Illegal employment of Third-Country Nationals in the EU

Common Template of EMN Focussed Study 2016

Final version: 3rd November 2016

**Action:** EMN NCPs are invited to submit their completed Common Templates by **15th February 2017**. Further clarifications can be provided by contacting the EMN Service Provider (ICF International) at emn@icfi.com.

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. In general, “undeclared work tends to obstruct growth-oriented economic, budgetary and social policies” and, therefore, fighting it is an **economic policy objective**. 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”, 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; 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.

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’ 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.

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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.
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.
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);
- 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
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 regulatory system of (Member) States”.\textsuperscript{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.

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

<table>
<thead>
<tr>
<th>Status of third-country nationals</th>
<th>Type of employment (performed by TCNs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>When entering the (Member) State</td>
<td>At time of illegal employment</td>
</tr>
<tr>
<td>Legally (visa, residence permit)</td>
<td>Regular (workers, students, family</td>
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<tr>
<td></td>
<td>members, refugees, asylum seekers,</td>
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<td></td>
<td>regularised persons)</td>
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<tr>
<td>Illegally</td>
<td>Irregular (over-stayers, persons who</td>
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<td></td>
<td>never received the permit)</td>
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</tbody>
</table>

(*) Outside the scope of the Study

### 3 EU LEGAL AND POLICY CONTEXT

The phenomenon of illegal employment of third-country nationals is concerned both with migration and employment law and policy. The EU competence in employment and migration law differs, and, as a consequence, the types of policy instrument in place. **Employment policy**, including measures to tackle undeclared work (either of EU or third-country nationals), is primary responsibility of (Member) States, which should however coordinate their policies (Article 5 TFEU). The open method of coordination, creating a common framework, allows (Member) States to develop their employment policies with a view of pursuing common objectives. **Migration policy**, and in particular measures to “prevent and combat illegal migration”, is competence of the EU, which shall adopt specific measures to “develop a common immigration policy” (Article 79 TFEU).

To tackle undeclared work, in which both legally residing third-country nationals and EU nationals may be involved, in October 2003, the Council adopted a **resolution**\(^{10}\) on transforming undeclared work into regular employment. The resolution called (Member) States to “examine the common features of undeclared work across the (Member) States which might best be addressed by a common approach in the framework of the European Employment Strategy”.\(^{11}\) In particular, it called on actions to **prevent** illegal employment, for instance by putting in place measures to encourage employers and employees to operate within the formal economy sector, by strengthening surveillance and implementing awareness raising actions; and it called on actions to **improve** the **capacity of measuring** the extent of the phenomenon and the progress in fighting it, for instance by cooperating on methodologies and good practices exchanges. The resolution invited also social partners to cooperate with the authorities in the fight against undeclared work.

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\(^{11}\) Ibidem.
Three years later, the Commission published a Green Paper entitled ‘Modernising labour law to meet the challenges of the 21st century’ to collect stakeholders’ views on several employment challenges, including undeclared work. In 2007, the Commission Communication “Stepping up the fight against undeclared work” was published. It noted that undeclared work continued to be a phenomenon of a considerable extent and a “financially attractive option” and highlighted that (Member) States adopted a piecemeal approach to tackle undeclared work while little evidence was collected on its results.

In 2009 the EU adopted a primary legislative instrument to tackle illegal employment of irregular TCNs, the Employers’ Sanctions Directive 2009/52/EC. The Directive includes measures to prevent, detect and sanction employers who engage in illegal employment (e.g. covering return costs of the TCN, Article 5), as well as some protective measures for irregularly residing TCNs involved (e.g. the right to receive back payments such as outstanding remuneration, Article 6). The Report on the application of the Directive, issued in 2014, found that (Member) States adopted very different approaches in sanctioning illegal employment. Moreover, some of the protective measures were not implemented by some (Member) States and the European Commission noted that (Member) States needed to make efforts to ensure that effective inspections were carried out and to improve the reporting system. The 2015 EU Agenda on Migration also stressed the need to “step up action against illegal employment of third country nationals”, by better enforcing the Employers’ Sanctions Directive. The EU Action Plan against migrant smuggling (2015–2020) announced that together with Member States, the Commission would identify targets as regards the number of inspections to be carried out every year in the economic sectors most exposed to illegal employment.

In March 2016, the Commission launched the European Platform on undeclared work with the aim of enhancing cooperation between authorities and other actors at national and trans-national level, to ultimately improve (Member) States’ capacity to tackle undeclared work. The Platform is about undeclared workers as such, regardless of the nationality of the worker. However, the Council Decision establishing the Platform recognises that “undeclared work has different effects on different social groups” and that some groups, like “migrants”, given the precariousness of their status, are in a particular vulnerable position.

With regard to the right to stay and work for specific categories of TCNs, several EU Directives include provisions on third-country nationals’ access to the labour market. Generally, permanent residence status (under national law and/or the Long-Term Residence Directive 2003/109/EC) grants the third-country national equal access with nationals to employment. Under temporary residence permits the access to the labour markets of (Member) States differs. At EU level, all third-country nationals entitled to work are covered by equal treatment conditions with nationals with regard to working conditions, as laid down in the Single Permit Directive 2011/98/EU (Article 12). Other work permits may have attached specific provisions laid down in the Directives:

- the EU Blue Card Directive 2009/50/EC - EU Blue Cards have specific salary requirements
- the Seasonal Workers Directive 2014/36/EU - seasonal permits have restrictions on the length of the permit
- the Intra-Corporate Transferees Directives 2014/66/EU - intra-corporate transfer permits guarantees equal treatment with posted workers with regard to employment relationship

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14 IE and the UK do not participate in this Directive.
19 With the exception of long-term residents, seasonal workers, intra-corporate transferees, beneficiaries of international and temporary protection and asylum seekers, which are not covered by the Directive.
the **Family Reunification Directive** 2003/86/EC - does not impose any additional conditions to the equal treatment provisions in the Single Permit Directive

- Directive 2016/801/EU 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 – which includes specific conditions for employment per category of TCNs covered under the Directive

- the **Qualification Directive** 2013/32/EU and the **Temporary Protection Directive** 2001/55/EC - allow beneficiaries of international and temporary protection to work and do not impose specific conditions, except that the employment should be subject to the rules generally applicable to the profession

- the **Reception Conditions Directive** 2013/33/EU – allows asylum seekers to take up employment activities and lays down specific requirements for them.

**Table 2** below provides the main compulsory employment-related provisions included in the relevant Directives.

**Table 2**: Right to stay and work for specific categories of TCNs as defined by EU Directives

<table>
<thead>
<tr>
<th>Categories</th>
<th>Relevant EU instruments</th>
<th>Main compulsory provisions concerning work</th>
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<tr>
<td></td>
<td>Right to stay</td>
<td>Right to work</td>
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<td>Study</td>
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[21] IE and the UK do not participate in this Directive.
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[23] IE and the UK do not participate in this Directive.
#### 4 RELEVANT SOURCES AND LITERATURE

**EMN Studies**

This Focussed Study is the first EMN Study on illegal employment. However, other Studies may present relevant information. In particular:

- **2015 EMN Study on determining labour shortages and the need for migration labour from third countries in the EU**
  
  This Study provides an overview on (i) the role of labour migration in efforts to overcome labour shortages; (ii) the variety of instruments used to identify and monitor labour shortages at EU and national level (such as employer surveys, forecasts and qualitative studies); and (iii) the extent to which these instruments are used in designing labour migration policy at national level. Although it does not specifically tackle illegal employment, the Study provides some indications on the sectors which suffer from labour shortages and the extent to which these are targeted when designing labour migration policy. Untapped labour shortages could have an impact on the demand of illegal employment.

