



REPUBLIKA SLOVENIJA  
MINISTRSTVO ZA NOTRANJE ZADEVE



## **EMN FOCUSED STUDY 2016**

# **Illegal employment of Third-Country Nationals in the EU**

## **National contribution from Slovenia**

Ljubljana, March, April 2017

*Illegal employment of Third-Country Nationals in the EU*

The study has been prepared by Legal-Informational Centre for Non-Governmental Organisations (*Pravno-informacijski center nevladnih organizacij* – PIC) in cooperation with the European Migration Network National Contact Point in the Republic of Slovenia and competent departments and bodies of the Ministry of the Interior of the Republic of Slovenia, Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia and Ministry of Finance of the Republic of Slovenia.

European Migration Network has been established due to the need for exchange of information on all aspects of migrations and for the establishment of common asylum and migration policy. The European Migration Network reviews migration policies of third-country nationals or non-EU citizens, the scope of EU citizens is considered only supplementary to the European Migration Network' studies and other documents. The Council Decision 2008/381/EC, which provides a legal basis for the establishment of the European Migration Network, was adopted on May 14, 2008.

More information on the European Migration Network is available at: [www.emm.si](http://www.emm.si).

*Disclaimer: The following responses have been provided primarily for the purpose of completing a Synthesis Report for the above-titled EMN Focused Study. The contributing EMN NCPs have provided information that is, to the best of their knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of an EMN NCPs' Member State.*

### 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 national contribution to the EMN Focused Study is based on the analysis of relevant legislation, interviews with representatives of supervisory bodies and other institutions, and on the annual reports of Financial Administration of the Republic of Slovenia, the Labour Inspectorate of the Republic of Slovenia, and the Government Commission for detecting and preventing illegal work and employment. The field of illegal employment falls under the jurisdiction of several line ministries. The central ministry is the Ministry of Labour, Family, Social Affairs and Equal Opportunities, under which competence fall the Labour Inspectorate and the Employment Service, and the Financial Administration falls under the competence of Ministry of Finance; we interviewed representatives of these bodies. Through interviews and provided responses, we also met with the Police to clarify the implications of procedures; Police falls within the department of the Ministry of Interior. We also addressed the Ministry of Justice (i.e. the Supreme State Prosecutor's Office and the Supreme Court) with request for specific statistics.

Financial Administration and Labour Inspectorate are supervisory bodies, and the Employment Service is the institution granting consent for employment of third-country nationals. The supervisory bodies carry out joint activities for detection and prevention of undeclared work and employment, which are guided by the Government Commission for detecting and preventing illegal work and employment. The supervisory bodies within the Inspection Council of the Republic of Slovenia and in the framework of the cooperation, concur on joint coordinated action. The cooperation also includes the Police in case of return procedures of illegally employed third-country nationals and in case of criminal offenses.

While preparing the Study a request for statistical data has been sent to the Financial Administration, Labour

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Inspectorate, Police, Supreme Public Prosecutor's Office and the Supreme Court. However the Republic of Slovenia does not statistically monitor all the data covered in the Study, or the data is collected but not appropriately aggregated, therefore for obtaining the required data required by the study, this would require additional work from the organs to prepare relevant extracts from existing data, which would affect the planned timetable set by the EMN and national focal points in the specification. Therefore the providers - Legal Information Centre for NGOs and the Slovenian National Contact Point, with the consent of the EMN and national focal points, concluded obtaining relevant data and information within the deadline which was acceptable based on the a pre-determined timetable, which was part of the specification. The fact is that this refers to an EMN study, which it is thematically focused on studying Illegal employment of third-country nationals in the EU and is limited in timeframe. The study requires a complex and horizontal approach, participation of several national competent authorities and institutions, and as such represents a quality framework and foundation for possible further study of the topic and upgrading of the content, encompassed in the study.

Fight against grey economy is among priority tasks of the Government of Slovenia. In the context of fighting the grey economy, the Financial Administration pays special attention to control of undeclared employment and work. The Government of Slovenia launched a communication campaign titled "Turn on the reason – ask for the bill!" (*Vklopi razum – zahtevaj račun!*) in 2013, which aims at raising public awareness on negative impacts of the grey economy. The Ministry of Labour, Family, Social Affairs and Equal Opportunities is carrying out the campaign "Let's stop the illegal work and employment together" (*Skupaj ustavimo delo in zaposlovanje na črno*) which addresses the general public and presents undeclared work – main actors in undeclared work and employment, its incidence, and the possibility of action.

Under the Prevention of Undeclared Work and Employment Act (*Zakon o preprečevanju dela in zaposlovanja na črno – ZPDZC-1*)<sup>1</sup> and the Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 on minimum standards on sanctions and measures against employers of illegally staying third-country nationals,<sup>2</sup> the Government Commission defines on yearly basis the economic activities in which third-country nationals are most often illegally employed, and develops an inspections' plan. It also prepares a report on implemented inspections in this field for each calendar year and informs the European Commission on main findings by the end of June for the previous calendar year. The reports show that the problem of illegal employment of third-country nationals is present in the construction, transport, and accommodation and food service activities (heavy goods vehicle drivers, roofers, bricklayers, plasterers, house painters, and waiters). Individual cases of violations of unauthorized employment of third-country nationals have been detected in the transportation and storage sector, and wholesale and retail trade; repair of motor vehicles and motorcycles. In most cases, this refers to posted workers.

In accordance with Article 2 of the Directive 2009/52/EC, "illegal employment" refers to employment of illegally staying third-country national; and "illegally staying third-country national" refers to a third-country national, residing in the territory of a Member State and not meeting or no longer meeting the conditions for residence of this Member State. The Directive is partially transposed into the Prevention of Undeclared Work and Employment Act,<sup>3</sup> mostly in the part referring to illegal employment. Article 2 of the Prevention of Undeclared Work and Employment Act defines illegal employment as an employment of a third-country national illegally residing in Slovenia. Illegal residence is residence of a third-country national, who does not reside in Slovenia in accordance with the provisions of the Act governing entry, residence and removal of aliens, or the Act regulating international protection.

<sup>1</sup> Official Gazette of the Republic of Slovenia, No. 32/2014, 47/2015 – ZZSDT, 55/2016.

<sup>2</sup> Official Journal of the European Union, L 168/24, 30 June 2009.

<sup>3</sup> Official Gazette of the Republic of Slovenia, No. 32/2014, 47/2015 – ZZSDT, 55/2016.

Sanctions provided for employers illegally employing employees provided in the Slovene legislation, are mostly fines, confiscations of financial gain, ineligibility for public contracts, as well as imprisonment and withdrawal of residence permit; and for workers, usually fines are imposed, but a result can also be removal from the country.

Among challenges identified by supervisory bodies are unavailability and obstruction of inspection by the taxable persons (employers), understaffing of supervisory bodies, dispersal and consequent lack of transparency and coherence of legislation, dispersal of official records, lack of direct access or the possibility to access to the Record of issued single permits <sup>4</sup>granted under the Employment, Self-Employment and Work of Aliens Act (regarding the supervision of aliens). As good practices, coordinated actions and coordination among organs and bodies can be emphasized, together with exchange of information, annual reporting on their work and affecting systemic changes. As a good practice, we can also highlight mobile units of the Financial Administration. Constant presence of mobile units in the field and connection of the mobile departments with their operational communication centre of the Financial Administration allows supervision coverage 24/7 and detection of violations in time and place where illegal employment is more prevalent.

### Executive Summary (Synthesis Report) [maximum 3 pages]

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

The key legislation in the field of prevention of illegal work and employment is the Prevention of Undeclared Work and Employment Act, which falls under the competence of the Ministry of Labour, Family, Social Affairs and Equal Opportunities. The Prevention of Undeclared Work and Employment Act defines those cases in which the pursuit of activities, work or employment shall be deemed undeclared, the cases deemed to be facilitation of undeclared work, and also defines illicit advertising. This Act also identifies activities, work or employment not deemed undeclared and the authorities responsible for supervising implementation of the provisions of this Act (Article 1). Article 5 of the Act defines and prohibits undeclared employment; undeclared employment shall be deemed to occur when an employer:

- allows an individual to work but fails to conclude an employment contract with him and does not register him for compulsory social insurance schemes or deregisters him from compulsory social insurance schemes during employment;
- allows an individual to work but fails to conclude a civil law contract on the basis of which work can be carried out or does not register him for compulsory social insurance schemes;
- fails to conclude a contract with a retired person for temporary or occasional work in accordance with the act governing the labour market;
- allows a school pupil or student to work in contravention of the regulations governing temporary or occasional work of pupils and students;
- illegally employs a third-country national.

The competence of supervision of undeclared employment has been transferred from the Labour Inspectorate to the Financial Administration with the Prevention of Undeclared Work and Employment Act (from 18 August 2014). The rationale of the transfer of powers was primarily strengthening the supervision on the field, providing a basis for more efficient work of the supervisory authorities and inclusion of the Customs Administration into supervision (the Financial Administration which is the legal successor of the Customs Administration and the Tax Authority, is operating under the Financial Administration Act from 1 August 2014). Supervision of illegal employment of third-country nationals is carried out under the supervision of undeclared employment.

<sup>4</sup> The record fully established in 2017, when the Employment Service of Slovenia started to obtain screened data on single permits. Possibility of access to records of approvals and single permit will also be accessible to all supervisory authorities (Labor Inspectorate, Financial Administration, Police).

The Government Commission for detecting and preventing illegal work and employment is under the Article 20 of the Prevention of Undeclared Work and Employment Act responsible for defining, coordinating and monitoring of prevention of illegal work and employment. The Commission prepares a yearly report on activities and effects of prevention of illegal work and employment, defines the economic activities in which the Commission believes third-country nationals are most often illegally employed, and develops an inspections' plan, and informs the European Commission on implemented inspections and main findings in this field by the end of June for the previous calendar year. It also reports on the Prevention of Undeclared Work and Employment Act implementation and effects to the Economic and Social Council, the Government and the Inspection Council of the Republic of Slovenia, also by the end of June for the previous calendar year.

Fight against the grey economy is among priority tasks of the Government of the Republic of Slovenia. In the context of fighting the grey economy, the Financial Administration pays special attention to control of undeclared employment and work. The Government of Slovenia launched a communication campaign titled "Turn on the reason – ask for the bill!" (*Vklopi razum – zahtevaj račun!*) in 2013, which aims at raising public awareness on negative impacts of the grey economy, and public campaign "Let's stop the illegal work and employment together" (*Skupaj ustavimo delo in zaposlovanje na črno*) which addresses general public and presents undeclared work – main actors in undeclared work and employment, its incidence, and the possibility of action.

The problem of illegal employment of third-country nationals is mostly prevalent in the construction, transport, and accommodation and food service activities (heavy goods vehicle drivers, roofers, bricklayers, plasterers, house painters, and waiters).<sup>5</sup> Individual cases of violations of unauthorized employment of third-country nationals have been detected in the transportation and storage sector, and wholesale and retail trade; repair of motor vehicles and motorcycles. In aforementioned occupations often third-country nationals are illegally employed or working, in most cases, as posted workers.

In accordance with Article 2 of the Directive 2009/52/EC, "illegal employment" refers to employment of illegally staying third-country national; and "illegally staying third-country national" refers to a third-country national, residing in the territory of a Member State and not meeting or no longer meeting the conditions for residence of this Member State. The Directive is partially transposed into the Prevention of Undeclared Work and Employment Act,<sup>6</sup> mostly in the part referring to illegal employment. Article 2 of the Prevention of Undeclared Work and Employment Act defines illegal employment as an employment of a third-country national illegally residing in Slovenia. Illegal residence is residence of a third-country national, who does not reside in Slovenia in accordance with the provisions of the Act governing entry, residence and removal of aliens, or the Act regulating international protection.

