



EMN Synthesis Report

# Illegal employment of third-country nationals in the European Union



August 2017 – Final Version

This final version is based on the National Contributions from the following Member States: AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, EL, HR, HU, IE, LT, MT, LU, LV, NL, SI, SK, SE and UK

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## DISCLAIMER

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The Focussed Study was part of the 2016 Work Programme for the EMN.

## EXPLANATORY NOTE

This Synthesis Report was prepared on the basis of National Contributions from 23 EMN NCPs (**AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, EL, HR, HU, IE, LT, MT, LU, LV, NL, SI, SK, SE** and **UK**) according to a Common Template developed by the EMN and followed by EMN NCPs to ensure, to the extent possible, comparability.

National contributions were largely based on desk analysis of existing legislation and policy documents, reports, academic literature, internet resources and reports and information from national authorities. Statistics were sourced from Eurostat, national authorities and other (national) databases. The listing of Member States in the Synthesis Report results from the availability of information provided by the EMN NCPs in the National Contributions.

It is important to note that the information contained in this Report refers to the situation in the above-mentioned Member States up to and including 2016 and specifically the contributions from their EMN National Contact Points. More detailed information on the topics addressed here may be found in the available National Contributions and it is strongly recommended that these are consulted as well.

EMN NCPs from other Member States could not, for various reasons, participate on this occasion in this Study, but have done so for other EMN activities and reports.

## EXECUTIVE SUMMARY

## KEY POINTS TO NOTE:

- ★ Illegal employment of third-country nationals (TCNs) - defined as employment contravening migration and/or labour law - is **a source of concern in the EU for economic, migration-related and social and fundamental rights** reasons. It is also linked to trafficking in human beings for labour exploitation.
- ★ Due to its covert nature, illegal employment is **a 'hidden' phenomenon** linked to the 'grey' or informal economy of the Member States. Although there is no shared and clear definition of the term 'grey' economy, definitions commonly include both legal and illegal activities. Schneider and Boockmann define it as "economic activities to obtain income whilst avoiding state regulation, taxation, or detection".<sup>1</sup>
- ★ Statistics provided by a limited number of Member States in the context of this Study shows that the number of identified illegally employed TCNs and the number of convictions and sanctions for employers **differ significantly** across Member States. It should be noted that available statistics on identification of illegally employed TCNs and convictions of employers reflect law enforcement practices and thus does not provide a complete picture. In the period 2014-2016, the highest number of cases of identified irregularly staying and illegally employed TCNs, in Member States that record data on this phenomenon, was in **France** (2,311 identified TCNs in 2014 and 1,774 in 2015), followed by **the Netherlands** and **Belgium**, while the lowest number of cases were recorded in **Latvia** (two identified in 2014 and one in 2015) and **Bulgaria** (two in 2014; zero in 2015 and one in 2016 respectively), based on statistics provided by fifteen Member States. As for regularly staying TCNs, from the eight Member States which provided data, the highest numbers of illegal employment were recorded in the **Czech Republic** (1,128 in 2016) and **Greece** (832 in 2016), while the lowest number of cases were again recorded in **Bulgaria** (thirty-two in 2016).
- ★ Agriculture, construction, manufacturing, hospitality and food services are the sectors in which the illegal employment of TCNs is most prevalent. The types of businesses considered at high risk of illegal employment are in the labour-intensive and low-skilled sectors, particularly those with a high turnover of staff and low wages.
- ★ Fighting illegal employment is a policy objective and priority for the EU as a whole and in the Member States participating in this Study. The EU has been mandated to adopt measures to prevent and tackle illegal employment of TCNs, most notably through the **Employers' Sanctions Directive 2009/52/EC**, which tackles irregularly staying TCNs. At Member State level, the majority of Member States have recently adopted or are in the process of implementing new measures. These include introduction or increase of sanctions for illegally employed TCNs and employers; establishing lists of trusted or unreliable employers; addressing malpractice of employment intermediaries (e.g. employment agencies); setting up specific offices; running communication campaigns and stepping up and improving inspections.

*What does the Study aim to do?*

The following Synthesis Report presents a **comparative overview** of the main findings of the EMN Focussed Study on *Illegal Employment of Third-Country Nationals (TCNs) in the EU* based on National Reports from twenty-three Member States. The aim of this Focussed Study is to map and analyse the measures in place at Member States level to fight the illegal employment of TCNs, possible problematic areas and obstacles in this field and strategies and good practices to overcome them.

The Study examines each stage of the illegal employment policy 'cycle' for TCNs: (i) preventive measures and incentives for employers and employees; (ii) identification of illegal employment of TCNs; (iii) sanctions for employers and (iv) outcomes for employees.

<sup>1</sup> Schneider, Friedrich/Boockmann, Bernhard (2016): Die Größe der Schattenwirtschaft. Methodik und Berechnungen für das Jahr 2016

Figure 1: Illegal employment policy cycle



#### What is the scope of the study?

The scope of this Focused Study is illegal employment of TCNs. This study focuses on the illegal (either totally or partially undeclared) employment of the following categories or workers:

- ★ TCNs regularly residing on the territory of the Member State working illegally – for example, without the right to access the labour market (for instance, some asylum seekers) or who contravene restrictions on their access to labour market, (e.g. students working beyond permitted hours);
- ★ Irregularly residing TCNs, i.e. persons who do not, or no longer, meet the conditions to stay in the country. These include TCNs who arrived outside the legal channels of migration and TCNs who continue to reside and work after their permit or visa expired or the conditions for which it was granted are no longer valid.

Illegal employment of TCNs working as self-employed or as posted workers is not covered by the Study.

#### What preventive measures and incentives are in place in the Member States and what success factors contribute to their effectiveness?

With regard to preventive measures for employers, **information campaigns** targeted at employers on the risks and liabilities of illegal employment have been implemented in nineteen Member States. In seven of these Member States, these campaigns focus on illegal employment in general (and not specifically on TCNs).

**Information support** for employers is another preventive mechanism provided by all Member States participating in the Study, typically through online platforms.

Furthermore, all Member States require employers to notify national authorities when employing TCNs.

Similar preventive measures for employees include information campaigns (implemented by thirteen Member States); information support (available in different forms in all Member States) and notification obligations for commencing employment and changing employer. Protective measures as established by Directive 2009/52/EC also include establishing a **complaints mechanism**, which is available in most Member States participating in this Study.

#### How do Member States use risk assessments to establish the sectors and industries at risk?

As stipulated by the Employer Sanctions' Directive (Art. 14 (2)), Member States should identify the sectors of activity which are at greater risk of illegal employment of TCNs. Risk assessments are carried out in all Member States participating in this Study. Depending on the Member State, the authorities most commonly involved in risk assessment are labour inspectorates; immigration authorities; police, border guard and customs authorities and Ministries of Finance and tax authorities. Risk assessments are used by Member States to better target inspections.

#### How is identification of illegal employment of TCNs organised and carried out in Member States and what are the success factors?

In the majority of Member States, **labour inspectorates** are responsible for identifying illegal employment and carrying out inspections. Depending on the Member State (see details in the Synthesis report) other competent authorities may include police, border guard and customs authorities, financial police and immigration authorities. In all Member States, the competent authorities do not have separate functions to specifically target illegal employment of TCNs but carry out inspections for all the population (including nationals of the Member State and EU nationals).

In all Member States, inspections are carried out based on the results of the **risk assessments** of sectors at risk and other methods of inspection planning. Inspections can also be triggered from **signals of irregularities** from the public, including signals from the illegally employed TCNs.



The majority of Member States have a dedicated **hotline where** any individual can call to signal a case of illegal employment but in most cases this hotline is not specifically dedicated to signal a case of illegal employment of TCNs, but for signals in general (including nationals and TCNs).

In all Member States, inspections are carried out **on-site of the workplace**, but can also take place in some Member States at private premises (typically with an authorisation from a judge); company premises and/or offices of intermediaries. While in most Member States, **technical tools and methods** (such as planning maps, manuals, operational guidelines, interview scripts, etc.) are systematically applied, a few Member States (e.g. LT, LV, SE) reported that such formal tools are not applied and inspections are carried on a case-by-case manner without using common methods and tools.

