



ESTONIAN ACADEMY OF SECURITY SCIENCES

EUROPEAN MIGRATION NETWORK

PRACTICAL RESPONSES TO IRREGULAR MIGRATION IN ESTONIA

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The European Migration Network (EMN) is a network established in 2003 and financially supported by the European Commission. On the basis of the Council Decision 2008/381/EC the objective of the EMN is to meet the information needs of Community institutions and of Member States' authorities and institutions on migration and asylum, by providing up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the European Union in these areas. Also provide the general public with information on these subjects. Documents put together by the Estonian contact point of the European Migration Network are based on public and available data and may not necessarily represent Estonia's official position.

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Executive Summary

Estonian migration policy has been rather steady, although during the recent years it has been strongly influenced by the European *acquis* (e.g. Schengen border rules, EU directives etc). The Aliens Act in its content, is enabling towards legal immigration and intolerant towards illegal stay. Due to that all persons who have arrived to Estonia illegally or are staying in the country illegally, must leave immediately. If they fail to leave voluntarily, they are expelled from Estonia. The Obligation to Leave and Prohibition on Entry Act foresees a thorough regulation regarding the performance of an alien's obligation to leave.

Estonia is not a destination country of irregular immigration, but rather a transit country or even a "second transit country". In order to arrive in Estonia, usually the Estonia-Russia border is crossed illegally in the area between the border crossing points, or falsified documents/visas/residence permits are used to enter Estonia. Generally, the aim of the illegally arrived immigrants is not to stay in Estonia, but to move on to Scandinavia or other Western European countries.

Looking at the statistics, one can observe that during the recent years Estonia's importance as a transit country has significantly increased. While in 2008, in total 57 immigrants were caught at the external border at the attempt of illegal entry to Estonia, then in 2009, the number was already 134 and in 2010 109. During these years, the number of immigrants from Central Asia (Afghanistan, Syria, Palestine) caught at the border increased significantly. The beginning of the year 2011 has brought along increase of the number of immigrants from Africa (Congo, Cameroon, Algeria, Ghana).

The aim of applying the measures for combating against irregular immigration is to make Estonia as unattractive as possible for irregular immigrants, illegal entry into Estonia as complicated as possible, discovering of illegal stay in Estonia as probable as possible and sending back to the country of origin as fast as possible. Achieving these aims is facilitated by the following measures: visa requirement, applying residence permit in a foreign representation, carrier's liability, checks performed at airports before allowing to the plane, concluding readmission agreements with transit countries, checking of authenticity of

documents performed at border crossing points, mobile units in areas between border inspection points and regular checks in the country.

1. INTRODUCTION: OBJECTIVES, METHODOLOGY AND DEFINITIONS

1.1 Objectives

This study is twelfth migration and asylum study prepared by the European Migration Network (hereinafter the EMN) Estonian contact point. Earlier studies are available at the web page of the EMN Estonian contact point at www.sisekaitse.ee/ery.

Present study is an overview prepared within the framework of the EMN of the existing approaches, mechanisms and measures implemented by Estonia to address irregular migration in Estonia. The specific aims of the study are to:

- Examine the overall political approaches towards irregular migration;
- Outline national policy and legal frameworks with regard to preventing, detecting and following up irregular migration;
- Provide a overview of practical approaches, mechanisms and measures developed;
- Explore the availability of data to estimate the irregular migrant population and the costs of implementing practical measures to tackle irregular migration;
- Explore the effects of EU policy and legislation on national policy,
- Draw conclusions about the effectiveness of the practical responses to irregular migration.

In particular, the study will identify effective practical measures undertaken to:

- Prevent the **arrival** of irregular migrants at national borders;
- Detect the **entry** of irregular migrants onto Estonia's territory;
- Monitor and ensure migrant compliance with the respective conditions of their visa and/or other permission to **stay** in the country in order to avoid overstay; and
- Address the (legal) situation of irregular migrants by providing **ways out** of irregularity.

The study will focus on the following groups of **third-country nationals** found to be illegally present:

- Persons who have entered illegally (e.g. via smuggling, crossing a border with false documents, or fraudulently stating the purpose of their stay);

- Persons who have overstayed their visa (or their maximum visa waiver period);
- Persons who have violated the conditions of to their visa, work permit or permit to stay (i.e. the conditions for granting the visa / permit are no longer satisfied);¹
- Persons who have not left the Member State territory upon a (final) negative decision on their application for international protection;
- Persons who have absconded during the application process for international protection and did not leave the Member State territory.

This EMN study will serve to inform policymakers and practitioners about the practical measures that have proved effective and proportionate in addressing the issue of irregular migration, both in relation to prevention and in providing pathways out of irregularity, including best practice. On the basis of studies presented by the national contact points the EMN compiles a summarised report. The summarised report will be compiled and published by the first half of 2012. The summarised report will contextualise national policies and practices within the overall EU policy framework, and explore the effects of EU policy and legislation on national policymaking and practice.

The study should also be seen in the context of the complementary EMN study on “*Visa Policy as Migration Channel in Estonia*”.

1.2 Methodology

This report is prepared according to the specifications established for the EMN 2011 study “*Practical Responses to Irregular Migration*” (MIGRAPOL Doc 231). Methodologically this study is the so called secondary study or desk research in which existing public information is used and no new studies or analyses have been carried out for preparing this overview. Existing public studies, legal acts and overviews were used for preparing this paper, additionally, discussions in the media have been observed.

The Police and Border Guard Board that is responsible for the prevention and control of irregular immigration, was also involved in the preparation of this paper. Furthermore, the

¹ This could thus include third-country nationals who are, for example, working whilst they are not allowed to work or who are irregularly employed (e.g. thus violating the conditions of their visa, permit to stay and/or work).

Police and Border Guard Board is an institution that collects data on the cases of irregular immigration.

The statistical data used in this paper are for the years 2005-2010. Statistics regarding the years 2005-2007 has been obtained from the Police and Border Guard Board and the statistics on the years 2008-2010 from the Eurostat database. Additionally, there are some data, e.g. on the number of irregular immigrants in the country that are estimated and are based on data/estimates presented in the media or other studies.

1.3 Definitions

Terms used in present study have been used in accordance with respective European Union (hereinafter the EU) *acquis*, e.g. the Schengen Borders Code, Return directive etc. Definitions of these terms may also be found in the EMN Glossary².

The term used throughout in this paper is “irregular migrant” when referring to a third-country national without a required permit authorising them to regularly stay in the EU member states. The term “irregular migrant” is preferred to other terms such as “illegal migrant” or “migrant without papers”, as specified in Resolution 1509 (2006) of the Council of Europe Parliamentary Assembly³.

² Available at <http://emn.sarenet.es/Downloads/prepareShowFiles.do?directoryID=117>.

³Resolution 1509 (2006), Human rights of irregular migrants, available online: <http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta06/eres1509.htm>

2. POLICY AND LEGAL FRAMEWORK IN RELATION TO IRREGULAR MIGRATION IN ESTONIA

In this section an overview of the national policy, institutional and legal frameworks in relation to irregular migration in Estonia is provided. The social and political context influencing national policy and legislation is identified.

2.1 National policy and legislation towards irregular migration

2.1.1 An overview of current national policy and approach towards irregular migration in Estonia in relation to a) pre-entry; b) entry; c) stay; d) removal

Since regaining independence in 1991, Estonian immigration policy has been conservative. This is first and foremost due to the fact that after the collapse of the Soviet Union a very large Russian community stayed in Estonia that now was considered as aliens on the basis of the Aliens Act. The share of other-language population still reaches up to ca 30% and there are 16% of citizens of other countries living in Estonia. Thus Estonia is an EU Member State with one of the largest immigrant communities. Although the government has focused mainly on integrating the existing immigrant communities, several political documents have also been developed for the so called new immigrants, including those concerning prevention and decreasing irregular immigration.

Estonia has developed several strategic documents that provide for prevention and control measures as well as goals against irregular immigration. Documents such as “The bases of the security policy of the Republic of Estonia“, “Main directions of the security policy until 2015” and “Estonian European Union policy 2007-2011“ provide for the general directions for the security and European Union policy. These have already been used as the basis for preparing more specific planning documents (development plans) that deal with the development of internal security.

The document approved by the Parliament (Riigikogu) on 12.05.2010 “The bases of the security policy of the Republic of Estonia”⁴ sets forth as the main direction for the activities of the country in the field of security policy the need to make guarding of the external border more efficient. According to this document, this will help to control irregular migration and

⁴ RT I 2010, 22, 110

cross-border crime, thereby ensuring security of Estonia as well as other EU Member States. Furthermore, making the control of the EU external border more efficient requires increasing technical guarding capacity, introduction of new control measures as well as making the work of authorities more effective.

The document approved by the Government of the Republic on 25.10.2007 “Estonian European Union Policy 2007-2011”⁵ sets forth that: “In preventing irregular immigration, it is important to enhance control on external borders of Europe, ensure effective implementation of readmission agreements, lay down sanctions for criminal cells organising illegal migration as well as operators creating demand by using illegal immigrant labour.” Continuing on that “Estonia is interested in developing a technically advanced and unified monitoring system for border surveillance at all external borders of the EU. In order to prevent irregular migration, it is important to efficiently implement an integrated border management of the external borders, including developing operational co-operation and cohesion between competent authorities. Estonia supports strengthening of the authorities of FRONTEX in managing joint operations and the use at the EU level of Rapid Border Intervention Teams (RABIT) and their resources in the prevention of massive irregular immigration.”

The Parliament approved with its decision dated 10.06.2008 the strategy document “Main directions of the security policy until 2015”⁶ that as a broad-based document joining the different sectors of the society, defines the common principles, vision, directions and long-term impact-based goals of Estonian security policy, which the public, non-profit and private sector must take as the basis and contribute to the achievement thereof. This document sets forth as one of the aims that possibilities for irregular immigration and illegal stay in Estonia will be reduced. For that purpose: 1) The measures for preventing, combating and discovering irregular immigration will be enhanced; 2) The accession of Estonia to the EU standardised Visa Information System (VIS) and the second-generation Schengen Information System (SISII) will be ensured; 3) The efficiency of the capacity for visual identification of marine surveillance system marks in heavy shipping traffic areas, and exchange of marine information with the competent agencies will be enhanced; 4) The land section of the external

⁵ Estonian European Union policy 2007-2011. Can be found at http://www.riigikantselei.ee/failid/ELPOL_2007_2011.pdf

⁶ RT I 2008, 25, 165

border, as well as the lake and river border will be developed; 5) The guarding of the land section of the external border with the help of technical surveillance systems and the use of modern technology for conducting border control will be increased.

In addition to the abovementioned general documents, prevention and control of irregular migration is also discussed in the development plans of the area of administration of the Ministry of the Interior (can be found at www.siseministerium.ee). The latter set forth goals for each year in order to make border control and guarding more efficient and prevent irregular migration.

2.1.2 Overview of legislative framework in relation to irregular migration

The most important legal act that regulates the bases for arrival in Estonia, temporary stay, residence and employment in Estonia of a citizen of a third country and the bases for the legal liability of an alien, is the **Aliens Act**. This act provides for the legal bases for stay and employment in the country.

Pursuant to section 43(1) of the Aliens Act *an alien is required to have a legal basis to arrive in Estonia and temporarily stay in Estonia. The legal basis can be:*

- 1) a visa issued by a competent authority of Estonia;*
- 2) a visa issued by a competent authority of a Member State of the Schengen Convention, if the conditions of the visa do not exclude the right to stay in Estonia;*
- 3) the right to stay in Estonia arising from an international agreement;*
- 4) the right to stay in Estonia arising from the decision of the Government of the Republic to waive the visa requirement;*
- 5) the right or obligation to stay in Estonia arising directly from the law, a court ruling or an administrative act;*
- 6) a residence permit issued by a competent authority of a Member State of the Schengen Convention and*
- 7) a diplomatic or service card issued by the Ministry of Foreign Affairs to the personnel of a diplomatic representation and consular institution of a foreign country and international organisation's representation accredited to Estonia, their family members and private staff.*

An alien is granted a temporary residence permit or right of residence for settling and living in Estonia. Pursuant to section 118 of the Aliens Act *a temporary residence permit may be granted to an alien:*

- 1) *for settling with a spouse;*
- 2) *for settling with a close relative;*
- 3) *for studying;*
- 4) *for employment;*
- 5) *for business;*
- 6) *if sufficient legal income exists;*
- 7) *on the basis of an international agreement or*
- 8) *in case of considerable public interest (for victims of human trafficking).*

The right of residence is granted to the family members of the citizens of the European Union and it is regulated in the **Citizen of European Union Act**. Section 2 of this law provides that *the legal basis for the residence in Estonia of a citizen of the European Union and his or her family members is the right of residence.*

The legal status of persons enjoying international protection, the basis for their temporary stay, residence and employment in Estonia are set forth in the **Granting Aliens International Protection Act**.

The conditions for entering the country are set forth in the **State Borders Act**. This act provides for the definition of the Estonian state border, establishing and marking of the location of the state border, border regime and liability for the violation of the border regime and illegal crossing of the state border. Pursuant to section 9 of the State Borders Act *persons and means of transport arriving in or departing from Estonia may cross the state border [...] through border checkpoints for international traffic during their opening hours. The permission to cross the external border is given by a police official to a person who has passed the border control, for whom no circumstances excluding the crossing of the external border exist and who meets the requirements for entry into Estonia, stay in Estonia and leaving from Estonia.* Pursuant to section 9¹, *persons, means of transport and goods which*

have arrived at a border checkpoint from a foreign state and which are not permitted to cross the state border, and persons who illegally cross the state border, are detained or seized and returned into a state from or through which they arrive in or are conveyed into Estonia pursuant to the procedure prescribed by law the European Union legal acts, international agreements and laws [...].

