



## **Ad-Hoc Query on penalties and sanctions for employing illegal workers**

**Requested by UK EMN on 20<sup>th</sup> January 2014**

**Compilation produced on 05<sup>th</sup> March 2014**

**Responses from Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom plus Norway (23 in Total)**

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### **1. Background Information**

The UK is currently in the process of updating its illegal working provisions to increase the maximum civil penalty for employing an illegal worker from £10,000 to £20,000 per illegal worker and amending our regulations. We aim to commence these regulations in April 2014 and request an urgent response from Member States to inform our impact assessment.



Question:

1. What level of financial or other penalties do you impose on employers who employ illegal migrants (those who are not entitled to undertake the work in question because of their immigration status)?


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We would very much appreciate your responses by **3<sup>rd</sup> February 2014** (as an urgent request) but we are happy to still collect final responses by the **20<sup>th</sup> of February 2014**.

## 2. Responses

		<b>Wider Dissemination?</b>	
	<b>Austria</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Belgium</b>	<b>Yes</b>	<p>Article 16 of the Law of 11 February 2013 inserts the following provision in the Social Penal Code:</p> <p><i>§1er/1 Shall be punished by a <b>sanction of level 4</b>, the employer, its servant or agent, who, contrary to the Law of 30 April 1999 on the employment of foreign workers, has not, for occupation of third-country nationals:</i></p> <ul style="list-style-type: none"> <li>- <i>Previously verified that he/she has a residence permit or other valid authorization to stay</i></li> <li>- <i>Held at the disposal of competent inspection services, a copy or data from his/her residence permit or other valid authorization to stay, at least during the occupation period</i></li> <li>- <i>Declared his/her entry into and exit from the service according to legal and regulatory provisions</i></li> </ul> <p><i>In case the residence permit or other authorization to stay presented by the foreigner is fake, the sanction referred to in paragraph 1 shall apply if it is <b>proved that the employer knew</b> that the document was a forgery.</i></p> <p><i>The fine is <b>multiplied by the number of workers concerned</b>.</i></p> <p><i>The judge may also impose the penalties provided for in Articles 106 and 107.</i></p> <p><u>What does <i>sanction of level 4</i> correspond to?</u></p> <p>The Social Penal Code provides for four different levels of violations (1: slight, 2: moderate, 3: serious and <b>4: very serious</b>) of employment and social security provisions, each with a corresponding penalty. The penalty of level 4 consists of <b>either imprisonment of 6 months to 3 years and a criminal fine of 600 to 6000 Euros or one of these penalties, or an administrative fine of 300 to 3000 Euros</b>.</p> <p>The Social Penal Code further stipulates that the additional decimals (provided for in the Law of 5 March 1952 relating to the additional decimals ("opdecimes") on criminal fines), also apply to administrative fines in the Code. Based on this, above mentioned fines are subject to a <b>multiplication coefficient</b>. As from 1 January 2012, this multiplication coefficient has been raised to 6 (increase of 50 decimes). Therefore fines of level 4 are to be paid as follows (x 6):</p>

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			<ul style="list-style-type: none"> <li>- <b>Criminal fine: 3.600 to 36.000 Euros</b></li> <li>- <b>Administrative fine: 1.800 to 18.000 Euros</b></li> </ul> <p><u>What do penalties provided for in Articles 106 and 107 correspond to?</u>                  Article 106 of the above mentioned Code provides for prohibition to operate and closure of enterprise                  Article 107 of the above mentioned Code provides for professional ban and closure of enterprise</p>
	<b>Bulgaria</b>	<b>Yes</b>	<p>Penalties for employers who hire illegal aliens are regulated by the Employment Promotion Act and the Foreigners in the Republic of Bulgaria Act.                  ( EUR 1 = BGN 1,95583 ).</p> <p>I. In Article 73 of the Employment Promotion Act is regulated that:</p> <ul style="list-style-type: none"> <li>- The hiring of foreigners illegally staying within the territory of the Republic of Bulgaria shall not be allowed.</li> <li>- In case an employer hires a foreigner illegally staying within the territory of the Republic of Bulgaria, hi shall be liable to pay the said foreigner the remuneration agreed but not less than the minimum wage established for Bulgaria or for the economic activity concerned, for a period of three months, unless the employer or the person hired proves a different duration of hiring. The payment shall remain due even after the return of the foreigner to the State of habitual residence thereof and shall include the money transfer costs.</li> <li>- If the employer fails to pay the amount, the hired foreigners illegally staying within the territory of the Republic of Bulgaria may bring an action against such employer within the prescription periods under the Obligations and Contracts Act and according to the procedure established by the Code of Civil Procedure.</li> <li>- The remuneration shall be subject to the relevant taxes and social and health insurance contributions provided for by Bulgarian legislation with regard to hired persons.</li> <li>- The employer shall cover the costs of return of the illegally staying foreigner.</li> </ul> <p>II. In Article 82 of the Employment Promotion Act is regulated that:</p> <ul style="list-style-type: none"> <li>- Any employer, who or which has hired under an employment relationship a foreigner without a work permit or without registration at the Employment Agency, or any resident person, who or which has appointed a posted foreigner without a work permit or without registration at the Employment Agency, as well as any foreigner, who performs work without a work permit or without registration at the Employment Agency, and any foreigner posted to the Republic of Bulgaria in the framework of provision of services without a work permit or without registration at the Employment Agency, shall be liable to a fine or a pecuniary penalty to an amount fixed under Article 48 of the Foreigners in the Republic of Bulgaria Act, unless subject to a severer sanction.</li> <li>- Any resident person, who or which appoints posted factory or office workers from the Member States of the European Union, the States which are Contracting Parties to the Agreement on the European Economic Area, and the Swiss Confederation, or factory or office</li> </ul>