Sanctions provided for employers illegally employing employees provided in the Slovene legislation, are mostly fines, confiscations of financial gain, ineligibility for public contracts, as well as imprisonment and withdrawal of residence permit; and for workers, usually fines are imposed, but a result can also be removal from the country.

Among challenges identified by supervisory bodies are inaccessibility and obstruction of inspection by the taxable persons (employers), understaffing of supervisory bodies, dispersal and consequent lack of transparency and coherence of legislation, dispersal of official records, lack of direct access or the possibility to access to the Record of issued single permits<sup>7</sup> granted under the Employment, Self-Employment and Work of Aliens Act (regarding the supervision of aliens). As good practices, coordinated actions and coordination among organs and bodies can be emphasized, together with exchange of information, annual reporting on

<sup>5</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

<sup>6</sup> Official Gazette of the Republic of Slovenia, No. 32/2014, 47/2015 – ZZSDT, 55/2016.

<sup>7</sup> The record fully established in 2017, when the Employment Service of Slovenia started to obtain screened data on single permits. Possibility of access to records of approvals and single permit will also be accessible to all supervisory authorities (Labor Inspectorate, Financial Administration, Police).

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their work and affecting systemic changes. As a good practice, we can also pinpoint mobile units of the Financial Administration. Constant presence of mobile units in the field and connection of the mobile departments with their operational communication centre of the Financial Administration allows supervision coverage 24/7 and detection of violations in time and place where illegal employment is more prevalent.

## 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.*

The grey economy is a multifaceted and significant problem that shall be addressed comprehensively, since it negatively affects in great scale both employers and employees, as well as the state, social security, property and safety of people and the environment. Fight against the grey economy is among priority tasks of the Government of the Republic of Slovenia. In the context of fighting the grey economy, the Financial Administration pays special attention to control of undeclared employment and work. The Government of Slovenia launched a communication campaign titled "Turn on the reason – ask for the bill!" (Vklopi razum – zahtevaj račun!) in 2013, which aims at raising public awareness on negative impacts of the grey economy. The campaign mainly aimed at raising public awareness on the fact that various forms of grey economy (e.g. illegal work and employment, not issuing bills/invoices, concealment of actual turnover of companies and other illegal activities) are socially unacceptable, as on long-term we all lose due to its results – as individuals and as the whole society. Avoiding the grey economy and paying taxes and contributions represent the basis for quality public health and education systems, social security and other rights stemming from the welfare state.

Based on the Prevention of Undeclared Work and Employment Act (*Zakon o preprečevanju dela in zaposlovanja na črno – ZPDZC-1*) and the Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 on minimum standards on sanctions and measures against employers of illegally staying third-country nationals<sup>8</sup>, the Government Commission defines on yearly basis the economic activities in which third-country nationals are most often illegally employed, and develops an inspections' plan. It also prepares a report on implemented inspections in this field for each calendar year and informs the European Commission on main findings by the end of June for the previous calendar year.<sup>9</sup>

The problem of illegal employment of third-country nationals is mostly prevalent in the construction, transport, and accommodation and food service activities (heavy goods vehicle drivers, roofers, bricklayers, plasterers, house painters, and waiters).<sup>10</sup> Individual cases of violations of unauthorized employment of third-country nationals have been detected in the transportation and storage sector, and wholesale and retail trade; repair of motor vehicles

<sup>8</sup> Official Journal of the European Union, L 168/24, 30 June 2009.

<sup>9</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

<sup>10</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

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and motorcycles. In aforementioned occupations often third-country nationals are illegally employed or working, in most cases, as posted workers. However, we cannot exclude the European Union (EU) citizens from this violation, since they mainly provide services for companies registered in the EU. The system of application is not complicated for EU citizens; it is done through online registration of the Employment Service of Slovenia. These applications are not reviewed previously, the applicants get confirmation of Enrollment Form. Therefore, the supervisory bodies (Labour Inspectorate) control check the entities on the basis of the reports received or on the basis of the findings of other inspection bodies. In these cases, all elements of employment relationship are reviewed. Contracts have to be translated into the official language.<sup>11</sup>

Among challenges, we can point to the fact that workers are not willing to report violations - they only do so when they lose their job and have not received the payment, therefore the estimation is, the number of violations is significantly higher than the number of reported cases.<sup>12</sup>

In 2017, the new Transnational Provision of Services Act<sup>13</sup> has been adopted, in line with the Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. The Act entered into force on 14 March 2017, and it shall be applied with effect from 1 January 2018. Additionally, the Employment, Self-Employment and Work of Aliens Act novel is being prepared.<sup>14</sup>

## 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:

<sup>11</sup> Interview with Mr. Miho Šepec, Department of Legal Affairs, Employment Service of Slovenia. Ljubljana, 29 March 2017.

<sup>12</sup> Interview with Mr. Miho Šepec, Department of Legal Affairs, Employment Service of Slovenia. Ljubljana, 29 March 2017.

<sup>13</sup> Official Gazette of the Republic of Slovenia, No. 10/17.

<sup>14</sup> Interview with Mr. Miho Šepec, Department of Legal Affairs, Employment Service of Slovenia. Ljubljana, 29 March 2017.

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

| Measure/incentives for employers   | <p><b><i>Irregularly staying and illegally working TCNs</i></b></p> <p><i>*Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. **Please specify if these measures are established to tackle illegal employment or are general incentives.</i></p> | <p><b><i>Regularly staying and illegally working TCNs</i></b></p> <p><i>*Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them.</i></p> <p><i>**Please specify if these measures are established to tackle illegal employment or are general incentives.</i></p>   |
|--|--|--|
| <p><b>a.1. Information campaigns targeted at employers</b></p> <p><i>Outreach/awareness-raising activities to inform employers on the criteria by which they can hire TCNs</i></p> <p>For each campaign that has been run in your MS indicate:</p> <ul style="list-style-type: none"> <li>- Which sectors were targeted?</li> <li>- How the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.)</li> </ul> | /  | <p>Upon entry into force of the Employment, Self-Employment and Work of Aliens Act, the Employment Service of Slovenia and the Ministry of Labour, Family, Social Affairs and Equal Opportunities conducted regional consultations with employers and local administrative units. The presentations addressed new legislation and consequences of illegal employment.<sup>15</sup></p> <p>The public <b>campaign "Let's stop the illegal work and employment together"</b> <sup>16</sup>(<i>Skupaj ustavimo delo in zaposlovanje na črno</i>) is carried out by the Ministry of Labour, Family, Social Affairs and Equal Opportunities (<a href="http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja_in_pravice_iz_dela/delovna_razmerja/delo_na_crno/javna_kampanja/">http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja_in_pravice_iz_dela/delovna_razmerja/delo_na_crno/javna_kampanja/</a>). The campaign addresses the general public in Slovenia and presents undeclared work – main actors in undeclared work and employment, its incidence, and the possibility of action. Sponsors of the campaign against illegal work and employment are Chamber of Craft and Small Business of Slovenia and Slovenian Chamber of Commerce, and the campaign is supported by the Chamber of Commerce and Industry of Slovenia, Association of Employers of Slovenia, Association of Employers in craft and business of Slovenia, and Slovenian Trade Union Confederation Pergam.</p> <p>In the field of <b>employment of posted (foreign) workers</b>, the Ministry of Labour, Family, Social Affairs and Equal Opportunities is carrying out a campaign on posted workers (<a href="http://www.napotenidelavci.si/sl/">http://www.napotenidelavci.si/sl/</a>). A thematic website was launched and an online manual was prepared as part of the project, with the</p> |

<sup>15</sup> Interview with Mr Miho Šepec, Department of Legal Affairs, Employment Service of Slovenia. Ljubljana, 29 March 2017.

<sup>16</sup> Dedicated for Slovene nationals.

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|   |   | <p>aim of increased accessibility, transparency and coherency of information on posting of workers for different target groups: workers, employers and competent public officials. The website and manual were prepared within the project Posting of workers: Sharing experiences, promoting best practices and improving access to information, co-financed by the European Commission under the EU Programme for Employment and Social Innovation, and the Ministry of Labour, Family, Social Affairs and Equal Opportunities. Following Slovene entities participated in the project: Research Centre of the Slovenian Academy of Sciences and Arts, Slovenian Migration Institute (Project Coordinator), Ministry of Labour, Family, Social Affairs and Equal Opportunities, Labour Inspectorate, the Association of Free Trade Unions of Slovenia, and Chamber of Commerce and Industry of Slovenia. The website is available in Slovene, English, German and Croatian language.</p>  |
| <p><b>a.2. Information support for employers</b><br/><i>Simplification of administrative procedures and information support for employers recruiting TCNs (e.g. helpline, information on government website etc.)</i></p>   | / | <p>The <b>Ministry of Labour, Family, Social Affairs and Equal Opportunities</b> provides information on illegal work and employment, sanctions and supervision on its website (<a href="http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja_in_pravice_iz_dela/delovna_razmerja/delo_na_crno/">http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja_in_pravice_iz_dela/delovna_razmerja/delo_na_crno/</a>).</p> <p>The <b>Employment Service</b> collected all information on employment, self-employment and work of aliens (third country nationals) on its website (<a href="http://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tujcev">http://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tujcev</a>). The website primarily targets employers and provides information on single permit, work permit, registration of services and short-term work of the representative, on free access to labour market and on employment, work and housing of aliens.</p> |
| <p><b>a.3. Partnership agreements and initiatives by Social Partners</b><br/><i>Conclusion of agreements between trade unions and employer organisations in the same sector (e.g. construction industry) establishing bilateral agreements of actions to curb</i></p> | / | <p>The public <b>campaign "Let's stop the illegal work and employment together"</b> (<i>Skupaj ustavimo delo in zaposlovanje na črno</i>) (a.1.) was joined by the Chamber of Craft and Small Business of Slovenia and Slovenian Chamber of Commerce as sponsors, and the campaign is supported by the Chamber of Commerce and Industry of Slovenia, Association of Employers of Slovenia, Association of Employers in craft and business of Slovenia, and Slovenian Trade Union Confederation Pergam.</p>  |

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|--|---|--|
| <i>illicit activities.</i>   |   |  |
| <b>a.4. Obligation of the employer to notify the authorities about employing a TCN</b> | / | <p>Registration for compulsory disability and pension insurance, compulsory health insurance, parental protection and unemployment insurance for aliens in the Republic of Slovenia shall be arranged in accordance with the regulations governing compulsory insurance scheme registration and deregistration.<sup>17</sup></p> <p>A foreign employer may post workers to provide services connected to the supply of goods and maintenance in the Republic of Slovenia based on the registration of the commencement of the provision of services.<sup>18</sup> The employer referred to in the first paragraph of this Article shall register the commencement of the provision of services with the Employment Service prior to the start thereof. The Employment Service shall issue a certificate of registration.<sup>19</sup></p> <p>An alien entered, in accordance with the law, in the court register of the Republic of Slovenia as a representative of a legal entity may be engaged to represent a legal entity, to conclude legal transactions, and to supervise and give instructions, and may also perform other similar tasks which can only be carried out by a representative on the basis of the registration of the work of a representative.<sup>20</sup> The alien shall register the commencement of such work with the Employment Service prior to commencing work as a representative. The Employment Service shall issue a certificate of registration.<sup>21</sup></p> |
| <b>a.5. Other measures/incentives for employers</b>                                    | / | <p>As incentives for employers, simplified procedures for employment of aliens in deficit occupations can be mentioned, as in this case, it is not necessary to carry out the verification process of whether workers are already available in the labour market (this applies for the permits without labour market control).<sup>22</sup></p>  |

<sup>17</sup> Employment, Self-Employment and Work of Aliens Act, Article 8/1.

<sup>18</sup> Employment, Self-Employment and Work of Aliens Act, Article 36/3.

<sup>19</sup> Employment, Self-Employment and Work of Aliens Act, Article 36/1.