The effective **cooperation and exchange of information** between different authorities involved in identification, including using common databases is a common success factor. An effective **complaints mechanism** as a protective measure also contributes to successful identification, in especially where the TCN has been subject to particularly exploitative conditions.

**Challenges** identified by Member States include **language barrier** for TCNs to obtain and share information on their rights and communicate effectively during inspections and **insufficient number of staff** to carry out inspections.

*What sanctions for employers are in place in Member States and what are the factors affecting their implementation?*

The most common **sanction** – applied by all Member States participating in this Study - is **finances**. Although applied for both regularly and irregularly staying illegally employed TCNs, the severity of the sanction for employing irregularly staying TCNs is much higher in most Member States. **Imprisonment** is applied as a possible sanction with regard to irregularly staying TCNs in seventeen Member States and regularly staying TCNs in thirteen Member States.

Other less commonly applied sanctions include **confiscation of financial gains and equipment** (applied in nine Member States for irregularly staying and seven Member States for regularly staying TCNs); **ineligibility for public contracts** (applied in fourteen Member States for irregularly staying and fourteen Member States for regularly staying TCNs); **temporary/definitive closure** (applied in thirteen Member States for irregularly staying and twelve Member States for regularly staying TCNs); **withdrawal of trading license** (applied in ten Member States for irregularly staying and eight Member States for regularly staying TCNs) and **revocation of residence permit** if the employer is a TCN (applied in twelve Member States for irregularly staying and eleven Member States for regularly staying TCNs). In general, **procedures do not differ** if the employer did not **intentionally hire irregular workers**. This is mainly due to employers having a responsibility to conduct thorough checks and fulfil the necessary conditions to verify an employee's legal status.

Art. 9(1) of the Employer Sanctions' Directive stipulates that criminal sanctions should be applied in severe cases of illegal employment. The Study found that seventeen Member States of the participating twenty-three Member States comply with the provision, while four Member States (CY, HR, LV and NL) do not apply criminal sanctions in all of the severe circumstances (*IE and UK have opted out of the Directive*).

Sanctions for employers are found to have **deterrent effect** in some Member States but limited effect in others. Not only the strictness of legislation and levels of sanctions but also the actual application of sanctions is a key factor in deterring employers from illegally employing TCNs. Furthermore, practices of making publicly available the names of employers ('naming and shaming') has been identified as successful in some Member States (e.g. FR, SK).

*What are the possible outcomes and/or sanctions for identified illegally employed TCNs?*

Following identification of an illegally employed TCN, there are several **possible outcomes**, including **return**, possibly preceded by **detention** (which is an 'intermediary outcome' and in itself may lead to release, return or regularisation), **finances**, **identification as victims of trafficking in human beings** and **regularisation of residence/work status**.



‘Possible outcomes’ means that these outcomes are not ‘definite’ (meaning that Member States will act in one way or another) but they are possibilities depending on the particular case (in some cases subject to discretion of Member States’ authorities). In some cases, outcomes are cumulative (e.g. a return decision may be accompanied by a detention order and an entry ban), while in other cases these outcomes are exclusive (meaning that only one of the outcome is possible – e.g. return decision or regularisation).

The most common outcome for illegally employed and irregularly staying TCNs is the issuance of a **return decision**, which in most cases includes a period for voluntary departure. Member States may also issue an entry ban to irregularly staying and illegally employed TCNs. In the case of regularly staying TCNs found to be working illegally, the main outcome would be the possibility of **losing residence rights**. A consequence would be the issuance of a return decision.

Nineteen Member States reported that **detention in conjunction with a return procedure** of irregularly staying TCNs found to be working illegally can be applied in some cases. In eleven Member States regularly residing and illegally employed TCNs – who lost their residence rights – can be detained in certain cases.

In **Germany**, **imprisonment** (besides the possibility for detention pending deportation) is a possible sanction for the TCNs in the case of persistent repetition of irregular employment or if illegally employed TCNs commit fraud against the social security system.

As provided by Directive 2004/81/EC<sup>2</sup>, residence permits of temporary duration may be issued to non-EU nationals who are victims of trafficking in human beings. If the irregularly staying TCN is identified as a victim of trafficking of human beings subject to labour exploitation, twenty-one Member States reported that they may issue (temporary) residence and work permits. **Regularisation** of TCNs (meaning regularising their status by issuing a residence and/or work permit) found to be working illegally is only possible in nine Member States for irregularly staying illegally employed TCNs and in seven Member States for regularly staying illegally employed TCNs (i.e. regularising their work permit).

This is usually done on the basis of a **humanitarian residence permit** in **exceptional circumstances**.

Financial fines are applicable in 12 Member States for irregularly staying illegally employed TCNs. The fines range significantly across Member States – e.g. from €140-700 in **Latvia** and € 330 in **Slovakia** to up to €5,000 in **Germany** and **Slovenia** and up to £20,000 in **the UK**.

*What are the possibilities for illegally employed TCNs to receive back payments and compensation of unpaid wages?*

In twenty Member States, TCNs who are found to be illegally employed (regardless of whether they are residing regularly or irregularly) can make claims against their employer for compensation of unpaid wages for the duration of their employment as under a valid employment contract (including in cases when they have been returned). In most Member States, third parties with legitimate interest (such as trade unions, organisations of migrant workers), may act on behalf or in support of TCNs. In addition to employers, direct contractors and other immediate subcontractors can be liable and obliged to pay any outstanding taxes to the state and remuneration due to the TCN.

However, some Member States reported that **in practice TCNs seldom file a complaint** about their working conditions. In addition to the language barrier, TCNs can be reluctant to cooperate with police forces or inspectorates, because they face direct risks of the outcomes described above (a return decision, with possible detention and forced removal and entry bans), and due to challenges participating in proceedings (including with legal assistance) and proving their employment. Although statistics are not available, some Member States reported that in practice, there is a very limited number of cases where the worker actually receives due compensation.

*What are the channels which provide information to illegally employed TCNs?*

While the majority of Member States provide general information on employment without specifically targeting illegally employed TCNs, only a limited number of the Member States (eleven Member States) reported that they provide for information **specifically to illegally employed TCNs** on their rights.

<sup>2</sup> Council Directive [2004/81/EC](#) of 29 April 2004

There is variation in terms of when any information on rights is provided to the TCN, by whom and in what way; all of which can impact on understanding and ability to act on the information. Initiatives by civil society and social partners have been implemented in a number of Member States, including offering counselling and legal support for TCNs working illegally, in particular those TCNs who are subject to exploitation.

As outlined in the **2015 EU Agenda on Migration** and as demonstrated by the findings of this Study, although Member States have adopted a number of safeguards and measures in this field, action against illegal employment of TCNs needs to be stepped up, notably in introducing and implementing protective measures and risk assessments to improve identification. Such measures (if effectively implemented) are expected to ultimately increase the number of identified cases and convictions for employers, which is still very low in some Member States (as demonstrated by the partial data provided in this Study).

# 1 Introduction

This Synthesis Report presents the main findings of the EMN Focussed Study on *Illegal employment of third-country nationals in the European Union*. The Study aims to map national policies and practices to prevent, identify and sanction illegal employment in the Member States.

## 1.1 RATIONALE AND CONTEXT OF THE STUDY

Illegal employment of third-country nationals (TCNs) (i.e. defined as employment contravening immigration and/or labour law) is a source of concern in the EU, for economic, migration-related and social reasons. At macro-economic level, illegal employment decreases tax revenues and contributions to the welfare system (due to the irregular employment status of TCNs) posing an unnecessary burden to the social security system of the Member States. At micro-economic level, it distorts competition among economic actors and creates social dumping.<sup>3</sup> In general, “*undeclared work tends to obstruct growth-oriented economic, budgetary and social policies*”<sup>4</sup> and, therefore, fighting it is an **economic policy objective**.<sup>5</sup>

Counteracting illegal employment of irregularly staying TCNs is also a **migration policy objective**, specifically in the context of reducing irregular migration. Last but not least, fighting exploitation of TCNs in illegal employment is also a **social policy and fundamental rights objective**, as the human rights of illegally employed workers are frequently violated (e.g. in cases of human trafficking for labour exploitation).