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			<p>workers from third countries, who or which fails to comply with the terms and procedure for the posting of factory or office workers from the Member States, the States which are Contracting Parties to the Agreement on the European Economic Area, and the Swiss Confederation, or for the admission of posted factory and office workers from third countries in the framework of provision of services, shall be liable to a fine or a pecuniary penalty, as the case may be, to the amount of BGN 5,000 and, in the case of a repeated violation, of BGN 5,000 or exceeding this amount but not exceeding BGN 10,000.</p> <ul style="list-style-type: none"> <li>- Any employer, who or which has failed to declare at the Employment Agency within the statutory time limit the hiring of any third-country nationals who have not obtained a permanent residence permit for the territory of the Republic of Bulgaria and who are family members of Bulgarian citizens or of citizens of the European Union, of a State which is a Contracting Party to the Agreement on the European Economic Area, or of the Swiss Confederation, who, by virtue of international treaties concluded with the European Union, have the right of free movement, shall be liable to a fine or a pecuniary penalty, as the case may be, of BGN 1,000 or exceeding this amount but not exceeding BGN 2,500 and, in the case of a repeated violation, of BGN 2,500 or exceeding this amount but not exceeding BGN 5,000.</li> </ul> <p>III. According to Article 82a, any employer, who or which has hired under an employment relationship a foreigner without a work permit or without registration at the Employment Agency, where the violation does not constitute a criminal offence, shall be liable to a fine or a pecuniary penalty to an amount fixed under Article 48c of the Foreigners in the Republic of Bulgaria Act, unless subject to a severer sanction. The employers, which are legal persons, may not participate in the employment promotion measures for a period of one year after the violation is ascertained.</p> <p>IV. In Article 48 of the Foreigners in the Republic of Bulgaria Act is regulated: With a fine from 500 to 5 000 lv shall be punished a foreigner who:</p> <ol style="list-style-type: none"> <li>1. has been expelled and enters the country;</li> <li>2. без without the corresponding permission or registration implements working, commercial or other activity;</li> <li>3. has stayed in the country after the elapse of the term of stay.</li> </ol> <ul style="list-style-type: none"> <li>- The penalty of para 1 shall be imposed also to individuals who have hired to work or have accepted legally residing foreigners but without the corresponding permission or registration, and to the corporate bodies shall be imposed proprietary sanction amounting to 20 000 lv.</li> <li>- When the breaches of para 1 and 2 are done for second time the imposed fine shall be from 1 000 to 10 000 lv and to the corporate bodies – in amount from BGN 4 000 up to BGN 40 000.</li> </ul> <p>V. In Article 48c of the Foreigners in the Republic of Bulgaria Act is regulated:</p> <ul style="list-style-type: none"> <li>- A fine of 750 to 7 500 BGN shall be imposed on a natural person who has hired illegally staying foreign, as far as the act does not constitute a crime;</li> <li>- Where the violation is committed by a pecuniary penalty of 3000 to 30 000 BGN shall be imposed on a legal entity</li> <li>- For a repeated violation a fine of 1 500 to 15 000 BGN shall be imposed on a natural person, and the legal entity shall be liable</li> </ul>
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**EMN Ad-Hoc Query: penalties and sanctions for employing illegal workers**