Apprehension and expulsion of a third country national who has no legal basis for entering the country and staying in the country is regulated with the **Obligation to Leave and Prohibition on Entry Act**. Section 2(1) of this law provides that *an alien is prohibited to stay in Estonia without a legal basis*. The legal bases for an alien’s stay in the country are set forth in the Aliens Act.

Table 1. Acts regulating the bases for entry into the country, stay in the country and expulsion.

Entry into the country	Aliens Act State Borders Act
Stay in the country	Aliens Act Granting Aliens International Protection Act Citizen of European Union Act
Leaving the country	Obligation to Leave and Prohibition on Entry Act

2.1.3 Penalties / sanctions to be imposed in cases of irregularity

The legal liability for illegal entry into the country, stay, employment and enabling of employment in the country is established in the Aliens Act, State Borders Act as well as Code of Criminal Procedure. Generally, these actions constitute actions punishable according to the misdemeanour procedure, except the cases set forth in the Code of Criminal Procedure. Penalties are foreseen for immigrants, employers as well as other concerned persons (e.g. provider of transport services, person providing housing etc.).

An irregular immigrant is punished in the following cases:

1. Pursuant to the misdemeanour procedure

- ✓ *Violation of the border regime is punishable by a fine of up to 200 fine units (SBA § 17¹).*
- ✓ *Illegal crossing of the state border or a temporary border line of the Republic of Estonia is punishable by a fine of up to 200 fine units or arrest (SBA § 17²).*
- ✓ *Illegal stay at the border is punishable by a fine of up to 200 fine units (SBA § 17⁴).*
- ✓ *Illegal stay in Estonia of an alien without a legal basis is punishable by a fine of up to 300 fine units or arrest (AA § 298).*
- ✓ *Illegal working in Estonia by an alien who has no legal basis for employment in Estonia is punishable by a fine of up to 300 fine units or arrest (AA § 303).*
- ✓ *Violation of the conditions for employment in Estonia, including working that is incompliant with the conditions established with the legal basis by an alien is punishable by a fine of up to 300 fine units or arrest (AA § 304).*

2. Pursuant to the criminal procedure

- ✓ *Illegal crossing of the state border or temporary border line of the Republic of Estonia, if committed:
1) in disregard of a stop signal or order given by a Border Guard official;
2) by a group;
3) by a means of transport in a location not intended for crossing
4) and a punishment for a misdemeanour has been imposed on the offender for the same act is punishable by a pecuniary punishment or up to one year of imprisonment.
The same act, if committed:
1) by using violence, or
2) by causing serious damage to health is punishable by 4 to 12 years imprisonment (PenC § 258).*
- ✓ *An alien who stays in Estonia without a legal basis at least twice within a year shall be punished by a pecuniary punishment or up to one year of imprisonment (PenC § 260).*

An employer is punished in the following cases:

1. Pursuant to the misdemeanour procedure

- ✓ *Enabling employment by the employer to an alien who has no legal basis for employment in Estonia is punishable by a fine of up to 300 fine units.
The same act, if committed by a legal person is punishable by a fine of up to 3,200 Euros. (AA § 300)*

- ✓ *Enabling violation by an alien of the conditions for employment in Estonia by the employer, including enabling employment of the alien in compliance with the conditions established with the legal basis is punishable by a fine of up to 300 fine units. The same act, if committed by a legal person is punishable by a fine of up to 3,200 Euros. (AA § 301)*
- ✓ *Payment of salary lower than the rate established for employment of an alien in Estonia or failure to pay salary by the employer is punishable by a fine of up to 300 fine units. The same act, if committed by a legal person is punishable by a fine of up to 3,200 Euros. (AA § 302)*

2. Pursuant to the criminal procedure

- ✓ *Enabling employment by the employer to an alien who has no legal basis for stay in Estonia, if the action did not include characteristics of enslaving and:

 - 1) it has been committed for at least second time during 12 consecutive months;
 - 2) three or more aliens were enabled employment;
 - 3) a minor alien was enabled employment;
 - 4) an alien victim of a crime related to human trafficking was enabled employment or
 - 5) this caused a hazard to the life or health of an alien or the alien was treated in a manner degrading to human dignity is punishable by a pecuniary punishment or imprisonment of up to three years.
 The same act, if committed by a legal person is punishable by a pecuniary punishment. (PenC § § 260¹)*

Other persons are punished in the following cases:

1. Pursuant to the misdemeanour procedure

- ✓ *Direct conveying of an alien who has no legal basis for stay in Estonia or transit zone to the Estonian state border, transit zone or temporary control border by a natural person providing transport services is punishable by a fine of up to 300 fine units. The same act, if committed by a legal person is punishable by a fine of up to 6,400 Euros per each conveyed person. (AA § 299)*
- ✓ *Conclusion of a rental agreement with an alien staying in Estonia illegally or providing housing for such alien, except for accommodating an alien in an establishment providing accommodation is punishable by a fine of up to 300 fine units. The same act, if committed by a legal person is punishable by a fine of up to 3,200 Euros. (AA § 305)*
- ✓ *Failure to perform the notification obligation is punishable by a fine of up to 300 fine units. The same act, if committed by a legal person is punishable by a fine of up to 3,200 Euros. (AA § 306)*

✓ *Failure to forward, non-compliant forwarding or forwarding incorrect data of passengers is punishable by a fine of up to 300 fine units. The same act, if committed by a legal person is punishable by a fine of up to 6,400 Euros. (SBA § 17³)*

2. Pursuant to the criminal procedure

✓ *Illegal transportation of an alien across the state border or temporary border line of the Republic of Estonia is punishable by a pecuniary punishment or up to one year of imprisonment. The same act, if committed:*
1) *by a group, or*
2) *by using violence, is punishable by a pecuniary punishment or up to 3 years imprisonment. If serious health damage is thereby caused, is punishable by 4 to 12 years imprisonment. (PenC § 259)*

2.1.4 How can a legal status be obtained? (For example, what are the regularisation possibilities?)

Estonian legal acts do not provide for special provisions or conditions for legalising citizens of third countries staying illegally in the country. The legal bases for an alien's stay in the country are set forth in the Aliens Act. Thus if an alien staying illegally in the country wants to legalise his or her status, they have to apply for a residence permit. The residence permit is granted to an alien only on the basis of specific grounds (e.g. employment, study, business, family reunification, sufficient income) and conditions.

Generally, an application for temporary residence permit must be submitted to Estonia's foreign representation that forwards it, after identifying the applicant or checking the identity of the applicant and taking biometric data, for processing to the Police and Border Guard Board. This is a part of the so called preliminary control that ensures that only the "welcomed" persons arrive in the country.

At the section 216(1) of the Aliens Act, the act sets forth a list of special cases in which a third country national has the right to submit an application for residence permit in the country directly to the Police and Border Guard Board.

§ 216. Submission of the application for temporary residence permit to the Police and Border Guard Board

(1) A temporary residence permit may be applied for from the Police and Border Guard Board by:

- 1) Estonians, their spouses and minor children;*
- 2) spouse and minor child of an Estonian citizen;*
- 3) children under one year descending from an alien living in Estonia on the basis of the residence permit;*
- 4) alien who is working within the framework of international co-operation programs with the participation of state or local municipality institution;*
- 5) alien who is staying in Estonia on the basis of temporary residence permit and is applying for new temporary residence permits;*
- 6) alien to whom the Police and Border Guard Board has granted such permission as an exception, provided that the alien has, due to good reason, the possibility to apply for residence permit at Estonian foreign representation;*
- 7) alien to whom the Minister of the Interior has granted a permission for that on the basis of a motivated proposal of a member of the Government of the Republic, due to the fact that his or her arrival in Estonia is necessary due to public interest;*
- 8) alien who is a citizen of a country with which an agreement has been concluded on visa free movement or for whom the visa requirement has been waived, as well as the spouse and minor child of such alien;*
- 9) citizen of the United States of America or Japan, his or her spouse and minor child;*
- 10) alien who settled to Estonia before 1 July 1990 and has not left to live in another country after the mentioned date and who has not been refused of the residence permit or extension of the residence permit, or whose residence permit has not been declared void;*
- 11) alien holding the long-term resident residence permit of a Member State of the European Union, except Estonia, who applies for the temporary residence permit for studies, employment or business;*
- 12) spouse of the alien mentioned in clause 11) of this section who holds a residence permit of an European Union Member State or minor child holding a residence permit of an European Union Member State, if the family has been established in the Member State that granted the alien the long-term resident residence permit;*
- 13) alien the long-term resident residence permit of whom has been declared void due to the reason that he or she has submitted false data or used fraud to obtain the long-term resident residence permit, within two months after the long-term resident residence permit was declared void and*
- 14) alien who is staying in Estonia legally if he or she is applying for the residence permit for studying on the basis of a nationally recognized curriculum in Master's or Doctoral studies;*
- 15) alien who is staying in Estonia legally if he or she is applying for the EU Blue Card;*
- 16) alien holding the EU Blue Card issued by another EU Member State, who is applying for the EU Blue Card in Estonia;*
- 17) spouse of alien holding the EU Blue Card issued by another EU Member State, who has the residence permit issued by another EU Member State as to the family member of an alien who holds the EU Blue Card, who is applying for the residence permit in Estonia to settle with the spouse;*
- 18) close relative alien holding the EU Blue Card issued by another EU Member State, who has the residence permit issued by another EU Member State as to the family member of an alien who holds the EU Blue Card, who is applying for the residence permit in Estonia to settle with a close relative.*

Persons staying illegally in the country whose visa or residence permit has expired, use mainly clause 6) of this section and the so called “local illegals” use mainly clause 10) in order to submit the application for residence permit in the country.

Concerning granting amnesty to persons staying illegally in the country, Estonia, unlike other EU Member States has neither foreseen nor practiced such possibility. So far no legalisation programs have been carried out in Estonia. However, a special provision exists, for persons of Estonian origin and persons who had resided in Estonia before 1990 and continued to reside here permanently, which can be considered a programme rather than a mechanism⁷. This programme can be seen as an “adjustment“ of resident populations to the new post-Soviet order, and the creation of “illegal“ residents that resulted from political and territorial changes⁸. Regularisations are processed individually and on a case-by-case basis and aim at securing legal status for long-term residents⁹.

2.1.5 What happens if a legal status cannot be obtained?

If an alien is refused of the residence permit, he or she is obliged to leave the country immediately. For that purpose a precept to leave is formalised for the person. If the person fails to voluntarily perform this decision and does not leave, the decision becomes subject to compulsory execution and the person is forced to leave the country. The Administrative Law Chamber of the Supreme Court has in its ruling No. 3-3-1-53-06, dated 16 October 2006 indicated that upon deciding on the temporary residence permit application, the perspective of expulsion of the person must be initially considered. If as a result of the considering, it appears that the expulsion of the person has no perspective and the person cannot be expelled from the country, his or her stay in Estonia must be legalised.¹⁰ Thus a situation where the state refuses to give legal basis for the person’s stay in the country, but is also unable to expulse him from the country, should be avoided.

⁷ Ruspini, P. Estonia. REGINE, Regularisations in Europe. Vienna, ICMPD

⁸ Baldwin-Edwards, M, Kraler, A., REGINE, Regularisations in Europe. Vienna, ICMPD, lk 40

⁹ Ruspini, P. Estonia. REGINE, Regularisations in Europe. Vienna, ICMPD

¹⁰ RT III 2006, 37, 317

2.1.6 Recent changes in Estonia's policy and legislation, over the last five years

In essence the legal acts regulating prevention and control of irregular immigration have remained the same during the years. Illegal arrival and stay in Estonia is not acceptable and if necessary, the state organises the alien's leaving from the country by way of deportation. During the past five years some changes have been made to the Estonian legal acts, including to those concerning irregular immigration – these have mainly been due to the fact that Estonia is part of the EU and is significantly influenced by the EU's common migration system. Estonia became a member of the EU on 1 May 2004. Since that time, Estonia has transposed all the most important directives regulating migration, including those concerning managing of irregular migration.

Another important step in the field of migration policy was the joining of the common Schengen visa area on 21 December 2007 (partially on 30.03.2008). This brought along significant changes for the authorities involved in migration and asylum issues as well as legal acts and procedures. For example, Estonia as a full member of the Schengen area started to issue Schengen visas on the basis of which a person has the right to enter all Schengen Member States and stay there. Furthermore, Estonia brought its external border into compliance with the Schengen external border criteria and terms such as "external border" and "internal border" were created. With the disappearance of control from the internal border, a need arose to apply other compensation measures for discovering and controlling irregular migration.

The most important changes in the legal acts related to irregular immigration during the past five years have been related to transposition into Estonian legislation of Directive 2008/115/EC (on common standards and procedures in Member States for returning illegally staying third-country nationals) and Directive 2009/52/EC (providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals). The first directive was transposed with the Obligation to Leave and Prohibition on Entry Act and it entered into force on 24 December 2010. The second Directive was transposed with the Aliens Act and it entered into force on 20 July 2011. Additionally, Estonia has also transposed the following directives concerning irregular migration 2001/40/EC, 2003/110/EC,

2001/51/EC, 2004/81/EC, 2004/82/EC etc. Furthermore the Schengen border rules are taken as the basis for cross-border movement of persons¹¹.

Other important steps for controlling irregular immigration were made already before joining the EU. For example, the amendments to the Obligation to Leave and Prohibition on Entry Act that entered into force on 1 March 2003 gave the Citizenship and Migration Board (now Police and Border Guard Board) the right to apprehend aliens staying illegally in Estonia and to organise their leaving. For that purpose a new closed-regime and 24-hour guarded structural unit – expulsion centre was established. The centre started its work on 10 March 2003. Additionally, the Citizenship and Migration Board created migration bureaus all over Estonia (to the North, South, East and West regional department) in 2004 and employed migration officials (inspectors) whose main task is to carry out control and supervisory proceedings. Thus periodical checks on the existence of the bases for stay in the country of aliens started periodically and departure of aliens from the country was ensured.