- **2015 EMN Study on dissemination of information on voluntary return**
  
  The main aim of this Study is to identify approaches that have either targeted and/or have proven effective in reaching out to those irregular migrants who are not in contact with the authorities. In order to provide a wider context, the study also gathered information on (Member) States’ policies and practices with regard to the dissemination of information on voluntary return more generally. In exploring the different tools, content and format of information provision, the study provides an assessment of the extent to which these factors influence the effectiveness of uptake of voluntary return. To the extent possible, it seeks to identify practices that have proven particularly effective and the factors which made them effective. This is relevant because return is one possible outcome for a third-country national found to be working illegally. Moreover, irregularly staying third-country nationals are one of the target of AVR(R) programmes.

- **2015 EMN Study on smuggling of migrants**
  
  This Study maps and analyses policies, programmes and operational responses implemented by selected EU (Member) States and third countries aimed to fight against, reduce and prevent migrant smuggling. The Study provides a factual and comparative picture of the scale, characteristics, trends and patterns of the phenomenon, and based on this it draws concrete comparative assessments of practices in various parts of the world where smuggling of migrants occurs. This Study, although not focused on the employment of irregularly staying migrants, is relevant in so far as the possibility of finding illegal employment opportunities is generally considered a pull factor of irregular migration.

- **2012 EMN Study on reducing irregular migration**
  
  This EMN Study on Practical Measures to Reduce Irregular Migration is to provide an overview of existing approaches, mechanisms and measures to reduce irregular migration in the EU and Norway. In particular, its aim is to inform policymakers and practitioners about the practical measures that have proved effective and proportionate in addressing the issue of irregular migration, both in relation to prevention and in providing pathways out of irregularity. The Study includes good practices and contextualises national policies and practices.

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28 IE and the UK do not participate in this Directive.
within the overall EU policy framework. A further aim is to present the available statistics and the methods of data collection used by (Member) States to estimate the irregular migrant population. In the section that describes the measures taken by (Member) States during the stay of irregularly residing migrants, the Study collects information on the specific measures adopted to prevent employment of irregular migrants.

The following EMN Studies may also be relevant:

- 2015 EMN Study on integration of beneficiaries of international protection
- 2014 EMN Study on migrant access to social security and healthcare
- 2013 EMN Study on highly qualified migrants
- 2013 EMN Study on immigration of international students
- 2012 EMN Study on visa policy as migration channel
- 2011 EMN Study on satisfying labour demand through migration
- 2006 EMN Study on labour migration: health sector

**EMN Ad-Hoc Queries**

The following EMN AHQs are relevant to this Study:

- Cooperation agreements with third countries regulating recruitment of workers (1070.2016), requested by PL on 18th May 2016
- Illegal working (1001.2015), requested by UK on 4th November 2015
- Inspections to control the employment of irregular migrants (703.2015), requested by COM on 24th June 2015
- Payment of the Costs Associated with (Administrative) Expulsion (629.2014), requested by CZ on 11th November 2014
- Penalties and sanctions for employing illegal workers (530.2014), requested by UK on 20th January 2014
- Overseas Domestic Workers (167.2009), requested by UK on 2nd November 2009

**Other relevant studies and reports**

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

  The paper provides a definition of ‘shadow economy’ and measures the size of the shadow economy in 76 countries. It also analyzes the main causes of the increase of shadow economy and the consequent effects on the official economy. The paper also discusses a variety of methods to estimate the size of the shadow economy.


  This forum on illegal employment of foreigners in Europe gathered the contributions of different scholars. Christina Boswell and Thomas Straubhaar provide an overview of the problem; Horst Entorf and Jochen Moebert analyse the relationships between demand for illegal immigrant labour, migration decisions and market outcomes, with some costs-benefit considerations. Alessandra Venturini focuses on the extent to which illegally residing migrants compete with national workers. Christiane Kuptsch examines the international legal framework for the protection of illegally residing migrants, and discusses migrants’ reasons in accepting illegal employment and employers’ preferences for irregularly residing migrants in the context that creates incentives to illegal employment. Finally, Philip Martin examines the policy responses to unauthorised or irregular workers, including prevention measures, sanctions and legalisation programmes.

- OECD 2000, Combating the Illegal Employment of Foreign Workers.

  The report is divided into two parts: in the first part, the impact of irregular migration on the economy and the labour market is analysed, in particular the political and economic issues linked to the illegal employment of foreign workers and the effect of regularisation programmes; the second part provides an analysis and evaluation of measures undertaken to fight illegal employment involving irregularly residing third-country nationals across OECD countries and with a focus on US and France.
The paper discusses guest worker programmes, i.e. programmes that allow the temporary stay of third-country nationals for work purposes, and their biggest pitfall, which is the inability to prevent third-country nationals to overstay the expiration of their visa and the engagement in the illegal job market. The paper, which has an economic approach, presents a model whereby a well-designed guest-worker programmes is associated with high chances of third-country nationals to go back to their countries once the programme is terminates. The model has three components: a bond-system involving the government, the employer and an agency; an insurance system whereby the government temporarily holds part of the third-country income, which will return with interest when the third-country national leaves; cooperation with sending countries.

The paper discusses employers’ motivations to hire irregular migrants and the policies to curb the phenomenon; in particular, the paper discussed employer sanctions, facilitating legal immigration, and labour market reforms and enforcing labour standards.

The study provides an estimate of the scale of shadow economy in terms of percentage of GDP. It covers the year 2013 and the whole EU. When possible, data are disaggregated by Member State, macro-regions and sectors. The study discusses also the effectiveness of measures taken to tackle informal economy.

This special survey was conducted in the 27 Member States and Croatia in 2013. The respondents were 26.563 and represented different social and demographic groups. The questions were on their experience with undeclared work, personally or in terms of knowing someone engaged with undeclared work.

The report analyses the practical obstacles in the implementation of the measures foreseen in the Employers’ Sanctions Directive, to protect irregular migrants working illegally, specifically in Czech Republic, Hungary, Poland, Slovakia and Romania. The report presents an overview of how the EU addresses irregular migration; profiles the country under analysis as regards their immigration; and provides information on the implementation of the Employers’ Sanctions Directive at the national level. It also focuses on the provision of legal assistance to documented vis-à-vis undocumented migrant workers and collects best practices.

This report provides an overview of the international and EU law on labour exploitation, it defines severe labour exploitation, which is a type of labour exploitation criminalised under national law, and maps its forms. It analyses risk factors and risk management for severe labour exploitation, strategies to monitor labour exploitation and techniques and challenges to prevent it. Finally, the Report provides an overview of victims’ access to justice, regularisation and support services.

The 2015 edition of the OECD International Migration Outlook has a special focus on employment. It looks at the recent development in international migration movements and policies, at recent labour market trends and integration policies and at changing patterns in international migration of doctors and nurses. Policies to tackle illegal employment of migrants are also mentioned.

The position paper on the Employers’ Sanctions Directive analyses the impacts of the Directive on third-country nationals, with a specific focus on the effectiveness of the protective elements for irregular migrants working illegally, i.e. availability and accessibility of complaint mechanisms and recuperation of outstanding wages and access to residence permits. The paper is based on four case studies (Belgium, Czech Republic, Italy, the Netherlands), which cover four different geographical areas. The paper finds that the mechanisms to protect and enforce the rights of undocumented workers are not effective, as many practical obstacles persist. On the contrary, the repercussions of illegal employment on the employers remain limited.
The purpose of this study is to consider the role that national labour inspection systems in the EU have as part of a strategic policy response to undeclared work. It was coordinated by the ILO’s Labour Administration and Inspection Programme (LAB/ADMIN) in cooperation with the European Commission’s Labour Law Unit. This comparative study aims to fill the gap of knowledge within labour inspectorates on how to deal effectively against fraud, undeclared work and challenges in the informal economy.