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			pecuniary penalty of 6000 to 60 000 BGN
	<b>Czech Republic</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Estonia</b>	<b>Yes</b>	According to <a href="#">Aliens Act</a> § 300 p 1,2 an employer who enables employment to an alien who does not have a legal basis to take employment in Estonia is punishable by a fine of up to 300 fine units (1200 eur). The same act, if committed by a legal person, is punishable by a fine of up to 3,200 euros.
	<b>Finland</b>	<b>Yes</b>	<p>Up to 30 units fine may be imposed on an employer who employ illegal migrants (normally 8 units, range between 5-30 units). A fine is imposed as unit fines (uf) and the amount of unit fine depends on the income of the convict (net income). The more blameworthy the act, the more unit fines are imposed. If the fine is not paid either voluntarily or through recovery proceedings, the district court may convert the fine into imprisonment, so that one day's imprisonment corresponds to three unit fines.</p> <p>National aliens Act stipulates that an employer or his or her representative who: 1) deliberately or through negligence employs an alien who does not have the right to gainful employment; 2) deliberately or through gross negligence gives false or misleading information to the authorities on the alien's terms of employment or duties and the requirements of these duties; or 3) deliberately or through gross negligence fails to fulfil the obligation provided in section 73(3), shall be sentenced for employer's violation of the Aliens Act to a fine, unless a more severe punishment for the act is provided elsewhere in the law. Guidance on the amount of unit fines is given in the Handbook approved by the National Police Board.</p>
	<b>France</b>	<b>Yes</b>	<p>In France, according to the article L. 8256-2 of the Labour Code, the employment of a foreign national who does not hold a work permit constitutes an offence punishable by five-year imprisonment and a fine of 15,000 euros. These penalties are increased to ten-year imprisonment and a fine of 100,000 euros when the offense is committed by an organized group.</p> <p>The penalty is applied as many times as there are foreign nationals involved.</p> <p>According to article L. 8256-3 of the Labour Code, complementary criminal penalties incurred are, among others:</p> <ul style="list-style-type: none"> <li>- prohibition of practicing the occupational activity in connection with the pursuit of which the offence has been committed, for a period of up to five years;</li> <li>- exclusion from public contracts for a period of up to five years;</li> <li>- confiscation of offence-related objects;</li> <li>- display or dissemination of the decision delivered ;</li> <li>- prohibition of civic, civil and family rights;</li> </ul>

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			<p>- ban on residence for a period of up to five years.</p> <p>Besides, persons who irregularly employed foreign nationals must pay:</p> <ul style="list-style-type: none"> <li>- for each migrant irregularly employed, a specific contribution to the French Office for Immigration and Integration (OFII) equivalent to 5,000 times the hourly rate of the guaranteed minimum wage (articles L. 8253-1 and R. 8253-2 of the Labour Code). This rate is currently set at 3.49 euros;</li> <li>- for each migrant irregularly employed, a lump sum contribution representing the cost of the repatriation of the migrant to his/her country of origin (article L. 626-1 of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA));</li> </ul> <p>Legal persons are liable to a fine equal to five times the fine incurred by the individual, namely 75,000 euros.</p>
	<p><b>Germany</b></p>	<p><b>Yes</b></p>	<p>A person's conduct shall constitute an administrative offence if he willfully or through negligence engages a foreigner who does not possess the required residence permit (cf. § 4, section 3, subsection 2, German Residence Act) in order to perform a sustainable and profit-oriented service or work; the imposed fine will amount to up to 500,000 Euro (§ 98, section 2a, German Residence Act). Whoever persistently repeats such administrative offences, shall be punished with a term of imprisonment of up to one year, in case of acting out of pure self-interest of up to three years or a fine (§ 11, section 1, no. 2c, section 2, German Act to Combat Clandestine Employment).</p> <p>An entrepreneur's conduct shall constitute an administrative offence if he/she commissions a sub-contractor of which he knows or does out of negligence not know that he employs foreigners who do not possess the required residence permit; the imposed fine in such a case will amount to up to 500,000 Euro (§ 404, section 1 and section 3, Third Book of the German Social Insurance Code).</p> <p>Whoever commits an administrative offence by willfully or out of negligence employing a foreigner, who does not possess the required residence permit, shall be punished with a fine of up to 5,000 Euro (§ 404, section 2, no. 3 and section 3, Third Book of the German Social Insurance Code). Whoever employs the foreigner under working conditions which gravely differ from the working conditions of German employees who perform the same or comparable work, shall be punished with a term of imprisonment of up to three years or receive a fine; if the offender acts for commercial reasons or out of pure self-interest, the term of imprisonment ranges from six months to five years (§ 10 German Act to Combat Clandestine Employment). Whoever persistently repeats such administrative offences, shall be punished with a term of imprisonment of up to one year, in case of acting out of pure self-interest with a term of imprisonment of up to three years or a fine (§ 11, section 1, no. 2a, German Act to Combat Clandestine Employment).</p> <p>Whoever employs a foreigner without the required residence permit, who has become the victim of human trafficking, and thus exploits his/her hardship, shall be punished with a term of imprisonment of up to three years or receive a fine (§ 10 German Act to Combat Clandestine Employment).</p>