2.2 Institutional framework

In Estonia the **Ministry of the Interior** is responsible for issues related to internal security. Pursuant to section 66 of the Government of the Republic Act¹², it is with the area of governance of the Ministry of the Interior to ensure internal security of the country and protect public order, guard and protect the state border and ensure border regime, crisis regulation, organising issues related to citizenship and migration [...] and preparing drafts of the respective legal acts. The statutes of the Ministry of the Interior¹³ specify the competence of the Ministry according to which it is with the area of competence of the Ministry of the Interior to analyse, plan and coordinate the realisation of the prevention and control of irregular immigration and illegal employment.

The migration, both irregular and regular, policy of the country as well as the border policy of the country is realised by the **Police and Border Guard Board** that is in the area of

¹¹ Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 105, 13.4.2006, p. 1–32

¹² RT I, 15.03.2011, 23

¹³ RT I 2004, 42, 291

governance of the Ministry of the Interior. Before the year 2010, the aforementioned issues were divided between the boards of the respective areas – i.e. the border issues were the responsibility of the Board of Border Guard and the Citizenship and Migration Board took care of the migration issues. The border guard department was formed in the new Police and Border Guard Board on the basis of the former Board of Border Guard, the main task of which is, among other things, to organise guarding of the state border, organise border management issues, collect and analyse the necessary information and organise processing of international protection at the border. The task of the citizenship and migration department formed on the basis of the former Citizenship and Migration Board is, among other things, to organise and co-ordinate migration supervision and organising issues related to readmission of persons. Thus one of the tasks of the Police and Border Guard Board is to deal with the arrival in Estonia of unwanted aliens and preventing and controlling their stay in Estonia as well their expulsion.

An important task in preventing irregular migration is performed by the **consular institutions** that are issuing Estonian visas in co-operation with the Police and Border Guard Board and the Security Police Board¹⁴. Estonian embassies and consulates are located in more than 60 countries. In designing the visa policy, the Ministry of the Interior is co-operating with the **Ministry of Foreign Affairs**. The latter is involved in Estonian visa policy, as far as is allowed with the competence of the Ministry, and is participating in the planning and realisation of the relevant strategy.

Among the non-profit organisations to be highlighted in this context is the **Estonian Red Cross** whose activities involve carrying out monitoring on expulsion of the citizens of third countries staying illegally in the Republic of Estonia according to Council Directive 2008/115/EC. The Red Cross is performing this task since the year 2011, using the funds of the European Return Fund. Additionally, the **International Organisation for Migration (IOM) Tallinn office** is implementing the VARRE program since 2010. This program is dealing with assisting voluntary return of aliens staying illegally in the country and enabling their reintegration. This project is also funded from the funds of the European Return Fund.

¹⁴ Minister of the Regulation No 29 Interior dated 14.07.2010 “Appointing competent authorities for approving granting of visas”. RT I 2010, 61, 440

3. PRACTICAL MEASURES TO CONTROL IRREGULAR MIGRATION

Control and prevention of irregular immigration means balanced preliminary control in order to prevent arrival in Estonia of an undesired alien, migration supervision in order to discover aliens staying and working illegally in Estonia, and a functioning system for organising leaving from Estonia¹⁵. For that purpose various measures have been taken into use. For example, visa requirements, applying residence permit in a foreign country, carrier's liability, control at airports before a person is allowed to the plane, conclusion of readmission agreements with transit countries, mobile units in areas between the border crossing points and regular checks in the country. Carrying out of these measures is based on different risk assessments (e.g. risk analyses of Frontex, PBGB) and information obtained from different databases.

This chapter is divided into three, dealing with the most important measures for preventing irregular migration before entry into the country, at border and in the country. The beginning of each section sets forth also other tools that facilitate prevention and discovery of irregular migration, but which are not discussed in detail. The fourth part of this chapter gives an overview of what happens to persons who are unable to legalise their status.

3.1 Pre-Entry: practical measures undertaken to address irregular migration before the migrant arrives in Estonia.

Such measures might include: information campaigns & awareness raising in third countries to discourage irregular migration; controls and checks prior to arrival at national border (carrier sanctions, visa decisions); training activities of border staff and others responsible for carrying out practical measures; development of equipment support; development of the network of Immigration Liaison Officers (ILOs); identification of irregular migration routes into the (Member) States (e.g. through participation in the ICMPD's 'Mediterranean Transit Migration' interactive map project); examination of willingness to return as part of visa procedure.

One of the most important measures of preventive migration control is establishing the planned aim of staying in the country of a third country national before his or her entry into the country. The actual aim can be established through checks at the Estonian foreign representations before issuing a visa as well as at the state border before allowing the person

¹⁵ Security policy 2011. Summary of performance of "Main directions of the Estonian security policy until the year 2015". Ministry of the Interior, Tallinn 2011, pp. 34

to the country. No visa is granted to aliens in the case of whom suspicions exist that the actual aim of his or her entry to the country does not correspond to the stated aim. The same purpose is also served by the general obligation to apply for the residence permit at Estonian foreign representations before entering the country. Irregular immigration can be prevented also with the help of applying the carrier's liability. Below, the following measures are discussed in more detail: 1) visa obligation, 2) application for the residence permit at foreign representations, 3) carrier's liability and 4) preliminary control of passengers.

1. Visa requirement

The visa requirement is one of the most efficient measures for preventing arrival in the country of unwanted aliens, because the data of an alien is checked while he or she is staying in the country of origin. Pursuant section 81 of the Aliens Act granting of the visa or refusal to grant the visa is decided by the consular official at the foreign representation of Estonia. The consular official is obliged to co-ordinate the issue of visa with the Police and Border Guard Board and the Security Police Board through the visa register.

The most important personal data regarding the visa applicant (since 11 October 2011, Estonia is fingerprinting the visa applicants), the purpose of his or her trip and the related persons in the country of destination are entered to the visa register¹⁶. Thanks to that it is possible to carry out efficient preliminary control of aliens arriving in the country and their sponsors. With the help of the visa register, it is also possible to carry out follow-up control, or check if the alien who has arrived in the country with a visa is also leaving in due time. Although the follow-up control gives information regarding the events afterwards, it is an input for planning future activities and making decisions and also gives important information regarding the persons staying illegally in the country. In 2010, co-operation with Estonian foreign representations and EU neighbouring countries was intensified in relation to preliminary and follow-up control¹⁷.

In order to combat irregular immigration, the Police and Border Guard Board sends, if necessary, within the framework of professional assistance, its officials to the major

¹⁶ Statutes on maintaining the visa registry, § 8, RT I 2010, 45, 271

¹⁷ Security policy 2011. Summary of performance of "Main directions of the Estonian security policy until the year 2015. Ministry of the Interior. Tallinn 2011, p 30

embassies in order to provide consultations for issuing visas and perform the II level checks of documents.

Estonian foreign representations receive ca 100,000 visa applications per year. For example, in 2010, Estonian foreign representations received in total 120,804 visa applications, in 2009 95,571 and in 2008 101,788 visa applications. In 2010 visa was refused in 2,964 cases or in 2.5% of the cases. The percentage of refusing the visas was in the same range also in 2008 and 2009, 2.1 in both years.

A more thorough overview of the visa processing is given in the EMN study “Visa policy as migration channel in Estonia”.

2. Application for residence permits at foreign representations

Regulating the entry of immigrants is a tool for preventing misuse of entry channels and thereby preventing the increase of irregular immigration. For that purpose Estonia has established a condition for the citizens of third countries who wish to settle in Estonia – to apply for the residence permit at their country of origin. Similarly to the visa proceedings, this gives the state the possibility to check previously if the state wishes to allow this person to enter its territory. Section 215 of the Aliens Act provides that an alien shall submit the application for the temporary residence permit to an Estonian foreign representation that forwards it, after establishing the identity of the applicant or identifying the applicant and taking his or her biometric data, if required, to the Police and Border Guard Board for processing. Thus the Police and Border Guard Board checks already before the arrival of the alien in the country his or her compliance with the conditions established for granting the residence permits and eliminates the possibility that an “unwanted” person arrives in Estonia.

The law foresees a number of exceptions for persons who may submit the application for residence permit in the country directly to the Police and Border Guard Board. The list of special cases is set forth in the section 216(1) of the Aliens Act (see page 18).

3. Carrier's liability

One of the solutions for preventing illegal entry of aliens to Estonia, is the obligation imposed on the drivers of the means of transport to check the right of the carried persons to enter to Estonia. For that purpose, the Aliens Act provides for carrier's liability. This means that a person that transports or whose representative transports an alien to the Estonian state border, temporary border line or the transit zone, is obliged to check before accepting the alien to the means of transport that the alien accepted to the means of transport has the legal basis required for entering to Estonia and staying in the transit zone and the document foreseen for border crossing. If the carrier fails to check the legal basis for entry into the country or the document of an alien, the carrier is obliged to take the alien sent back from the border to the same place where the carrier accepted the alien to the means of transport or to the country of location of the alien. Additionally, the carrier can be requested payment of the costs of compulsory expulsion and detention of the alien in the amount of up to 32, 000 Euros.

4. Preliminary checking of passengers

The most important part in applying the compensation measures before the arrival in the country of the person is the preliminary checking of the electronic lists (passengers), compiling risk analyses and cross-use of databases. In principal, these activities can be used for planning activities so that the officials would be in the right place at the right time, by using the optimum resource for that.

Forwarding the data of air passengers gives the border guard the possibility to carry out checks of the passengers upon crossing the external borders on the basis of the electronic lists before the passengers arrive at the border. Pursuant to section § 9³ of the State Borders Act, a legal entity or a natural person providing public transport service that is conveying passengers to Estonia by air, across the external border, is obliged to forward the following data regarding the passengers carried by them to the police:

- 1) name and number of the travel document;
- 2) citizenship;
- 3) name and surname (names);
- 4) personal identification code, or if not available, date of birth;
- 5) border inspection point for entry to Estonia and leaving Estonia;

- 6) flight number;
- 7) date of departure and arrival of the aircraft (date and time);
- 8) total number of passengers;
- 9) place of boarding.

The air carrier forwards the data of the passengers promptly after the end of registration of the passengers. The police have the right to process the forwarded data for the purposes of combating against irregular immigration and making the border control more efficient¹⁸.

Such preliminary control helps preventing crossing of border by passengers who are potentially hazardous for the safety of the country and applying measures for stopping a person on his or her way to Estonia or to another EU Member State through Estonia, who has no grounds for staying in the EU. Information obtained on the passengers is used, if necessary, for checking the suspicious persons additionally at border control.

3.2 Entry: practical measures undertaken to identify and detect irregular migrants at the national border

Such measures might include: border controls and use of technology & surveillance (e.g. checks to detect passport checking & biometrics); intelligence gathering; risk assessment (e.g. through cooperation with Frontex' Risk Analysis Unit (RAU) for border guards' training); identification of irregular entry of specific categories of migrants at the border; procedures used to deny entry to someone who has been rejected by another country; identification and registration of fraudulent documents at the border; strengthening police cooperation (readmission agreements); cooperation with Frontex.

At the external border, Estonia has to guard 339 km of land border and 767 km of sea border. In total 49 border inspection points are open for international traffic at the external border¹⁹, among them, 29 are located at the sea and border water bodies ports, 7 at airports, 8 at sections of roads, 3 in railway stations and there are 2 border inspection points foreseen only for the citizens of the Republic of Estonia and the Russian Federation. Pursuant to section 9 of the State Borders Act, persons arriving in Estonia or leaving Estonia [...] may cross the external border [...] at border inspection points open for international traffic during their opening hours.

¹⁸ State Borders Act § 9³, RT I 1994, 54, 902

¹⁹ Border inspection points open for international traffic, RT I, 21.06.2011, 22

In 2010, ca 6.6 million persons crossed the border. In total 76% of the border crossings took place via land at the Estonia-Russia border. In total 19% of the total number of border crossers crossed the external border via the sea border and ca 5% via the air border. The majority of the persons crossing the land border are citizens of either Estonia or Russia who go to the other side of the border to e.g. work, study, take care of the elderly or meet business partners.

In order to enter Estonia illegally, the aliens try to use falsified documents at the border inspection points or cross the border at areas between the border crossing points. To discover such activity the following measures play an important role: 1) establishing the identity of the person and his or her bases for entering the country at the border inspection point, 2) efficient guarding of the external border.

1. Border control – identifying the person and establishing the basis for his or her entry to the country

Upon checking the border crossing at the border inspection point, the police checks persons and identifies if permission can be granted for the person to cross the border. Checking of the persons includes checking the documents, bases for stay, luggage and means of transport of the person. A citizen of a third country crossing the state border must have a valid travel document of a foreign country or an international organisation, an alien's travel document or return permit issued by the Republic of Estonia to which visa data have been entered, or the person submits in addition to the travel document a document that certifies the residence permit. An alien who is younger than 15 years is not required to have a travel document if his or her name, date of birth, visa or data of the residence permit or right of residence, if such requirement arises from a law, EU legal act or international agreement, and photo (for children over 7 years) has been entered to the valid travel document of an accompanying person. Additionally, authenticity, validity and state recognition of the travel document is checked as well as the fact if the financial situation of the person enables him or her to stay in the country legally, including existence of accommodation, financial means and insurance.

The police official has the right to refuse entry to the country if:

- an alien is violating the border regime or customs rules;
- an alien refuses to submit data regarding himself/herself and his/her trip at the border crossing point;

- an alien has no sufficient financial means to cover the costs of staying in Estonia and leaving Estonia and there is no receiving person who would cover the costs;
- an alien has no required health insurance policy;
- in other cases foreseen with Estonian legal acts.