## 1.2 BRIEF OVERVIEW OF EU LAW AND POLICY CONTEXT

The EU has a mandate to adopt measures to “prevent and combat illegal migration”, including measures to tackle illegal employment (Article 79 TFEU). In 2009 the EU adopted the

**Employers’ Sanctions Directive** 2009/52/EC to tackle illegal employment of irregularly staying TCNs.<sup>6</sup>

The Directive includes measures to prevent, detect and sanction employers who engage in illegal employment (e.g. covering return costs of the TCN, Article 5), as well as some protective measures for irregularly residing TCNs (e.g. the right to receive back payments such as outstanding remuneration, Article 6).

The **Report on the application of the Directive**<sup>7</sup>, issued in 2014, found that Member States adopted different approaches in sanctioning illegal employment. Moreover, some of the protective measures were not implemented by some Member States and the European Commission noted that Member States needed to make efforts to ensure that effective inspections were carried out and to improve reporting systems. Monitoring of implementation by civil society confirms that transposition and effective implementation of the protective elements of the Directive in some Member States is limited.<sup>8</sup>

The **2015 EU Agenda on Migration**<sup>9</sup> also stressed the need to “step up action against illegal employment of third country nationals”, by better enforcing the Employers’ Sanctions Directive. The **EU Action Plan against migrant smuggling** (2015-2020)<sup>10</sup> announced that together with Member States, the Commission would identify targets as regards the number of inspections to be carried out every year in the economic sectors most exposed to illegal employment.

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

<sup>4</sup> Ibidem

<sup>5</sup> While the statement is true for all forms of illegal employment, in this Study the focus will be on illegal employment of third-country nationals.

<sup>6</sup> IE and the UK do not participate in this Directive.

<sup>7</sup> European Commission, 2014. Report on the application of the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, COM(2014) 286 final. Available at <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-286-EN-F1-1.Pdf>

<sup>8</sup> See e.g. PICUM, 2017. Summary of findings on the implementation of the Employers’ Sanctions Directive. Available at

[http://picum.org/picum.org/uploads/publication/PICUM%20Summary%20EmployerSanctionsDirective%20implementation\\_BE%20and%20CZ.pdf](http://picum.org/picum.org/uploads/publication/PICUM%20Summary%20EmployerSanctionsDirective%20implementation_BE%20and%20CZ.pdf) and SIP & SIMI, 2014. ‘Unprotected: Migrant workers in an irregular situation in Central Europe’. Available at

<http://interwencjaprawna.pl/en/files/unprotected.pdf>

<sup>9</sup> European Commission, 2015. A European Agenda on Migration, COM(2015) 240 final. Available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)

<sup>10</sup> European Commission, 2015. EU Action Plan against migrant smuggling (2015 – 2020), COM(2015) 285 final. Available at [http://ec.europa.eu/dgs/home-affairs-e-library/documents/policies/asylum/general/docs/eu\\_action\\_plan\\_against\\_migrant\\_smuggling\\_en.pdf](http://ec.europa.eu/dgs/home-affairs-e-library/documents/policies/asylum/general/docs/eu_action_plan_against_migrant_smuggling_en.pdf)

Other EU legal and policy instruments are also relevant, including provisions on rights and procedures for TCNs that may be working irregularly, including *inter alia*, the Victims Directive<sup>11</sup>, the Anti-Trafficking Directive<sup>12</sup>, the EU legal migration *acquis* and asylum *acquis*, and the Return Directive<sup>13</sup>.

### 1.3 STUDY AIMS

Building on the information that is already available, the aim of this Focussed Study is to map and analyse the measures in place at Member State level to fight the illegal employment of TCNs, possible problematic areas and obstacles in this field and strategies and good practices to overcome them.

The Study provides a brief overview of the contextual situation regarding illegal employment in the Member States and investigates the extent to which illegal employment of TCNs is an issue in the participating EU Member States in this Study (Section 1). The Study then examines each stage of the illegal employment 'cycle' for TCNs:

- ★ **preventive** measures and incentives for employers and employees to avoid illegal employment practices, including risk assessment analysis carried out by national authorities (Section 3);
- ★ national authorities and organisations involved in the **identification** of illegal employment of TCNs and their cooperation between different players, and measures and techniques used to carry out inspections (Section 4);
- ★ **sanctions** for employers illegally hiring and/or exploiting irregularly and regularly residing third-country nationals (for instance criminal sanctions or administrative sanctions) as well as payment of unpaid taxes (Section 5);
- ★ **outcomes** for TCNs found to be working illegally (e.g. granting of residence permits (temporary or long-term), issuing of return decisions or the granting of a period for voluntary departure) and protective measures (e.g. back payment of salaries,

access to justice, facilitation of complaints) (Section 6 and 7);

Figure 1 below depicts the different steps of illegal employment policy as a cycle. Firstly, the prevention measures and incentives for both employers and employees are depicted as a first step in the policy cycle. This is followed by identification of illegal employment through inspections and other measures which in turn leads to sanctions for employers and different outcomes for migrants (such as return to the country of origin or regularisation of stay and employment). It is recognised that the various steps do not necessarily follow chronologically from each other; however, the notion of a cycle is used in the Study for organisational purposes, as it helps to highlight the different aspects which the analysis will focus on.

Figure 2: Illegal employment policy cycle



### 1.4 SCOPE OF THE STUDY

The scope of this Focused Study is illegal employment of TCNs. The forms of employment of TCN that fail to comply either with employment or with migration law are defined by the general term '**illegal employment**'. There are different types of illegal employment and not all of these fall within the scope of this Study. The employment activity can be lawful or illicit.

'**Undeclared work**' refers to a licit activity and is defined as "any paid activities that are lawful

<sup>11</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime

<sup>12</sup> Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

<sup>13</sup> Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals

as regards to their nature but not declared to public authorities, taking into account differences in the regulatory system of Member States".<sup>14</sup> Employment can be illegal where different forms of irregularity are present: these can concern employees or self-employed persons, employment carried out in the Member State or in another Member State (for instance, as posted workers).

Moreover, the employment activities can be totally undeclared to the relevant authorities or only partially undeclared (for instance, when the working hours, the salary or the paid social contributions are not as specified in an official employment contract) and this may be taken into account by authorities in dealing with illegal employment. The types of illegal employment can be conceptually distinguished **by the status** of the TNC and **by the type of employment**.

TCNs can enter the Member State via regular or irregular routes, and can have a regular or irregular status. Irregular migrants could enter the country regularly but then lose their status or are unable to renew their residence or work permits (for example due to loss of employment, refusal by the employer to submit necessary paperwork, violation of employment conditions by the employer (e.g. social security and tax payments) administrative delays, etc.) leading them to fall into irregularity.<sup>15</sup> When illegally employed, they can be also regularly or irregularly residing.

The position of third-country national workers engaged in illegal employment thus depends on the validity of their visa or residence permit and the rights attached to it. Similarly, the extent to which their employment activity is illegal depends both on general employment conditions laid down in national labour law (e.g. compliance with the employment contract), tax and social security legislation, and in the specific conditions attached to their residence permit, as laid down in immigration law.

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

- ★ Third-country nationals regularly residing on the territory of the Member State working illegally – for example, without right to access the labour market (for instance, tourists or some asylum seekers) or who contravene restrictions on their

access to labour market, (e.g. students working beyond permitted hours);

- ★ Irregularly residing third-country nationals, i.e. persons who do not, or no longer, meet the conditions to stay in the country. These include third-country nationals who arrived outside the legal channels of migration and third-country nationals who continue to reside and work after their permit or visa expired.

Illegal employment of TCNs working as self-employed or as posted workers is not covered by the Study.

## 1.5 STRUCTURE OF THE REPORT

In addition to this introduction, the Synthesis Report consists of the following Sections:

<b>Section 2:</b>	Contextual overview of the general situation regarding illegal employment in the EU
<b>Section 3:</b>	Prevention measures and incentives
<b>Section 4:</b>	Identification of illegal employment of TCNs
<b>Section 5:</b>	Sanctions for employers
<b>Section 6:</b>	Outcomes for third-country nationals found to be working illegally
<b>Section 7:</b>	Case Studies
<b>Section 8:</b>	Conclusions

## 1.6 STATISTICAL OVERVIEW OF ILLEGAL EMPLOYMENT OF TCN IN THE EU

This section presents a statistical overview of illegal employment of TCNs, including statistics on identified cases of illegal employment, profiles of TCNs working illegally and their employers and convictions for employers (see Annex 5). It should be noted that the requested statistics could not be provided by all Member States.