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			Whoever employs more than five foreigners without the required residence permit at the same time or if he/she engages these in order to perform services or work or employs an under-age foreigner without the required residence permit, shall be punished with a term of imprisonment of up to one year, in case of acting out of pure self-interest with a term of imprisonment of up to three years or receive a fine (§ 11, section 1, no. 1 respectively 3, section 2, German Act to Combat Clandestine Employment).
	<b>Hungary</b>	<b>Yes</b>	<p>In Hungary, an employer engaging in the employment of illegal workforce may be liable to certain payment obligations into the government budget. In case the employer appears to commit this illegal act for the first time, (s)he may be liable to pay a sum corresponding to four times as much as the amount of wage the illegal worker has gained until then or eight times as much as the minimum wage. Upon repetition in the next three years, the employer may be liable to pay an amount of eight times as much as the minimum wage paid over the given timeframe or a sum corresponding to fifteen times as much as the minimum wage.</p> <p>In case the employer employing illegal workers is a natural person, (s)he may be liable to pay a sum of two times as much as the minimum wage when caught for the first time, and four times as much as the minimum wage if the illegal act is repeated in the next three years.</p>
	<b>Italy</b>	<b>Yes</b>	<p>Legislative Decree no. 109 of the 16<sup>th</sup> of July 2012, which enforces Directive 2009/52/CE on the employment of irregular migrant workers, has introduced changes in the Unique Text on Immigration that have toughened sanctions against employers.</p> <p>The sanctions against employers now consist in incarceration for a period ranging from six months to three years and a fine amounting to 5,000 Euros per illegal worker employed. In addition, the employer is also forced to pay an accessory administrative fine which will amount to the average cost the repatriation of the illegally employed worker.</p> <p>Moreover, the charges foreseen are aggravated in the three following circumstances:</p> <ol style="list-style-type: none"> <li>1. If more than three third-country nationals are employed.</li> <li>2. If the employed third-country nationals are minors.</li> <li>3. In case the workers have been subjected to conditions of particular labour exploitation.</li> </ol> <p>In this last case, the third-country national who has denounced his employer may be granted residence permit with a duration of six months by the judge.</p> <p>Lastly, when an employer has been charged, within the last five years, with the offenses of favouring illegal immigration or illicit brokering and labour exploitation, he will not be authorized to employ third-country nationals and the prefecture will deny the applicant's authorization to work.</p>
	<b>Latvia</b>	<b>Yes</b>	<p>In accordance with the Section 189<sup>2</sup> of the Latvian Administrative Violations Code</p> <p>In the case of the employment of one or more persons (up to 5 people), if the person or persons are in a position to reside in the Republic of Latvia, but do not possess work permits, the necessity of which is specified by regulatory enactments –</p> <p>a fine shall be imposed on a natural person or a member of the board in an amount from EUR 140 up to EUR 430 subtracting the board member from the right to hold certain positions in commercial companies or not.</p>