Persons crossing the border illegally for the purposes of irregular immigration are mostly using falsified travel documents, visas and residence permits for that purpose. In order to check the authenticity of the documents the following devices are used at the border: magnifying glasses, UV lamps, miniature microscopes, light optics (coaxial) cables, tweezers, lenses for decoding the invisible security elements (IPIs) of photos, combined devices for the I level check of documents (PPN, document authenticity control devices (retro-check), Ultramag), combined devices for the II and III level check of documents (CSS 05, VSC 4XC, VSC 2000, VSC 5000), microscopes (only for II and III level checks), document readers, fingerprint scanners, electrostatic detectors (only for III level checks) and border control stamps²⁰. These devices give the border guard a better opportunity to establish the identity of fugitives and preventing irregular immigration.

In 2010, 6 cases of using falsified documents for the purposes of irregular immigration were discovered; during the first half year of 2011 the number had increased to 12. In 2008 in total 29 falsified documents were discovered at the external border²¹.

Another trend on the external border according to the data of the Police and Border Guard Board, in 2010, was the misuse of the Schengen visas. In total 33 cases of misuse of the Schengen visas were discovered, which is more than twice the number of the year 2009 (2009-15). Misuse of visas is seen as an increasing trend. This is further confirmed by the data of the first half of the year 2011, according to which 18 cases of misuse of visas took place during that period.

If increase in the pressure of irregular immigration at the external border is detected, co-operation is improved with the border representatives of Russia – e.g. joint investigation of documents are carried out with the help of Estonian experts and databases. If as a result of

²⁰ Multiannual External Borders Fund program 2007-2011. Can be found at www.siseministeerium.ee

²¹ Response No 6-2/2009-56 of the Board of Border Guard to Estonian Migration Foundation.

joint investigations falsification of a document is discovered in the second level check, the border guard officials of the Russian Federation will not allow the person to Estonia. As on September 2011, such joint investigations have been carried out 8 times²².

Additionally, discovering irregular immigrants is facilitated by the explanations given at the border control as to the aim of the trip (even if the person has legal grounds for entering the country). Pursuant to section 11(4) of the State Borders Act, all persons crossing the external border are obliged to give explanations regarding the person and the aim of the trip by the request of the police official. Thorough interviewing of the persons crossing the border is used to establish if the aim of the trip set forth in the visa application corresponds to the actual aim of the trip. Very often the real aim of the so called “fake tourists” is to go to a Central European country where their respective community is already there²³.

Persons, means of transport and goods which have arrived at a border checkpoint from a foreign state and which are not permitted to cross the state border, and persons who illegally cross the state border, are detained or seized and returned into a state from or through which they arrive in or are conveyed into Estonia pursuant to the procedure prescribed by the EU legislation, international agreements and the law²⁴. Before that the police official will perform fingerprinting of an alien who is at least 14 years old caught at illegal border crossing pursuant to Council Regulation No. 2725/2000 and forwards the data collected at fingerprinting for comparison to the central unit of the Eurodac system pursuant to the Council Regulation No. 407/2002²⁵.

2. Guarding of the external border

Immigrants entering Estonia illegally are using mainly the area between the border crossing points. For example, in 2009, 60% of the persons apprehended at irregular immigration had crossed the state border in the area between the border crossing points²⁶. Due to the fact that most of the immigrants who have illegally entered the country wish to move on from Estonia

²² Korsten, T. “Estonia is increasingly attractive for immigrants”. Põhjarannik, 8.09.2011. Can be found at <http://pr.pohjarannik.ee/?p=2115>

²³ Korsten, T. “Estonia is increasingly attractive for immigrants”. Põhjarannik, 8.09.2011. Can be found at <http://pr.pohjarannik.ee/?p=2115>

²⁴ State Borders Act, RT I, 09.12.2010, 3, § 9¹ (1)

²⁵ Ibid, § 9¹ (1¹)

²⁶ Security policy 2010. Summary of performance of “Main directions of the Estonian security policy until the year 2015. Ministry of the Interior. Tallinn 2010, p 30

to other Schengen countries, Estonia has the obligation to ensure safety of the Schengen external border and thereby prevent illegal border crossings.

Pursuant to the State Borders Act § 9⁴ guarding of the state border is the patrol and observation activity of the police on land, at sea and at border bodies of water with the aim of preventing, establishing and controlling border crossing at places and at times not established for that as well as cross-border crime, including illegal delivery of persons and goods from non-Community countries to Estonia and from Estonia to non-Community countries through territorial and inner sea and border bodies of water, and checking the legal bases for stay in the country. Upon guarding the state border and ensuring the border regime, the police may use the relevant technical, including electronic devices for detecting illegal border crossing, ensuring safety at the border crossing points and preventing cross-border crime²⁷. Upon choosing the border control and border management measures, risk analysis, data collection and management, risk assessment and exchange of information with other state authorities and Schengen countries are used. The risk assessment is used as the basis for establishing the necessary reaction capacity and the resources are placed to the extent of the entire border in the way that it would be possible to detect and discover illegal border crossings at any time²⁸.

The EU external border is guarded at land on the basis of cordons with patrols and monitoring systems, using radars and other observational equipment. The land border part of the external border is covered with electronic and technical surveillance to the extent of ca 50%. In order to observe the sea area of the external border and to discover objects, a sea surveillance system consisting of 20 radars is used. The surveillance system covers at least 90% of the territorial sea under normal conditions. The border sections not covered with technical surveillance are subject to patrol and monitoring activities.²⁹

Patrolling is performed at the land border on foot or by vehicles. If necessary, service dogs are used in the patrol. The equipment includes different communication and observation devices. Floating and flying devices of the border guard are used at the sea border. At the sea areas, the main surveillance method includes the 24-hour technical and visual observation that is carried out at the maritime observation centres.

²⁷ State Borders Act, RT I, 09.12.2010, 3, § 9⁵ (1)

²⁸ Multiannual program of the External Border Fund 2007-2013. Can be found at www.siseministeerium.ee

²⁹ Annex 1. Analysis of the current situation of the internal security area, 2010

The Border Guard Department readiness unit has been formed as a structural unit of the Police and Border Guard Board. The main task of the readiness unit is to participate in the improved guarding of the external border, preventing the possible mass illegal border crossing, deportation of the expelled persons and accompanying of the detained persons in the country, applying prompt measures for controlling risks that are hazardous for public order and participating in joint operations with the co-operation partners. The readiness units are used intensively, e.g. in the South Eastern border points for Estonia-Latvia border and in the North Eastern border points in the region of the city of Narva and the Narva river in order to manage the increased risks related to the smuggling in the area between the border crossing points and to prevent irregular immigration³⁰.

Additionally, co-operation with the municipality governments and residents of the border area for discovering persons who have illegally crossed the state border at the area between the border inspection points can be set forth as one practical solution. The Aliens Act gives the local municipality units the obligation to notify the Police and Border Guard Board of aliens staying or working without a legal basis at the territory of the local municipality unit³¹.

3.3 Stay: practical measures undertaken to control irregular migration in Estonia's territory

Such measures might include: apprehensions of irregular migrants and control on the street; identification of irregular migrants; measures to prevent irregular work, including sanctions against employers employing illegally-staying migrants and inspections at workplaces; marriages of convenience and false paternity declarations; indirect methods of detecting and monitoring irregular migrants through public reporting and access systems (for example, through migrants', access to social security, health care systems, accommodation and education).

The most efficient measure for discovering third country nationals staying illegally in the country are the regular checks of the police in public places, establishments providing accommodation and places of employment. Additionally, persons/establishments related to aliens have the legal obligation to notify the police of the circumstances that may make the alien's stay in the country illegal. Thus, this section discusses thoroughly the following successful measures used for discovering irregular immigration: 1) checks of the migration

³⁰ Annex 1. Analysis of the current situation of the internal security area, 2009.

³¹ Aliens Act, § 294, RT I 2010, 3, 4

supervision officials, 2) registration of the guests of establishments providing accommodation, 3) notification obligation.

1. Checks of the migration supervision officials

In 2004 establishing of the efficient migration supervision system was started within the framework of prevention of irregular immigration and combating against it. As a result migration supervision officials are working in all four prefectures of the Police and Border Guard Board (North, South, East, West). With the establishment of the positions of migration supervision officials, supervision over the legal stay and employment of aliens in the country was significantly improved. The workplaces of the supervisory officials are mobile, due to which they have the possibility to work outside their offices.

The migration supervision officials check the existence of the legal basis for the aliens' stay and employment in Estonia, apprehend persons who are staying illegally in the country and are organising their leaving etc. During the control raids, public places (restaurants, bus stations, recreational establishments), establishments providing accommodation and places that may be related to immigrants staying illegally in the country or use of illegal labour force are checked. Within the framework of processing the residence permit, house visits are carried out with the aim of discovering the misuse of the right for family reunification (marriage of convenience). Checks are carried out on the basis of the risk analysis carried out previously at the Board as well as data and information gathered during previous years.

As a result of employment of the migration supervision officials, the number of persons discovered staying in the country illegally as well as the cases of illegal employment discovered increased. While in 2004, in total 1,449 persons staying illegally in the country were discovered, then in 2005, this number was already 2,618. Furthermore, during the period, the number of illegal employments discovered increased from 32 to 428.³² However, the current trend shows that illegal employment is rather decreasing – in 2007 there were 191 cases and in 2010 94 cases. This is definitely influenced by the fact that employers have become more informed as well as the sanctions foreseen (illegal stay, employment, enabling illegal employment or housing in Estonia is punishable according to the misdemeanour

³² Return Fund 2008-2013, Ministry of the Interior. Can be found at http://www.siseministeerium.ee/public/RF_MAP_EST_final.pdf

procedure).

2. Registration of guests in establishments providing accommodation

An important compensation measure for eliminating the border control at the internal borders between the Schengen Member States is registration of guests at establishments providing accommodation. Checking the establishments providing accommodation is a police activity covering the territory and border areas of the entire country, the aim of which is to discover irregular immigration and through preserving registration sheets, facilitate investigation and procedural activities³³. In 2010, in total 265 establishments providing accommodation were checked and in 41 cases violations were discovered in completing and preserving guest registration cards, which brought along misdemeanour procedures³⁴.

Pursuant to section 288 of the Aliens Act, an establishment providing accommodation is obliged to present a visitor's card with the data of the accommodated alien to an authority that requested the information by the request of the Police and Border Guard Board or Security Police Board. Failure to perform this obligation is punishable through the misdemeanour procedure with a fine of up to 200 fine units³⁵.

At the same time, an establishment providing accommodation is not obliged to check the legal basis of the alien's stay in Estonia or the correctness of the presented data.

3. Notification obligation

The Aliens Act establishes for the alien, employer, educational institution, sponsor as well as the person providing housing for the alien, the obligation to notify the Police and Border Guard Board of the circumstances that may cause expiry of the legal basis for the alien's stay in the country, or of his or her illegal status. This allows dealing efficiently with monitoring of such persons and if necessary, their apprehension and expulsion.

An alien is obliged to notify the Police and Border Guard Board of the following circumstances:

³³ Breivel, J. Schengen compensation measures: application and efficiency by the example of restoration of border control. Master's thesis, Estonian Academy of Security Sciences, Tallinn 2011, p 25

³⁴ Security policy 2011. Summary of performance of "Main directions of the Estonian security policy until the year 2015". Ministry of the Interior. Tallinn 2011, p 35

³⁵ Tourism Act, § 31³, RT I 2000, 95, 607 RT I 2000, 95, 607

- 1) change of marital or family status if such change has been registered in a foreign state;
- 2) punishment under criminal procedure if the punishment was imposed on the alien by a law enforcement authority of a foreign state;
- 3) any change in the conditions of employment determined by the residence permit for employment and termination of the contract if the alien has been issued a residence permit for employment;
- 4) expiry or termination of an insurance contract covering any costs related to the medical treatment as a result of illness or injury of the alien and
- 5) entering the armed forces of a foreign country for military service, starting active service or contractual service in the armed forces of a foreign state, going to reserve or retiring.³⁶ The alien is obliged to notify of the circumstances set forth in clauses 1)-3) within two weeks, of the circumstances set forth in clauses 4)-5) immediately.³⁷

The employer is obliged to notify the Police and Border Guard Board of the commencing of work, failure to commence work, change in the conditions for working established in the temporary residence permit for employment, premature termination of the contract underlying the employment relationship, including hosting contract and actual termination of employment of the alien regarding the alien who holds a residence permit for employment or whose short-term employment has been registered.³⁸ The employer is required to notify the Police and Border Guard Board of the mentioned circumstances within one week, except in case of a hosting agreement and of the termination of short-term employment, which must be notified immediately.

An educational institution is obliged to notify the Police and Border Guard Board of failure to commence studies, exmatriculation from the educational institution, end or interruption of studies or conclusion of practical training agreement with the alien or of ending the practical training agreement concluding with regard to the alien who has been granted a temporary residence permit for studying.³⁹ The listed circumstances must be notified immediately.

³⁶ Aliens Act, § 280

³⁷ Regulation No. 25 of the Minister of the Interior dated 14.07.2010 "Procedure for performing the notification obligation established in the Aliens Act", RT I 2010, 61, 437

³⁸ Aliens Act, § 285

³⁹ Aliens Act, § 287

The sponsor and the person providing housing for an alien are also obliged to check the legality of the alien's stay in Estonia.⁴⁰ The sponsor is obliged to receive the alien in Estonia, ensure his or her accommodation and cover the costs of the alien's stay in Estonia and leaving from Estonia.

3.4 Pathways out of irregularity

Pursuant to section 2(1) of the Obligation to Leave and Prohibition on Entry Act aliens are prohibited to stay in Estonia without a legal basis. Thus each person staying in the country without a legal basis is obliged to leave the country immediately. For that purpose the Police and Border Guard Board will prepare a precept obliging an alien staying in Estonia without a basis for stay to leave Estonia or make his or her stay in Estonia legal. If an alien fails to perform the precept to leave voluntarily during 7 to 30 days, the alien will be apprehended and forced to leave the country.