<sup>20</sup> Employment, Self-Employment and Work of Aliens Act, Article 37/1.

<sup>21</sup> Employment, Self-Employment and Work of Aliens Act, Article 37/2.

<sup>22</sup> Interview with Mr. Miho Šepec, Department of Legal Affairs, Employment Service of Slovenia. Ljubljana, 29 March 2017.

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b. **Measures and incentives for employees from third countries:** Please indicate which measures and incentives for employees from third countries exist in your (Member) State and describe the measures.

| <b>Measure/incen<br/>tive for<br/>employees</b>  | <b><u>Irregularly staying and illegally working TCNs</u></b><br>Please indicate if the measures/incentives exist in your (Member) State<br>(Yes/No) and if Yes, please describe them. | <b><u>Regularly staying and illegally working TCNs</u></b><br>Please indicate if the measures/incentives exist in your (Member) State (Yes/No)<br>and if Yes, please describe them.  |
|--|---|--|
| <b>b.1. Financial incentives for employees</b><br><i>Financial and fiscal incentives, including social security incentives – i.e. any social security incentives aimed at encouraging employers to legally register their employees</i>  | /   | /  |
| <b>b.2. Information campaigns targeted at employees (potential or current)</b><br><i>(including pre-departure campaigns and post-departure campaigns in third countries)</i><br>For each campaign that has been run please:<br>- Provide detail of the campaigns, including who are the target groups; what country, type of workers, etc. | /   | The public <b>campaign “Let’s stop the illegal work and employment together”</b> ( <i>Skupaj ustavimo delo in zaposlovanje na črno</i> ) (a.1.) is carried out by the Ministry of Labour, Family, Social Affairs and Equal Opportunities ( <a href="http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja_in_pra_vice_iz_dela/delovna_razmerja/delo_na_crno/javna_kampanja/">http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja_in_pra_vice_iz_dela/delovna_razmerja/delo_na_crno/javna_kampanja/</a> ). The campaign addresses the general public and presents undeclared work – main actors in undeclared work and employment, its incidence, and the possibility of action. Sponsors of the campaign against illegal work and employment are Chamber of Craft and Small Business of Slovenia and Slovenian Chamber of Commerce, and the campaign is supported by the Chamber of Commerce and Industry of Slovenia, Association of Employers of Slovenia, Association of Employers in craft and business of Slovenia, and Slovenian Trade Union Confederation Pergam. |

|   |   |   |
|---|---|---|
| <p>- Explain how the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.)</p>                        |   |   |
| <p><b>b.3. Information support for employees from third countries</b> (e.g. <i>One-stop shop information points</i>)</p>                                  | <p>The <b>Employment Service</b> provides information on employment, self-employment and work of aliens (third country nationals) on its website (<a href="http://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tujcev">http://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tujcev</a>). Until 30 September 2015, an Info point for aliens operated within the Employment Service of Slovenia; after this date, individuals can address local administrative units with questions regarding employment of aliens and obtaining or renewing the single permit. The Employment Service provides information on employment of aliens through its <b>Contact Centre</b> (via free helpline).</p> <p>The <b>Counselling office for workers</b> (<i>Delavska svetovalnica</i>) as an organisation, which aims at advocacy, protection, promotion and development of labour, social and statutory rights of most vulnerable groups, provides information to migrants, refugees and asylum seekers. The Counselling Office provides information on entry and residence of aliens, rights stemming from work/employment, social rights, education, and rights and obligations of asylum seekers and refugees, and posted workers (<a href="http://www.delavskasvetovalnica.si/">http://www.delavskasvetovalnica.si/</a>).</p> | <p>The <b>Employment Service</b> provides information on employment, self-employment and work of aliens (third country nationals) on its website (<a href="http://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tujcev">http://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tujcev</a>). Until 30 September 2015, an Info point for aliens operated within the Employment Service of Slovenia; after this date, individuals can address local administrative units with questions regarding employment of aliens and obtaining or renewing the single permit. The Employment Service provides information on employment of aliens through its <b>Contact Centre</b> (via free helpline).</p> <p>The <b>Counselling office for workers</b> (<i>Delavska svetovalnica</i>) as an organisation, which aims at advocacy, protection, promotion and development of labour, social and statutory rights of most vulnerable groups, provides information to migrants, refugees and asylum seekers. The Counselling Office provides information on entry and residence of aliens, rights stemming from work/employment, social rights, education, and rights and obligations of asylum seekers and refugees, and posted workers (<a href="http://www.delavskasvetovalnica.si/">http://www.delavskasvetovalnica.si/</a>).</p> |
| <p><b>b.4. Other measures/incentives for employees</b> (incl. obligation of TCN to notify the authorities about any changes in employment conditions)</p> | /   | /   |

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

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

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

If **Yes**, please describe:

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

The criteria based on which the Financial Administration implements supervisions, are set based on risk analysis, random selection, received reports and other initiatives. The systematic supervision of taxable persons/entities (employers) is ensured through the annual plan, which is prepared based on the risk analysis. A certain part of the annual plan is based on random selection.

Both for 2015 and 2016, the objective has been set to implement supervision of illegal employment through preventive and repressive measures in high-risk activities and consequently by implementing proceedings of corresponding taxation and penalization. The inspections are targeting risk fields of work, which the Financial Administration will manage through project and target management. Inspections under the Prevention of Undeclared Work and Employment Act (ZPDZC-1)<sup>23</sup> focus on activities perceived as risky, and on implementation of actions for specific activities in which inspections have not yet been implemented. In this segment accommodation and food service, construction, passenger transport in international road traffic, trade, bakery, various repair and service activities, personal services and taxi services.<sup>24</sup>

Also in 2017, the Financial Administration' activities will aim at preventing undeclared work and employment, namely it will implement preventive and supervisory activities, either as stand-alone inspections or as parallel inspections' implementations under other regulations.

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

The Government Commission for detecting and preventing illegal work and employment guides joint actions by supervisory bodies for detection and prevention of illegal work. Article 20 of the Prevention of Undeclared Work and Employment Act provides that the Commission defines on yearly basis economic activities in which it believes third-country nationals are most often illegally employed, and develops an inspections' plan. The Commission also prepares yearly report on implemented inspections and informs the European Commission on main findings. Members of the Commission are representatives of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, Ministry of Justice, Ministry of Economic Development and Technology, Ministry of Finance, Labour Inspectorate, Market Inspectorate, Inspectorate of Infrastructure, Inspectorate for Agriculture, Forestry, Hunting and Fisheries, Inspectorate for the Environment and Spatial Planning, Health Inspectorate, Inspectorate for Education and Sport, Financial Administration, General Police Directorate, and employers' and employees' representatives.<sup>25</sup>

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

Based on risk assessment, joint actions of various inspectorates for detection and prevention of illegal work and employment are planned.

<sup>23</sup> Official Gazette of the Republic of Slovenia, No. 32/2014, 47/2015 – ZZSDT, 55/2016.

<sup>24</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

<sup>25</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

**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.

For a more effective prevention of grey economy, encompassing illegal work and employment, inspections and results of these inspections are announced in the media with the aim of drawing attention to legal work and employment, as well as invoicing. With preventive activities, the Financial Administration encourages the taxpayers (employers) to register and legalize their work and activities, and to raise tax moral and awareness. Also in cases of detected violations of illegal work and employment, the infringers are encouraged to remedy the violation already during the inspection, by which the primary purpose of inspection, i.e. legalization of employment, provision of services or activities, is achieved.

The Financial Administration continues cooperating with other inspectorates, professional associations and general and interested public, and develops proposals for systemic legislative changes for managing the risks in the field of grey economy.

As part of targeted inspections in the field of grey economy, coordinated actions with other inspections are implemented, both on the level of regional coordinated inspections as well as centrally coordinated actions.<sup>26</sup>

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

The practice has shown that in high-risk activities, illegal employment of aliens oftentimes occurs outside regular working hours. The specifics of the working time of mobile units providing constant presence in the field, enables inspection implementation and detection of violations in time when illegal work is most prevalent.<sup>27</sup>

The specifics of the working time of mobile units, ranging through all working days and over the weekend, in the afternoon, evening and during night hours, enables constant presence in the field and consequently coverage of supervision, and detection of violations in time when illegal work is most prevalent. Constant presence of mobile units in the field and connection of the mobile departments with their operational communication centre of the Financial Administration (which receives urgent reports and information on suspected violations) enables real-time review of the reports for which supervision is effective only if examined immediately. The described way of operation has contributed to detection of more violations of illegal work of aliens, engaged in illegal work during weekends, and most often selling various goods door-to-door. In 2016, in 67 cases aliens were sanctioned with fines for illegal work. In 10 cases of sales by aliens, accusation proposal for seizure of goods was issued.<sup>28</sup>

### 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.*

<sup>26</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

<sup>27</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

<sup>28</sup> Interview with Mr. Peter Jenko, Deputy Director General, Ms. Mojca Japelj, Ms. Metka Meh, Inspector councillor, Financial Administration, Ljubljana, 15 March 2017.

**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.*

Labour Inspectorate and Financial Administration are responsible for identification of illegally employed third-country nationals. Financial Administration exercises supervision over illegally staying and illegally employed third-country nationals<sup>29</sup>, while the Labour Inspectorate exercises supervision over legally staying and illegally employed third-country nationals.<sup>30</sup>

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

No.

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

The Labour Inspectorate does not have separate functions/departments targeted to the detection of illegal employment of migrants from third countries, but it does separate inspectors for employment relationships, and inspectors for safety and health at work (who, among other things, control the minimum living and hygiene standards with employers and commissioners of work, who provide accommodation for aliens in Slovenia).<sup>31</sup>

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

Labour Inspectorate and Financial Administration cooperate in special, extraordinary checks (sometimes in cooperation with the Police). Special inspection checks are planned based on reports or regular programme guidelines; in the context of special checks, targeted inspections are carried out, either by the Labour Inspectorate solely or in cooperation with other bodies, and coordinated actions that are carried out in cooperation with other authorities.

Regional coordinated actions take place also under the Inspection Council of the Republic of Slovenia, coordinated by the Ministry of Public Administration. The Labour Inspectorate is a member of the Working Group for combating human trafficking. In case of detected exploitation of workers, they establish the circumstances also as a basis to file criminal complaint or announcement of criminal offense, also in case of suspicion of human trafficking.<sup>32</sup>

The Government of the Republic of Slovenia shall appoint a **commission for the prevention of undeclared work and employment**. The commission shall:<sup>33</sup>

- coordinate the work of the supervisory authorities related to the prevention of undeclared work and employment;
- propose to the Government of the Republic of Slovenia measures for more efficient prevention and detection of undeclared work and employment;
- report on the implementation and effects of this Act to the Economic and Social Council, the Government of the Republic of Slovenia and the Inspection Board of the Republic of Slovenia by the end of June for the previous

<sup>29</sup> Monitoring the implementation of certain provisions of the Prevention of Undeclared Work and Employment Act.

<sup>30</sup> Monitoring the implementation of certain provisions of the Employment, Self-Employment and Work of Aliens Act.

<sup>31</sup> Interview with Ms. Jasmina Rakita Cencelj, directress of the Inspection of supervision of employment relationships, Ms. Romana Košorok, Inspector Counselor, and Ms. Sonja Konestabo, Secretary, Labour Inspectorate. Ljubljana, 24 March 2017.

<sup>32</sup> Interview with Ms. Jasmina Rakita Cencelj, directress of the Inspection of supervision of employment relationships, Ms. Romana Košorok, Inspector Counselor, and Ms. Sonja Konestabo, Secretary, Labour Inspectorate. Ljubljana, 24 March 2017.