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			<p>In the case of the employment of more than 5 people, if the persons do not possess work permits, the necessity of which is specified by regulatory enactments –</p> <p>a fine shall be imposed on natural persons or a member of the board from EUR 430 up to EUR 700 subtracting the board member from the right to hold certain positions in commercial companies or not.</p> <p>In the case of employment of one or more persons (up to 5 people) who do not have a right to reside in the Republic of Latvia – a fine shall be imposed on natural person or a member of the board from EUR 210 up to 500 EUR subtracting the board member from the right to hold certain positions in commercial companies or not.</p>
	<b>Lithuania</b>	<b>Yes</b>	<p>Code of Administrative Infringements provides the financial penalty from 2000LTL to 3000LTL for employer, who employs illegal migrants. (1 Euros=3,4528 LTL).</p>
	<b>Luxembourg</b>	<b>Yes</b>	<p>An employer may be liable to an administrative fine of 2.500 € per irregular TCN worker in accordance with article L-572-4 of the Labour Code. An employer may also be liable to imprisonment from 8 days of up to 1 year and a fine of 2.501 up to 20.000 € per irregular TCN or to one of these sanctions (article L-572-5) if the employer fulfils one of the following conditions:</p> <ol style="list-style-type: none"> <li>1. the infringement is persistently repeated;</li> <li>2. the infringement concerns the simultaneous employment of a significant number of illegally staying third-country nationals;</li> <li>3. the infringement is accompanied by particularly exploitative working conditions;</li> <li>4. the infringement is committed by an employer who uses work or services from an illegally staying third-country national with the knowledge that (s)he is a victim of trafficking in human beings;</li> <li>5. the infringement relates to the illegal employment of a minor.</li> </ol> <p>Finally article L-572-6 foresees also accessory criminal sanctions such as:</p> <ol style="list-style-type: none"> <li>1. Interdiction up to 3 years to practice a social or professional activity related directly or indirectly to the primary infraction;</li> </ol> <p>The temporary foreclosure up to 5 years or the definitive foreclosure of the company or establishment that was used for the primary infraction.</p>
	<b>Malta</b>	<b>Yes</b>	<p>Such instances are reported to the Immigration Police as they constitute a violation of the provisions of the Immigration Act (Cap 217) and the employer would be subject to prosecution and penalties. Employers found guilty by the Courts of Law of illegally employing third country nationals will be barred from applying for any new or renewed licence for twelve months.</p> <p>The following legislation provides the extent of the penalties involved.</p> <ul style="list-style-type: none"> <li>• <b>Legal Notice 110 of 1993: Manpower Records (Commencement Or Termination of Employment) Regulations</b></li> </ul>



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		<p>Any person who contravenes or fails to comply with any of the provisions of regulations 3, 4, 8 and 9 shall be guilty of an offence and shall be liable <b>on conviction to a fine (multa) of not less than one hundred and sixteen euros and forty-seven cents (116.47) and not exceeding one thousand and one hundred and sixty-four euros and sixty-nine cents (1,164.69)</b>, and the Court may, in addition to such punishment, order the suspension or cancellation of any licence held by the offender and relating to trade or business, or relating to any business premises where the persons are employed. The provisions of the Probation Act shall not be applicable in respect of such offence: Provided that no proceedings shall be taken against any person who, after receiving an intimation by the Corporation for the payment of a penalty not exceeding fifty-eight euros and twenty-three cents (58.23) for having contravened the provisions of these regulations, complies with the provisions of these regulations and pays such penalty to the Corporation in either case within fifteen days from the date of the receipt by him of such intimation.</p> <ul style="list-style-type: none"> <li>• Legal Notice 432 of 2011: Minimum Standards on sanctions and measures against employers of illegally staying Third-Country Nationals – some of the measures as per below.</li> </ul> <p>An employer shall be liable, on conviction and in addition to any penalty imposed by the Court of Magistrates to pay:</p> <p>(a) any outstanding remuneration to the illegally employed third-country national. The agreed level of remuneration shall be presumed to have been at least equivalent to the national minimum wage, unless either the employer or the employee can prove otherwise;</p> <p>(b) an amount equal to any taxes and social security contributions that the employer would have paid had the third-country national been legally employed, including penalty payments for delays and relevant administrative fines;</p> <p>(c) where appropriate, any cost arising from sending back payments to the country to which the third-country national has returned or has been returned; and</p> <p>(d) the costs of return of illegally employed third-country nationals in those cases where return procedures are carried out.</p> <p>For the purposes of these regulations, the Court of Magistrates may, in its judgment, also order that an employer be subject to the following measures:</p> <p>(a) exclusion from entitlement to some or all public benefits, aid or subsidies, including EU funding managed by the Government of Malta, for up to five years;</p> <p>(b) exclusion from participation in a public contract as provided in any public procurement regulations on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, for up to five years; and</p> <p>(c) recovery of some or all public benefits, aid, or subsidies, including EU funding managed by the Government of Malta, granted to the employer for up to twelve months preceding the detection of illegal employment.</p> <p>Where the person found guilty of an offence under these regulations is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of these regulations be deemed to be vested with the legal</p>
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			<p>representation of the same body corporate which shall be liable to the payment of a fine (<i>multa</i>) not exceeding two thousand and five hundred euro (€2,500).</p> <p>Without prejudice to any other punishment to which the offence may be liable under any other law, where the offender is a body corporate liable to punishment under provisions in this Legislation the Court of Magistrates may, at the request of the prosecution, order -</p> <p>(a) the suspension or cancellation of any licence, permit or other authority to engage in any trade, business or other commercial activity;</p> <p>(b) the temporary or permanent closure of any establishment which may have been used for the commission of the offence;</p> <p>(c) the compulsory winding up of the body corporate.</p>
	<b>Netherlands</b>	<b>Yes</b>	An employer may be liable to penalty of up to € 12 000 per illegal worker.
	<b>Poland</b>	<b>Yes</b>	<p>As for the liability of employers the following sanctions relating to illegal stay and work of foreigners within the territory of Poland are applicable:</p> <p>Any person who entrusts illegal work performance to a foreigner is subject to criminal and administrative liability within the territory of Poland. Article120 section 1 of the Act of 20 April 2004 on employment promotion and labour market institutions specifies that any person who entrusts illegal work performance to a foreigner is liable to a fine in the amount not lower than PLN 3 000. The above provision was strengthened by Article 9 section 1 of the Act of 15 June 2012 on the consequences of entrusting the performance of work to foreigners who illegally stay within the territory of the Republic of Poland<sup>1</sup>. It provides that any person who entrusts the performance of work to many foreigners staying within the territory of the Republic of Poland without a valid document is liable to a fine or penalty of limitation of freedom. Any person who makes a foreigner perform illegal work by way of deception, exploiting error, exploiting professional dependency or exploiting the inability to properly comprehend the undertaken action is liable to a fine of up to PLN 10 000 (Article120 section 3 of the Act of 2004). Any person who demands from a foreigner financial benefit for undertaking actions aimed at obtaining work permit or another document that entitles to perform work in Poland is also liable to a fine (Article120 section 4 of the Act of 2004). Any person who persistently entrusts the performance of work to a foreigner who stays within the territory of the Republic of Poland without a required valid document, if the work is not connected with the business activity conducted by the entrusting entity, is liable to a fine of PLN 10 000 (Article11 section 1 of the Act of 2012).</p> <p>Any person who entrusts a foreigner who stays within the territory of the Republic of Poland without a required valid document with the performance of work in particularly exploitative working conditions is liable to a penalty of deprivation of freedom of up to 3 years (Article10 section 1 of the Act of 2012).</p>

