

⁸⁸ Response of the Labour Inspectorate to the EMN's inquiry, 15.02.2017.

⁸⁹ Response of the Labour Inspectorate to the EMN's inquiry, 15.02.2017.

⁹⁰ Response of the Labour Inspectorate to the EMN's inquiry, 15.02.2017.

⁹¹ Obligation to Leave and Prohibition to Entry Act, Article 7(5), RT I, 03.01.2017, 16, available at: www.riigiteataja.ee

⁹² The European Commission issued implementation report on the Employers' Sanctions Directive on 22 May 2014. This EMN study aims to examine whether/and if so – to what extent there has been new legislation/practices following that date.

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below, please describe the general procedure **after detecting illegal employment** and the consequences in your (Member) State for the third-country national. In order to determine the procedure and the consequences in accordance with the rules of your Member State, additional information about the particular circumstances of each case may be required. EMN NCPs are asked to identify the different circumstances relevant for each case.

Q21a. A third-country national residing and working irregularly

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

Labour Inspectorate informs Police and Border Guard Board of possible illegal employment. PBGB starts a misdemeanour procedure against the employer and employee according to Aliens Act. Return decisions are issued to the third country national concerned if their applications for residence permit have been rejected by PBGB. An employer is prohibited to enter into an employment contract with an alien who lacks a legal basis for the stay or employment in Estonia.⁹³

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

Ms. Svitlana Ivanenko, a student holding Ukrainian citizenship, aged 22, moved to your (Member) State one year ago. Svitlana is enrolled in a two year master's programme at university. She holds a residence permit for students. For the past six months she was also employed for 10 hours per week at a local café⁹⁴. During some months of the academic year as well as the summer break at university, Svitlana started to work longer hours at the café, leading to work of almost 45 hours per week during term time for 3 months without changes in her part-time student contract. What happens after the labour inspectorate detected that Svitlana was working 40 hours per week? Please specify the maximum hours per week that students are allowed to work in your (Member) State.

An alien who has been issued a residence permit for study may take employment in Estonia without a specific permit on condition that such employment does not interfere with the studies. However, temporary residence permit for study shall be annulled if an alien has failed to complete the study program to the extent required for holding a residence permit for study, has terminated his or her studies or has failed to perform to a significant extent an obligation arising from this Act or any other legislation (Aliens Act, Article 173).⁹⁵

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

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

Labour Inspectorate informs Police and Border Guard Board of possible illegal employment. If the legal basis exists, then the previous undeclared employment relationship will not be an obstacle in her new employment relationship. If the third country national has worked without legal basis a procedure will be initiated towards the employee and employer under Aliens Act articles 300 and 303 (Employment of alien who is staying in Estonia without legal basis). Return decision is issued to the third country national staying in Estonia without legal basis. Before issuing a return decision the Police and Border Guard Board shall notify the alien of the obligations of the employer provided for in Aliens Act and of the possibilities to resolve labour disputes and receive state legal aid.⁹⁶

⁹³ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

⁹⁴ Based on Directive 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast) allowing students to take up employment of at least 15 hours per week. IE and the UK are not participating in this Directive.

⁹⁵ Response of the PBGB expert to the EMN's inquiry, 19.12.2016.

⁹⁶ Response of the Ministry of the Interior to the EMN's inquiry, 27.02.2017.

*Illegal employment of Third-Country Nationals in the EU***Q21d. A third-country national present as a tourist**

Marija Bogdanovic, a Serbian citizen, aged 45 has entered your (Member) State as a tourist one month ago. Due to visa liberalisation for the Western Balkans countries, Marija has the right to remain in your (Member) State for up to 90 days per six-month period as a tourist without requiring a visa⁹⁷. During her stay in your (Member) State, Marija has been working for a family she met through friends as a housekeeper and babysitter. She has been living with the family and has been paid cash for her work. After two months the family asks Marija to stay and work for them full time. They offered to grant her a work contract and asked her to apply for a residence permit. Marija intends to apply for a residence in permit in your (Member) State during the 90 days period she enjoys visa liberalization. However, Marija is detected by the authorities in your (Member) State before applying for the permit. What would be the consequence for Marija?

If the third country national has a valid legal basis a procedure will be initiated towards the employee and employer under Aliens Act articles 301 and 304 (Violation of conditions of employment of alien). The period of stay may be terminated prematurely if there is doubt to believe that the alleged purpose of the entry into the territory of the member states of the Schengen Convention of an alien does not correspond to the actual purpose. In that case a return decision is issued. Before issuing a return decision the Police and Border Guard Board shall notify the alien of the obligations of the employer provided for in Aliens Act and of the possibilities to resolve labour disputes and receive state legal aid.⁹⁸

A21e. A third-country national seasonal worker

Mr. Karim Harrak, a 25 year old from Morocco entered your (Member) State as a seasonal worker for strawberry picking. He has been residing on a seasonal worker permit and is required to leave your (Member) State after the legally allowed duration for stay expired⁹⁹. The contract with his current employer is valid for six months. However, after his contract expired he remained in your (Member) State and took on another job in a hotel. He thus remained in your (Member) State longer than the legally allowed duration. After a few months in the second job, he applied again as a seasonal worker for strawberry picking. However, he is detected that he has overstayed in the country. What would be the consequences for Karim?