Statistics on identification of illegal employment directly reflect enforcement practices and thus do not provide the full picture of illegal employment in the given Member State and the EU as a whole (i.e. many cases of illegal employment may remain unidentified). Furthermore, the methodologies for the data

<sup>14</sup> European Commission, 2007. Stepping up the fight against undeclared work. COM(2007) 628 final. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007DC0628>

<sup>15</sup> Anna Triandafyllidou, 2009. "CLANDESTINO Project Final Report", European Commission DG Research project. Available at: <http://clandestino.eliamap.gr/wp-content/uploads/2010/03/clandestino-final-report-november-2009.pdf>



collection may significantly differ across Member States (please see National Reports published on the EMN web-site for more details).

### Number of identified cases of illegally employed TCNs

Fourteen Member States provided statistics on irregularly staying and illegally employed TCNs and eight Member States provided the number of cases of identified regularly staying and illegally employed TCNs (see Table 1 and 2 below and Annex 5, table A5.3).

As it can be seen from the table below, in the period 2014 -2016 the highest number of cases of identified irregularly staying and illegally employed TCNs, in those Member States recording data on the phenomenon, was in **France**, followed by **the Netherlands** and **Belgium**, while the lowest number of cases were recorded in **Latvia** and **Bulgaria**. With regard to regularly staying TCNs, from those Member States which provided data, the highest numbers of illegal employment were recorded in the **Czech Republic** and **Greece**, while the lowest number of cases was again recorded in **Latvia** and **Bulgaria**.

**Table 1: Number of cases of identified irregularly staying and illegally employed TCNs**

	Irregularly staying and illegally employed TCNs		
	2014	2015	2016
<b>BE</b>	769	679	605
<b>BG</b>	2	0	1
<b>CY</b>	651	437	282
<b>CZ</b>	46	67	209
<b>EE</b>	19	35	17
<b>EL</b>	202	104	:
<b>FR</b>	2,311	1,774	:
<b>IE</b>	600	531	:
<b>LT</b>	0	32	0
<b>LV</b>	2	1	:
<b>NL</b>	1,409 (d)	863(d)	:
<b>SE</b>	157	94	:
<b>SI</b>	:	:	31
<b>SK</b>	0	6	42

: not available

(d) – definitions differ

Source: National reports

**Table 2: Number of cases of identified regularly staying and illegally employed TCNs**

	Regularly staying and illegally employed TCNs		
	2014	2015	2016
<b>BE</b>	161	231	231
<b>BG</b>	13	33	32(d)
<b>CZ</b>	299	554	1,128
<b>LT</b>	66	138	58
<b>LV</b>	36	17	:
<b>EL</b>	265	519	932
<b>SI</b>	:	:	107
<b>SK</b>	49	40	128

D :not available

(d) – definitions differ (see footnote)

Source: National reports

### Profiles of illegally employed TCNs

Eleven Member States<sup>16</sup> of the participating countries in this Study reported on top nationalities of identified cases of illegally employed TCNs. (see table A5.4 in Annex 5). The most common third-country nationalities identified as illegally employed in the eleven Member State which provided statistics 2015 were Ukrainians (AT, BG, CZ, EE, FI, LT, SK), followed by Russians (AT, BG, CY, CZ, EE, FI, LT) and Chinese (BG, CZ, FI, MT, SK). In terms of gender and age, predominantly men (from 69% in Cyprus to 100% in Lithuania and Slovakia) between 25 and 35 years of age (approx. over 50% in Cyprus, Estonia, Finland and Slovakia) were identified as working illegally in the Member States which provided data.

### Profiles of employers

The companies which employ TCNs illegally are usually small (AT, BE, FI, FR, LT, SI) or medium (AT, CZ, SI) sized companies, less often large companies (FI) and private households (BE). Sectors which mostly require low and medium skilled workers were predominantly affected. The catering and tourism (AT, BE, ES, FI, FR, HU, IE, MT, NL, SE, SK, UK,) and construction (AT, BE, CZ, EE, ES, FI, FR, HU, MT, NL, SK, UK, SI) sectors were most often mentioned by Member States as engaging TCNs illegally (see table A5.4 in Annex 5). Other mentioned sectors include agriculture, retail trade, domestic care and social assistance, manufacturing and transport.

### Sanctions for employers

Seventeen Member States<sup>17</sup> provided statistics on sanctions for employers for the period 2014-

<sup>16</sup> AT, BE, BG, CY, CZ, EE, FI, LT, MT, SI and SK

<sup>17</sup> BE, BG, CY, CZ, EE, EL, FI, FR, HR, HU, LV, LT, NL, SE, SI, SK, UK

2016. It should be noted that across the Member States sanctions vary significantly, including financial, criminal and other types of sanctions and thus, sanctions are not precisely comparable (see Annex 5.2 and Annex 6 and Section 5 below).

Fourteen Member States provided statistics on the number of convictions for illegally employing TCNs for the period 2014-2016 (see Table 3 below and Annex 5, Table 5.1). The number of convicted employers differed significantly, from 0 convictions in **Latvia, Lithuania and Slovakia** to 1,930 in 2014 and 1,388 in 2015 in **France**; and 1,027 in 2014, 889 in 2015 and 657 in 2016 in **Belgium**<sup>18</sup> respectively.

**Table 3: Total number of convictions for illegally employing TCNs<sup>19</sup>**

	2014	2015	2016	Trend
<b>Total</b>	<b>4,731</b>	<b>3,914</b>	<b>847</b>	
BE	1,027	889	657	
CY	402	286	:	
CZ	1	3	:	
EE	29	68	24	
EL	:	65	:	
FI	175	149	166	
FR	1,930	1,388	:	
IE	63	71	:	
LT	0	0	0	
LV	0	0	0	
NL	1,084	987	:	
SE	16	3	:	
SK	0	0	0	
UK	4	5	:	

:not available

Source: National Reports to this Study

Seven Member States provided statistics on number of complaints lodged against employers (see Table A5.7 in Annex 5).

### Outcomes for identified illegally working TCNs

Section 6 of this Study examines the different outcomes for identified illegally employed TCNs. Only six Member States provided statistics; however the statistics provided are on different outcomes and thus cannot be compared (see

Table A5.5 in Annex 5). Two Member States (BE and CZ) provided statistics on the number of illegally employed TCNs who were given an order to leave in 2016, which amounted to 680 in **Belgium** and 1,418 in **Czech Republic**. In **Slovenia**, 218 identified illegally employed TCNs were granted a period of voluntary return in 2016.

## 2 Contextual overview of the general situation regarding illegal employment in the EU

Illegal employment is a phenomenon posing threats to the legal economy of all Member States and fostering the development of a parallel "grey" or informal economy. There is no shared and clear definition of the term 'grey' economy. Academic literature provides several definitions, often including both legal and illegal activities. Smith describes it as the "market-based production of goods and services, whether legal or illegal, that escapes detection in the official estimates"<sup>20</sup> while Schneider and Boockmann link it to "economic activities to obtain income whilst avoiding state regulation, taxation, or detection".<sup>21</sup>

### 2.1 STATISTICS ON THE INFORMAL ECONOMY

As defined in Section 1 above, illegal employment infringes employment laws and/or tax and social security regulations (e.g. employees working without being in possession of a work permit, employers failing to notify in time the relevant authorities of the commencement/ termination of employment, etc.). The scale of the informal economy can hint at the magnitude of illegal employment. If the share of informal economic activity is high, one can assume that illegal employment in general is too.

However, there are no estimates on the extent to which the illegal employment is comprised of TCNs and nationals of the Member State or EU nationals and data should be treated with caution. Available estimates of the approximate size of the informal economy in relation to GDP, suggests that in EU Member States there has been a steady downward trend in the share of the informal economy in the period between

<sup>18</sup> Provisional data.