The project covers 11 EU countries and provides data and estimates on the stock population and flows of undocumented migrants, with a comparative approach.

5 AVAILABLE STATISTICS

EU-level statistics on the number of illegally employed third-country nationals, both regularly and irregularly residing, are not available. However, other relevant background statistics on the population of third-country nationals and on employment are available:

- Third country nationals found to be illegally present - annual data (rounded) (migr_eipre)
- Immigration by five-year age group, sex and citizenship (migr_imm1ctz)
- First permits by reason, length of validity and citizenship (migr_resfirst)
- All valid permits by reason, length of validity and citizenship on 31 December of each year (migr_resvalid)
- Long-term residents by citizenship on 31 December of each year (migr_reslong)
- Employment by sex, age and detailed economic activity (from 2008 onwards, NACE Rev. 2 two digit level) - 1 000 (lfsa_egan22d)
- Employment by sex, age, professional status and occupation (1 000) (lfsa_egais)
- Employment by sex, age and citizenship (1 000) (lfsa_egan)

The Employers’ Sanctions Directive impose on (Member) States the obligation to report to the Commission data on the number and results of inspections pursuant to Article 14(1) of the Directive, measures applied under Article 13 and possibly 6 and 7 of the Directive. 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

6 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.

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

‘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".30

7 ADVISORY GROUP

The Advisory group for this Study consists of:

★ EMN NCPs:
  o BE NCP (Elisa van der Valk, Koen Dewulf)
  o EE NCP (Marion Pajumets, Barbara Orloff)
  o HR (Nera Komaric)
  o HU NCP (Agnes Tottos)
  o IE NCP (Susan Whelan, Emma Quinn)
  o IT NCP (Mattia Vitiello)
  o LV NCP (Ilva Ievina, Stanislavs Lopatinskis)
  o LU (Adolfo Sommarribas)
  o PL (Joanna Sosnowska)
  o UK NCP (Laura Broomfield, Katharine Beaney)

★ European Commission (Agnieszka Sternik, Tomasz Ostropolski)

★ EMN Service Provider (Veronika Vasileva, Martina Belmonte)

8 TIMETABLE

The following timetable has been proposed for the Study going forward:

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>26th September 2016</td>
<td>Circulation of Version 1 of the Common Template to AG members to provide comments (by 30th September 2016)</td>
</tr>
<tr>
<td>12th October 2016</td>
<td>Circulation of Version 2 (following comments from AG) of the Common Template</td>
</tr>
</tbody>
</table>

9 TEMPLATE FOR NATIONAL CONTRIBUTIONS

The template provided below outlines the information that should be included in the National Contributions of EMN NCPs to this Focussed Study. The indicative number of pages to be covered by each section is provided in the guidance note. For National Contributions, the total number of pages should **not exceed 35 pages**, including the questions and excluding the Statistical Annex. A limit of **25 pages** will apply to the Synthesis Report, in order to ensure that it remains concise and accessible. The national templates used as sources for EMN synthesis reports should be published on the EMN website as an annex to the Synthesis Report (in the form of hyperlinks) in order to facilitate more in-depth analysis by users.

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31 Provided that at least 20 EMN NCPs have submitted a National Contribution in time for the synthesis stage of the Study.
Illegal employment of Third-Country Nationals in the EU

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.

The institutions responsible for identification of illegal employment of third-country nationals (TCNs) are the State Revenue Service (the SRS), the State Labour Inspectorate (the SLI) and the State Border Guard (the SBG).

Illegal employment of the TCNs is not currently considered a political priority in Latvia. This phenomenon is not emphasised either in the principal political documents or the information provided by the responsible institutions for the development of the focused study. The small scale of the problem is suggested by data from the responsible institutions: In 2015, the SLI found 2 violations, while the SBG found 96 administrative violations. In comparison with the total number of inspections performed, 3,067 by the SLI and 2,737 by the SBG, the number of violations detected, which were committed by third-country nationals, is relatively small (0.07% in the SLI; 3.5% in the SBG).

The SRS is implementing the following functions in relation to employment of third-country nationals:

- analyses the information provided by the OCMA about the employers employing the TCNs;
- carries out the risk analysis on those employers that have a high risk of non-payment of taxes;
- performs tax audits.

Upon combating illegal employment, the SLI:

- assesses the results of inspections made in previous years;
- analyses the information provided by the cooperation institutions (SRS, SBG, Office of Citizenship and Migration Affairs);
- checks the companies where there is a higher risk of illegal employment in the sector.
The SBG, based on the results of inspections of previous years and the information provided by the SLI, the OCMA, and in cooperation with the SLI, carries out joint inspections. Based on the inter-institutional agreement, both the SBG and the SLI can be instigators of such inspection. Usually, 8 to 12 inspectors participate in the inspection. During the inspection, the SLI inspectors are inspecting documents related to the legal employment relations and labour protection documents. Inspectors of the SBG are checking legal stay of persons in the territory of Latvia. The total number of inspections in 2015 was 80, in 2014 it was 115.

Administrative penalties are imposed in Latvia for illegal TCN employment on both the employer and the employee. Both the employer and the employee can be fined from 140 up to 700 EUR (depending on the Section applied). Restrictions in the commercial activity may be imposed on the Board Member of the company, however, such a penalty has not been applied.

While criminal liability for the illegal employment of the TCNs is foreseen in cases when a minor is employed, if more than five persons are employed, a person is employed in especially exploitative conditions as well as if a victim of trafficking in human beings is deliberately employed. No persons were brought to criminal liability for illegal employment of TCNs in 2014, 2015 and 2016.

The residence permit of the TCN, if such had been issued, may be annulled as well and in addition the OCMA shall issue the return decision. If a person fails to perform the obligation imposed in the return decision voluntarily, a deportation may be applied. In addition, the entry ban may be imposed.

A TCN is entitled to bring civil action against his/her employer if the TCN believes that the employer has violated his/her rights. If the TCN has left the country voluntary or as a result of return procedure, the TCN may be represented in court by an authorised representative or a person may enter for the court hearing with a visa.

As noted by experts, the success and achievement factors in combating illegal employment of TCNs is the analytical thinking of the SBG, the SLI inspectors and officials of other institutions involved and their ability to discern possible risks in the flow of information. The SLI inspectors also note that after the inspections the sector is better organised and the potential risks of the illegal TCN employment are identified.

One of the biggest obstacles and difficulties noted by experts is that the number of infringements detected is comparatively small, so each case is very specific and individual.

Information materials on the possibility for the TCNs to engage in legitimate employment may be found on websites of the Office of Citizenship and Migration Affairs and the State Employment Agency. The responsible institutions are providing information by telephone as well.
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 particularly 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.

1.a. The size of the shadow economy in Latvia amounts to 21.3% of gross domestic product; compared to neighbouring countries, it is the highest: in Lithuania – 15%, in Estonia – 14.9%. Compared to 2014, the amount of shadow economy has fallen by 2.2%. The study of the shadow economy in Latvia notes that the "reduction of the shadow economy in Latvia has happened mainly by reduction in the unrevealed business income and envelope wages."