To facilitate voluntary return⁴¹, IOM Estonia is providing, since the year 2010 within the framework of the VARRE⁴² project, asylum applicants and other migrants staying illegally in the country an opportunity to voluntarily return to their country of origin. Within the framework of this project the trip of the person obliged to leave is organised, all the necessary documents are obtained and the re-integration of the returnee is taken care of. The project is co-financed through the European Return Fund. Since the beginning of the project until 31 June 2011, the return of in total 12 persons has been supported (4 to Russia, 2 to Azerbaijan, 2 to Ukraine, 1 to Georgia, 1 to Belarus, 1 to Armenia, 1 to Egypt).

The person to be expelled is sent to the country from which he or she came to Estonia, to the country of citizenship, country of origin or with the permission of the third country, to a third country. An alien cannot be expelled to a country, where the expulsion of the alien may bring along consequences mentioned in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 3 of the UN Convention Against Torture and

⁴⁰ Aliens Act, § 289 and § 291

⁴¹ Additional information regarding the assisted return programs can be found in the EMN 2009 study "Assisted return and re-integration to third countries – European Union Programs and strategies". Can be found at www.sisekaitse.ee/erv

⁴² Further information regarding the VARRE program at <http://www.iom.ee/varre>

Other Cruel, Inhuman or Degrading Treatment or Punishment or application of the death penalty. Furthermore, the expulsion must be in accordance with Articles 32 and 33 of the UN Convention Relating to the Status of Refugees (together with the protocol relating to the status of refugees dated 31 January 1967).

If the expulsion cannot be completed within 48 hours from the apprehension of the alien, he or she will be placed, with the permission of an administrative judge⁴³ to an expulsion centre until his or her expulsion, but not for longer than two months. This term may be extended with the permission of the court by two months at a time, in total for up to 18 months, after which the person to be expelled must be released from the expulsion centre. Release from the expulsion centre does not give the alien a legal basis for staying in Estonia and his or her stay in Estonia is illegal until he becomes the holder of a legal basis for stay in Estonia set forth in the Aliens Act, Granting Aliens International Protection Acts or Citizen of European Union Act.⁴⁴

Placement in the expulsion centre should ensure that, if the necessary documents exists, the person could be expelled from the country immediately. In an average, an expelled person is staying at the expulsion centre a little over 3 months. For example, during the period 01.10.2009-31.10.2010, the average time of apprehension, according to the data of the Police and Border Guard Board was 96 days (in 2007 for example 110 days). The maximum period of apprehension was 391 days.⁴⁵ Most of the expelled persons can be removed much faster than the mentioned period. In case of some of the expelled persons, their fast release and expulsion from the country is hindered due to various circumstances (e.g. unwillingness to cooperate with the country in acquiring travel documents, court disputes etc). The speed and efficiency of the expulsion depends generally on the communication with the foreign representation of the accepting country and the will of the latter to contribute to the return of its citizens to the country of citizenship. Furthermore, expulsion can be complicated also due to absence of the readmission agreement or failure to perform it by the other country.

⁴³ The administrative court decides first and foremost if detention at the expulsion centre is a proportional coercive measure or would other supervisory measures or penalty payment suffice. Additionally the perspective of the expulsion should be assessed.

⁴⁴ Section 24(5) of the Obligation to Leave and Prohibition on Entry Act

⁴⁵ Control visit of the Police and Border Guard Board to the expulsion centre. Office of the Chancellor of Justice. Can be found at

http://www.oiguskantsler.ee/public/resources/editor/File/OMBUDSMANI_MENETLUSED/Kontrollkaigud/2010/Kontrollk_igu_kokkuv_te_PPA_v_ljasaatmiskeskus.pdf

Expulsion is not applied if expulsion has become impossible. Furthermore, the court may suspend the compulsory execution of the precept to leave. If expulsion has become impossible, the Supreme Court has found⁴⁶ that the logical result of this would be making a precept to legalise or settling an application for temporary residence permit in favour of the person.

The Obligation to Leave and Prohibition on Entry Act foresees the possibility for the precept to legalise. The precept to legalise is issued for persons who are of Estonian nationality or who have settled in Estonia before 1 July 1990 and have not left to live in another country and whose continuing stay in Estonia is not detrimental to the interests of Estonia. The mentioned precept obliges the person to apply for the residence permit to legalise his or her stay in Estonia. Thus the country gives these persons an opportunity to legalise their status and does not create a basis for their immediate expulsion from the country. Additionally, the Police and Border Guard Board may oblige the alien to observe the supervisory measures⁴⁷ and pay penalty payment in order to ensure performance of the precept.

⁴⁶ Ruling of the Supreme Court dated 9 May 2006 in administrative matter No. 3-3-1-6-06, RT III 2006, 19, 177

⁴⁷ The supervisory measures are: residing in a determined place of residence; appearing for registration and giving explanations at the Police and Border Guard Board at prescribed intervals; notifying the Police and Border Guard Board of the changes of residence of the alien and of his or her prolonged absence from the place of residence, changes in the alien's marital status and depositing of a travel document of a foreign country or an identity document of an alien. Obligation to Leave and Prohibition on Entry Act, § 10, RT I 1998, 98, 1575

4. TRANS-NATIONAL COOPERATION IN THE AREA OF IRREGULAR MIGRATION

In this chapter the cooperation in the area of irregular migration is described. For example bilateral readmission agreements that Estonia has concluded with other EU or third countries.

4.1 Cooperation Agreements

An important measure for the prevention and control of irregular immigration is co-operation with the source countries of irregular immigration. For that purpose, countries have concluded bi- and multilateral agreements with third countries in order to ensure efficient co-operation in exchange of information regarding immigrants staying illegally in the country, apprehending immigrants and their fast expulsion. For the purposes of the latter, Estonia has concluded readmission agreements with 22 countries. Most of them have been concluded with the EU and Schengen Member States. Additionally, the EU has concluded readmission agreements with 12 third countries and negotiations are still ongoing with several countries.

Table 2: Readmission agreements concluded by Estonia and the EU.

Bi- or multilateral agreement	Latvia, Lithuania, Finland, Norway, Sweden, Iceland, Slovenia, Italy, Switzerland, France, Germany, Benelux countries (Belgium, Holland Luxembourg), Spain, Croatia, Austria, Portugal, Hungary, Bulgaria and Romania
Agreements concluded by the EU	Albania, Bosnia and Herzegovina, FYROM, Hong Kong, Macao, Moldova, Montenegro, Russia, Serbia, Sri Lanka, Pakistan, Ukraine and Georgia.

Draft readmission agreements are being prepared with Azerbaijan, Armenia, Kazakhstan and Kosovo. With other countries, with which Estonia or the EU have not concluded bi- or multilateral readmission agreements, data obtained regarding the expelled person and good practice is taken as the basis for the expulsion.

The readmission agreements concluded by the EU very often foresee that the Member States conclude a bilateral readmission agreement implementing protocol with the other party. Estonia has concluded the respective protocols with Macedonia (2010), Bosnia and Herzegovina (2010) and Russia (2011). Furthermore, negotiations have been started for concluding the implementing protocols for the EU readmission agreements with Serbia and Montenegro, and a proposal has been made to Ukraine for the conclusion of such protocol.

Additionally, the Estonian Police and Border Guard Board is efficiently co-operating with the neighbouring countries and the migration as well as border guard authorities of the main source countries of irregular immigration. There is tight co-operation with Finland, Russia, Latvia and Lithuania – both bilateral and multilateral co-operation agreements have been concluded with these countries. These agreements also contain provisions regarding control of irregular immigration. In addition to the closest neighbours, Estonian co-operation partners also include the respective authorities of Lithuania, Germany, Poland, Bulgaria, Ukraine, Georgia, Belarus, Azerbaijan and Moldova.

At the same time, co-operation is ongoing with all EU and Schengen countries. Estonia has successful co-operation in expulsion of irregular immigrants with for example Belgium, Germany, Norway, Sweden, Finland, Latvia and Lithuania with regard exchange of personal data of the immigrants, issuing and sending new identity documents or travel documents⁴⁸.

4.2 Other forms of (non-legislative) cooperation with countries

Networks of Immigration Liaison Officers in countries of origin and transit

As to the network of co-ordinators the Estonian border guard has no ILOs (immigration liaison officers) and ALOs (air liaison officers) in other Member States or third countries. Estonian interests and needs in terms of third countries are covered in Belarus (Minsk) with

⁴⁸ Response letter of the Police and Border Guard Board to the EMN Estonian contact point dated 20.12.2010

the joint ILO office of Estonia, Latvia and Lithuania that is represented by the official of Latvian border service. Such joint representation has been created thanks to the project “Creating a contact point to facilitate exchange of information and communication between Russia, Belarus, Estonia, Latvia and Lithuania in the field of irregular immigration”. In addition to Belarus, Estonia, Latvia and Lithuania have joint representatives in Russia and Georgia (within the framework of the same project). Furthermore, there is a plan to extend the format of such joint representations also to Ukraine.⁴⁹

4.3 Cooperation with EU or international organisations

One part of the integrated border management is international co-operation, the volume of which has significantly increased since Estonia joined the Schengen area. The border guard actively contributes to the joint operations co-ordinated by FRONTEX for guarding EU external border and applying the fast response units of the border guard area at trainings.

FRONTEX – Estonia as a country that is responsible for the EU’s external border is co-operating intensely in the border guard area with FRONTEX (European Union foreign border agency). In 2010, FRONTEX used for the very first time the fast response groups of the border guards of the Member States to provide fast operative assistance to a Member State (Greece) in an extraordinary pressure situation. Estonia also contributed to this operation with 19 border officials who helped to patrol at the Greece-Turkey land border.

In addition to that Estonia regularly participates in the joint operations organised by FRONTEX with the aim of making the land, air and sea border safer. For example, in 2010, the Police and Border Guard Board contributed with human and technical resources into in total 11 joint operations at the EU external border in 11 countries (in total 81 police officials and equipment, in total 2381 operation days)⁵⁰.

⁴⁹ Ibid

⁵⁰ Report “Summary of performance of “Main directions of the Estonian security policy until the year 2015””. Ministry of the Interior. Tallinn 2011, pp 5. Can be found at [https://valitsus.ee/UserFiles/valitsus/et/valitsus/arengukavad/siseministeerium/Security policy%202010.%20a%20aruanne.pdf](https://valitsus.ee/UserFiles/valitsus/et/valitsus/arengukavad/siseministeerium/Security%20policy%202010.%20a%20aruanne.pdf)

For example, so far Estonia has not had to participate in organising joint flights for returns, because the number of Estonian returnees is rather low as compared to other EU countries. At the same time the entire necessary information and procedural questions regarding joint return operations (flights) is readily available from FRONTEX.

IOM (International Organisation for Migration) – in 2010, Estonia started co-operation with the IOM Estonian representation for implementing the assisted voluntary return and re-integration program (the VARRE project). The aim of the program is to help asylum applicants and other immigrants staying illegally in the country to voluntarily return from Estonia to their country of origin. The program ensures organised, safe and dignified return with the possibility of re-integration. This project is funded by the European Union through the Return Fund and the Ministry of the Interior of the Republic of Estonia.

Red Cross – Due to Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals that Estonia transposed into its national legislation duly (24.12.2010), Estonian Red Cross was appointed as the authority performing supervision on expulsions. Thus, the Red Cross monitors if the authority carrying out expulsion observes procedural requirements and if necessary, provides opinions and recommendations.

5. ESTIMATES AND DATA ON THE IRREGULAR MIGRANT POPULATION

In this chapter national as well as Eurostat data on irregular migrant population in Estonia is given for the years 2005-2010.

5.1 National data on irregular migration (Eurostat)

In this chapter data on irregular migration is given for the years 2005-2010. The statistical data set forth in this chapter is collected in accordance with the Migration Statistics Regulation 862/2007⁵¹ and is extracted from the Eurostat database, except data for the years

⁵¹ Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0023:0029:EN:PDF>
See Articles 5(1)-a, 5(1)-b, 7(1)-a and 7(1)-b. In addition, for Article 5(1)-a see relevant desegregations outlined in Article 13(5) of [Regulation 562/2006](#).