<sup>19</sup> With regard to the Netherlands, the figures featuring in the table concern convictions based on breaches of the Foreign Nationals Employment Act. This includes convictions related to illegally employed TCNs but the category of 'foreign nationals' is broader than TCNs.

For Belgium, the data provided is provisional.

<sup>20</sup> Smith, Philip (1994): Assessing the Size of the Underground Economy: the Statistics Canada Perspective. Statistics Canada. Catalogue no. 13-604 no. 28.

<sup>21</sup> Schneider, Friedrich/Boockmann, Bernhard (2016): Die Größe der Schattenwirtschaft. Methodik und Berechnungen für das Jahr 2016



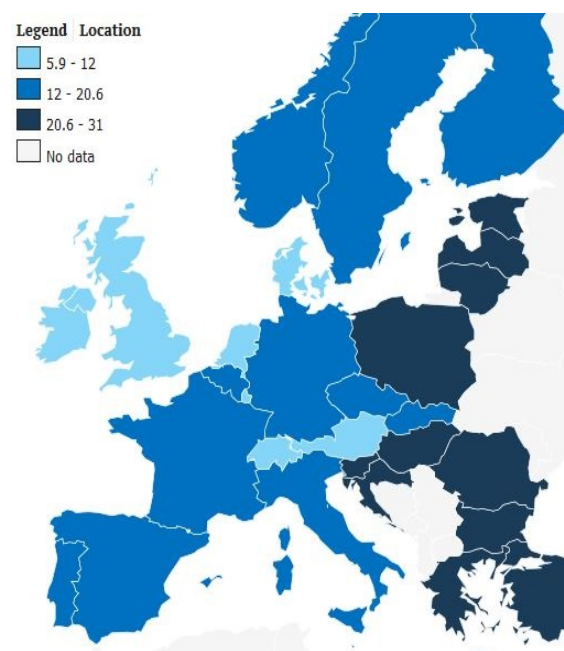
2007 and 2015 (Figure 2),<sup>22</sup> reaching an average of 18% of countries' GDP in 2015. It should be noted that estimates of the informal economy may vary significantly.<sup>23</sup>

Figure 3: Average share of the informal economy in EU Member States' GDP



Levels lower than the average were estimated in the **Netherlands**, for example, where it amounted to 9% of the national GDP in 2015. Similar low levels can be attributed to the economies of **Luxembourg** (8.3%), **Austria** (8.2%) and **United Kingdom** (9.4%), as shown in Figure 3.<sup>24</sup> In **Greece**, on the other hand, available statistics show that the percentage of fully undeclared work increased from 29.7% of 2009 to 40.5% of 2013. However, since the Greek government increased fines for unregistered workers (up to 10,550 euros), the share fell to 25% in 2014 and kept declining steadily.

Figure 4: Percentage of informal economy in EU/EFTA Member States' GDP in 2015



## 2.2 ILLEGAL EMPLOYMENT IN EU MEMBER STATES

Research has shown that the informal economy is more likely to grow during an economic recession, as some employers seek to reduce costs by avoiding social welfare obligations. Some Member States reported that undeclared and illegal work leads to tax evasion and unfair competition among companies. Furthermore, research carried out by the European Agency for Fundamental Rights (FRA) highlighted that "working in an irregular situation is an important risk factor for exploitation".<sup>25</sup>

Nevertheless, the illegal employment of TCNs has overall not been subject of major **public debate** over recent years. An exception is **Germany**, where the topic received broad media attention in the course of the increased migration in 2015/16. Isolated cases have been discussed in some Member States, where newspapers reported cases in particular labour sectors or concerning the illegal employment of TCNs coming from specific geographical areas.

<sup>22</sup> Schneider, Friedrich: Size and Development of the Shadow Economy of 31 European and 5 other OECD Countries from 2003 to 2015, available at <https://knoema.com/SDSE2015/size-and-development-of-the-shadow-economy-of-31-european-and-5-other-oecd-countries-from-2003-to-2015>

<sup>23</sup> For example, according to Schneider (see Figure 3), the share for Estonia is between 20.6 and 31%, while other

sources such as Stockholm School of Economics indicates that this share is lower in Estonia – i.e. 12-20.6%.

<sup>24</sup> Ibidem

<sup>25</sup> FRA (2015), Severe labour exploitation: workers moving within or into the European Union, available at [http://fra.europa.eu/sites/default/files/fra-2015-severe-labour-exploitation\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2015-severe-labour-exploitation_en.pdf)

Overall, the large majority of Member States reported that agriculture, construction, manufacturing, domestic care and social assistance, hospitality and food services are the sectors in which the illegal employment of TCNs is most prevalent.

Generally, the types of businesses considered at high risk of illegal employment are in the labour-intensive and low-skilled sectors, particularly those with a high turnover of staff and low wages. Two Member States (**BE, IE**) reported that TCNs may work for an employer who is him/herself a foreign national or of foreign origin. A Eurofound Study<sup>26</sup> in 2012 found that there was a tendency for ethnic entrepreneurs in **Ireland** to recruit from their own communities. Finally, a growing link between illegal employment of third country nationals and organised crime has been detected in **Spain**.

### 2.3 RECENT OR PLANNED CHANGES IN LAW AND PRACTICES

Fighting illegal employment is a priority in the majority of EU Member States, some of which have implemented several targeted measures and actions over the last decade. Eighteen Member States<sup>27</sup> are planning the adoption or have recently adopted new legislative measures or practices in order to prevent and fight illegal employment (see National Reports for more details).

One common measure adopted regards the **introduction or increase of sanctions** for illegally employed workers as well as for employers, who may also be subject to criminal proceedings in some Member States. For example, the **United Kingdom** introduced, in the context of its 2016 Immigration Act, a package of measures aiming to reduce irregular migration and employment, including more severe sanctions for employers as well as sanctions for employees. Changes in legislation adopted in 2016 allow illegal workers to be prosecuted, with a maximum custodial sentence of six months and/or a fine of the statutory maximum which is currently £20,000 in Scotland and Northern Ireland (and unlimited in England and Wales).

Other new measures include:

- ★ **Establishing lists of 'trusted' or 'unreliable' employers:** The planned

introduction of the concept of "unreliable employers". An employer would be deemed unreliable if s/he has a history of illegal employment, does not register his/her employees into social and health insurance systems, has tax, insurance or other arrears (**CZ**); The exclusion of employers found guilty of illegally employing TCNs from public contracts (**DE**); Establishing the Trusted Partner Initiative for employment permit applications whereby registered Trusted Partners do not need to replicate employer related information on each employment permit application (**IE**).

- ★ **Addressing malpractice of employment intermediaries (e.g. employment agencies and brokering):** Incorporation of the definition of "covert brokering of employment" into the legislation (temporary assignment of workers to other companies for remuneration which is done outside the legal framework of employment brokering; also still in the process of implementation) and introduction of fines up to 10 million CZK (370,000 EUR) for committing such misdemeanour (**CZ**). Similarly, the **Netherlands** launched initiatives to tackle middlemen (parties between the client and workers) who commit malpractices such as exploitation and illegal employment. One of the initiatives, "Programmed approach to rogue employment agencies" was specifically designed to tackle fraudulent employment agencies, which in case of detection of illegal employment would be fined and pursued through legal means.
- ★ **Setting up specific offices:** Setting up "Job Brokerage Offices" in order to support employers who require occasional labour market services for up to 600 hours per annum and prevent the exploitation of workers (**MT**); A specific national office for fighting against labour fraud is being established (**ES**);
- ★ **Communication campaigns:** In **Slovenia**, the government launched a several communication campaigns such (e.g. "Let's stop illegal work and employment together") with the main aim of raising public awareness of the negative impacts of the informal economy;

<sup>26</sup> Eurofound (2012), Ethnic entrepreneurship: Case study: Dublin, Ireland. CLIP Study, available at <https://www.eurofound.europa.eu/>

<sup>27</sup> AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HR, LU, MT, NL, SE, SI, SK, UK

- ★ **Stepping up and improving targeting of inspections:** Authorities have changed their approach to carry out more inspections, based on the identification of industry sectors in which there is an elevated risk for illegal employment (DE, SE).