<sup>33</sup> Prevention of Undeclared Work and Employment Act, Article 20.

calendar year;

- give initiatives to amend regulations within the limits of its competence;
- identify annually the activities it considers prone to illegal employment of third-country nationals and draft an inspection plan;
- draw up a report on the inspections referred to in the preceding indent carried out in a calendar year and inform the European Commission of their results by the end of June for the previous calendar year.

The commission is composed of representative of the ministry responsible for the prevention of undeclared work and employment, the ministry responsible for finance, the ministry responsible for justice, the ministry responsible for internal affairs, representatives of the supervisory authorities under this Act, representatives of employers and representatives of workers. The commission is chaired by a representative of the ministry responsible for the prevention of undeclared work and 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.

On 31 December 2015, the Labour Inspectorate employed 77 inspectors. Among them, 41 inspectors were working in the field of employment relationships, encompassing also prohibition of illegal employment; 32 inspectors for work carried out inspection in the field of ensuring safety and health at work; and 4 inspectors were working in the field of social inspection.<sup>34</sup> On 31 December 2016, 42 inspectors were responsible for employment relationships, 31 inspectors were responsible for safety and health at work and 5 inspectors for social inspection.<sup>35</sup>

On 1 January 2016, the Financial Administration employed 180 officials in mobile units and 320 financial inspectors who additionally to the tasks under the Prevention of Undeclared Work and Employment Act also exercise supervision under provisions of other legislation under the responsibility of the Financial Administration.<sup>36</sup> On 31 December 2016, the Financial Administration employed 2.697 authorized officials, of which 433 inspectors, 510 financial advisers, 167 investigators, 263 customs officers, 914 controllers and 410 debt-collectors.<sup>37</sup>

The number of employees refers to performing all tasks within the competence of certain authority, not specifically to identification of illegally employed third-country nationals.

**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.

In Slovenia, for identification of illegal employment of third country nationals, inspections and border controls are applied by competent authorities.

The Labour Inspectorate implements regular and special, extraordinary checks. The regular inspections are carried out on random basis. Special inspections are carried out based on reports, targeted and coordinated actions, involving cooperation with other authorities, and control checks which aim to review the detected disparities or irregularities.

<sup>34</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

<sup>35</sup> Interview with Ms. Jasmina Rakita Cencelj, directress of the Inspection of supervision of employment relationships, Ms. Romana Košorok, Inspector Counselor, and Ms. Sonja Konestabo, Secretary, Labour Inspectorate. Ljubljana, 24 March 2017.

<sup>36</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

<sup>37</sup> Financial Administration's Yearly Report for 2016.

The Financial Administration also controls illicit advertising by monitoring the media, processing reports and collecting advertisements. They focus on online advertising, mainly on sales advertisement, with more attention given to advertisements by individuals that are possible to identify.

Related to illegal work and employment, controls under the Fiscal Verification of Invoices Act<sup>38</sup> shall also be mentioned. Introduction of fiscal cash registers has had several positive effects that are evident in the increased turnover as a result of supply of goods and services, as well as increased VAT payments and greater number of registered individuals (employees) into the social insurance system. One of the positive aspects of introduction of fiscal cash registers can be shown based on the increased number of registrations into social security insurance that consequently increased payments for social security and personal income tax advances for income from employment. Part of the registrations is due to the fact that the Financial Administration is using data obtained from the fiscal cash registers, also for supervision of illegal work and employment.

**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)?

Control over illegal employment is carried out by the Financial Administration based on own detection of suspected violations, analyses and reports. Control of undeclared work by individuals and business is carried out by the Financial Administration based on own detection of suspected violations, on preliminary analyses, obtained reports and referrals from other authorities. Individual cases of illegal work of individuals are also detected while implementing other tasks, such as controls by mobile units, a great part in the supervision of road transport operations, and within other targeted actions.

For regular inspections, the Labour Inspectorate carries out random selection of employers, and for targeted and coordinated inspections, they are planned according to the programme guidelines, reports or actions. Within control checks, the Inspectorate verifies whether the detected irregularity has been eliminated.

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

Inspections of illegal employment of third-country nationals are implemented under the supervision of undeclared employment. The criteria, based on which the Financial Administration implements inspections, are set based on risk analysis, random selection, received reports and other initiatives. The systematic control of taxable persons (employers) is ensured based on the annual plan prepared based on risk analysis. A certain part of the annual plan is based on random selection. The taxable persons (employers) are selected on national and local level. In the baseline for developing the annual plan, importance of certain taxes in total domestic revenue, and objective risk factors (based on statistical methods, preliminary inspection findings, period from the last implemented inspection, urgency of inspection etc.) are considered. The annual plan also includes activities related to increasing of voluntary compliance.

Inspections under the Prevention of Undeclared Work and Employment Act are targeting economic activities perceived as of higher risk, and implementation of actions by individual field of activities, where such controls have not yet been implemented.<sup>39</sup>

<sup>38</sup> Official Gazette of the Republic of Slovenia, No. 57/15.

<sup>39</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

The Financial Administration inspections' aim at systemic control of taxable persons (employers), ensured through the annual plan. The plan shall be prepared based on risk analysis and objective criteria, which take into account the principle of uniform implementation of inspections of all taxable persons (employers), and the principle of importance of certain tax, contributed by the taxable person to the government revenue. The objective criteria are mainly based on statistical methods and preliminary findings in inspection procedures. A certain part of the annual plan is prepared based on information received from other state authorities, reports, international requests and other initiatives, and it also based on the method of random selection.

The Labour Inspectorate inspections are planned based on annual program guidelines, which are based on risk assessment. Sometimes, actions are planned systematically in the areas with perceived higher risk.

Under the Prevention of Undeclared Work and Employment, the Government Commission for detecting and preventing illegal work and employment defines on yearly basis the economic activities in which third-country nationals are most often illegally employed, and develops an inspections' plan. For 2015, the Commission identified as high-risk economic activities where illegal employment of third-country nationals has been detected, construction, and accommodation and food service activities. Individual cases of unauthorized employment of third-country nationals have been detected in the transportation and storage sector, and wholesale and retail trade; repair of motor vehicles and motorcycles.

**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.

Inspections can be triggered both by media reporting on suspected violations of undeclared employment, as well as reports, that can be made in writing (via regular post), via e-mail, orally (during office hours or by phone), or via the form on the website.

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

The Labour Inspectorate decides on implementation of inspections within its competence, and also implements the inspections, at the same time providing technical assistance to employees and employers.

The Financial Administration decides and implements inspections under its competence. The monitoring activities of the Financial Administration' mobile units primarily focus on detecting and sanctioning irregularities in the field, detecting the actual situation, collecting and verifying information and eliminating individual procedural acts. Mobile units are included in vesting procedures, and they also cooperate in implementation of in-depth follow-up controls and inspections.<sup>40</sup>

The Employment Service mainly carries out controls over unemployed persons with a suspicion of undocumented work or employment in occupancies, highly requested in the labour market: heavy goods vehicle drivers, roofers, bricklayers, plasterers, house painters, and waiters etc. In these occupations, third-country nationals are often illegally employed.<sup>41</sup>

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

<sup>40</sup> Financial Administration's Yearly Report for 2016.

<sup>41</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

In case of reports, the Labour Inspectorate checks the report statements.

For targeted inspections, the Labour Inspectorate defines in its yearly program guidelines the institutes, verified in targeted actions. For 2016, the main emphases were:

- compliance with provisions related to payment for work,
- compliance with the provisions related to working time, ensuring rest periods and breaks for workers,
- compliance with the provisions related to record-keeping in the field of work and social security (e.g. record on usage of working time), also related to reallocation of working time,
- compliance with the prohibition of concluding civil law contracts if elements of employment relationship,
- ensuring decent working environment and protection against influences of psychosocial factors on the health of employees,<sup>42</sup>
- respect for the rights of posted (agency) workers,<sup>43</sup>
- ensuring professionalism and work, and promoting and ensuring individualized approach for examination.

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

The powers of the Labour Inspectorate are defined by the Labour Inspection Act.<sup>44</sup> The Inspectorate carries out inspection duties over implementation of legislation, other regulations, collective agreements, and general acts in the following areas, unless otherwise provided by the law:

- safety and health at work,
- employment relationships, minimum salary, labour market and employment, work and employment of aliens, workers' participation in management, and strikes.

The Inspectorate also carries out supervision over implementation of other laws and regulations, if provided in the legislation.<sup>45</sup> Other laws, under which the Labour Inspectorate exercises its powers, are for example the Employment Relationship Act, Occupational Health and Safety Act, Labour Market Regulation Act, Minimum Wage Act, Employment, Self-employment and Work of Aliens Act,<sup>46</sup> which is also evident from its annual reports.

General principles of inspection, organization of inspections, status, rights and obligations of inspectors, their powers, the inspection procedure, inspection measures and other issues related by inspections, are regulated by the Inspection Act<sup>47</sup> which is applied in a subsidiary manner. In implementing inspections' tasks by a natural or legal person, the inspector has the right to:<sup>48</sup>

- to inspect the premises, facilities, production installations, work equipment, installations, articles, goods, materials, business records, contracts, charters and other documents, and operation and documents of state bodies, corporations, institutions, other organizations and communities and private individuals,
- enter the parcels and land of the natural and legal persons,
- inspect business records, contracts, charters, and other documents, and business operation and documentation, if administered and stored in electronic format, he may require a hard copy which shall certify the electronic form,
- question the party and witnesses of the administrative procedure,
- review documents used to establish a person's identity,

<sup>42</sup> According to the Labour Inspectorate, this guideline has been moved into the 2017 guidelines.

<sup>43</sup> According to the Labour Inspectorate, this guideline has been related to a campaign in EU Member States. Due to changes in the agreement on the EU level, the control will be implemented in 2017.

<sup>44</sup> Official Gazette of the Republic of Slovenia, No. 19/2014.

<sup>45</sup> Labour Inspection Act, article 2/2.

<sup>46</sup> Official Gazette of the Republic of Slovenia, No. 47/2015.

<sup>47</sup> Official Gazette of the Republic of Slovenia, No. 43/07 and 40/14.

<sup>48</sup> Inspection Act, article 19/1.

- obtain and use free of charge personal and other data from official records and other databases, which are necessary for implementation of the inspection,
- take samples of the goods free of charge and test them,
- take samples of materials and equipment free of charge for the purpose of investigation,
- photograph or record on another medium visual data of the person, premises, facilities, production installations, installations and other items from the first indent,
- reproduce charters, audio-visual records and other documents,
- seize objects, documents and samples to preserve evidence,
- carry out a covert purchase in a way to identify him- or herself after the purchase with his or her service card, if indications of violation or information on the infringer can be obtained this way,
- perform other actions in accordance with the purpose of the inspection.

Legal and natural persons, against whom the inspections procedure is not carried out and who possess alleged evidence or other information, including personal data, necessary for implementation of the inspection, shall at the request of the inspector provide the evidence and other information, including personal data, or allow questioning of witnesses to obtain that evidence or other information, including personal data, within three days from receiving the inspector's request.<sup>49</sup>

In the course of performing inspection tasks, the inspector may seize the documentation necessary to examine actual situation of the case for a maximum of 15 days, if he or she considers that there are reasonable grounds for suspected violations of legislation or other regulations, and if this does not impede activities of the natural or legal person. The inspector issues a certificate on withdrawal of documents. The inspector is not allowed to withdraw documentation of public authorities which is classified as confidential.<sup>50</sup>

The inspector has the right to enter the premises, facilities and installations of persons,<sup>51</sup> to enter business premises and other premises that do not belong to the taxable person,<sup>52</sup> to inspect residential premises of the taxable person and smoothly perform inspection duties.<sup>53</sup> The General Administrative Procedure Act<sup>54</sup> applies regarding procedural issues. The Labour Inspectorate is also a minor offence authority, the Minor Offences Act<sup>55</sup> sets out general terms and conditions for issuing offences and related sanctions, general conditions for liability for violations, for imposing sanctions for violations, minor offence proceedings and the authorities and the courts to decide upon the offenses.