1.b. Most illegally employed persons in 2016 were identified in the construction sector: 345 individuals had worked without an employment agreement. The total number of illegally employed persons in 2016 has been more than 800 persons. In 2016, the SLI has discovered a total of 15,002 infringements related to labour safety in 4,419 companies. The Public Authorities' Work Plan for the Control of the Shadow Economy for 2016-2020 was adopted in June 2016. It arises from the plan that fighting shadow economy can be regarded as a national priority, but TCNs are not individually mentioned in these documents as a category.

1.c. Fighting the shadow economy and related topics are often both discussed in the public media and included in the agenda of the Government and various ministries, but such debate is not related to the illegal employment of TCNs, as their number is relatively small.

1.d. Illegal employment of the TCNs is not currently considered a political priority. It is not emphasised either in the principal political documents or the comments on the subject provided by the responsible institutions: the State Labour Inspectorate and the State Border Guard.

1.e. They ways used by the TCNs to enter the country for the purposes of illegal employment have not been identified. Before Bulgaria's accession to the EU, it was found that Bulgarians were illegally employed; in 2004-2008 when there was increase of activity in Latvia in the construction sector, citizens of Moldova were illegally

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employed. Ukrainian citizens are employed in shipbuilding, including illegally. However, it is difficult to identify one way that is used most often to enter the country with the goal to be illegally employed.

1.f. Not planned.

1.g. Illegal employment in the TCNs is most commonly found in construction, shipbuilding, freight services, however, the sectors where TCNs are illegally employed change over time.

1.h. In recent years, it is no longer possible to highlight citizens of a particular country that are employed illegally. The only characteristic indicator is that generally they are men aged between 18 and 50.

1.i. The main and most important influencing factor is gaining economic benefit because, upon employing the TCN illegally, it is easier to control TCN, because there is only a small risk that a person will complain to the law enforcement authorities, realizing that TCN is employed illegally or, moreover, staying in the country illegally. In these situations the employer himself can choose how much to pay, no taxes are paid to the state, resulting in double economic benefit for the employer.

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:
### a. Preventive measures and incentives for employers:

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

<table>
<thead>
<tr>
<th>Measure/incentives for employers</th>
<th>Irregularly staying and illegally working TCNs</th>
<th>Regularly staying and illegally working TCNs</th>
</tr>
</thead>
<tbody>
<tr>
<td>a.1. Information campaigns targeted at employers</td>
<td>*Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. *<em>Please specify if these measures are established to tackle illegal employment or are general incentives.</em></td>
<td>*Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. *<em>Please specify if these measures are established to tackle illegal employment or are general incentives.</em></td>
</tr>
<tr>
<td>Outreach/awareness-raising activities to inform employers on the criteria by which they can hire TCNs</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
| For each campaign that has been run in your MS indicate:  
  - Which sectors were targeted?  
  - How the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.) | | |
| a.2. Information support for employers | No | No |
| Simplification of administrative procedures and information support for employers recruiting TCNs (e.g. helpline, information on government website etc.) | | |
| There is no informative support available to the employers on the websites of the responsible authorities about the conditions of employment of third-country nationals who are not legally residing and working illegally in Latvia. It is possible to receive information on immigration and procedural issues over the telephone from the OCMA or the SLI. | | |
| Information about the conditions for the employer who wants to invite and to employ a third-country national is available on the SEA website [www.nva.gov.lv](http://www.nva.gov.lv) and the OCMA website [www.pmlp.gov.lv](http://www.pmlp.gov.lv) | | |
| In 2013, the OCMA prepared a leaflet "Entry and residence of third-country nationals in Latvia in connection with employment". It provides information in Latvian, Russian and English on the conditions to be met by third-country nationals as well as their employers in relation to temporary and long-term employment. The leaflet was available in the SEA and the OCMA Customer Service | | |
### a.3. Partnership agreements and initiatives by Social Partners

*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.*

<table>
<thead>
<tr>
<th>Service Centres, and it can be researched electronically on the OCMA website.</th>
<th>Centres, and it can be researched electronically on the OCMA website.</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

In 2016, the Prime Minister Māris Kučinskis, Deputy Prime Minister and Minister of Economics Arvils Ašeradens and the Minister of Finance Dana Reizniece-Ozola signed a cooperation memorandum with the organisations from the construction sector. Its goal is to reduce, during a three year period, the shadow economy in the construction sector by half, while stimulating at the same time the development of quality, safe and sustainable construction in Latvia. One of the measures contained in the plan is implementation of the general agreement. TCNs are not mentioned in this plan as an individual category of persons.

### a.4. Obligation of the employer to notify the authorities about employing a TCN

<table>
<thead>
<tr>
<th>Yes</th>
<th>Yes.</th>
</tr>
</thead>
<tbody>
<tr>
<td>In Latvia, the employer cannot legally employ a TCN that is residing in Latvia illegally. The employer registers each employee with the SRS by providing details of the employee no later than one day before the person</td>
<td>The employer has been imposed a duty to register each employee with the SRS prior to starting the work. There is</td>
</tr>
</tbody>
</table>

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38 Annex 1 of the 7 September 2010 Cabinet Regulation No. 827 “Regulations regarding registration of persons making mandatory state social insurance contributions and reports regarding mandatory state social insurance contributions and personal income tax”.
begins the work, if the information is submitted in paper form, or no later than one hour before the person begins the work, if the information is submitted electronically in the Electronic Declaration System.\textsuperscript{39}

Moreover, Part One of Section 40 of the Labour Law provides that an employment agreement shall be entered into in writing before starting the work.\textsuperscript{40}

If the employer wants to employ a third-country national who is still in his/her country of origin, upon executing the documents in the OCMA, the employer shall notify the wish to employ a TCN.

b. \textbf{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.

<table>
<thead>
<tr>
<th>Measure/incentive for employees</th>
<th>Irregularly staying and illegally working TCNs</th>
<th>Regularly staying and illegally working TCNs</th>
</tr>
</thead>
<tbody>
<tr>
<td>b.1. Financial incentives for employees</td>
<td>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</td>
<td>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</td>
</tr>
<tr>
<td>b.1. Financial incentives for employees</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Financial and fiscal incentives, including social security incentives – i.e. any social security incentives aimed at encouraging employers to legally register their employees</td>
<td></td>
</tr>
<tr>
<td>b.2. Information campaigns targeted at employees (potential or current)</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>(including pre-departure campaigns and post-departure campaigns in third countries)</td>
<td>For each campaign that has been run please:</td>
<td></td>
</tr>
</tbody>
</table>


\textsuperscript{40}Labour Law, Latvijas Vēstnesis, 105 (2492), 06.07.2001., Zinojās, 15, 09.08.2001.
| - 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, visits and talks by government officials visits, etc.) |

**b.3. Information support for employees from third countries** (e.g. One-stop shop information points)

| No | Yes |

There is information available on the website of the association Shelter "Safe House" as well as the website developed by the association [www.dzivotlatvija.lv](http://www.dzivotlatvija.lv) in Latvian, Russian and English for the employees from third countries on the conditions of entry, employment as well as health services, education and other public life issues.

There is information available on the OCMA website about the documents that must be filed by third-country nationals in order to receive a residence permit or visa.

In 2013, the OCMA prepared a leaflet "Entry and residence of third-country nationals in Latvia in connection with employment". It provides information in Latvian, Russian and English on the conditions to be met by third-country nationals as well as their employers in relation to temporary and long-term employment. The leaflet was available in the SEA and the OCMA Customer Service Centres, and it can be researched electronically on the OCMA website.41

A TCN has the opportunity to consult by calling the Office of Citizenship and Migration Affairs information hotline + 371 8300, or to receive counselling in the OCMA in person.

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| b.4. Other measures/incentives for employees (incl. obligation of TCN to notify the authorities about any changes in employment conditions) | No | No |
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)

Yes

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?