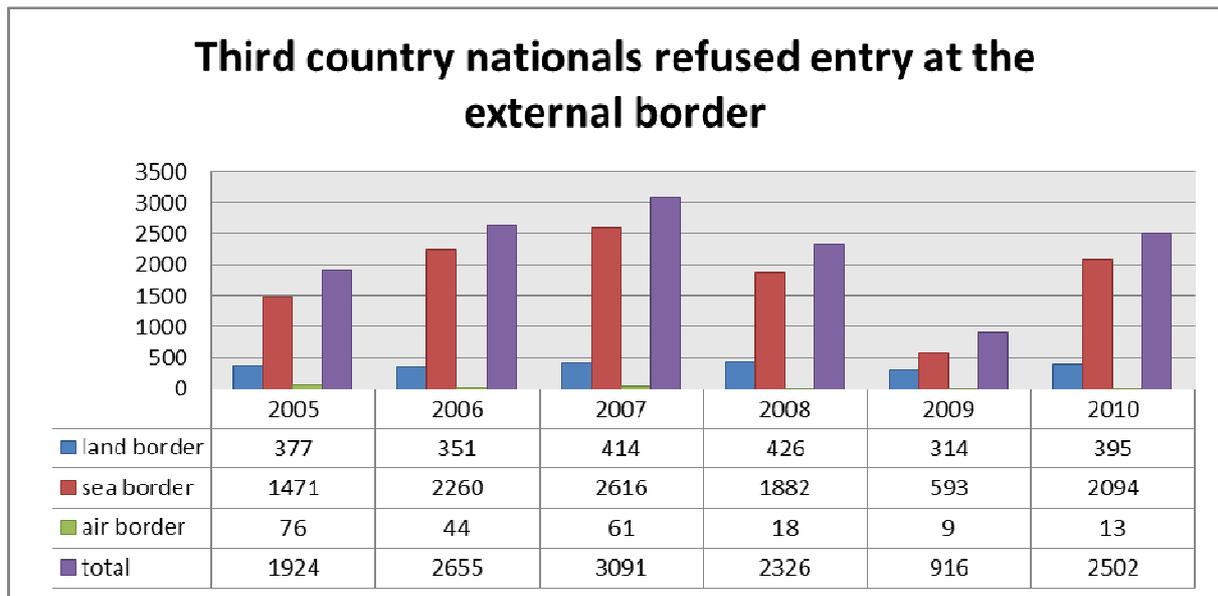
2005-2007. Data for the years 2005-2007 is from the Police and Border Guard Board's database, who is the national data provider to Eurostat on migration, including on irregular migration. In this section the following data on irregular migration is analysed:

- *third-country nationals refused entry to the (Member) States' territory at the external border disaggregated by grounds for refusal,⁵² plus the citizenship of the person refused and the type of border (land, air or sea) at which they were refused entry;*

During the past five years entry at the external border was refused and persons were sent back from the border in 13,414 cases due to the fact that the individuals did not meet the requirements for entry to the country set forth in the State Borders Act. During that period 81% of the refusals to allow entry into the country were made at the Estonian sea border, 17% of the cases at the land border and 2% of the cases at air border. This is regardless of the fact that only ca 20% of the total number of the persons crossing the border cross the external border via the sea border. For example, in 2010, 1.2 million (i.e. 19%) border crossings took place via the sea border and 5 million (i.e. 76%) via the land border. Considering the number of persons crossing the border in a year, the number of persons sent back from the border is very low. For example, in 2010, 0.04% of the persons had no basis for crossing the external border. In the case of sea border the percentage was ca 0.2%.

⁵² These are: a) the migrant has no valid travel document; b) the migrant has a false/counterfeit/forged travel document'; c) the migrant has no valid visa or residence permit; d) the migrant has a false/counterfeit/forged visa or residence permit; e) the migrant has no appropriate documentation justifying the purpose and conditions of stay (state the document that could not be provided); f) the migrant has already stayed for three months during a six-month period on the territory of the Member States of the European Union; g) the migrant does not have sufficient means of subsistence in relation to the period and form of stay, or the means to return to the country of origin or transit; h) the migrant is a person for whom and alert has been issued for the purposes of refusing entry either in the SIS or in the national register; i) the migrant is considered to be a threat to public policy, internal security, public health or the international relations of one or more of the Member States of the European Union (each State must indicate the reference to national law relating to the right of appeal).

Chart 1. Third country nationals refused entry at the external border, 2005-2010



Source: Eurostat, Police and Border Guard Board

The number of persons sent back from the border during the period 2005-2010 has fluctuated between 3,000 (2007) and 1,000 (2009) persons (Chart 1). Until the years 2005-2007 the number of refusals to allow entry increased 38%. From the year 2007, the refusals to allow entry decreased by ca 70% by the year 2009, when it increased again by 63% by the year 2010.

The increase of last year can be justified with the fact that on 26.02.2010 the Russian Federation ended its membership in the convention of the International Labour Organisation C.108 “Seafarer’s Identity Document Convention” and ratified the ILO convention C.185. Due to that the exceptions arising from the ILO convention C.108 for entering the territory of the Republic of Estonia, including as a transit passenger no longer extend to the Russian seamen. Thus, a person, in order to travel through Estonia as a transit passenger, requires a foreign passport with a visa⁵³, which many did not have in 2010 due to lack of information. The decrease that was observed after 2007 can be explained by the fact that Estonia joined the Schengen visa area in 21.12.2007, due to which the border control at the Estonia-Latvia border disappeared. Additionally, from that moment on, the citizens of third countries that

⁵³ Security policy 2011. Summary of the performance of the “Main directions of the security policy until 2015”. Ministry of the Interior, Tallinn 2011, p 35

held Schengen visas, had the right to enter Estonia on the basis thereof – a possibility that they did not have before.

The largest group of individuals who are trying to cross the Estonian sea border are the crew members of the transport ships that are staying at the Estonian ports, but very often they do not have a valid document or a visa to enter the country. This mostly concerns citizens of India, Philippines, Myanmar and Russia (Table 3). The majority of persons sent back from the land border (Estonia-Russia) are citizens of Russia. This is mostly due to the reason that they do not have a valid document or other legal basis for entering the country. Furthermore, at the land border there are also cases of falsified documents, residence permits and cases where the purpose of the trip of the person is not justified or prohibition on entry has been enforced for the person (Table 4).

The persons who have crossed the border illegally for the purposes of irregular immigration mostly use falsified travel documents and visas. In 2010, one of the most common trends at the external border was the misuse of the Schengen visas and according to the opinion of the officials of the Police and Border Guard Board, this will remain as a trend for the coming years⁵⁴. In 2010, 33 cases of misuse of Schengen visas were discovered, which is more than twice higher than in 2009 (15).

Table 3. The top 10 of third-country nationals (by citizenship) refused entry in years 2005-2010

	2005	2006	2007	2008	2009	2010
IND	738	1204	1739	1042	17	50
RUS	290	308	331	374	371	1703
PHL	227	395	349	532	333	456
UNK	120	76	67			
CHN	81	223	82	32		
MMR	69	66	119	49	43	79
PAK	54	55	99	92	19	
CPV	35			29	6	57
UKR	32	81	54	21	35	32
IDN	29	40				
ROU	19	15				
TUR		33	55	45	42	29

⁵⁴ Annex 1. Analysis of the current situation of the internal security area.

BGD	31	20	
BLR			7
TKM			6
EGY			21
MYS			15
CUB			9

Source: Eurostat, Police and Border Guard Board

Table 4. Third country nationals refused entry by grounds for refusal in years 2005-2010

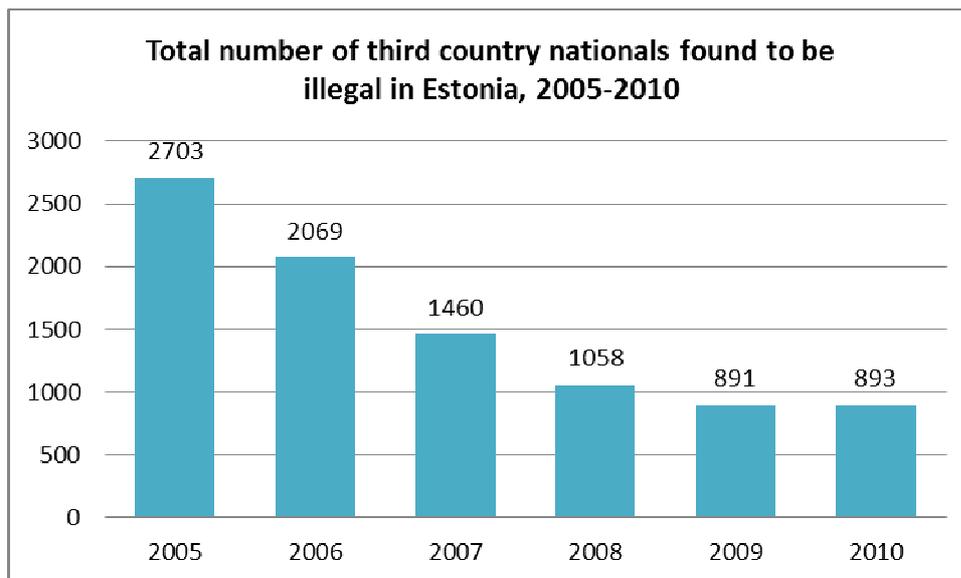
	2005	2006	2007	2008			2009			2010		
Total	1924	2669	3091	2326			916			2502		
				Land border	Sea border	Air border	Land border	Sea border	Air border	Land border	Sea border	Air border
No valid travel document(s)	:	:	:	12	673	0	2	196	3	4	1050	4
False travel document	:	:	:	0	0	0	5	0	0	0	0	0
No valid visa or residence permit	:	:	:	366	1205	17	232	394	5	315	1038	8
False visa or residence permit	:	:	:	13	0	0	5	0	0	4	0	0
Purpose and conditions of stay not justified	:	:	:	11	0	0	25	0	0	43	0	1
Person already stayed 3 months in a 6-months period	:	:	:	3	0	0	27	0	0	19	0	0
No sufficient means of subsistence	:	:	:	10	0	0	8	0	0	2	0	0
An alert has been issued	:	:	:	11	4	1	10	3	1	8	6	0
Person considered to be a public threat	:	:	:	0	0	0	0	0	0	0	0	0

Source: Eurostat, Police and Border Guard Board, : = "no value available"

- *third-country nationals found to be illegally present in the (Member) State's territory under national laws relating to immigration, disaggregated by age, sex, and by citizenship of the persons concerned;*

During the period 2005-2010, the number of persons staying illegally in the country decreased by 67% (2005 - 2703 persons, 2010 - 893 persons) (Chart 2). In an average 65% of the persons staying in the country without a legal basis apprehended in the country are stateless persons (2005 - 75%; 2007 - 60%, 2010 - 63%). They are mainly persons residing permanently in Estonia whose residence permit has expired and they have, for some reason, failed to renew it. The years 2004-2006 were the years when many of the temporary residence permits issued for five years expired. This conditioned a higher number of persons staying illegally in the country.

Chart 2. Total number of third country nationals found to be illegally present in Estonia, 2005-2010



Source: Police- and Border Guard Board, Eurostat

Approximately one fourth of all apprehended immigrants who are illegally staying in the country are citizens of the Russian Federation (mostly Ingush, Chechens and Dagestan origin) (2005 - 22%; 2007 - 29%, 2010 - 25%). Additionally, citizens of Ukraine, Georgia, Belarus, Armenia and Kazakhstan have been apprehended each year, but their number is small as compared to the stateless persons and citizens of Russia (Table 5). They are aliens who have arrived in Estonia on the basis of visa or residence permit and have not left the country after

the visa or residence permit has expired, as well as immigrants who have entered Estonia illegally (mostly wishing to move on to Scandinavia).

As an important change in the trends related to the apprehended persons, the citizens of Afghanistan rose to focus in 2009 – earlier there were no observations regarding them in Estonia. They wanted to use Estonia mainly as a transit country to move on to Finland or Sweden.

Table 5. Top 10 third country nationals (by citizenship) found to be illegally present in Estonia in the years 2005-2010

	2005	2006	2007	2008	2009	2010
Recognized non-citizens	2030	1440	878	624	569	559
Russia	587	488	423	312	197	226
Ukraine	38	47	66	46	14	19
Belarus	14	21	23	16	11	7
Armenia	7	7	9	6	3	6
Georgia	5	14	8	9	2	14
Kazakhstan	6	14	8	7	1	2
Moldova	2	15	6	5		
Azerbaijan	3	3	9	6	6	5
Afghanistan					17	3
USA	2	5	4	5	7	3
The Philippines					8	1

Source: Police and Border Guard Board, Eurostat

If we look at the gender and age structure of the immigrants staying illegally in the country, then according to the data of the past three years, there has been ca twice as many men as there have been women among the detained persons. The detained persons are mainly older than 35 and 18-34. The share of minors is very small (Table 6).

Table 6. Third-country nationals found to be illegally present in Estonia disaggregated by age and sex, 2008-2010

	Less than 14			14-17			18-34			35+		
	2008	2009	2010	2008	2009	2010	2008	2009	2010	2008	2009	2010
Male	0	0	0	15	20	10	245	205	200	445	365	375

Female	0	0	0	25	10	10	80	80	95	240	180	175
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Source: Eurostat (data rounded)

- *third-country nationals ordered to leave (i.e. third-country nationals found to be illegally present in the territory of the (Member) State who are subject to an administrative or judicial decision or act stating or declaring that their stay is illegal and imposing an obligation to leave the territory of the (Member) State), disaggregated by citizenship of the persons concerned;*

The number of persons staying illegally in the country, for whom a precept to leave the country has been made, has remained between 110-185 persons during the period in question (Table 7). During all the years in question, the highest number of decisions have been made for the citizens of Russia (in total 351) and Ukraine (106). Which is also natural due to the fact that the citizens of these countries also form the majority of the migrants staying in the country without legal basis. Additionally, the decision obliging to leave has also been made for the citizens of Belarus (42), Georgia (36) and stateless persons (61).

Similarly to the statistics reflecting apprehension of persons staying in the country without legal basis, the number of the citizens of Afghanistan, Syria and the Philippines for whom the precept to leave has been issued, increased drastically in 2009.

Table 7. Third-country nationals ordered to leave disaggregated by citizenship, 2005-2010

	2005	2006	2007	2008	2009	2010
Total	116	136	137	185	150	110
Belarus	2	10	5	15	5	5
Moldova	1	2	4	5	0	0
Russia	59	64	58	75	50	45
Ukraine	16	16	24	30	10	10
USA	2	5	4	0	5	5
Canada	0	0	0	0	0	5
Columbia	0	0	0	5	0	0
Kazakhstan	2	6	3	5	5	0
China (including Hong Kong)	1	1	8	5	5	0
Afghanistan	0	0	0	0	15	0
Philippines	0	0	0	0	10	0
Armenia	5	5	4	5	0	5
Azerbaijan	2	0	4	5	5	5

Georgia	3	7	6	10	5	5
Jordan	0	0	0	5	0	0
Syria	0	1	0	0	5	0
Nepal	1	0	0	0	0	0
Turkey	1	0	0	0	0	0
Japan	0	1	1	0	0	0
Uzbekistan	2	1	1	0	0	0
Recognised Non-Citizens	19	13	9	:	10	10
Unknown	0	0	0	15	0	0

Source: Data for 2005-2007 is from Police and Border Guard Board; 2008-2010 is from Eurostat.