### 3 Preventive measures and incentives and risk assessments

This section provides a comparative overview of the preventive measures of illegal employment of TCNs available in the Member States participating in this Study.

Firstly, this section examines preventive measures and incentives for employers (Section 3.1) and for employees (Section 3.2). Preventive measures and incentives can include any measures or incentives which encourage employers and employees not to engage in illegal employment. Measures and incentives usually include simplifying compliance with legislation and regulation through reforming the legislative system; using direct and indirect financial incentives for businesses to operate on a declared basis; and providing information, support and advice on employment rights and duties to both employers and employees. This section also examines how risk assessments are carried out by Member States (Section 3.3). Finally, the section highlights some good practices, success stories and challenges in prevention measure (Section 3.4).

#### 3.1 OVERVIEW OF PREVENTIVE MEASURES AND INCENTIVES FOR EMPLOYERS

Preventive measures and incentives for employers include, *inter alia*, information campaigns, information support, agreements with social partners and obligations for employers to notify authorities when employing a TCN. These are examined below. A comprehensive overview of existing preventive measures for employers across Member States can be found in Annex 1. In the majority of cases, a clear distinction between preventive measures targeted at regularly/irregularly staying and illegally working TCNs was not drawn by Member States.

##### 3.1.1 INFORMATION CAMPAIGNS

Most Member States<sup>28</sup> participating in this Study reported to have run awareness and information

campaigns targeted at employers. The information campaigns are generally aimed at informing employers about ways and liabilities of legal employment of TCNs and about the risks of employing TCNs illegally.

However, in some instances, information campaigns did not always specifically target employment of TCNs, but instead focused rather on illegal employment in general (e.g. BE, DE, ES, FI, FR, SI and SK).

Typically, such information campaigns were implemented by government departments or agencies<sup>29</sup>, trade unions<sup>30</sup> and non-public entities<sup>31</sup>.

Commonly used campaign methods by Member States included the dissemination of information via government websites<sup>32</sup>, the national press<sup>33</sup> or thematic conferences and seminars<sup>34</sup>. In addition, sector-specific campaigns in the construction sector on working conditions, health and safety at the workplace and social dumping were carried out in **Luxembourg, Sweden** and the **United Kingdom**.

#### Examples of information campaigns in the construction industry

In **Sweden**, the 'Swedish Construction Industry in Cooperation', a joint initiative representing employers and trade unions in the construction sector, has been running the project "Clean Construction Industry". The project targets a wide range of stakeholders and aims at changing attitudes towards undeclared work in this sector.

In the **United Kingdom**, the Home Office Immigration Enforcement launched the "Operation Magnify" in 2015 to tackle illegal working in the construction industry and other sectors of the economy where illegal working is considered significant. This UK-wide multi-agency campaign against illegal working includes activities to support employer compliance, as well as enforcement in high risk sectors of the economy. Promotional material, including posters and videos explaining the responsibilities of employers, was created for this campaign.

<sup>28</sup> BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IE, LT, LU, MT, SE, SI, SK, and UK

<sup>29</sup> BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IE, LT, LU, MT, SI, SK, UK

<sup>30</sup> BG, CY, FI, SI and SE

<sup>31</sup> DE, FI, SI and SE.

<sup>32</sup> BE, BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, IE, LT, LU, MT, SI, SE, SK, and UK

<sup>33</sup> BE, BG and DE.

<sup>34</sup> BE, BG, CZ, EE and SK.

### 3.1.2 INFORMATION SUPPORT

Information support is provided to employers in all Member States<sup>35</sup> participating in this Study. In some Member States (e.g. BG, LV, ES), no specific information support on preventing illegal employment of TCNs has been established. Rather different institutions offer a wide range of information for employers on possibilities of legal employment of TCNs.

Member States reported that information was mainly disseminated through online platforms by:

- ★ Federal government and government departments/agencies (e.g. labour inspectorate and social security services)<sup>36</sup>;
- ★ Law enforcement agencies (e.g. police and border control)<sup>37</sup>; and
- ★ Non-public entities<sup>38</sup>.

In addition, employers could request information by directly getting in touch with the relevant authorities such as labour ministries or public employment services<sup>39</sup>.

### 3.1.3 PARTNERSHIP AGREEMENTS WITH SOCIAL PARTNERS

In addition to national authorities, social partners are key players in preventing illegal employment. To date, partnership agreements with social partners<sup>40</sup> exist in a number of Member States participating in this Study.<sup>41</sup> For example, in **Malta** social partners are regularly consulted and involved in regulatory decision-making in the field of illegal employment.

Most partnership agreements with social partners occur in the form of partite and tripartite agreements. For example, in **Belgium**, fair competition agreements and protocols of cooperation between the social partners, the labour inspection services and the government exist, which aim at combating illegal work, social fraud and social dumping in sectors such as the cleaning, construction and transport sector.

In **Germany**, trilateral partnerships between the Federal Ministry of Finance, the employers' associations and the trade unions have existed at federal level since 2004 in those sectors especially affected by illegal employment: e.g.

the cleaning, construction, meat, transport and logistics sectors.

In **France**, partnership agreements are signed between the government and economic and social partners in different sectors, including transport, agriculture, and private security.

The national plan for the fight against illegal employment 2016-2018 recommends the development of preventive actions with social partners, including the renewal of the partnership agreement in the agriculture sector and the signature of new partnership agreements in the performing arts sector and the domestic work sector.

### 3.1.4 NOTIFICATION OBLIGATIONS

Requirements for employers to notify national authorities when employing a TCN can also be considered as a prevention measure.

All Member States participating in this Study reported that employers have to notify relevant authorities about the commencement and termination of employment of a TCN<sup>42</sup>. Most commonly, employers will have to notify local public employment and social security services as well as tax authorities about the commencement and termination of the employment of a TCN.

For example, in **France**, several measures are in place. Firstly, employers have to verify the legal status of the foreign applicant with the prefecture (i.e. if the TCN is regularly staying and has a work permit). Employers also have to register any employee (regardless if it is a TCN or not) prior to employment<sup>43</sup>. A new tool<sup>44</sup> has been implemented in 2017, aiming at reducing administrative burden for the employer by making available electronically information related to the payslip and social security.

In **Bulgaria**, also the General Labour Inspectorate is to be notified for the commencement of employment of TCN and the Employment Agency in case of early termination.

In **Croatia** and **Cyprus**, employers need to request prior approval from the Ministry of Interior and the Department of Labour

<sup>35</sup> AT, BE, BG, CY, CZ, DE, EE, ES, FI, GR, HR, HU, IE, LT, LU, LV, MT, NL, SE, SI, SK and the UK

<sup>36</sup> AT, BE, CY, CZ, DE, ES, FI, FR, HR, IE, LT, LV, MT, NL, SE, SK, SI and the UK

<sup>37</sup> EE, ES, GR, and HU

<sup>38</sup> BE, and FI

<sup>39</sup> AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, GR, HR, HU, IE, LT, LU, LV, MT, NL, SE, SK and the UK

<sup>40</sup> 'Social partners' is a term generally used in Europe to refer to representatives of management and labour

(employers'organisations and trade unions). (Eurofound definition)

<sup>41</sup> BE, DE, FI, FR, HR, IE, LT, LV, NL, SI, and SE

<sup>42</sup> AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, GR, HR, HU, IE, LT, LU, LV, MT, NL, SE, SI, SK and the UK.

<sup>43</sup> Déclaration préalable à l'embauche (DPAE)

<sup>44</sup> Déclaration sociale nominative (DSN)

respectively before being allowed to employ a TCN.

### 3.2 OVERVIEW OF PREVENTION MEASURES AND INCENTIVES FOR EMPLOYEES

Prevention measures and incentives for employees are in place in a number of Member States<sup>45</sup>.

Among the prevention measures used, Member States generally do not distinguish between regularly and irregularly staying and illegally working TCNs.

#### 3.2.1 INFORMATION CAMPAIGNS

Information campaigns for employees were implemented in several Member States<sup>46</sup>. For example, **Belgium** ran a temporary information campaign in 2009 to prevent the economic exploitation of Brazilian migrants residing in Belgium. In addition, campaigns on irregular migration were carried out in countries of origin to warn about the risks of irregular migration (e.g. in Albania in 2015).