The responsible authorities are performing joint risk assessment of the sectors where TCNs are employed, however, the legality of residence of persons is not separated.

In Latvia, the authorities responsible for combating the illegal employment of TCNs are the State Border Guard (SBG), the State Labour Inspectorate (SLI) and the State Revenue Service (SRS). These authorities carry out the risk assessment by employing the following methods:\(^{42}\)

The SRS

- analyses of the information received from the OCMA about the TCNs entitled to employment;
- establishes in the risk analysis, which taxpayers have the highest risk of non-payment of taxes.

The SLI

- uses the information of the SRS about the taxpayers where infringements have been established through inspections for the reduction of illegal employment;
- relies on the results of inspections performed during previous years and the detected infringements;
- analyses the information provided by the authorities of cooperation.

The SBG

- considers the findings of inspections and infringements detected during previous years;
- uses the information provided by the authorities of cooperation.

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

There are three governmental authorities involved in the fight against illegal employment: the State Labour Inspectorate, the State Border Guard, the State Revenue Service.

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

Inspections and surveys are planned on the basis of a risk assessment analysis. The SRS informs the SLI about those employers where the risk of non-payment of taxes has been established, as well as the SRS carries out thematic inspections and audits of taxpayers employing TCNs. The SLI, based on data supplied by the SRS as well as on the risk assessment analysis performed by the SLI, plans the surveys and inspections together with the SBG. There were 80 such checks organised in 2015 and in the area of illegal employment of TCNs were found.

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.

Due to the small number of TCN established as illegally employed in Latvia, one cannot draw conclusions on the strengths and deficiencies in prevention of illegal employment. For these reasons, no studies have been carried out in this field in Latvia.

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\(^{42}\)Information of the Republic of Latvia in relation to performance of the requirements of Article 14 of the Directive 2009/52/EC
**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.

Successful cooperation in the field of exchange of information between the authorities involved in the fight against illegal employment of TCNs. As regards the success factors, one can mention analytical skills of the SBG, SLI and SRS employees, the ability to see the features of illegal employment of TCNs in the information flow.

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**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 SLI checks the existence and the content of employment agreements as well as the labour safety aspects.
The SRS performs tax audits and inspections.
The competency of the SLI and the SRS is to identify the illegal employment in general, they have not been created expressly for identification of illegally employed TCNs.
The SBG carries out checks together with the SLI, establishes the legal basis for the TCN residence as well as the legal basis for employment.

The principal function of the SLI is to identify the fact of illegal employment, so is not divided during identification whether a TCN is residing in the country legally or illegally. If during the survey the SLI inspector finds that the TCN is residing illegally then this information is transferred to the representatives of the SBG.
While the principal function of the SBG is to identify persons who are residing in the territory of Latvia illegally, therefore both in the identification and the surveys the SBG focuses on those TCNs who are residing in Latvia illegally.

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

Due to the small number of illegally employed TCNs, no individual institutions have been established that would be responsible for specific sectors of the labour market.

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

No.
The SLI carries out identification of illegal employment regardless of the type of residence of the person in the country.

During the inspections, the SBG inspectors establish the legality of residence of persons in the country as well as perform the control of employment of foreigners in the territory of their responsibility.

Q5d. How do national authorities and other organisations involved cooperate? Are there any specific cooperation mechanisms/forums 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?

In Latvia, the State Administration Structure Law sets forth that the state administration authorities shall cooperate to carry out their functions and tasks. The law also sets forth that authorities may enter into the inter-institutional agreements to describe the principles of their cooperation more clearly and in more detail. Such an agreement was entered into by and between the State Labour Inspectorate and the State Border Guard in 2006. It provides for joint cooperation in the field of exchange of information and the duties of both parties, and the joint activities to perform in the prevention of illegal employment.

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.

The number of the SLI and the SBG officials participating in the inspections varies (from 4 to 20). There are usually from 8 to 12 SLI and SBG inspectors participating in the inspection; the number of inspectors and their composition is determined by the initiator. The initiator can be both the SLI and the SBG. Similarly, the number and the composition of inspectors is determined by taking into account the size of the object, the area of activity and the possible number of inspected persons in the object.

The officials involved in inspections are not specially employed only for identification of illegally employed TCNs.

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.

On the basis of a risk assessment analysis, the SLI and the SBG are performing inspections of companies. Each institution carries out its own inspections, but if the SLI or the SBG has information that a TCN is possibly illegally employed in any company then the SLI and the SBG, upon prior agreement, carry out a joint inspection of the company.

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)?

The selection of employers uses the data from the national information systems available to the SBG, the information selected from media, job advertisements and advertising as well as previous experience that allows to identify potential illegal employment of TCNs. The received complaints are also taken into account when selecting the employers.

The SLI uses the information provided by the cooperation authorities (OCMA) in the selection of employers for inspection as well as information provided by the population.

The methods of the two institutions in selecting employers do not vary, regardless of whether a TCN is residing in Latvia legally or illegally.

Q7b. How are inspections planned? Are they based on the results of a risk assessment?
Inspections are planned guided by the risk analysis and taking into account the seasonality, but mostly they happen by checking the information received over the trus hotline and/or from the cooperation authorities.

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.

Both the SBG and the SLI have their trust hotlines. This way, information about illegal employment, including illegal employment of TCNs, is received often.

Information provided by the SBG experts suggests that TCNs themselves report illegal employment very rarely; such information mostly received by the SLI regarding infringements in the area of labour law.

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

Decision is made depending on the available information to each authority and by prior agreement on time, and in accordance with inter-institutional agreement on joint cooperation of the SLI and the SBG in the field of exchange of information.

Checks are carried out by the SBG and the SLI.

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

The SRS, based on the information provided by the Office of Citizenship and Migration Affairs about the employers that are employing TCNs, carries out thematic inspections and tax audits.

Inspectors of the SLI and the SBG carry out the inspections at places of work. The law sets forth that the inspectors are entitled to inspect the following factors:

The SLI inspector is entitled to:
1. Ask questions to the employers, employees and other persons regarding the legal employment relations and labour protection issues;
2. Request documents related to legal employment relations and labour safety documentation;
3. Take the necessary measurements, photograph, make audio and video recordings as well as take samples of substances for analysis;
4. Require the employer and employees and other persons to produce identification documents, including a vehicle registration certificate or a certificate of employment.

The SBG inspector is entitled to:
1. Request the entry and residence documents of the TCN as well as check whether the information and details provided by the inviter (the employer, when executing the invitation) are true.

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?

Powers of the SBG inspectors:
1. to invite individuals or representatives of legal entities to the SBG premises to get clarification on the purpose, place, time of entry and residence of a TCN and the provision for residence;
2. to request from the individual or the legal entity the information, documents or their copies justifying information and details provided by the TCN or his/her inviter.

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3. to visit and inspect the premises of the state and local government authorities, religious organisations, foundations, associations and merchants, places of operation of companies (organisational units where the employers employ foreigners) as well as any other places in the company that are available to the employee in due course of work during the working hours set forth by the authorities, organisations, merchants and companies, without prior notification or receipt of authorisation (also in absence of the owner or his/her authorised person),
4. to visit premises and buildings owned or used by individuals as well as legal entities not discussed in the previous paragraph, and to survey the premises with the permission of the owners, users or persons authorised by such.

Powers of the SLI inspectorsː
definitions:
1. to visit and inspect persons under the supervision and control: the employers, employees and other persons. The SLI is entitled to require the employer, employee and others persons presenting personal identification documents,
2. to request the documents regarding legal employment relations, labour protection documents, accounting, registration and other documents that are required under the legal employment relations and labour protection,
3. to take the necessary working environment measurements, photograph, make audio and video recordings as well as take samples of materials and substances for analysis;
4. To invite a specialist to perform individual tasks.