The Labour Inspectorate cooperates with the Financial Administration. If while exercising its powers, it detects a suspicion of illegal employment, it issues a decision prohibiting performance of work to the individual illegally employed, and immediately informs the Financial Administration. The Inspectorate cooperates also with the Police. In case of detecting a suspected criminal offence, it refers the case to the Police or reports the criminal offense.

In supervision procedures where they detect illegal employment of aliens, the Financial Administration implements following measures:<sup>56</sup>

- if the third-country national is illegally staying in the Republic of Slovenia, they immediately notify the Police;

<sup>49</sup> Inspection Act, article 19/2.

<sup>50</sup> Inspection Act, article 19/3.

<sup>51</sup> Inspection Act, article 20.

<sup>52</sup> Inspection Act, article 21.

<sup>53</sup> Inspection Act, article 23.

<sup>54</sup> Official Gazette of the Republic of Slovenia, No. 24/06, 105/06 – ZUS-1, 126/07, 65/08, 8/10 and 82/13.

<sup>55</sup> Official Gazette of the Republic of Slovenia, No. 29/11, 21/13, 111/13, 74/14, 92/14 and 32/16.

<sup>56</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

- by issuing a decision on prohibition of work, they prohibit performance of work duties to an illegally employed third-country national;
- verifies compliance with legal obligations by the employer. The employer is obliged by law to pay the third-country national any unpaid obligations for the performed work at least equal to the gross minimum wage for each month of work and also all costs of sending back payments to a country to which the third-country national has returned or has been returned. The employer is obliged to pay his obligations within 15 days from inspection conclusions and within 8 days from the deadline for payment, submit a proof of payment to the supervisory authority;
- introduction of minor offence proceeding with sanctioning (the employer and the its liable person).

While implementing supervisions, the Financial Administration can also introduce measures pursuant to Article 37 of the Financial Administration Act,<sup>57</sup> namely prohibition of activity and sealing of business premises, documents and other items. Prohibition of activity is among more stringent measures to be used only when it is absolutely necessary due to prevention of further violations, protection of evidence or elimination of irregularities.

In 2016, the Financial Administration actively cooperated with the Police in managing the migration flows. Mobile units' employees have been involved in enhanced cooperation with the Police in the inspection of cargo vehicles at the border crossings Gruškovje, Obrežje and Starod from 9 August to 14 November 2016. During this time, the mobile units' employees conducted 6.409 inspections and investigations of cargo vehicles and detected 26 migrant. The mobile units' employees also detected 321 violations within Financial Administration's powers, mostly in the areas of control of tachographs, customs regulations, road transport, transport of dangerous goods, weapons, and excise duties, VAT and illegal work and employment.<sup>58</sup>

**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.

Regular inspections are carried out in random intervals, and targeted inspections based on reports or planned actions.

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

The Labour Inspectorate strives towards implementing as many inspections as possible on sight and unannounced. In case of evading the inspection, the taxable person is invited for an inspection at the Inspectorate headquarters or headquarters of regional units (invitation under the General Administrative Procedure Act). If necessary, they also question witnesses – workers.<sup>59</sup>

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

In 2016, the activities in the field of grey economy aimed at preventing illegal work and employment, both through preventive and control measures in high-risk economic activities. In 2016, all supervisors conducted 10,965 inspections, of which 2,355 inspections of undeclared work, 8281 inspections of undeclared employment, and 329 controls of illicit advertising.

1,482 suspected violations have been identified and 314 decisions issued, which have been banned performance of illegal work or activities and individuals for violations of illegal employment. In a total 1.978 minor offence

<sup>57</sup> Official Gazette of the Republic of Slovenia, No. 25/14.

<sup>58</sup> Financial Administration's Yearly Report for 2016.

<sup>59</sup> Interview with Ms. Jasmina Rakita Cencelj, directress of the Inspection of supervision of employment relationships, Ms. Romana Košorok, Inspector Counselor, and Ms. Sonja Konestabo, Secretary, Labour Inspectorate. Ljubljana, 24 March 2017.

proceedings have been implemented, in which 1,540 decisions and 611 warnings have been issued. In 13 cases, the court was submitted an accusatory instrument, 17 criminal charges have been submitted and one announcement of suspected criminal offense of illegal employment. Most of the inspections were carried out in the sectors of construction, accommodation and food service activities, transport, bakeries, shops, on marketplaces (December festivities), vulcanisations, car mechanics and road traffic control. Supervision of undeclared work and employment has also been implemented in cooperation with other inspection services in joint coordinated action. Coordinated actions were carried out on markets and farms in collaboration with the Inspectorate for Agriculture, Forestry, Hunting and Fisheries, in restaurants in cooperation with the Labour Inspectorate, supplementary activities on farms with the Market Inspectorate, controls of the activities of slaughter of animals in cooperation with the Administration for Food Safety, Veterinary and Plant Protection, control over wood resellers with the Inspectorate of Infrastructure, and illicit advertising with the Health Inspectorate. Special attention was given in the context of a common European campaign, which aimed at detecting and preventing the exploitation of foreign workers (human trafficking) in cooperation with the Labour Inspectorate and the Police.

The major part of supervisory activities in this area are conducted by the mobile units' employees since their 24-hour presence in the field ensures greater effectiveness of such controls, and the inspectors play an important role in preventive and supervisory activities.<sup>60</sup>

**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?

As a good practice, we can also specify mobile units of the Financial Administration. Constant presence of mobile department in the field and connection of the mobile units with their operational communication centre of the Financial Administration allows supervision coverage and detection of violations in time and place where illegal employment is more prevalent.<sup>61</sup>

The Financial Administration also controls illicit advertising by monitoring the media, processing reports and collecting advertisements. They focus on online advertising. With, mainly on sales advertisement, with more attention given to advertisements by individuals that are possible to identify. To identify the advertisers, they also collect information from mobile operators and owners of web domains as part of controls. Regarding this, the Financial Administration points out that in terms of the fight against illicit advertising and illegal work, it cooperates well with the advertising companies. When monitoring illicit advertising of individuals, the Financial Administration faces with the problem of advertising on websites located on foreign servers, or in cases where web addresses registered through a foreign domain, for which possibility to identify the offender, perform inspection and consequent action, is very difficult. At the same time, they note that advertisers are increasingly moving to social media, especially Facebook, where it is more difficult to identify the advertisers. In such cases, they use the power of covert purchases while implementing the control.<sup>62</sup>

In implementing the controls, the Financial Administration detects a significant increase in "lending of workers" by companies not registered for the employment agency activities and without the permission (license) for carrying out this activity (usually this refers to lending of workers between associated companies within the meaning of the law governing commercial companies). Workers who have been lent, are performing the work in the premises, with work equipment, and under instruction of the company where they are not employed. Cases have

<sup>60</sup> Financial Administration's Yearly Report for 2016.

<sup>61</sup> Financial Administration's Yearly Report for 2016.

<sup>62</sup> Financial Administration's Yearly Report for 2016.

been identified in which an alien (a third-country national) has been employed (employment contract concluded and the single permit obtained) in a company registered for construction, but actually worked in another company with baking as main economic activity. During the control, the two companies submitted contracts on business cooperation, which the Financial Administration found to be fictitious, since the services set out in the contracts are not performed by the companies. In 2016, more inspections have been implemented, where those irregularities have been detected.<sup>63</sup>

Among weaknesses, the Labour Inspectorate highlighted the unavailability and obstruction of supervision by the taxable persons (employers), and the Inspectorate understaffing. Among good practices, they highlighted coordinated actions, cooperation with other authorities, submission of proposals for regulatory changes, information exchange and annual reporting on their work under the requirements of Convention No. 81 on labor inspection in industry and commerce (International Labour Organization).<sup>64</sup>

Government Commission for detecting and preventing illegal work and employment in its report for 2015 notes that the supervisory authorities cooperated well and properly (co-operative co-operation, exchange of experience, knowledge and joint work), and that several coordinated actions of inspection services have been successfully introduced (among which those in the activity of bakeries, tourist sports services, supplementary activities on farms with an emphasis on catering activities on tourist farms, markets' sale, sale of seasonal fruit, taxi service), which can be highlighted as an example of good practice and successful action. Among shortcomings, the report pinpoints the dispersion and consequent lack of transparency of the legislation, which sets out specific conditions for carrying out certain regulated activities; dispersal of official records, which shall be verified in the context of implementing of controls under the Prevention of Undeclared Work and Employment Act; lack of direct access or the possibility to access to the Record of issued single permits <sup>65</sup>granted under the Employment, Self-Employment and Work of Aliens Act (regarding the supervision of aliens); and lack of coherence of the legislation governing various areas. The Commission notes that the supervisory authorities do not have major difficulties in their work performance, the problem they perceive is mainly their understaffing. It should be noted that this refers to general activity of detection and prevention of illegal work and employment, and not specifically for activities targeting third-country nationals. Among the Commission recommendations, one is directly related to third-country nationals: the Commission recommends the supervisory authorities responsible for supervising employment of illegally staying third-country nationals, to establish the appropriate measures for more efficient and accurate statistical monitoring of possible violations in this area for the purpose of the annual report to the European Commission.<sup>66</sup>

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

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

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

<sup>63</sup> Financial Administration's Yearly Report for 2016.

<sup>64</sup> Interview with Ms. Jasmina Rakita Cencelj, directress of the Inspection of supervision of employment relationships, Ms. Romana Košorok, Inspector Counselor, and Ms. Sonja Konestabo, Secretary, Labour Inspectorate. Ljubljana, 24 March 2017.

<sup>65</sup> The record fully established in 2017, when the Employment Service of Slovenia started to obtain screened data on single permits. Possibility of access to records of approvals and single permit will also be accessible to all supervisory authorities (Labor Inspectorate, Financial Administration, Police).

<sup>66</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

## Family Reunification of TCNs in the EU: National Practices

| Sanctions for employers                                 | <p align="center"><b><u>Irregularly staying and illegally working TCNs</u></b></p> <p align="center"><i>*Please indicate if this sanction is imposed in your (Member) State (Yes/No), and if yes in which cases</i></p> <p align="center"><i>** Please provide reference to the specific legal provisions</i></p>   | <p align="center"><b><u>Regularly staying and illegally working TCNs</u></b></p> <p align="center"><i>*Please indicate if this sanction is imposed in your (Member) State(Yes/No), and if yes in which cases</i></p> <p align="center"><i>** Please provide reference to the specific legal provisions</i></p>   |
|---|---|--|
| Fines (e.g. fines imposed per illegally hired employee) | <p>YES</p> <ul style="list-style-type: none"> <li>- employer and the responsible person of the employer<sup>67</sup> who illegally employs a third-country national;<sup>68</sup></li> <li>- employer and the responsible person of the employer<sup>69</sup> or an individual who fails to settle all obligations within 15 days of detecting a violation or fails to submit proof of payment to the supervisory authority within 8 days of the deadline for payment<sup>70</sup></li> </ul> | <p>YES</p> <ul style="list-style-type: none"> <li>- employer and the responsible person of the employer<sup>71</sup> who fails to require a third-country national to submit proof of his legal residence in the Republic of Slovenia prior to concluding an employment contract;<sup>72</sup></li> <li>- employer and the responsible person of the employer<sup>73</sup> who fails to keep a copy of the proof of legal residence in the Republic of Slovenia for the duration of the employment of a third-country national;<sup>74</sup></li> <li>- employer and the responsible person of the employer<sup>75</sup> who allows an alien holding a temporary residence permit not issued for employment, self-employment or work to carry out work in contravention of the conditions and elements of employment stated in the official informative document.<sup>76</sup></li> <li>- employer and the responsible person of the employer<sup>77</sup> who allows an alien to carry out work for which a consent was not granted in the procedure for issuing or extending a single permit or an EU Blue Card or a written authorisation or for which</li> </ul> |

<sup>67</sup> Prevention of Undeclared Work and Employment Act, Article 23/2.