<sup>1</sup> Journal of Laws of 6 July 2012, No. 679.

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			<p>The cost of expulsion of a foreigner who illegally performs work within the territory of Poland if the expulsion takes place in connection with work performed by the foreigner in breach of the provisions of the Act of 20 April 2004 on employment promotion and labour market institutions shall be borne by an employer or a person who entrusts the foreigner with the performance of other gainful work or function. This is the wording of Article 96 section 3 of the Act of 13 June 2003 on foreigners. Whereas section 4 provides that a foreigner invited to the territory of the Republic of Poland is subject to expulsion in connection with work performed in breach of the Act of 20 April 2004 on employment promotion and labour market institutions, the cost of expulsion is borne by an employer or a person who entrusts the foreigner with the performance of other gainful work or function.</p> <p>In the specific case defined in Article 96 section 5 of the Act on foreigners if a foreigner who stays within the territory of the Republic of Poland for the purpose of carrying out scientific research does not pay charges resulting from expulsion, the cost shall be borne by a research institution.</p> <p>For more please visit our web site: <a href="http://emn.gov.pl/ese/news/9381,Entry-into-force-of-the-Act-regulating-the-results-of-employing-third-country-na.html">http://emn.gov.pl/ese/news/9381,Entry-into-force-of-the-Act-regulating-the-results-of-employing-third-country-na.html</a></p>
	<p><b>Portugal</b></p>	<p><b>Yes</b></p>	<p>According to the legal framework (Act n.º 29/2012, 9<sup>th</sup> August), the exercise of a self-employed professional activity by a foreign citizen who is not qualified with the proper residence permit, when demanded, is an regulatory offence punishable with a fine from €300 up to €1.200 (n.º 1, article n.º 198º).</p> <p>Also whoever employs a foreign citizen who is not authorised to exercise a working activity according to the stipulations of the present law is liable, for each foreign citizen, to the application of one of the following fines:</p> <ul style="list-style-type: none"> <li>a) From €2 000 up to €10 000, if employing 1 to 4 foreign citizen;</li> <li>b) From €4 000 up to €15 000, if employing 5 to 10 foreign citizen;</li> <li>c) From €6 000 up to €30 000, if employing 11 to 50 foreign citizen;</li> <li>d) From €10 000 up to €90 000, if employing more than 50 foreign citizen. (n.º 1, als. a) to d), article n.º 198º - A)</li> </ul> <p>On the other hand this Act (Article 185º-A) also stipulates that whoever, on a regular basis, uses the work of foreign citizens that do not hold a residence permit or visa that enables them to legally stay in Portugal shall be punished with a term of imprisonment of up to one year or a fine up until 204 day; whoever, in the cases referred to in the previous paragraph, uses simultaneously the activity of a significant number of illegally staying foreign citizens shall be punished with a term of imprisonment of up to two years or a fine up until 480 days; whoever uses the work of an illegally staying foreign minor, even if he/she has been admitted to work under the terms of the Labour Code [Código do Trabalho], shall be punished with a term of imprisonment of up to two years or a fine up to 480 days.</p> <p>If the above mentioned conducts also include particularly abusive or degrading work conditions, the person using the work of those citizens shall be punished with a term of imprisonment of one to five years if a heavier penalty is not applicable by imposition of any other legal provision.</p> <p>If the employer or user of the work or services of an illegally staying foreign citizen is aware that the citizen is a victim of any criminal offence related with trafficking in persons, he/she shall be punished with a term of imprisonment of two to six years if a heavier penalty is</p>