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.

Mostly the sectoral inspections carried out by the SBG are of seasonal nature, for example:

- in the area of sports and entertainment - not long after the start of the season in a given sport (mostly they are team sports);
- in construction – mostly in the summer period or after the receipt of certain information;
- in the public catering area – throughout the year or after the receipt of certain information.

Frequency of inspections is determined by the current service capacity, available resources, information provided by the cooperation partners. Compared to inspections carried out by the SBG and the SLI in regular procedure, the number of joint inspections of the SLI and the SBG is relatively small - 80 joint inspections in 2015 (the SLI individually carried out 3,067 inspections and the SBG carried out 2,737 inspections).

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

The SLI inspects the documents regarding legal employment relations, labour protection documents as well as accounting, registration and other documents related to such. The SLI has the right to carry out audio, video recordings, make measurements and take photographs. The SLI may invite specialists to perform individual tasks. Also, the SLI is entitled to require the employer, employee and others persons presenting personal identification documents. The SLI acknowledges that in the event if the inspection is carried out without the involvement of the SBG, often people in the workplace refuse to present personal identification documents.

The SBG has the right to require personal identification documents for verification. The SBG has the right to detain persons in order to clarify identity as well as in case the person is illegally residing in the territory of Latvia.

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)?

The SBG notes that each case is very individual, so it is difficult to develop universal methodological instructions and/or guidelines. There is no internal regulation on uniform guidelines developed currently, however, the SBG has developed Tactical Warnings that are issued on the basis of the specific case, risk analysis, and they serve as

an informative tool for informing all SBG officials on topical trends. In such case, Tactical Warnings perform the function of the methodology and guidelines.

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?

The specifics of Latvia is that it is not possible to highlight any example of best practices because the cases are very individual in the aspects of both detection methods and the development of the case and the outcome of the case.

Success factors in these cases are the analytical thinking of the SBG officials and the ability to see the features of possible TCN employment in life situations and in the flow of information, which, in turn, allows to carry out inspections with the purpose of verifying the legality of employment.

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 these sanctions applied.

<table>
<thead>
<tr>
<th>Sanctions for employers</th>
<th>Irregularly staying and illegally working TCNs</th>
<th>Regularly staying and illegally working TCNs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>*Please indicate if this sanction is imposed in your (Member) State (Yes/No), and if yes in which cases ** Please provide reference to the specific legal provisions</td>
<td>*Please indicate if this sanction is imposed in your (Member) State (Yes/No), and if yes in which cases ** Please provide reference to the specific legal provisions</td>
</tr>
<tr>
<td>Fines (e.g. fines imposed per illegally hired employee)</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td></td>
<td>The Latvian Administrative Violations Code (the LAVC) sets forth that the employer, upon employing TCNs (up to five persons) who are not entitled to reside in Latvia, is imposed a fine for individuals from 210 up to 500 euros.47</td>
<td></td>
</tr>
<tr>
<td></td>
<td>At the same time, if one manages to prove that the violation has been committed by a particular Board Member, then the penalty is applied for a particular Board Member. If it cannot be proved then the penalty is applied to each Board Member.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If proved that the violation has been committed by a particular Board Member,</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Latvian Administrative Violations Code (the LAVC) sets forth that the employer, upon employing TCNs (up to five persons) who are entitled to reside in Latvia, is imposed a fine for the individual or the Board Member from 140 up to 430 euros.48</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If the employer employs more than five TCNs that have a right to reside in Latvia then the fine is applied to the individual or the Board Member from 430 to 700 euros.49</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If proved that the violation has been committed by a particular Board Member, then the penalty is applied for a particular Board Member. If it</td>
<td></td>
</tr>
</tbody>
</table>

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48 Ibid.
49 Ibid.
then the penalty is applied for a particular Board Member. If it cannot be proved then the penalty is applied to each Board Member.

| Imprisonment of employers (Please indicate the aggravating circumstances) | NO | NO |
| Confiscation of financial gains (e.g. share of profit or revenue of the employer) | NO | NO |
| Ineligibility for public contracts | NO | NO |
| Temporary or definitive closure of company or worksite | NO | NO |
| Confiscation of equipment/property | NO | NO |
| Suspension of activity | NO | NO |
| Withdrawal of trading license/disbarment of activity | NO | NO |
| Withdrawal of residence permit if the employer is a TCN | NO | The residence permit may be annulled, but each case is assessed individually |
| Other sanctions | YES | YES |
| | Additional penalty, a ban to take certain positions in commercial companies, is foreseen. Note: additional penalty has never been applied so far. | Additional penalty, a ban to take certain positions in commercial companies, is foreseen. Note: additional penalty has never been applied so far. |

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?

The right to employment is granted for employment by a particular employer. The employer must arrange the invitation itself and must submit the employment agreement to arrange a residence permit or a visa with the right to employment, therefore it is difficult or practically impossible to employ a TCN in Latvia unknowingly.
Also, if the residence permit is issued to a TCN, it contains a note that the person has the right to work for the particular employer. Other employers must understand that such an employee cannot be employed legally. If the residence permit of a TCN is annulled then the employer is informed about it.

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

In case the residence permit is annulled or is not extended, the Office of Citizenship and Migration Affairs shall notify the employer of this fact.

**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?**

<table>
<thead>
<tr>
<th>Criminal sanctions for employers</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) the infringement continues or is persistently repeated</td>
<td>NO</td>
</tr>
<tr>
<td>(b) the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals</td>
<td>YES Section 280 of the Criminal Law on the violation of provisions regarding employment of persons sets forth that for employing of more than five persons who are not entitled to reside in the Republic of Latvia the punishment applicable to the employer is temporary deprivation of liberty or community service, or a fine.</td>
</tr>
<tr>
<td>(c) the infringement is accompanied by particularly exploitative working conditions</td>
<td>YES Section 280 of the Criminal Law on the violation of provisions regarding employment of persons sets forth that for employing a person who is not entitled to reside in the Republic of Latvia, if a person is employed in particularly exploitative working conditions, the punishment applicable to the employer is temporary deprivation of liberty or community service, or a fine.</td>
</tr>
<tr>
<td>(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</td>
<td>YES Section 280 of the Criminal Law on the violation of provisions regarding employment of persons sets forth that for employing a victim of trafficking in human beings the punishment applicable to the employer is temporary deprivation of liberty or community service, or a fine.</td>
</tr>
<tr>
<td>(e) the infringement relates to the illegal employment of a minor</td>
<td>YES Section 280 of the Criminal Law on the violation of provisions regarding employment of persons sets forth that for employing a minor the punishment applicable to the employer is temporary deprivation of liberty or community service, or a fine.</td>
</tr>
</tbody>
</table>

**Q12b. Has you Member States amended legislation on sanctions for illegally employed TCN since July 2014? If so, please provide details.**

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50 Criminal Law, Section 280, adopted on 17.06.1998, entered into force on 01.04.1999.

51 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.
No. 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.

Based on the data for 2015, the SBG has established 96 administrative violations related to illegal employment of TCNs. The SLI established only 2 violations in 2015. On the background of the total number of inspections by all authorities (5,804), offences relating to illegal employment of TCNs form a small number.

One of the changes that can be noted as a success is a change in the Latvian Administrative Violations Code adopted on the basis of the information report About the Regulation of Responsibility and Punishment Policy in the Commercial Activity at the Cabinet meeting of 30 March 2010, which states that a Board Member/Board Members, not a legal entity, are responsible for illegal employment of a TCN.