<sup>68</sup> Prevention of Undeclared Work and Employment Act, Article 23/1, 5<sup>th</sup> indent.

<sup>69</sup> Prevention of Undeclared Work and Employment Act, Article 23/12.

<sup>70</sup> Prevention of Undeclared Work and Employment Act, Articles 23/8 and 23/9.

<sup>71</sup> Prevention of Undeclared Work and Employment Act, Article 23/12.

<sup>72</sup> Employment, Self-employment and Work of Aliens Act, Article 52/1.

<sup>73</sup> Prevention of Undeclared Work and Employment Act, Article 23/12.

<sup>74</sup> Prevention of Undeclared Work and Employment Act, Article 23/11.

<sup>75</sup> Employment, Self-employment and Work of Aliens Act, Article 50/3.

<sup>76</sup> Prevention of Undeclared Work and Employment Act, Article 23/11.

<sup>77</sup> Employment, Self-employment and Work of Aliens Act, Article 50/3.

## Family Reunification of TCNs in the EU: National Practices

|  |  |   |
|--|--|---|
|  |  | no seasonal worker permit was issued; <sup>78</sup><br>- employer and the responsible person of the employer <sup>79</sup> legally engaged in the supply of temporary agency work for concluding a contract of employment with an alien not residing in the Republic of Slovenia on the basis of an EU Blue Card, or who was not granted a consent to employment, self-employment or work in the procedure for issuing or extending a single permit or issuing a written authorisation, or who does not have free access to the Slovenian labour market; <sup>80</sup>  |
| Imprisonment of employers<br>(Please indicate the aggravating circumstances) | YES<br>Whoever consecutively or permanently or in a substantial number employs foreigners who are not nationals of an EU Member State and are illegally staying on the territory of the Republic of Slovenia, shall be shall be sentenced to imprisonment for not more than two years. <sup>81</sup> | YES<br>Whoever contrary to the regulations employs two or more workers and does not register them for the appropriate insurance or employs several foreigners or persons without the citizenship without suitable work permits shall be punished by a fine or imprisonment for not more than one year. <sup>82</sup><br>If the offence under the preceding paragraph was committed by employing workers, who are not qualified to perform works that required special authorisations, or by interfering with the physical or mental integrity of an individual or under particularly exploitative working conditions, or by exploitation of victims of trafficking or by employment of a minor, the perpetrator shall be sentenced to imprisonment for not more than three years. <sup>83</sup> |
| Confiscation of financial gains  | YES  | NO  |

<sup>78</sup> Employment, Self-employment and Work of Aliens Act, Article 50/1.

<sup>79</sup> Employment, Self-employment and Work of Aliens Act, Article 52/2.

<sup>80</sup> Employment, Self-employment and Work of Aliens Act, Article 52/1.

<sup>81</sup> Criminal Code, article 199/2. Official Gazette of the Republic of Slovenia, No. 55/2008, 66/2008, 39/2009, 55/2009, 91/2011, 54/2015, 38/2016.

<sup>82</sup> Criminal Code, article 199/1.

<sup>83</sup> Criminal Code, article 199/3.

*Family Reunification of TCNs in the EU: National Practices*

|  |   |   |
|--|---|---|
| (e.g. share of profit or revenue of the employer)      | A legal person, a foreign legal entity or a self-employed person who employs illegally staying third-country national, shall repay public funds, including European Union funds granted on the basis of a public call or public invitation for employment and training programmes which constitute State aid or aid under the de minimis rule, disbursed over a period starting 12 months prior to the supervisory authority's first report and ending when a decision on the fine imposed for a minor offence becomes final. <sup>84</sup>   |   |
| Ineligibility for public contracts                     | YES<br>A legal person, a foreign legal entity or a self-employed person who employs a third-country national illegally residing in the Republic of Slovenia shall be excluded from public procurement procedures for five years from the final decision imposing a fine for a minor offence under the fifth indent of paragraph (1) of Article 23 of this Act and shall lose the right to public funds or have limitations imposed thereon, including European Union funds granted on the basis of a public call or public invitation for employment and training programmes which constitute State aid or aid under the de minimis rule. <sup>85</sup> | YES<br>Under the Prevention of Undeclared Work and Employment Act, the Financial Administration is obliged to inform the Ministry of Public Administration on the names of employers for which with a final minor offence decision the offence of illegal employment of third-country nationals has been detected. This refers to a list of employers with negative reference, which are as a result of conducted offence for 5 years from the final decision excluded from public procurement procedures or lose or are limited the right to public funds, including EU funds. <sup>86</sup> |
| Temporary or definitive closure of company or worksite | NO  | NO  |
| Confiscation of equipment/property                     | NO  | NO  |
| Suspension of activity                                 | NO  | NO or only in the case if the company employed only foreigners and the prohibition of employment, self-employment and work of foreigners would produce the effect of the inability to perform the activity.   |
| Withdrawal of trading                                  | NO  | NO  |

<sup>84</sup> Prevention of Undeclared Work and Employment Act, Article 27/3.

<sup>85</sup> Prevention of Undeclared Work and Employment Act, article 27/1.

<sup>86</sup> Interview with Mr. Peter Jenko, Deputy Director General, Ms. Mojca Japelj, Ms. Metka Meh, Inspector councillor, Financial Administration, Ljubljana, 15 March 2017.

|   |    |   |
|---|----|---|
| license/disbarment of activity                          |    |   |
| Withdrawal of residence permit if the employer is a TCN | NO | YES if the Employment Service would revoke the consent to the single permit of the foreigner; <sup>87</sup> consequently, the person would also lose his or her residence permit. |
| Other sanctions   | NO | YES: prohibition of employment and work of foreigners or provision of services. <sup>88</sup>   |

**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?

A case of an employer unintentionally hiring illegal worker is not possible, since in accordance with the Employment, Self-employment and Work of Aliens Act, the employer can perform the activity of providing workers to the user only with foreigners residing in Slovenia based on the EU Blue Card, with foreigners, whom during the procedure for obtaining or renewal of the single permit or issue a written authorization consent for employment, self-employment or work has been granted, as well as with foreigners who have, in accordance with the Employment, Self-employment and Work of Aliens Act, free access to the labour market.<sup>89</sup> Additionally, the Employment, Self-employment and Work of Aliens Act also stipulates that foreigners employed, self-employed or working in Slovenia, shall have residence regulated in accordance with the regulations governing the residence of aliens in the Republic of Slovenia.<sup>90</sup>

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

The written approval shall be annulled by the competent authority that issued it or by the competent authority in the area of which the alien resides, if the Employment Service withdraws its consent to the written approval. It is not possible to appeal this decision.<sup>91</sup> In a decision by which a competent authority has refused an application for the granting or renewal of a residence permit on the grounds that there is a suspicion that the alien might pose a threat to the public order and safety or the international relations of the Republic of Slovenia, or if there is a suspicion that the residence of the alien in the country will be associated with the commission of terrorist or other violent acts, illegal intelligence activities, drug trafficking or the commission of other criminal acts; or if there are reasons to assume that the alien will not abide by the legal order of the Republic of Slovenia; if they are related to non-compliance with the regulations governing the entry and stay of aliens in the Republic of Slovenia, the competent authority may determine a period during which the alien is banned from entering the country. The period during which the alien is banned from entering the country may not be shorter than one year or longer than five years. In judging how long an alien should be banned from re-entering the country, the authority which issues the decision on the revocation of residence shall take into account the type and gravity of the circumstances by reason of which the alien's stay in Slovenia is undesirable.<sup>92</sup>

In such a case, the administrative unit would inform the Police, which would implement the decision. In some cases, the administrative units upon revoking the residence permit, do not establish the obligation of return from

<sup>87</sup> Employment, Self-employment and Work of Aliens Act, article 38/1.

<sup>88</sup> Employment, Self-employment and Work of Aliens Act, article 42/1.

<sup>89</sup> Employment, Self-employment and Work of Aliens Act, article 7/5.

<sup>90</sup> Employment, Self-employment and Work of Aliens Act, article 7/7.

<sup>91</sup> Aliens Act, article 56/2; Official Gazette of the Republic of Slovenia, No. 50/2011, 57/2011, 26/2014, 90/2014, 19/2015, 47/2015, 5/2017 (ZTuj-2).

<sup>92</sup> Aliens Act, article 55/6.

Slovenia, hence in these cases the foreigner is issued a decision on (voluntary) decision only in case of a police procedure.<sup>93</sup>

**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?

| <b>Criminal sanctions for employers</b>  | <b>Description</b><br><i>*Please indicate if this sanction is imposed in your (Member) State, and if yes in which cases</i><br><i>** Please provide reference to the specific legal provisions</i>  |
|--|---|
| (a) the infringement continues or is persistently repeated   | YES<br>Whoever consecutively or permanently or in a substantial number employs foreigners who are not nationals of an EU Member State and are illegally staying on the territory of the Republic of Slovenia, shall be sentenced to imprisonment for not more than two years. <sup>94</sup>   |
| (b) the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals   | YES<br>Whoever contrary to the regulations employs two or more workers and does not register them for the appropriate insurance or employs several foreigners or persons without the citizenship without suitable work permits shall be punished by a fine or imprisonment for not more than one year. <sup>95</sup>  |
| (c) the infringement is accompanied by particularly exploitative working conditions  | YES<br>If the offence under the preceding (a, b) paragraph was committed by employing workers, who are not qualified to perform works that required special authorisations, or by interfering with the physical or mental integrity of an individual or under particularly exploitative working conditions, or by exploitation of victims of trafficking or by employment of a minor, the perpetrator shall be sentenced to imprisonment for not more than three years. <sup>96</sup> |
| (d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings | YES<br>If the offence under the preceding (a, b) paragraph was committed by employing workers, who are not qualified to perform works that required special authorisations, or by interfering with the physical or mental integrity of an individual or under particularly exploitative working conditions, or by exploitation of victims of trafficking or by employment of a minor, the perpetrator shall be sentenced to imprisonment for not more than three years. <sup>97</sup> |
| (e) the infringement relates to the illegal employment of a minor  | YES<br>If the offence under the preceding (a, b) paragraph was committed by employing workers, who are not qualified to perform works that required special authorisations, or by interfering with the physical or mental integrity of an individual or under particularly exploitative   |

<sup>93</sup> Interview with Mr. Darjo Cizel, Border Police Department, Ministry of Interior. Ljubljana, 29 March 2017.

<sup>94</sup> Criminal Code, article 199/2.

<sup>95</sup> Criminal Code, article 199/1.

<sup>96</sup> Criminal Code, article 199/3.

<sup>97</sup> Criminal Code, article 199/3.

|  |   |
|--|---|
|  | working conditions, or by exploitation of victims of trafficking or by employment of a minor, the perpetrator shall be sentenced to imprisonment for not more than three years. <sup>98</sup> |
|--|---|

**Q12b.** Has your Member State amended legislation on sanctions for illegally employed TCN since July 2014<sup>99</sup>? If so, please provide details.

YES.

The new Prevention of Undeclared Work and Employment Act was adopted in April 2014 and published in the Official Gazette No. 32/14 dated 5 May 2014. The key changes in 2014, which affected the implementation of the Prevention of Undeclared Work and Employment Act, were the establishment of the Financial Administration under the Financial Administration Act, new supervisory powers after the new Financial Administration Act entered into force on 18 August 2014 and novelties being used under the Prevention of Undeclared Work and Employment Act from 18 August 2014. The Financial Administration acquired new supervisory powers under the Prevention of Undeclared Work and Employment Act. From 18 August 2014, the Financial Administration has exclusive competence over control of individuals, new powers of control over the enabling undocumented work and activities of individuals, and the powers of control over illegal employment were fully transposed from the Labour Inspectorate to the Financial Administration. Additionally, the Financial Administration is also responsible for control of illicit advertising of illegal work and activities by individuals.