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			<p>not applicable by imposition of any other legal provision.                  In case of recidivism, higher thresholds are set for penalties.                  Sentences applicable to entities mentioned in paragraph 1 of Article 182° of this Act are in the form of a fine whose minimum and maximum limits are doubled, or the interdiction of the exercise of the activity from three months up to five years.</p>
	<b>Romania</b>	<b>Yes</b>	<p>According to art.26 of Government Emergency Ordinance no. 56 of 2007 on employment and secondment of aliens in Romania (with subsequent amendments) the following are contraventions and they are punished as follows:                  a) receiving an working alien without work permit or residence permit for work, with a fine from 3,000 RON (approx. 700 Euro) to 4,000 RON (approx. 900 Euro) for each alien, but not exceeding 100,000 RON (approx. EUR 22,000);                  b) maintaining an working alien after the expiration of his/her work permit or residence permit for work, with a fine of 1,500 RON (300 Euro) to 2,000 RON (approx. 400 Euro) for each alien, but not exceeding 100,000 RON (approx. EUR 22,000);                  In cases where the employer is found committing the above mentioned acts, upon the notification of the General Inspectorate for Immigration or the territorial Labour Inspectorates, the competent authorities may, by law, take the following measures:                  a) total or partial loss of the employer's right to receive benefits, aids or subsidies, including EU funds, for a period of up to five years;                  b) prohibiting the employer's right to participate in the award of a public contract for a period of up to five years;                  c) full or partial recovery of benefits, aids or subsidies, including EU funds assigned to the employer for a period of 12 months before finding the deed;                  d) temporary or permanent closure of the working point(s) where these acts were committed or temporary or permanent withdrawal of the license to conduct the business activity in question, if this is justified by the gravity of the infringement.                  According to art. 265 of the Labour Code approved by Law no. 53/2003 (with subsequent amendments) receiving to work of a person being illegally residing in Romania, knowing that he/she is a victim of trafficking in persons, shall be punished with imprisonment from one to two years or criminal fine.                  If the work performed by the person being illegally residing in Romania and victim of trafficking in persons is likely to endanger the life, integrity or health, the punishment shall be imprisonment from six months to three years.                  In case of receiving to work of a person being illegally residing in Romania, knowing that he/she is a victim of trafficking in persons, the employer will be required to pay for:                  a) any remuneration owed to persons illegally employed. The amount of remuneration is assumed to be equal to the average gross wage on the economy, unless either the employer or the employee can prove otherwise;                  b) the amount of all taxes and social security contributions that the employer would have paid if the person was legally employed, including delay penalties and administrative fines appropriate;                  c) the costs of the transfer payments to the country in which the employee voluntarily returned or was returned according to the law.                  In case of receiving to work of a person being illegally residing in Romania, knowing that he/she is a victim of trafficking in persons by a subcontractor, both the main contractor and any intermediate subcontractor, providing they had knowledge that the subcontractor employed aliens illegally residing may be required, by the court, in solidarity with the employer or the employer or subcontractor where the contractor</p>