- *third-country nationals returned following an order to leave (i.e. third-country nationals who have in fact left the territory of the (Member) State, following an administrative or judicial decision or act), disaggregated by the citizenship of the persons returned.*

Eurostat statistics on the citizens of third countries that have left the country after they have been issued a precept to leave the country, has been in an average 97 persons per year during the past three years. This number has fluctuated between 80 and 115 (Table 8). Similarly to the previous statistics, the highest number of persons to leave have been the citizens of Russia, Ukraine and Belarus. During the years 2009-2010, citizens of Afghanistan, the Philippines and Syria were added.

Table 8. Third country nationals (by citizenship) returned following an order to leave (data rounded), 2008-2010

	2008	2009	2010
Total	95	115	80
Belarus	10	5	5
Moldova	5	0	0
Russia	45	35	35
Ukraine	5	10	10
Canada	0	0	5
USA	0	5	0
Colombia	5	0	0
Kazakhstan	5	5	0
China	0	5	0
Afghanistan	0	15	0
Philippines	0	10	0
Armenia	0	0	5

Azerbaijan	5	5	5
Jordan	5	0	0
Syria	0	0	5
Recognised Non-Citizens	:	5	5
Unknown	5	0	0

Source: Eurostat

5.2 Other national data on irregular migration

➤ *Estimates on the stock of irregular migrants in Estonia.*

By 1 January 2011, the population in Estonia was 1 340 194 (Eurostat). In 2010, the population comprised the following nationalities: Estonian (69%), Russian (26%), Ukrainian (1%), Finnish (1%), Byelorussian (0.8%), and other nationalities (2.2%). In 2010, 84.5% of the population were Estonian, 7.5% were aliens with undefined citizenship, 7.3% were Russian and 0.7% were citizens of other states. By 1 January 2011, the number of foreign nationals was 209 317, which equalled 15.6 % of the population. This data is based on the number of foreign nationals holding a valid residence permits in Estonia. Although, we have the number of legally residing residents, we have no official data on the stock of irregular migrants in Estonia.

The number of irregular immigrants is difficult to estimate, not only for researchers, but also for the experts working on this field as turned out from the study “Organised crime, corruption and the movement of people across borders in the new enlarged EU: A case study of Estonia, Finland and the UK”. However, all respondents participating in the study agreed that the number of irregular immigrants arriving to Estonia is small.⁵⁵

According to the estimates made in the REGINE study “Regularisations in Europe“, the number of irregular migrants in Estonia, range from between 5 000 to 10 000. This equals a medium level in relation to the total population, 0.6%⁵⁶. Also, the Estonian Minister of

⁵⁵ Spencer, J., Broad, R., Aromaa, K., Markina, A., “Organised crime, corruption and the movement of people across borders in the new enlarged EU: A case study of Estonia, Finland and the UK”, Heuni, Helsinki 2011, p 21-22

⁵⁶ Baldwin-Edwards, M, Kraler, A., REGINE, Regularisations in Europe. Vienna 2009, ICMPD. Page 41

Population estimated in 2003 that the number of irregular immigrants is around 5000 persons⁵⁷.

Based on the Eurostat data on irregular migrants apprehended in the country we can estimate that the number of irregular migrants is decreasing year by year. When in 2005 approximately 2700 persons were apprehended, then in last three years Police and Border Guard Board apprehended around thousand persons per year (2010- 893; 2009- 891; 2008-1058). As the number of discovered irregular migrants is decreasing year by year we can assume that the number of undetected irregular migrants is decreasing also.

As already stated above, Estonia is believed to be a potential transit country for refugees/economic migrants coming from the south and east, not a destination country. Afghans, Iraqis and Africans usually apply for asylum when they are caught staying illegally. Their main purpose is to use Estonia as a transit country to move to Finland or Sweden and these number are quite small (maximum 36 applicants in 2010). In Estonia, the asylum process does not play a role in “producing” irregular migrants⁵⁸ and the pathway into irregular stays can be considered to be irregular entry.

➤ *Estimates on the stock of irregularly employed migrants in your Estonia. Also related data on irregularly employed migrants, such as number of inspections at places of work etc.*

As there is no official data on stocks of irregular migrants, then it is hard to say how many of them are irregularly employed. As of 2004 when migration surveillance inspectors started their work, controls made to different companies to detect irregular employment, has become more regular. The Police and Border Guard Board carries out regular inspections in different institutions based on their annual risk analysis. The highest number of visits are made to the companies of the accommodation and commerce sector, also catering, building, service and light industry sectors.

For example in 2010 in total 630 visits were made to different institutions. That is 34% more control visits than in 2009 (416). Violations (both by the immigrant and by the employer) related to irregular employment were discovered approximately in 20% (125) of cases in 2010. In 2009 the percentage was 52% (215).

⁵⁷ Eestis elab 5000 immigranti. Saarlane.ee 5.08.2003

⁵⁸ Baldwin-Edwards, M, Kraler, A., REGINE, Regularisations in Europe. Vienna 2009, ICMPD. Page 41

During the years 2008 and 2007, in total 237 and 262 misdemeanour procedures related to irregular employment were carried out, respectively. During the years 2005 and 2006 almost twice as much misdemeanour procedures were made than in 2007, i.e. 494 and 528 procedures were carried out on the basis of the paragraphs concerning irregular employment (Table 9).

Table 9. Misdemeanours and completed procedures regarding irregular employment, 2005-2010

<u>Misdemeanours</u>	<u>Completed procedures</u>					
	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Illegal employment	428	430	191	143	157	80
Allowing employment for alien who has no work permit (legal entities)	66	98	71	94	58	35

Source: Police and Border Guard Board

During the years 2005-2010 over 400 misdemeanour procedures were carried out relating to allowing employment for alien who has no right to work. The total amount of fines was approximately 60 000 euro⁵⁹.

➤ *Estimates on the flows of irregular migrants into Estonia.*

After Estonia joined Schengen area the irregular immigration pressure has steadily increased-mainly to use Estonia as a transit county to get to Sweden, Finland or West-Europe. In 2010, Russian border and migration officials estimate that there are about 20,000 irregular immigrants near Estonian and Latvian borders whose destination is Finland or other Scandinavian countries and who attempt to get there through the Baltic states⁶⁰.

⁵⁹ Explanatory memorandum to the draft "Aliens Act Amendment and Related Acts Amendment Act". Can be found at <http://eelroud.valitsus.ee/main#JdXez8Mm>

⁶⁰ Hõbemägi, T. 20,000 irregular immigrants waiting outside Baltic borders. Äripäev, 11.02.2010

According to the current Police and Border Guard Board’s risk analysis and based on the data for 2008-2010, it can be stated that in the global migration context Estonia has been more influenced by the Persian Gulf area and from the irregular migration from Asia (Afghan, Iraqi, Iranian, Pakistani, Syrian and CIS country nationals).⁶¹

When in 2008 57 irregular migrants were detected at the external border, then in 2009 the number was already 134. In 2010 the number has decreased a little to 109 irregular immigrants.

Chart 3. Illegal border crossings for the purpose of irregular migration, 2005-2009



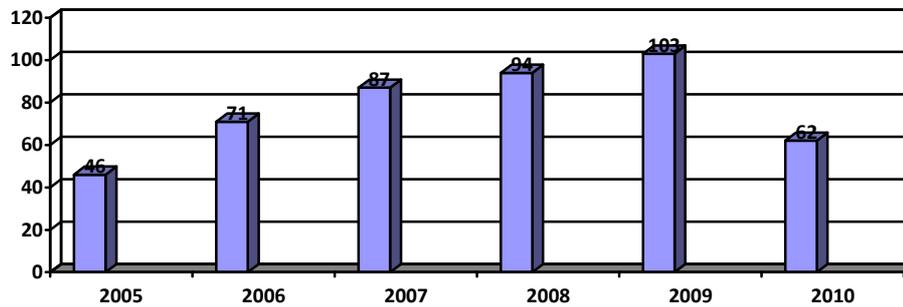
In 2009, 60% of detected irregular migrants at the external border crossed the border illegally between the border crossing points (Chart 3). In 2008, almost 30% of the illegal crossings were made between border crossing points.

- *Status-related stocks and flows. Including*
 - **Removals**

The number of removals has slightly increased every year since 2005, except in 2010. When in 2005 46 third country nationals were removed, then in 2009 the number was 103 (Chart 4). In 2010 62 removals took place. In case of removals we cannot talk about any trends, because the effectiveness and speed of the removal process depends of the communication with the receiving country’s foreign services and their willingness to facilitate returnees’ return to his home country.

⁶¹ Lisa 1. Analysis of the current situation of the internal security area.

Chart 4. Third-country nationals forcefully removed, 2005-2010



- **Return bans**

The number of entry bans has increased year by year. In 2005 there were 709 valid entry bans inserted in the database; then in 2009 the number was already 2278 (Table 10). In 2010 965 new entry bans were entered in the database. The number of temporary entry bans has grown 78% from 2005 to 2009. The number of permanent entry bans has grown in the same period 30%.

Most entry bans are imposed to Russians, Ukrainians, Moldavians, Belarusians and Georgians.

Table 10. Valid entry bans 2005-2009

	2005	2006	2007	2008	2009
Temporary	416	508	1320	1637	1859
Permanent	293	325	380	388	419
Total	709	833	1987	2025	2278

- **Rejected asylum applicants (first instance decision)**

The number of rejected asylum applications has increased from 5 in 2006 to 25 in 2010 (Table 11). That is explained by the fact that the number of asylum applications has increased

every year. When in 2006 only 7 applications were submitted to Estonia, then in 2009 40 applications and in 2010 36 applications were submitted. Negative asylum decision is made in most cases (2010- approx. 60% of cases received negative decision).

Table 11. Number of rejected asylum applications, 2005-2010

2005	2006	2007	2008	2009	2010
10	5	10	10	20	25

Source: Eurostat (data rounded)

- *Data on the operational costs implementing particular practical measures to address irregular migration (e.g. costs of removals, costs of training border guards etc.).*

With its Regulation No 19 “Establishing the procedure for ensuring the obligation of an alien to participate in the proceedings and the list of collectible expenses and rates”⁶² dated 11.07.2010, the Minister of the Interior has foreseen that the rate of collectible expenses for detaining an alien in the offices of the Police and Border Guard Board, expulsion centre or a police house of detention is 12.78 Euros per each calendar day stayed at the detention centre. This sum includes expenses on bed equipment, catering, use of sauna, bath or shower and basic toiletries.

In 2010, the Police and Border Guard Board spent in an average 1,920 Euros on the compulsory expulsion of one alien, including in an average 874 Euros on transporting the expelled person, 759 Euros on detaining the expelled person and 288 Euros on transporting the alien. Due to the fact that in 2010, forced expulsion was carried out to several exotic countries such as India, Islamist Republic of Afghanistan and Syria, it significantly increased the costs of transportation as well as the accompanying team.

Expulsions within the framework of which an alien was sent to the countries with which Estonia shares a common land border, the average costs on the forced expulsion were also significantly lower, in total 486 Euros of which an average 21 Euros were spent on transport, 434 Euros on detaining the alien and 30 Euros on transporting the alien.

⁶² RT I 2010, 61, 433

Since the year 2009 the Police and Border Guard Board is using also the funds of the European Return Fund to cover the expulsion costs. For example, in 2009, in total 785,104 Kroons (50,178 Euros) were spent, in which the European Union support was 588,191 Kroons (37,592 Euros).

The funds of the Return Fund are also used for training the officials of the Police and Border Guard Board who are involved in return and expulsion (project cost ca 1.3 million Kroons). Additionally, a project with the support of the European External Border Fund will be carried out in 2011 with the aim of training police officers involved in guarding the external border (project cost ca 95,000 Euros). Additional information on the projects carried out with the help of the European Union funds can be found at the web page of the Ministry of the Interior www.siseministeerium.ee

6. IMPACT OF EU POLICY AND LEGISLATION

In this section the effects and consequences of the impact of EU policies and legislation on Estonia's national policy is analysed. Especially, the changes that occurred as a result of Return directive and Sanctions directive.

6.1. The impact of EU policies and legislation on irregular migration on national policy

Since the time Estonia joined the European Union in 2004 and the Schengen Area in 2007, the Estonian migration policy has been greatly influenced by the decisions made at the EU level. The main changes in the immigration policy have been made in relation to transposition of the EU directives into the national law. Estonia has transposed into its legislation the following important legal acts regulating irregular immigration:

- Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (transposed into the Aliens Act in 2010);
- Directive 2009/52/EC of the European Parliament and of the Council providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (transposed into the Aliens Act in 2011);

- Council Directive 2004/82/EC on the obligation of carriers to communicate passenger data (transposed into the SBA in 2007);
- Council Directive 2003/110/EC on assistance in cases of transit for the purposes of removal by air (transposed into the OLPE in 2006);
- Council Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (transposed into the AA in 2004)
- Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals (transposed into the OLPE in 2007)
- Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). (transposed into the OLPE in 2007).

Joining the Schengen common visa area on 21 December 2007 (partially on 30.03.2008) brought along significant changes for authorities involved in migration and asylum issues as well as to legal acts and procedures. Estonia brought its external border into compliance with the Schengen external border criteria and the terms “external border” and “internal border” were coined. With the disappearance of the latter, the need for applying different compensation measures at the internal borders was created. Additionally, Estonia as the full member of the Schengen area started to issue short-term Schengen visas on the basis of which a person has the right to enter into and stay in all Schengen member states.

In order to make the abovementioned features functional, changes were required for legal acts, infrastructure had to be improved, new procedures had to be established, trained human resources had to be created and co-operation with neighbouring countries had to be developed.

6.2. What, if any, changes have occurred in relation to the transposition of Sanctions Directive and the Returns Directive?