In 2015, three acts have been changed, that affect the prevention of illegal work and employment (Road Transport Act, Employment, Self-employment and Work of Aliens Act, and Employment and Work of Aliens Act).

The key change in 2015, which affected the implementation of the Prevention of Undeclared Work and Employment Act, was the change of the Employment, Self-employment and Work of Aliens Act (Official Gazette of the Republic of Slovenia, No. 47/15). From 1 September 2015, based on the changes of the Employment, Self-employment and Work of Aliens Act, the Employment and Work of Aliens Act expired.

The Criminal Code stipulates the provision concerning illegal employment already since 2011, when the amendment KZ-1B was adopted.

**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.

Among the benefits of sanctioning employers are deterring employers from illegal employment. Among the advantages, we can also highlight the control of the labour market, combating grey economy, regularization in this area (through the legality of work, the legality of residence is also controlled). Among the vulnerabilities, it is necessary to indicate the fact that the activity of various authorities is not automatically interconnected; a single database is lacking, covering all the key data about a particular employee and would constitute the cornerstone of inter-governmental cooperation. Internal migration of workers - third-country nationals - are also among problems.<sup>100</sup>

<sup>98</sup> Criminal Code, article 199/3.

<sup>99</sup> 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.

<sup>100</sup> Interview with Mr Darjo Cizel, Border Police Department, Ministry of Interior. Ljubljana, 29 March 2017.

## 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.*

In this case the responsibilities are shared. Stricter control is introduced, following by handover of the procedure, at the same time, the authorities focus on the employer (how employment of other employees is arranged). The return decision stems from undeclared work, since it contains elements of illegal residence. In case of issuing a decision on voluntary return, it sets a deadline in which the third-country national has to return to his or her country of origin or to leave the Schengen area, and in the event of the return decision, he or she is placed in the Aliens Centre, and the return procedure is implemented. If repatriation is not possible, he or she is granted permission to stay. The third-country national is also set an entry ban for a certain period.<sup>101</sup>

**Q14b.** *is granted a period for voluntary departure*

The police may set a deadline in a return decision by which the alien must depart from the country voluntarily and which may not be shorter than seven days or longer than thirty days. The police may determine a specific address where the alien shall stay in the Republic of Slovenia during the period set for his voluntary departure from the country. The alien may depart from the country earlier than within seven days.<sup>102</sup>

A deadline for voluntary return shall not be set for an alien who is at risk of absconding or whose residence in the Republic of Slovenia poses a threat to public order, security or national security. A deadline for voluntary return may be set for an alien with regard to whom there exists less serious circumstances that indicate a risk of absconding.<sup>103</sup>

**Q14c.** *has received an entry ban*

A return decision shall also impose an entry ban on the alien in the following circumstances:<sup>104</sup>

- if he has not been permitted voluntary return; or
- if he has not departed from the country by the deadline set for voluntary return.

The period during which the alien is prohibited from re-entering the country may not be shorter than six months or longer than five years. In assessing how long an alien is to be prohibited from re-entering the country, the authority that issued the return decision shall take into account the type and seriousness of the circumstances that led to the residence of the alien in the Republic of Slovenia as being undesirable. When the return decision has become final, the authority that issued the return decision shall notify the authority responsible for the input of data into the Schengen Information System of the entry ban.<sup>105</sup>

An entry ban imposed by a return decision, a decision refusing a residence permit, a decision on the annulment of a residence permit, and a decision on the termination of residence may be cancelled or suspended by the police ex officio or at the request of the alien owing to the following reasons:<sup>106</sup>

<sup>101</sup> Interview with Mr Darjo Cizel, Border Police Department, Ministry of Interior. Ljubljana, 29 March 2017.

<sup>102</sup> Aliens Act, article 67/1.

<sup>103</sup> Aliens Act, article 67/5.

<sup>104</sup> Aliens Act, article 66/1.

<sup>105</sup> Aliens Act, article 66/2.

<sup>106</sup> Aliens Act, article 66/3.

- the death or illness of a family member of the alien;
- the provision of emergency medical treatment;
- the participation in proceedings before public authorities;
- if the alien on whom the entry ban was imposed by a decision refusing a residence permit, a decision on the annulment of a residence permit or a decision on the termination of residence proves that he departed from the country by the deadline for return;
- if the alien was permitted to stay in the Republic of Slovenia as a victim of the trafficking of human beings or if he was issued with a temporary residence permit.

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

Fines are stipulated in a range, usually the minimum amount is imposed.<sup>107</sup>

If an alien enters the Republic of Slovenia illegally, he shall be liable to a fine of between EUR 500 and 1,200 EUR.<sup>108</sup>

An alien shall be liable to a fine of between EUR 800 and 1200 EUR in the following circumstances:<sup>109</sup>

- if he resides in the Republic of Slovenia in contravention of the purpose for which his residence permit was issued;
- if he resides in the Republic of Slovenia illegally.

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

A third-country national is issued a decision on accommodation in the Aliens Centre and a return decision. If the circumstances of illegal entry are checked, the third-country national may be ordered detention (at the police station within 12 hours) before issuing a return decision and a decision on accommodation in the Aliens Centre.

**Q14f. receives work permit**

He or she would not receive a work permit. A return procedure would be implemented, and the third-country national would have to begin the procedure of obtaining residence and work permit from abroad, as provided in the Aliens Act.

An alien must acquire a first temporary permit in the Republic of Slovenia prior to his entry into the country, unless otherwise specified in this Act.<sup>110</sup>

The request for issuing or renewal of the single permit can be filed by the alien or his employer. The foreigner shall lodge the application for issuing the first single permit at a diplomatic mission or consulate office abroad, except in certain cases<sup>111</sup> where the application can also be filed with the competent authority in the Republic of Slovenia. The employer may submit an application for the first single permit at a diplomatic mission or consulate of the Republic of Slovenia abroad or at the competent authority in the Republic of Slovenia. If the request to issue or

<sup>107</sup> Interview with Mr Darjo Cizel, Border Police Department, Ministry of Interior. Ljubljana, 29 March 2017.

<sup>108</sup> Aliens Act, article 145/1.

<sup>109</sup> Aliens Act, article 145/2.

<sup>110</sup> Aliens Act, article 34/2.

<sup>111</sup> Sports trainer, professional athlete or private sports operator who is enlisted in the register of professional athletes or in the register of private sports operators and has an employment contract or a work contract with a sports club or sports organization headquartered in the Republic of Slovenia; an alien who intends to work as a clergyman in a registered religious community or to an alien who intends to perform charity or humanitarian activities for an established humanitarian organisation or registered religious community, and submits a certificate from the registered religious community regarding his or her pursuit of activities in this community, or a certificate by a recognized humanitarian organization on organization or conduct of charitable and humanitarian activities in this organization; an alien who works as a reporter for foreign media or is an international correspondent accredited in the Republic of Slovenia or is in the procedure of renewal of the accreditation; the existence of an economic interest for the Republic of Slovenia which the alien proves by submitting an opinion issued by the ministry responsible for the economy; the existence of an interest for the Republic of Slovenia in the field of education, science and culture, which the alien proves by submitting an opinion issued by the competent ministry.

renew the single permit is lodged by the alien's employer, he may also perform other procedural actions in accordance with the foreigner's authorization, but cannot serve him the issued single permit. In the case of consent for issuing a single permit is not rejected for reasons on the side of the alien, the decision on refusal to issue the single permit is also served to the employer.<sup>112</sup>

**Q14g.** *receives residence permit*

He or she would not receive a work permit. A return procedure would be implemented, and the third-country national would have to begin the procedure of obtaining residence and work permit from abroad, as provided in the Aliens Act.

An alien must acquire a first temporary permit in the Republic of Slovenia prior to his entry into the country, unless otherwise specified in this Act.<sup>113</sup>

If due to unforeseen circumstances, the foreigner was not able to obtain the first temporary residence permit before entering the country, he may be granted the first temporary residence permit in the Republic by the competent authority, which issued the permit, if the alien resides in the Republic of Slovenia legally and has granted the application for the first temporary residence permit prior to his or her entry into the country, and the alien has already before entering the country given fingerprints at the diplomatic mission or consulate abroad, and after entering the country, he or she informed the competent authority for issuing the permit on the entry into the country, address and duration of the intended stay in the country, and the reasons for which he or she was not able to obtain the first temporary residence permit before entering the country.

The first temporary residence permit is issued for a period of one year, unless otherwise provided by law. Exceptionally, a person would be granted a residence permit, if he or she was a victim of trafficking or a victim of illegal employment (see answer 14h).

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

A victim of trafficking and a victim of illegal employment may be, irrespective of the other conditions laid down in the legislation, for a residence permit may be issued a temporary residence permit, if he or she is willing to cooperate as a witness in criminal proceedings, and his or her testimony is important, as certified by the competent law enforcement authority, and to a victim of illegal employment also if he or she filed a lawsuit against the employer to exercise employment rights, and his or her presence on the territory of the Republic of Slovenia is important for the judicial process, as verified by the competent court.

The Police investigates the element of criminal offense. In the process, the victim is identify and protected, and the suspect is prosecuted.

**Q14i.** *Other sanctions/outcomes*

Certain (high-risk) employers are more often subject of control.<sup>114</sup>

**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*

This refers to misuse of the residential address for the purpose of undeclared work (e.g. a third-country national is a student illegally working), therefore the proposal for revoking the residence permit follows - which is not the

<sup>112</sup> Aliens Act, article 37.a/1.

<sup>113</sup> Aliens Act, article 34/2.

<sup>114</sup> Interview with Mr Darjo Cizel, Border Police Department, Ministry of Interior. Ljubljana, 29 March 2017.

inevitable consequence, but can be checked. If the residence permit is issued for study purposes and the third-country national is illegally employed, this constitutes an abuse of the residence permit for illegal work, and the residence permit is revoked.<sup>115</sup>

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

Undeclared work is never tolerated and is always sanctioned, but regularisation of status could be a possible consequence.

**Q15c.** *fined*

Yes. A fine of 500 to 5,000 EUR shall be imposed on a foreigner who performs work for which in the procedure for the issue or renewal of the single permit or an EU Blue Card, or to issue a written approval, consent was not given, and for which a permit was not granted for seasonal work.<sup>116</sup>

**Q15d.** *detained*

A third-country national is issued a decision on accommodation in the Aliens Centre in case of revocation of a residence permit. The decision is issued by the Police.

**Q15e.** *issued a return decision*

A third-country national is issued a return decision in case of revocation of a residence permit. The decision is issued by the administrative unit or the Police.

**Q15f.** *Other sanctions/outcomes*

Possible sanction is also bans of consensus or permits for a period of two years.<sup>117</sup>

**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?

The case is dealt with by the Police, which informs the competent authorities of the EU Member State. That State shall decide upon the measures, the order is executed by Slovene Police. For the duration of the decision of the competent authority of the other EU Member State, the third-country national is fined and released.

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

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

(i) outstanding remuneration

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

A fine of EUR 5,000 to EUR 15,000 shall be imposed on an employer<sup>118</sup> other than an individual that:

- fails to settle within 15 days of a supervisory authority establishing the infringement all employment relationship obligations for the entire period of undeclared employment at least in the amount of the minimum gross wage for each month of the work, if in the period in question the person concerned was not registered for compulsory insurance schemes on the basis of a concluded full-time employment contract; the payment obligation shall amount to a proportionate part of the gross wage for each month of the work if the person

<sup>115</sup> Interview with Mr Darjo Cizel, Border Police Department, Ministry of Interior. Ljubljana, 29 March 2017.

<sup>116</sup> Employment, Self-employment and Work of Aliens Act, article 51.