**EMN Ad-Hoc Query: penalties and sanctions for employing illegal workers**

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			<p>whose employer is a direct subcontractor to pay the sums of money mentioned above.</p> <p>According to art. 264 of the Labour Code receiving to work more than 5 people, regardless of their citizenship, without concluding a labour contract is punishable with imprisonment from one to two years or criminal fine.</p>
	<b>Slovak Republic</b>	<b>Yes</b>	<p>An employer may be liable to a civil penalty from 2000 € up to 200 000 € per one illegal worker to be imposed by the Central Office of Labour, Social Affairs and Family or Office of Labour, Social Affairs and Family and at least 5000 € for employing two and more illegal workers at the same time.</p> <p>An employer employing illegal worker(s) who had already been punished for a similar offence in the previous 24 months may be liable to imprisonment for up to 2 years. Under specific conditions (e.g. labour exploitation or in case of victims of human trafficking), an employer employing illegal worker(s) who had already been punished for a similar offence in the previous 24 months may face from 6 months up to 3 years of imprisonment.</p>
	<b>Slovenia</b>	<b>Yes</b>	<p>In Slovenian legislation there is no difference between penalties for illegal employment of nationals, non-nationals, illegal migrants. Penalty for employer illegally employing workers according to the legislation in force is from 4.100 EUR to 20.800 EUR. In the Parliamentary procedure we have the proposal of new Prevention of Undeclared Work and Employment Act that sets penalties for illegal employment from 5.000 EUR to 26.000 EUR.</p>
	<b>Spain</b>	<b>Yes</b>	<p>The hire of foreign workers without first obtaining the relevant work and residence permit is a very serious offence, defined in Article 54.1 d) of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, punishable by fines ranging from 10,001 to €100,000 for each hired foreign worker, provided that the act does not constitute a more serious crime.</p> <p>Article 311.2 of the Criminal Code states that punishments of six months to six years imprisonment and fines of six to twelve months will be applied to persons who simultaneously hire a number of workers without obtaining the relevant work permit, where the number of workers involved is at least:</p> <ul style="list-style-type: none"> <li>a) twenty-five percent, in companies or places of work employing more than one hundred workers.</li> <li>b) fifty percent, in companies or places of work employing more than ten and not more than one hundred workers.</li> <li>c) all of the workforce, in companies or places of work employing more than five and not more than ten workers.</li> </ul>
	<b>Sweden</b>	<b>Yes</b>	<p>According to the Swedish Aliens Law an employer may be liable to fines (the amount is not regulated) or, in aggravating circumstances, to imprisonment for at most one year. The employer may also be liable to pay a special charge up to SEK 44 400 for every worker illegally employed. The charge may be reduced or waived in full if there are special grounds for doing so.</p>
	<b>United</b>	<b>Yes</b>	<p>An employer may be liable to a civil penalty of up to £10,000 per illegal worker. An employer may also be liable to imprisonment of up to 2</p>

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	<b>Kingdom</b>		years and an unlimited fine for committing the criminal offence of <i>knowingly</i> employing an illegal worker.
	<b>Norway</b>	<b>Yes</b>	<p>According to Norwegian Immigration Law there are 2 main articles which pertain to illegal use of unauthorized immigrant labour: Section 12, subsection 108 (2) (a) which stipulates that an immigrant who works illegally, including a person who assists an immigrant in working illegally, is subject to fines or imprisonment for up to 6 months, or both and subsection 108 (3) (a) and (b) which further stipulates that employers and persons who arrange for illegal work will be subject to fines or imprisonment for up to two years, or both. There is no limitation on the amount of a fine, but the general principal is that employers (and persons who facilitate use of illegal work) are subject to harsher punishment. Prison sentences can range from 6 months, to up to 4 years for repeated offences. In addition, the Penal code provides for confiscation of any profits from the period of illegal employment. There is also a sliding scale in terms of potential prison sentences, depending on nature and extent of the exploitation and /or violations. The law subjects immigrants to penalties as well as administrative measures such as expulsion decisions and entry bans.</p> <p>However, in cases where the employer also takes an active role in acquiring false documents, including passports and residence permits, or in cases where the employee has previously been expelled from the country due to violations of Immigration Law, or if the abuse has taken place over an extended period of time; violation of several articles come into play and can thus lead to accumulated sentences including penalties and imprisonment.</p> <p>An employer risks up to 6 years imprisonment if they engage in organized crime, also including assisting migrants to enter the country/ Schengen illegally. It is considered aggravating circumstances if the migrant is subjected to life threatening situations in these endeavours. Human trafficking is forbidden by law according to Criminal Code Section 224 and can lead to imprisonment of up to 10 years. The government prosecuted a total of at least eight trafficking suspects – two for sex trafficking and six for labour trafficking – under Section 224 in 2012. <a href="http://www.refworld.org/docid/51c2f39b55.html">http://www.refworld.org/docid/51c2f39b55.html</a></p> <p>In April of 2013, the Norwegian Attorney General was asked to evaluate the need for increased penalties in cases where migrants repeatedly were arrested for entering the country illegally. It was felt that this would attack the root of many cases of criminal activity and organized crime, including illegal employment. By increasing the penalty to one year on the first offence and up to 3 years for every offence thereafter, it was felt that this might have a preventive effect.</p>

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