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.

After establishing the fact of illegal employment of a TCN, the State Labour Inspectorate notifies such to the Office of Citizenship and Migration Affairs. On the basis that the TCN resides in Latvia illegally, the OCMA issues the return order. The return order issued by the Chief of the Office or by the officer authorised by him. If a person would not leave the country voluntarily within the prescribed period, the decision on forced return of the TCN is adopted.

Q14b. is granted a period for voluntary departure

The return order enables the foreigner to leave the territory of the European Union voluntarily within seven to 30 days.

Q14c. has received an entry ban

Upon issuing the return order, the OCMA has the right to impose an entry ban in the Republic of Latvia and the Schengen area from 30 days to three years.

In the event if forced return is applied to a TCN, the entry ban in the Republic of Latvia and the Schengen area from 30 days to three years is imposed.

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

An administrative fine from one hundred and forty up to seven hundred euros may be imposed for working without a work permit.

For residing in the territory of Latvia without a valid visa, residence permit or valid document a person is punished with a warning or a fine of up to three hundred and fifty euros.

Q14e. detained (Please also describe which authorities have the right to detain illegally employed TCNs)
If the TCN refuses to leave the country due to the return order, the officials of the State Border Guard is entitled to detain the TCN in order to implement the procedure of forced return.

Q14f. receives work permit

No

Q14g. receives residence permit

No

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

Victim of human trafficking is granted a residence permit for up to 5 years with the right to work for any employer. In the case, if victim of human trafficking is working without contract, person will be imposed an administrative penalty for working without contract.

In the case, if victim of human trafficking without legal status (recognized as victim of human trafficking but do not received residence permit for any reason) and working without contract, person will be imposed an administrative penalty for working without contract and additionally OCMA will decide on granting residence permit.

P.S. There were no such cases.

Q14i. Other sanctions/outcomes

No.

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

The decision on annulment of the residence permit is made by the OCMA. If a temporary residence permit of TCN has been annulled, the temporary residence permits of his or her spouse, minor children and persons under guardianship or trusteeship whose residence in the Republic of Latvia is associated with the residence in the Republic of Latvia of the above foreigner, shall also be annulled. If a permanent residence permit of TCN is annulled, the permanent residence permits of his or her minor children shall also be annulled, except the case when the other parent of a child is a citizen of Latvia, non-citizen of Latvia or a third-country national who has received a permanent residence permit in the Republic of Latvia, or a child has received a permanent residence permit independently from the parent for whom a permanent residence permit is annulled, or he or she is under extra-familial care. A permanent residence permit shall also be annulled for a person under guardianship or trusteeship who has received a permit for the residence in the Republic of Latvia.

However, as acknowledged by experts, each case is assessed individually and it will depend on the gravity of the infringement. Sometimes an administrative penalty may be imposed on a person and he/she may be permitted to arrange documents for receiving a residence permit. This will be the case, for example, if the person will have kept the principal employment and continues to receive salary there and pay taxes, but has started working for another company as well. In this case, the person will have to receive permission to work for several employers.

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52Cabinet Regulation No. 564 "Regulations regarding residence permits", Latvijas Vēstnesis, 101 (4293), 29.06.2010.
53Immigration Law, Latvijas Vēstnesis, 100 (4498), 30.06.2011.
If the person has terminated the employment with the previous company and is working for another company, then administrative penalty will be imposed on a person as well, the previous residence permit will be annulled and a new residence permit will have to be requested for the new company. The previous RP may also be annulled if the employment relationship with the previous company is terminated, but the load is reduced and the person is not receiving such salary in that company, which was specified upon requesting the residence permit.

**Q15b. the illegal work is tolerated or regularised**

An administrative penalty is imposed on a person for working without the right to employment. The State Labour Inspectorate notifies the OCMA of such fact. The OCMA evaluates individual circumstances of the case, which may result in the annulment of the residence permit.

**Q15c. fined**

An administrative fine from one hundred and forty up to seven hundred euros may be imposed for working without a work permit.

**Q15d. detained**

If the TCN refuses to leave the country due to the return order, the officials of the State Border Guard is entitled to detain the TCN in order to implement the return procedure.

**Q15e. issued a return decision**

If the residence permit of the person is annulled, the OCMA issues a return order for the person to leave the country voluntarily. If a person would not leave the country voluntarily within the prescribed period, the decision on forced return of the TCN is adopted.

**Q15f. Other sanctions/outcomes**

No.

**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?**

If the person had a residence permit in Latvia without the right to employment or with the right to work for a particular employer and the illegal employment violation was found, upon considering the circumstances, the residence permit in Latvia may be annulled. The OCMA will assess how serious the infringement is; sometimes an administrative penalty may be imposed and a person may be permitted to arrange the RP documents. This will be the case, for example, if the person will have kept the principal employment and continues to receive salary there, and pays taxes, but has started working for another company as well. In this case, the person will have to receive permission to work for several employers.

If a resolution regarding annulment of the residence permit is adopted, in such resolution the person is imposed a duty to leave Latvia, and the person will be allowed to return to the country where it holds a residence permit.

**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
Latvian legal framework provides for equal liability of the employer regardless if a TCN or a Latvian national is illegally employed. If it is possible to determine the amount of remuneration paid by the employer to the TCN then the State Revenue Service shall recover from the employer the social contributions from this amount. If it is not possible to determine the actual remuneration then the fine is collected in a triple amount of mandatory contributions.\textsuperscript{54}

At the same time, a fine is collected from the employer in triple amount of the personal income tax from the sum established according to the information available to the State Revenue Service about the remuneration calculated for the person, if it exceeds the amount of minimum monthly wage set forth by legal acts, or from the amount of minimum monthly wage set forth by legal acts if the calculated remuneration is equal to or less, or if it is impossible to determine its amount.\textsuperscript{55}

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?

No.

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.

Due to the small number of illegally employed TCNs, it is difficult to identify the weak and strong aspects of this issue.

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

No.

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?

The TCN is entitled to bring civil action against the employer.

If the TCN has left the country after the return order or forced return, he/she may be represented in court by an authorised representative.

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

This is a civil dispute, which is resolved in the court of general jurisdiction.

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)

Yes, a TCN may authorise a third party to represent him/her in court.

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

Due to the small number of the TCN illegal employment cases, there is no information on such civil processes.

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?

\textsuperscript{54}Law on State Social Insurance, Part One of Section 16.1, adopted on 01.10.1997, entered into force on 01.01.1998.

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

On the website developed by the association Shelter "Safe House" www.dzivotlatvija.lv there is information available in Latvian, Russian and English on penalties and sanctions that may be applied to a TCN for illegal employment.56

Q19b. Have any of measures referred to under questions 17-19 been introduced in your legislation after July 201457? If yes, which ones?

No.

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.

Due to the small number of the TCN illegal employment cases, it is difficult to identify the success factors or good practices.

The SLI has mentioned as an observation of a good example that after routine checks the situation in the particular company and sector improves most often.

The SBG has mentioned as a good practice the observations of the inspectors themselves and their analytical ability to determine the illegally employed TCN in the companies.

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 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?

If the State Labour Inspectorate will have found an illegally employed foreigner, then, in addition to the administrative punishment procedure, it will inform the Office of Citizenship and Migration Affairs of the foreigner, who has been found staying and working in the country without a valid residence and work permit. The OCMA, upon considering the individual circumstances of the particular case and in view of the fact that persons are residing in the country in breach of immigration rules, will initiate the return procedure. Within the return procedure, the persons will be issued the return orders to leave the country voluntarily. The OCMA will also determine a reasonable deadline for leaving the country. If persons fail to leave the country by the specified deadline, the procedure for the forced return of persons will be started. Throughout the return procedure, the

57The 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.
persons can cooperate with the International Organization for Migration, which might contribute to the practical implementation of the return procedure.