If the third country national has worked without legal basis a procedure will be initiated towards the employee and employer under Aliens Act articles 300 and 303 (Employment of alien who is staying in Estonia without legal basis). The third country national has no legal basis to stay in Estonia and therefore cannot apply in Estonia a new legal base for stay or a new employment for a seasonal work. The third country national has to leave from Estonia. Therefore, the return decision is issued to the third country national staying in Estonia without legal basis. Before issuing a return decision the PBGB shall notify the alien of the obligations of the employer provided for in Aliens Act and of the possibilities to resolve labour disputes and receive state legal aid. The third country national can apply a seasonal work permit staying in the third country, however, depending the relevant circumstances, the application for seasonal work might be refused.¹⁰⁰

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

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

If there is no case of human trafficking, a return decision is issued to the third country national concerned. Before issuing a return decision the Police and Border Guard Board shall notify the alien of the obligations of the employer provided for in Aliens Act and of the possibilities to resolve labour disputes and receive state legal aid.¹⁰¹

⁹⁷ Based on the visa free travel decision adopted by the EU Member States on 30 November 2009: http://europa.eu/rapid/press-release_IP-09-1852_en.htm?locale=fr

⁹⁸ Response of the Ministry of the Interior to the EMN's inquiry, 27.02.2017.

⁹⁹ Based on Directive 2014/36/EU – Seasonal workers – allowing third-country nationals to reside in a Member State between five months and nine months in any 12-month period. The permit is renewable. IE and the UK are not participating in this Directive.

¹⁰⁰ Response of the Ministry of the Interior to the EMN's inquiry, 03.03.2017.

¹⁰¹ Response of the Ministry of the Interior to the EMN's inquiry, 27.02.2017.

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Section 6: Conclusions (Synthesis Report) [maximum 3 pages]

*The Synthesis Report will outline the main findings of the Study and present conclusions relevant for policymakers at national and EU level. **(Member) States should include any overall conclusions in the Top-line Factsheet at the beginning of the Common Template rather than duplicate information in this Section.***

Annex 1 Statistical Annex¹⁰²**1. Inspections and sanctions for employers**

The European Commission has collected data under the reporting requirements of the Employers' Sanctions Directive impose on (Member) States¹⁰³.

The following data are therefore available:

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

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

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

Convictions for employers	2014	2015	2016
Total number of convictions	29	68	24
(a) infringement continues or is persistently repeated			
(b) infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals			

¹⁰² Statistics is provided by PBGB, 01.02.2017

¹⁰³ IE and the UK do not participate in this Directive.

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(c) the infringement is accompanied by particularly exploitative working conditions			
(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings			
(e) the infringement relates to the illegal employment of a minor			

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

Type of sanction for employers (please fill in)	2014	2015	2016
Aliens Act § 300. Enabling employment to alien who is staying in Estonia without legal basis	19	35	17
Aliens Act § 301. Violation of conditions of employment of alien in Estonia	5	11	42
Aliens Act § 302. Payment of remuneration less than wage rate specified in Act	2	3	6

*Illegal employment of Third-Country Nationals in the EU***2. Scale and profiles of illegal employment of TCNs**

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

Illegally employed TCNs	2014	2015	2016	Methodological notes
Number of cases of identified <u>illegally staying</u> and illegally employed TCNs	19	35	17	
Number of cases of identified <u>legally staying</u> and illegally employed TCNs	29	68	24	

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

Illegally employed TCNs	Top 10 nationalities	Age disaggregation	Sex disaggregation	Methodological notes
Number of cases of identified <u>illegally staying</u> and illegally employed TCNs				
Number of cases of identified <u>legally staying</u> and illegally employed TCNs	Ukraine – 35 Unspecified – 10 Russian Federation – 7 Moldova – 6 Unnamed territories – 6 Columbia – 1 Uzbekistan – 1	Minors – 0 Age 21-29 – 20 Age 30-39 – 21 Age 40-49 – 14 Age 50-56 – 11 n. a – 2	Male – 50 Female – 13 n. a – 5	

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3. Outcomes for TCNs

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

Illegally employed TCNs	2014	2015	2016	Methodological notes
Number of residence and/or work permits issued to detected <u>illegally staying</u> and illegally working TCNs	20	20	15	
Number of residence and/or work permits issued to detected <u>legally staying</u> and illegally working TCNs				
Number of illegally employed TCNs who were granted a period for voluntary return				
Number of illegally employed TCNs who were given an order to leave the country following a labour inspection				
Number of illegally employed TCNs who were deported following an inspection				
Number of illegally employed TCNs who were identified as victims of trafficking in human beings				
Number of decisions obliging employers to pay back payments/ amount equal to taxes and social security contributions				

Question A.6: Please provide statistics on the types and number of sanctions for illegally employed TCNs

Type of sanctions available for illegally employed TCNs (e.g. fines, imprisonment, etc)	2014	2015	2016	Methodological notes

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Aliens Act § 303. Employment of alien who is staying in Estonia without legal basis	29	68	24	
Aliens Act § 304. Violation of conditions of employment in Estonia of alien	11	11	111	
Aliens Act § 306. Failure to perform notification obligation	1	2	1	

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

Number of complaints	2014	2015	2016	Methodological notes

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

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

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