Other sources of information mentioned by Member States include the provision of information materials on the websites of relevant public authorities<sup>47</sup> as well as information sessions for specific target groups (e.g. migrants in MT). No specific information campaigns targeted at employees have been reported by BG, CY, GR, LU, LV, NL, and SK.

#### 3.2.2 INFORMATION SUPPORT

Similarly to the information support that is provided to employers, employees have access to support and information provided to them by public authorities<sup>48</sup>, trade unions<sup>49</sup> and non-public entities<sup>50</sup>. Information is disseminated through the provision of information materials directly online or at information contact points of relevant authorities (e.g. ministries, public employment services, labour inspectorates etc.).

#### 3.2.3 FINANCIAL INCENTIVES

In contrast to financial incentives for employers, that mostly target tax benefits for registering employment, financial incentives geared directly towards illegally employed TCNs or those TCN inclined to take up/engage in illegal employment, are not used by Member States. Furthermore, due to their irregular status, TCNs

illegally employed most often do not have access to social benefits and insurance payments.

#### 3.2.4 NOTIFICATION OBLIGATIONS

Another prevention measure most commonly referred to by Member States is the obligation of employees to register when coming to the country and notify authorities about a change in their employment status, i.e. change of employer<sup>51</sup>.

For example, in **Finland**, tax numbers are issued to construction workers coming to the country. The issuing of tax numbers is aimed at combatting the informal economy in the construction sector. The personal details of each employee who has been issued a tax number are saved in the public tax number register. In spring 2017, the Finnish Tax Administration will complete a study on the impact of this practice with the aim of expanding this practice to other sectors.

### 3.3 RISK ASSESSMENTS

As provided by the Employer Sanctions Directive (Art. 14(2)): "Member States shall, on the basis of a risk assessment, regularly identify the sectors of activity in which the employment of irregularly staying third-country nationals is concentrated on their territory".

Risk assessments are carried out by all Member States participating in this Study with the exception of Cyprus. Some Member States conduct risk assessments that focus more generally on compliance with national legislation or social fraud and social dumping, and which include the illegal employment of third-country nationals (e.g. AT, BE, CZ, DE, FI, FR, IE, NL).

#### 3.3.1 NATIONAL AUTHORITIES RESPONSIBLE FOR RISK ASSESSMENT

While in most Member States labour inspectorates are in charge of drawing up risk assessments, other authorities may also be responsible for this task. The authorities most commonly involved in risk assessments include:

- ★ Labour inspectorates (BE, BG, CZ, EE, EL, ES, FI, HR, HU, IE, LT, LU, LV, NL, SK, SI)
- ★ Police, Border Guard and/or Customs authorities (BE, CZ, DE, EE, FI, LV, SE, SI)

<sup>45</sup> AT, BE, BG, CY, CZ, DE, EE, FI, FR, GR, HR, HU, IE, LT, LU, LV, MT, NL, SE, SI, SK and the UK.

<sup>46</sup> AT, BE, CZ, DE, ES, FI, HR, HU, IE, LT, MT, SE, SI

<sup>47</sup> BE, DE, CZ, EE, ES, FI, FR, HR, IE, LT, MT, SE, SI, SK

<sup>48</sup> AT, BE, BG, CZ, DE, EE, ES, FI, GR, HR, HU, IE, LT, LU, MT, NL, SI, SK, SI, UK

<sup>49</sup> BE, DE, FI

<sup>50</sup> AT, BE, FI, LV, SE, SI and SK

<sup>51</sup> CY, DE, EE, FI, IE, LU, SE, SK, SI, UK. In Luxembourg, the obligation to notify the authorities about changes in employment statuses only applies during the first year of a residence permit for salaried workers



- ★ Ministries of Finance (AT, DE, FR) and tax authorities (EE, FI, SE, SI)
- ★ Immigration authorities (SI, UK).

A comprehensive list containing all relevant authorities involved can be found in Annex 2.

### 3.3.2 USE OF RISK ASSESSMENTS' RESULTS

The results of risk assessments are generally used to target inspections by identifying high-risk sectors, i.e. sectors or industries where the possibility of illegal employment is the highest.

As such, risk assessments are used by the majority of Member States to better target their inspections<sup>52</sup>; this does not, however, rule out random inspections to be carried out in low-risk sectors aimed at monitoring new developments in the labour market. For example, in **Belgium**, the results of risk assessments are used, *inter alia*, to develop the objectives for the Annual Plan against social fraud and the selection of workplaces for inspection.

A short overview of the methods used by Member States and the national authorities responsible for risk assessment is provided in the box below.

#### Methods used for risk assessment

Member States take the following criteria into account when conducting their risk assessments:

National guidelines and/or annual action plans which have identified risk sectors where illegal employment of third-country nationals is most prevalent- for example by analysing the nature of the sector/industry (size of business, revenue, clients etc.)<sup>53</sup>

Data collected/results from previous inspections and unannounced visits<sup>54</sup>; and

Complaints, tip-offs and/or referrals from other national authorities<sup>55</sup>.

For the majority of Member States the pooling of data from previous inspections remains the most important method used for conducting risk assessments<sup>56</sup>.

### 3.4 LESSONS LEARNT, SUCCESS FACTORS AND CHALLENGES IN PREVENTION MEASURES

Several success factors and challenges were mentioned by Member States in carrying out effective prevention measures.

Some Member States stressed the **deterrent effect for employers of the apparent risks of being sanctioned** for illegally employing TCNs, as one of the key strengths of their preventative measures (e.g. AT, BE, DE, ES, FI).

However, in cases where employers remained negligent in ensuring compliance with employment legislation (which could be due to sanctions being too low and employers accepting the risk), preventive measures were reported as having a limited effect.

Not only the strictness of legislation, but also the **actual application of sanctions** and level of corruption in the Member States is perceived as a key factor in deterring employers from employing TCNs irregularly.

In countries where the sanctions for employers prescribed in legislation are strict but if not applied (i.e. inspectors turning a 'blind eye', or lack of follow up and prosecution of employers<sup>57</sup>) they may not act as a deterrent.

Another success factor commonly highlighted by Member States is **establishing partnerships (formal and informal)** and sharing intelligence among different bodies and organisations at national level (see Annex 2 for complete list) involved in observing working conditions, enforcing employment and social security standards as well as organisations providing support to employees and employers. For example, in the **United Kingdom**, the Government for the first time centralised the intelligence of three different agencies following the Immigration Act 2016: Gangmasters and Labour Abuse Authority, Employment Agency Standards Inspectorate and HM Revenue and Customs' National Minimum Wage enforcement team. Under the supervision of the Labour

<sup>52</sup> AT, BE, CZ, DE, EE, ES, FI, IE, LT, LU, LV, MT, NL, SE, SI and SK

<sup>53</sup> BE, CZ, EL, ES, FI, MT, SI

<sup>54</sup> AT, BE, BG, CZ, DE, EE, ES, FI, EE, EL, HR, HU, IE, LT, LU, LV, MT, NL, SE, SK, SI, and UK

<sup>55</sup> BE, CZ, DE, FI, IE, LU, SINL

<sup>56</sup> AT, BE, BG, CZ, DE, EE, FI, ES, EL, HR, HU, IE, LT, LV, MT, NL, SE, SI, and SK

<sup>57</sup> See e.g. PICUM, 2017. Summary of findings on the implementation of the Employers' Sanctions Directive. Available at

[http://picum.org/picum.org/uploads/publication/PICUM%20Summary%20EmployerSanctionsDirective%20Implementation\\_BE%20and%20CZ.pdf](http://picum.org/picum.org/uploads/publication/PICUM%20Summary%20EmployerSanctionsDirective%20Implementation_BE%20and%20CZ.pdf) and SIP & SIMI, 2014. 'Unprotected: Migrant workers in an irregular situation in Central Europe'. Available at

<http://interwencjaprawna.pl/en/files/unprotected.pdf>

Market Enforcement Director, these agencies will follow an annual strategy which targets sectors and regions which are vulnerable to unscrupulous employment practices.