There may be exceptions from the procedure described above if the persons prove that there exist any humanitarian considerations in their case, due to which return of such persons is highly undesirable. For example, if the persons would prove, for example, that a child is seriously ill or there are other similar circumstances, and the father would have found work, the OCMA could consider the possibility to allow filing documents for requesting a residence permit in connection with employment in the territory of Latvia rather than outside the Schengen area (usually documents for the residence permit must be filed outside the Schengen area, unless the documents claiming the new residence permit are filed during the period of validity of the previous residence permit).

If such humanitarian or other special circumstances would not exist then the mere fact that the father has found a job would not be the grounds for the persons not leaving and for issuing the residence permit without leaving Latvia. In this case, the persons will have to leave Latvia, will need to file documents for requesting the residence permit outside the Schengen area, and the persons will be able to enter Latvia after the residence permit is granted.

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 café. 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.

In Latvia, a foreign student may receive a residence permit only for full time studies rather than part time studies. Such a student is allowed to work for 20 hours a week. During the last 2 semesters, A master’s or doctoral student may work without the time limitation.

In the case mentioned in the example (provided that the residence permit has been issued for full time studies), if a person would prove that he/she is continuing studies and study tests have been passed successfully, the residence permit would not be annulled, but the person would be warned again about the restrictions for employment. If a person would act like that repeatedly or the study tests would not have been passed, the Office of Citizenship and Migration Affairs would decide on the annulment of the residence permit.

The person would be administratively punished for working without a work permit. The employer would also be punished for employing a foreigner without a respective work permit.

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?

The residence permit issued to the person earlier will be annulled because the person has terminated the employment relations with this IT company. To receive a residence permit in connection with the employment in

58 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.
the new IT company, the person will have to leave Latvia and to file the documents for requesting the residence permit with the diplomatic mission of Latvia outside the Schengen area.

A person will be administratively punished for working without a relevant work permit and for not notifying the Office of Citizenship and Migration Affairs about the termination of employment in the IT company. The owner of the local bar will also be punished for employing a foreigner without a work permit.

**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 visa. 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 before applying for the permit. What would be the consequence for Marija?

A person residing in Latvia within the visa-free regime may submit the documents for requesting a residence permit while staying in Latvia. A person may be refused a residence permit if during the last year he/she had been employed without the right to employment.

The person will be administratively punished for working without a work permit.

**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 expired. 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?

Amendments to the Immigration Law, where legal framework for employing seasonal workers will be provided, is currently being discussed in the Latvian Parliament on the draft stage. In accordance with the current version of the draft law, the person mentioned in the example will have to leave the country and the right for repeated employment in the status of a seasonal workers will have to be requested after leaving Latvia.

**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?

As long as the person is residing in the country without a valid visa or residence permit, has entered the country illegally and has concealed the identity, the procedure for the return of the person will be started.

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60 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.
At the same time the person will be punished administratively for residing in Latvia without a valid residence permit and for working without the right to employment.
1. Inspections and sanctions for employers

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

<table>
<thead>
<tr>
<th>Convictions for employers</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of convictions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a) infringement continues or is persistently repeated</td>
<td>0</td>
<td>0</td>
<td>No data</td>
</tr>
<tr>
<td>(b) infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals</td>
<td>0</td>
<td>0</td>
<td>No data</td>
</tr>
<tr>
<td>(c) the infringement is accompanied by particularly exploitative working conditions</td>
<td>0</td>
<td>0</td>
<td>No data</td>
</tr>
<tr>
<td>(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</td>
<td>0</td>
<td>0</td>
<td>No data</td>
</tr>
<tr>
<td>(e) the infringement relates to the illegal employment of a minor</td>
<td>0</td>
<td>0</td>
<td>No data</td>
</tr>
</tbody>
</table>

61 IE and the UK do not participate in this Directive.
**Question A.2**: Please provide statistics on type and number of sanctions for employers in your (Member) State

<table>
<thead>
<tr>
<th>Type of sanction for employers (please fill in)</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violating the prohibition of employment of foreigners (For employing one or more such persons (up to five persons), if the person concerned is entitled to reside in the Republic of Latvia)</td>
<td>36</td>
<td>17</td>
<td>No data</td>
</tr>
<tr>
<td>Violating the prohibition of employment of foreigners (For employing more than five-persons)</td>
<td>-</td>
<td>2</td>
<td>No data</td>
</tr>
<tr>
<td>Violating the prohibition of employment of foreigners (For employing one or more such persons (up to five persons), if the person concerned is not entitled to reside in Latvia)</td>
<td>2</td>
<td>1</td>
<td>No data</td>
</tr>
</tbody>
</table>

**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.

<table>
<thead>
<tr>
<th>Illegally employed TCNs</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Methodological notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of cases of identified illegally staying and illegally employed TCNs</td>
<td>2</td>
<td>1</td>
<td>No data</td>
<td>Data provided by the State Border Guard</td>
</tr>
<tr>
<td>Number of cases of identified legally staying and illegally employed TCNs</td>
<td>36</td>
<td>17</td>
<td>No data</td>
<td>Data provided by the State Border Guard</td>
</tr>
</tbody>
</table>

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

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

<table>
<thead>
<tr>
<th>Illegally employed TCNs</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Methodological notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of residence and/or work permits issued to detected illegally staying and illegally working TCNs</td>
<td>No data</td>
<td>No data</td>
<td>No data</td>
<td></td>
</tr>
<tr>
<td>Number of residence and/or work permits issued to detected legally staying and illegally working TCNs</td>
<td>No data</td>
<td>No data</td>
<td>No data</td>
<td></td>
</tr>
<tr>
<td>Number of illegally employed TCNs who were granted a period for voluntary return</td>
<td>No data</td>
<td>No data</td>
<td>No data</td>
<td></td>
</tr>
<tr>
<td>Number of illegally employed TCNs who were given an order to leave the country following a labour inspection</td>
<td>No data</td>
<td>No data</td>
<td>No data</td>
<td></td>
</tr>
<tr>
<td>Number of illegally employed TCNs who were deported following an inspection</td>
<td>No data</td>
<td>No data</td>
<td>No data</td>
<td></td>
</tr>
<tr>
<td>Number of illegally employed TCNs who were identified as victims of trafficking in human beings</td>
<td>No data</td>
<td>No data</td>
<td>No data</td>
<td></td>
</tr>
<tr>
<td>Number of decisions obliging employers to pay back payments/amount equal to taxes and social security contributions</td>
<td>No data</td>
<td>No data</td>
<td>No data</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Type of sanctions available for illegally employed TCNs (e.g. fines, imprisonment, etc)</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Methodological notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Working without a work permit</td>
<td>SBG 46 + SLI 21 = 67</td>
<td>SBG 76 + SLI 2 = 78</td>
<td>No data</td>
<td>Data provided by the State Border Guard and State Labour Inspection</td>
</tr>
</tbody>
</table>
**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.

<table>
<thead>
<tr>
<th>Number of complaints</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Methodological notes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
</tbody>
</table>

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

Due to the fact that data on the gender, age or any other specific characteristics of illegally employed TCNs is not compiled, we can only rely on observations of inspectors – no particular nationality should be distinguished, mostly men from 18 to 50 years old.

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


[Inspections - Annual Report 2015.xlsx](Inspections - Annual Report 2015.xlsx)