<sup>117</sup> Employment, Self-employment and Work of Aliens Act, article 42.

<sup>118</sup> Prevention of Undeclared Work and Employment Act, article 23/8.

concerned was registered for compulsory social insurance schemes on the basis of a part-time employment contract<sup>119</sup> (in case of illegal employment); or an employer who employs a third-country national residing illegally in the Republic of Slovenia shall settle all outstanding obligations relating to the work performed by the third-country national for each month of the work and at least in the amount of the gross minimum wage as if he were in legal employment; the employer shall also pay any costs arising from sending unsettled payments to the country to which the third-country national has returned or has been returned. If the employer or the third-country national in undeclared employment fails to demonstrate the duration of the employment, the third-country national shall be deemed in undeclared employment for three months;<sup>120</sup>

- fails to submit proof of payment to the supervisory authority within 8 days of the deadline for payment.<sup>121</sup>

**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?

When an employer who illegally hires a third-country national is a subcontractor, the obligations shall be deemed a joint and several liability of the main contractor and any intermediate subcontractor, provided they knew that the employer hired persons for undeclared employment and failed to notify the supervisory authorities accordingly.<sup>122</sup> The employer<sup>123</sup> or the main contractor or the intermediate subcontractors referred to in the preceding paragraph shall be held accountable if:<sup>124</sup>

- they knew that a third-country national had submitted falsified evidence of legal residence in the Republic of Slovenia;
- registration of work of a third-country national was not made in accordance with the act governing the employment and work of aliens.

**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.

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**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

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**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?

See answer 17.

**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

<sup>119</sup> Prevention of Undeclared Work and Employment Act, article 5/7.

<sup>120</sup> Prevention of Undeclared Work and Employment Act, article 5/8.

<sup>121</sup> Related to the Prevention of Undeclared Work and Employment Act, articles 5/7 and 5/8.

<sup>122</sup> Prevention of Undeclared Work and Employment Act, article 5/11.

<sup>123</sup> Prevention of Undeclared Work and Employment Act, article 5/10: "Prior to concluding an employment contract, an employer shall require a third-country national to submit proof of his legal residence in the Republic of Slovenia. A copy of the proof of legal residence in the Republic of Slovenia shall be kept by the employer for the duration of the employment."

<sup>124</sup> Prevention of Undeclared Work and Employment Act, article 5/12.

/

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)

/

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

/

**Q19a.** Does your (Member) State provide for information to illegally employed TCNs on their rights? If Yes, is this foreseen in legislation, or else is it a part of general administrative guidelines or practices? Please provide comments on difficulties encountered or success factors with measures that can be identified as good practices in relation to information obligations.

Information for third-country nationals is provided on the website "Infotujci".<sup>125</sup> However, the website does not provide information on illegally employed workers, but information on entry and residence, education, social and health care, life in Slovenia as well as information on Slovenia. The website is very comprehensive with information and referrals, therefore it represents a really good guide/tool for third-country nationals. It is prepared in several languages - English, French, Spanish, Russian, Serbian and Albanian.

The program "Information for foreigners" has been financed by the Asylum, Migration and Integration Fund, and the Ministry of Interior.

**Q19b.** Have any of measures referred to under questions 17-19 been introduced in your legislation after July 2014<sup>126</sup>? If yes, which ones?

See answer 12b.

**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.

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### 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.*

<sup>125</sup> Available at: [www.infotujci.si/index.php](http://www.infotujci.si/index.php).

<sup>126</sup> 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.

**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 while exercising its powers, the Labour Inspectorate detects a suspected illegal employment, it issues a decision prohibiting performance of work to the individual who is illegally employed, and immediately notifies the Financial Administration (or its mobile department).

The Financial Administration would inform the Police on the case, which would lead further procedure, based on which it would expel Mr Shire from Slovenia. Against the infringers, the employers and the individual, a minor offence procedure would be introduced and they would be imposed a fine.

**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<sup>127</sup>. 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 Slovenia, students are not employed, but they perform work based on student referrals (so-called *študentske napotnice*). Provisions on working time (Employment Relationship Act) are applied also for students, i.e. 40-hours weekday. If in the specific case elements of employment relationship would be identified, a prohibition of work would be issued based on civil law contracts in violation of the law governing employment relationships.<sup>128</sup>

**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?

She would be fined<sup>129</sup> and would receive a 2-years prohibition of work (from the date of the final decision).<sup>130</sup>

**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<sup>131</sup>. 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

<sup>127</sup> 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.

<sup>128</sup> Interview with Ms Jasmina Rakita Cencelj, directress of the Inspection of supervision of employment relationships, Ms Romana Košorok, Inspector Counselor, and Ms Sonja Konestabo, Secretary, Labour Inspectorate. Ljubljana, 24 March 2017.

<sup>129</sup> Employment, Self-employment and Work of Aliens Act, article 51.

<sup>130</sup> Employment, Self-employment and Work of Aliens Act, article 42/2.

<sup>131</sup> Based on the visa free travel decision adopted by the EU Member States on 30 November 2009: [http://europa.eu/rapid/press-release\\_IP-09-1852\\_en.htm?locale=fr](http://europa.eu/rapid/press-release_IP-09-1852_en.htm?locale=fr)

been living with the family and has been paid cash for her work. After two months the family asks Marija to stay and work for them full time. They offered to grant her a work contract and asked her to apply for a residence permit. Marija intends to apply for a residence in permit in your (Member) State during the 90 days period she enjoys visa liberalization. However, Marija is detected by the authorities in your (Member) State before applying for the permit. What would be the consequence for Marija?

Ms Bogdanović would be detected in the phase of illegal status in the country, therefore she would be issued a voluntary return decision (with a set deadline for return).

In this case it is necessary to note that in Slovenia, foreigners cannot be working or employed by natural persons.

#### **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<sup>132</sup>. 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?

Mr Harrak would be issued a return decision; whether it would be a return decision or a voluntary return decision, depends on the circumstances. But he would be considered for illegal residence and would be fined.<sup>133</sup>

#### **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?

She would be criminally charged of falsification of documents.<sup>134</sup> She would be issued a return decision<sup>135</sup> and an entry ban.<sup>136</sup>

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

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

The field of illegal employment of third-country nationals is controlled by the supervisory authorities, namely the Financial Administration and the Labour Inspectorate. The criteria, on which the Financial Administration implements supervisions are set, based on risk analysis, random selection, received reports and other initiatives. The systematic supervision of taxable persons/entities (employers) is ensured through the annual plan which is prepared based on the risk analysis. A certain part of the annual plan is based on random selection.

Based on risk assessment, joint actions of various inspectorates for detection and prevention of illegal work and employment are planned. Joint actions by supervisory bodies for detection and prevention of illegal work are directed by the Government Commission for detecting and preventing illegal work and employment.

<sup>132</sup> 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.

<sup>133</sup> Aliens Act, article 143.

<sup>134</sup> Criminal Code, article 251.

<sup>135</sup> Aliens Act, article 64.

<sup>136</sup> Aliens Act, article 66.

For a more effective prevention of grey economy, encompassing illegal work and employment, inspections and results of these inspections are announced in the media with the aim of drawing attention to legal work and employment, as well as invoicing. With preventive activities, the Financial Administration encourages the taxpayers (employers) to register and legalize their work and activities, and to raise tax moral and awareness. Also in cases of detected violations of illegal work and employment, the infringers are encouraged to remedy the violation already during the inspection, by which the primary purpose of inspection, i.e. legalization of employment, provision of services or activities, is achieved.

The Financial Administration continues cooperating with other inspectorates, professional associations and general and interested public, and develops proposals for systemic legislative changes for managing the risks in the field of grey economy.

The practice has shown that in high-risk activities, illegal employment of aliens oftentimes occurs outside regular working hours, therefore the Financial Administration's mobile units are much more efficient. Their specifics is their operating time of mobile department which ensures constant presence in the field, enables inspection implementation and detection of violations in time when illegal work is most prevalent. The specifics of the working time of mobile units, ranging through all working days and over the weekend, in the afternoon, evening and during night hours, enables constant presence in the field and consequently coverage of supervision, and detection of violations in time when illegal work is most prevalent. Constant presence of mobile units in the field and connection of the mobile units with their operational communication centre of the Financial Administration (which receives urgent reports and information on suspected violations) enables real-time review of the reports for which supervision is effective only if examined immediately. The described way of operation has contributed to detection of more violations of illegal work of aliens, engaged in illegal work during weekends, and most often selling various goods door-to-door. In 2016, in 67 cases aliens were sanctioned with fines for illegal work. In 10 cases of sales by aliens, accusation proposal for seizure of goods was issued.

In implementing the controls, the Financial Administration detects a significant increase in "lending of workers" by companies not registered for the employment agency activities and without the permission (license) for carrying out this activity (usually this refers to lending of workers between associated companies within the meaning of the law governing commercial companies). Workers who have been lent, are performing the work in the premises, with work equipment, and under instruction of the company where they are not employed. Cases have been identified in which an alien (a third-country national) has been employed (employment contract concluded and the single permit obtained) in a company registered for construction, but actually worked in another company with baking as main economic activity. During the control, the two companies submitted contracts on business cooperation, which the Financial Administration found to be fictitious, since the services set out in the contracts are not performed by the companies. In 2016, more inspections have been implemented, where those irregularities have been detected.

Government Commission for detecting and preventing illegal work and employment in its report for 2015 notes that the supervisory authorities cooperated well and properly (co-operative co-operation, exchange of experience, knowledge and joint work), and that several coordinated actions of inspection services have been successfully introduced (among which those in the activity of bakeries, tourist sports services, supplementary activities on farms with an emphasis on catering activities on tourist farms, markets' sale, sale of seasonal fruit, taxi service), which can be highlighted as an example of good practice and successful action.

Among shortcomings, the report pinpoints the dispersion and consequent lack of transparency of the legislation, which sets out specific conditions for carrying out certain regulated activities; dispersal of official records, which

shall be verified in the context of implementing of controls under the Prevention of Undeclared Work and Employment Act; lack of direct access or the possibility to access to the Record of issued single permits <sup>137</sup>granted under the Employment, Self-Employment and Work of Aliens Act (regarding the supervision of aliens); and lack of coherence of the legislation governing various areas. The Commission notes that the supervisory authorities do not have major difficulties in their work performance, the problem they perceive is mainly their understaffing. It should be noted that this refers to general activity of detection and prevention of illegal work and employment, and not specifically for activities targeting third-country nationals. Among the Commission recommendations, one is directly related to third-country nationals: the Commission recommends the supervisory authorities responsible for supervising employment of illegally staying third-country nationals, to establish the appropriate measures for more efficient and accurate statistical monitoring of possible violations in this area for the purpose of the annual report to the European Commission.

Among challenges identified by supervisory bodies are dispersal and consequent lack of transparency of legislation, dispersal of official records, lack of direct access or the possibility to access to databases of all authorities collecting data, and lack of coherence of legislation governing various fields. The Government Commission notes that the supervisory authorities do not have major difficulties in their work performance, the problem they perceive is mainly their understaffing. It shall be noted that this refers to general activity of detection and prevention of illegal work and employment, and not specifically for activities targeting third-country nationals.

Among the vulnerabilities, it is necessary to indicate the fact that the activity of various authorities is not automatically interconnected; a single database is lacking, covering all the key data about a particular employee and would constitute the cornerstone of inter-governmental cooperation. Internal migration of workers – third-country nationals – are also among problems. Among weaknesses, the Labour Inspectorate highlighted the unavailability and obstruction of supervision by the taxable persons (employers).

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<sup>137</sup> The record fully established in 2017, when the Employment Service of Slovenia started to obtain screened data on single permits. Possibility of access to records of approvals and single permit will also be accessible to all supervisory authorities (Labor Inspectorate, Financial Administration, Police).