6.2.1. Changes in relation to Sanctions Directive

Directive 2009/52/EC⁶³ of the European Parliament and of the Council providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals was transposed to the national legislation from 20 July 2011. Due to that the Aliens Act, Code of Criminal Procedure as well as Individual Labour Dispute Resolution Act had to be changed. The following changes were made as compared to the previous regulation:

- **Granting residence permit to the victim or witness who was employed illegally.** Aliens Act foresaw granting a residence permit to a victim of witness who was employed illegally in the existence of considerable public interest, if the victim or witness is a minor child, the illegally employed victim or witness was put into a situation where he or she was forced to work for someone else or perform other duties against his or her will, or he or she was kept in such situation and the respective action was committed with violence or fraud or by taking advantage of the helpless situation of the person (enslaving) or hazard was caused to the life or health of the illegally employed victim or witness; or he or she was treated in a manner that is degrading to human dignity (AA § 203).
- **Employer's notification obligation.** With the amendments of the Aliens Act, additional cases where the employer is obliged to notify the Police and Border Guard Board of the changes in the circumstances related to the employment of an alien were foreseen as compared to the previous regulation. The employer is obliged to notify the Police and Border Guard Board of the commencement of work, failure to commence work, changes in the conditions for employment established in the temporary residence permit granted for employment, premature termination of the contract on which the employment relationship is based and actual termination of the employment of the alien for who the residence permit for employment has been granted (AA § 285 (1) and (2)).

⁶³ Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0249:FIN:EN:PDF>

- **Criminal punishment imposed on the employer.** Unlike in the previous regulation, the Code of Criminal Procedure foresaw criminal punishment for the employer that allows employment of an alien who is staying illegally in Estonia. This is the case if the action has been committed for at least second time during 12 consecutive months, it allowed employment for three or more aliens, it allowed employment for an alien who is a minor, it allowed employment to an alien victim in a crime related to trafficking in humans, it has caused a hazard to the life or health of an alien or the alien has been treated in a manner that is degrading for human dignity. The punishment is either a pecuniary punishment or imprisonment of up to three years, if the employer is a legal entity, pecuniary punishment is foreseen (PenC § 260¹).
- **Resolution of employment dispute.** The Individual Labour Dispute Resolution Act provided that if an alien was employed in Estonia without a legal basis and the alien has already left Estonia by the time of the labour dispute resolution, leaves Estonia during the labour dispute resolution or is expelled from Estonia during the labour dispute resolution, the labour dispute is reviewed without his or her presence. It is important to pay attention to the fact that the area of influence of this section includes all cases that involve illegal employment of an alien, not just employment in Estonia of aliens staying illegally in the country (ILDRA § 18 (1²)).

6.2.2. Changes in relation to Return directive

Estonia transposed Directive 2008/115/EC⁶⁴ of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals into the national law in due time. This brought along changes in the Obligation to Leave and Prohibition on Entry Act that entered into force on 24 December 2010. The mentioned directive establishes common rules for return, expulsion, apprehension and imposing of the prohibition on entry to the citizens of third countries staying illegally in the Member States, ensuring protection of the persons recognised with the EU and international law.

⁶⁴ Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>

The most important changes that the transposition of the Directive to the Estonian legislation brought on, are the following:

- **An administrative act** is prepared for each alien without the basis for stay for the performance of the obligation to leave Estonia. The previous regulation of the law gave an administrative body the right to expel the alien from Estonia also without issuing a precept to leave.
- The precept to leave establishes the **term for the voluntary performance** of the precept to leave between 7 and 30 days. According to the previous wording of the law, the precept to leave was subject to compulsory execution 15 or 60 days from the issue of the precept, thus, during that period the alien still had the possibility to voluntarily leave the country during that period.
- The precept to leave generally brings along a **prohibition on entry** (3 years). The prohibition on entry is imposed as a sanction not only in relation to the expulsion of an alien but also for aliens who have exceeded toe time for stay in the country on the basis of a visa or residence permit.
- The law provided a more specific regulation of cases when an alien has the **right to voluntarily return** and when the precept to leave becomes subject to immediate compulsory execution.
- The term of **unaccompanied minor** was defined and the expulsion of a minor was regulated more accurately.
- The maximum **term for detaining** an alien in the expulsion centre was established as 18 – it had not been regulated before.
- The law established free **legal assistance** for aliens in relation to contesting the decisions on the precepts to leave. For that purpose, Ministry of the Interior and the Police and Border Guard Board have been granted the authority to conclude contracts with private legal entities for providing free legal assistance.
- A **supervisory authority** is appointed in order to monitor if the authority performing expulsions is following the procedural requirements, and if necessary, to provide opinions and recommendations. For the performance of the supervisory function, the

Ministry of the Interior concluded a contract with Estonian Red Cross.

6.3. What has been the effect of EU agreements (e.g. Readmission Agreements) on Estonia's practical responses to irregular migration?

In ensuring return of aliens staying illegally in the country, relations with third countries play an important role. Due to that, Estonia has focused on concluding and implementing the readmission agreements that would allow fast and efficient delivery of the expelled persons to their countries of origin. In addition to bilateral readmission agreements, return performed also on the basis of the contracts concluded between the EU and third countries. The EU has concluded such agreements with: Albania, Bosnia and Herzegovina, FYROM, Hong Kong, Macao, Moldova, Montenegro, Russia, Serbia, Sri Lanka, Ukraine, Pakistan and Georgia.

The readmission agreements have facilitated faster and simplified compulsory return and exchange of information. For Estonia, it was especially important that readmission agreements were concluded with Russia, Ukraine, Georgia and Moldova that are the main source countries for irregular immigration.

On 19 September 2011, the protocol of the EU-Russia readmission agreement was concluded between Estonia and Russia. Negotiations for this started already in 2008. Estonia has concluded the respective protocols also with Macedonia (2010) and Bosnia and Herzegovina (2010). Furthermore, negotiations have been started for concluding protocols of the EU readmission agreement with Serbia and Montenegro, a proposal for concluding the protocol has also been made to the Ukraine.

6.4. Activities funded by the External Border Fund and/or the European Return Fund

Estonia actively uses the funds of the European Return Fund as well as the External Border Fund in order to apply efficiently forced expulsion and make its external border safer.

The External Border Fund has been created for the years 2007-2013 within the framework of the general program "Solidarity and management of migration flows" on 23 May 2007 with the decision of the European Parliament and of the Council No 574/2007/EC. The fund

has been created in order to support countries that have extensive financial obligations for ensuring high and even control and supervision level at the external border of the EU Member States. Due to the fact that Estonia is responsible for guarding the EU external border, the country has used the funds of this fund in order to make the external border safer. During the recent years Estonia has mainly used co-financing of the External Border Fund for updating the infrastructure and establishing monitoring systems that are necessary for guarding the border and which should also facilitate discovering illegal border crossings. Furthermore, information systems have been developed for starting and implementing SIS II and the border guard management information system has been created. In the SIS II area the Ministry of the Interior has used an estimated 3 million Euros for carrying out the developments necessary to be made in its area of administration. Additionally, the infrastructure has also been developed with the help of the funds of the Schengen Facility (approximately 2.4 million Euros)⁶⁵.

The European Return Fund was founded for the period of 1 January 2008 to 31 December 2013 with the aim of supporting the efforts of the member states in managing return and supporting fair and efficient realisation of common standards for return. Estonia has used the funds of this fund mainly for developing and implementing the system for voluntary return. Additionally, activities of forced expulsion (covering of the costs of expulsion and escorting, establishing a system for the expulsion of vulnerable groups etc), development of operative co-operation with the authorities of third countries responsible for managing return and training of officials related to expulsion have been co-financed from this fund. During the years, in total ca 775,000 Euros have been foreseen for the projects of voluntary return, ca 719,000 Euros for supporting forced return, ca 142,000 Euros for developing co-operation with third countries and ca 155,000 Euros for trainings.

Further information regarding the projects realised with the support of the funds of the European Return Fund and the External Border Fund can be found at the web page of the Ministry of the Interior (www.siseministeerium.ee).

⁶⁵ External Border Fund Annual Program 2011, Ministry of the Interior. Can be found at http://www.siseministeerium.ee/public/VPF/AP_2011_ek.pdf

7. CONCLUSIONS

The aim of this paper was to set forth the most important measures that Estonia is applying in order to prevent, control and identify irregular immigration. A separate overview is given of the measures that are applied before a person arrives in the country, at the state border and for discovering persons illegally staying in the country. All measures described in this paper are often used in combination with other measures that are discussed in this paper as well as with those that have not been described in detail in this study. Thus, it is difficult to assess the influence of one measure on preventing and discovering irregular immigration.

The most important among the preventive measures is establishing the visa requirement for the citizens of a certain third country. With that it is established already before the alien arrives in the country, if he or she meets the requirements for arrival and stay in Estonia and the Schengen area. The requirement to apply for the residence permit in a foreign country and the liability given to the carrier for bringing a person without legal grounds to Estonia or to the state border play also a similar preventive function with regard to irregular immigration. It may be presumed that both the requirement to apply for a visa or apply for the residence permit already in the country of origin and the liability given to the provider of transport services do not facilitate irregular immigration, but are instead hindering circumstances.

The percentage of the decisions to refuse to give visa made by Estonia is rather low and it has also remained rather stable throughout the years. For example, it was 2.5% in 2010 and 2.1% in 2009 and 2008. Although the percentage for the decisions to refuse of granting a visa is rather low, the number of misuse of Schengen visas issued by Estonia as well as Schengen visas issued on the behalf of other countries has increased. For example, in 2010, in total 33 cases of the misuse of visas were discovered, which is 50% more than in 2009 (15). Due to that Estonia has made the ex-ante checks as well as ex-post checks of visas more efficient in co-operation with Estonian foreign representations and the EU neighbouring countries.

During the course of the checks carried out at the border inspection points persons are checked with the aim of establishing if they have the right to cross the state border. Authenticity of documents is checked together with the compliance of the aims set forth in visa application with the actual aim of the trip. In case of any suspicion, additional interviews

are carried out with the alien. According to the data of the Police and Border Guard Board the number cases of using falsified documents with the aim of irregular immigration discovered at the external border was: in 2010 6, but in 2008 29. The number of refusals of entry to the country at external border due to presentation of falsified documents, visa or residence permit has significantly decreased after the first year when Estonia became a Schengen area country. This first year may be considered a touchstone when citizens of third countries with falsified documents tested the strength of the Estonian border control⁶⁶.

In addition to the checks carried out at the border inspection points, it is important to ensure guarding of the rest of the border. Immigrants cross the border often at areas between the border crossing points. For example, in 2009, 60% of the persons discovered illegally entering the country (80 persons) crossed the border at areas between the border inspection points. In 2008, ca 30% (17 persons) of the illegal border crossings took place at the area between the border crossing points⁶⁷. In order to prevent irregular immigration, the electronic security system of the external border has been improved, additionally regular patrols take place at areas near the border. At the same time it is difficult to estimate the number of immigrants who have managed to illegally cross the border.

If we look at the number of immigrants staying in the country illegally who have been discovered in the country, their number has decreased with every year. Falling from 2703 apprehended persons in 2005 to 893 persons in 2010. The reason for it may lie in the fact that migration supervision officials were employed in 2004. Their task was to regularly check legality of stay and employment of the citizens of third countries. For example, while in 2004, 1,449 persons staying illegally in the country were discovered in 2004, then in 2005 the number was already 2703. Furthermore, the employment cases discovered during that period of time increased from 32 to 428. Thus, this measure has proved to be very efficient for discovering irregular immigration.

The work of the migration inspectors has facilitated decreasing the number of persons staying illegally in the country. Approximately 60-70% of the persons discovered staying illegally in the country are stateless persons who are permanently living in Estonia and for some reason

⁶⁶ Kaska, V. Estonian Visa Policy as Migration Channel. Estonian Academy of Security Sciences, Tallinn 2011.

⁶⁷ Kütü, R. Overview 2009. Police and Border Guard Board. Can be found at <http://www.politsei.ee/dotAsset/184231.pdf>

have failed to extend their residence permits. The Police and Border Guard Board has the right to issue a legalisation precept for them or impose the person an obligation to apply for a residence permit if they meet the conditions set forth in the law.

When we look at the share of the precepts to leave issued to citizens of third countries in the number of persons caught staying illegally in the country, the precept to leave has been issued to only 4-17% (2005- 4%, 2006-7%, 2007- 9%, 2008- 17%, 2009-17%, 2010-12%). This, it may be presumed that such a number of persons have come to Estonia with the purposes of irregular immigration or stayed here after the visa has expired.

In order to end illegal stay in the country a citizen of a third country must apply for the temporary residence permit in order to stay in Estonia. The conditions for obtaining the temporary residence permit set forth in the Aliens Act are rather limited, which makes it difficult to end illegality of such persons.

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- ❖ Granting Aliens International Protection Act, RT I 2006, 2, 3
- ❖ Obligation to Leave and Prohibition on Entry Act, RT I 1998, 98, 1575

Legal acts of the European Union

- ❖ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Official Journal L 348, 24.12.2008, pp 98—107
- ❖ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. Official Journal L 168, 30.6.2009, pp 24—32

- ❖ Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data. Official Journal L 261, 6.8.2004, pp 4—4
- ❖ Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air. Official Journal L 321, 6.12.2003, pp 26—31
- ❖ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence. Official Journal L 328, 5.12.2002, pp 17—18
- ❖ Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985. Official Journal L 187, 10.7.2001, pp 45—46
- ❖ Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals. Official Journal L 149, 2.6.2001, pp 34—36
- ❖ Regulation (EC) No 562/2006 of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). Official Journal L 105, 13.4.2006, pp 1—32
- ❖ Migration Statistics Regulation 862/2007, Can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:199:0023:0029:EN:PDF>

Other

- ❖ Response of the Police and Border Guard Board to the EMN contact point dated 20.12.2010
- ❖ Response No 6-2/2009-56 of the Board of Border Guard to Estonian Migration Foundation.