Measures taken forward by trade unions and NGOs focus on reducing exploitation in irregular employment and **empowering undocumented workers** by providing information, legal and mediation services, assisting with applications for permits and regularisation of status, and advocating for the necessary reforms of the legal and policy framework to address reasons for irregular and exploitative working conditions.

For example, in **Austria**, UNDOK – Drop-in Centre for Undocumented Workers offers consultation and support for migrant workers who have no secure residence permit and/or limited or no access to the labour market to prevent wage and social dumping. In addition, a coalition of the Austrian Trade Union for Production Workers (Pro-GE) and agricultural workers' activists is running in cooperation with non-governmental organisations an information campaign for seasonal migrant workers in the agricultural sector focussing on the prevention of wage and social dumping.

In **the Netherlands**, the Ministry of Social Affairs and Employment provides subsidies to the FairWork Foundation to reach TCNs through 'cultural mediators'. Cultural mediators are people with a similar cultural background who inform TCNs about existing employment rights and provide them with legal advice, assistance and representation.

**Challenges** in implementing prevention measures were also identified, including limited accessibility of information on employment rights for TCNs due to language barriers (e.g. FI, IE), and the overall lack of preventive measures which specifically targeted TCNs (e.g. SK).

## 4 Identification of illegal employment of TCNs

This section examines the identification of illegal employment of TCNs, focusing on the responsible national authorities (Section 4.1), the identification measures applied in practice (Section 4.2), the technical tools and methods deployed in identification (Section 4.3) and good practices and success factors in identifying illegally employed TCNs (Section 4.4). Annex 2 provides a detailed list of responsible national authorities.

### 4.1 NATIONAL AUTHORITIES RESPONSIBLE FOR IDENTIFICATION AND CARRYING OUT THE INSPECTIONS

The identification of illegal employment of TCNs is a complex task which has been assigned to one or several authorities across the different Member States. In the majority of Member States participating in this Study, the **labour inspectorates** are responsible for identifying illegal employment and carrying out inspections<sup>58</sup>.

In most Member States, the identification of illegal employment is not an exclusive competence and is shared with other authorities<sup>59</sup>. In some Member States, the Labour Inspectorate shares this competence with other authorities: the Customs offices (CZ, FR), police officers (FR), the Police and Border Guard Board and the Tax and Customs Board (EE) and the Border Guard (LV) and with the Grand-ducal police and the Customs and Excises Administration (LU).

In **France**, three inspection bodies are competent for identifying illegally employed TCNs: the Labour Inspectorate, the Police, and Custom offices. In some Member States, the Labour Inspectorate is not the competent authority to identify illegal employment or to carry out inspections. This power is given to the Immigration authority (MT and UK) or the Financial Police (AT).

In **Finland**, the Occupational Health and Safety authorities work together with the Police, the Border Guard, the tax authorities and Customs in order to identify illegal employment and deciding to carry out joint or separate inspection operations. In **Germany**, the customs administration's special monitoring unit for undeclared work is the competent authority as part of the Customs Authority. It carries out the inspections on illegal employment in general as primary actor, but illegal employment of TCNs can also be identified by other authorities in their inspections. Finally, in **Sweden**, the identification of illegal employment of TCNs is a shared competence between the Tax Agency, the Police and the Employment Service. In addition, other authorities can carry out inspections namely the Work Environment Authority, municipal authorities as well as the Migration Agency<sup>60</sup>.

In all Member States, these authorities have **full competence for all sectors**. In **Belgium**, all

<sup>58</sup> BE, BG, CY, CZ, EE, EL, ES, FI, FR, HU, IE, LT, LU, LV, NL, SK, SI

<sup>59</sup> BE, BG, CY, CZ, EE, EL, FI, FR, LT, LU, LV, SK, SI

<sup>60</sup> For follow-up measures regarding work permits only



sectors fall under the competence of the labour inspectorates, but specialized divisions are also operational for the seafaring and road haulage sectors.

Overall, the **number of staff/inspectors** involved in identification and inspections varies from one Member State to another and depends on the authorities responsible for these tasks (see Annex 2 and Annex 5 for further details).

In all Member States participating in this Study, except Finland, the competent authorities do not have separate functions or departments to specifically target illegal employment of TCNs.

In **Finland**, 12 inspectors are primarily engaged in the monitoring of foreign labour but this includes both EU and third country nationals.

In some Member States, **cooperation between and among competent national (governmental) authorities and other organisations** for identification of TCNs is established formally by law or regulation.<sup>61</sup> (See Annex 2 for details on the national bodies involved per Member State). Cooperation between authorities takes place during the inspections in Member States, in the exchange of data (e.g. BE, DE, FR, HR, ES, IE, SK and the UK) and in setting up action plans (e.g. BE, FI, and LT).

## 4.2 IDENTIFICATION MEASURES

### 4.2.1 TRIGGERS FOR INSPECTIONS AND PLANNING OF INSPECTIONS

Inspections can be triggered through signals (for example by the general public) or can be planned on the basis of risk assessments or other methods. These are examined below.

An effective **complaint mechanism** is required by the Employers Sanctions Directive (and for regular seasonal workers by the Seasonal Workers' Directive), and implied for effective implementation of the Victims Directive and Anti-Trafficking Directive. Workers should be able to file a complaint directly or through designated third parties such as trade unions or other associations.

In all Member States participating in this study, inspections can be triggered from **signals from**

**the general public**. In all Member States, TCNs can signal to the competent authorities about illegal employment cases. The majority of Member States have a dedicated **hotline where** any individual can call to signal a case of illegal employment but in most cases this hotline is not specifically dedicated to signal a case of illegal employment of TCNs, but for signals in general (including nationals and TCNs).

In **Sweden**, there is no such dedicated hotline but the Police can receive signals from other authorities or the general public. In **Germany**, the general public and TCNs can report to any authority or directly to one of the 41 main customs offices at which the competent customs administration's special monitoring unit for undeclared work is located.

In **France**, currently signals can be made to the regional Labour Inspectorate by phone or email. It is also planned to introduce a dedicated hotline.

In addition to reports from the general public, in twenty-two Member States the authorities responsible for identification of illegal employment also carry out their inspections on the basis of **methodologies** designed by their respective organisations<sup>62</sup>. These authorities use a variety of criteria that differ from one country to another in selecting employers that will be inspected. This information may come from **studies on working conditions** (e.g. FI), **previous inspections** (e.g. HR) or **official databases** (e.g. BE, ES).

<sup>61</sup> BE, CY, DE, EL, ES, HR, HU, IE, LT, LU, LV, MT, NL, SI and SK

<sup>62</sup> AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, EL, HR, HU, IE, LT, LU, LV, MT, NL, SK, SI and SE

### Further examples of complaint mechanisms

In **Belgium**, reports on social fraud can be made by an individual, company or an organisation through the dedicated hotline 'Point of Contact for Fair Competition'. It requires individual informants to provide their national identification number, which makes it difficult for TCNs irregularly residing in Belgium to file a report. Furthermore, the Labour Inspection of the Federal Public Service Employment, Labour and Social Dialogue has created a national contact point for illegally employed workers (including irregularly staying TCNs), where they can lodge a complaint against their employer. The confidentiality of the complaint is guaranteed by the Labour Inspectorate. Complaints lodged through this contact point can also lead to inspections.

In **Spain**, a specific e-mailbox for fighting against labour fraud has been established. Citizens can cooperate with labour inspectorate signalling a case of illegal employment without having to identify themselves. A growing number of signals from the public indicates an increase in social awareness.

Moreover, in most Member States<sup>63</sup>, the results of the **risk assessment process** are also used to target inspections. In **Bulgaria, Finland and Lithuania**, the **proportion of foreign employees in a given company** is one of the criteria used to determine employers that will be inspected. Other examples of criteria include sectors known for an elevated risk of tax evasion (SE), location of the enterprise (DE) or general attitude of the employer towards the Labour Inspectorate during a previous inspection (i.e. willingness to cooperate)(BG).

The blue box below provides an example of a methodology used to plan inspections.

### Example of a methodology used to plan inspections

Inspections in **Belgium**, carried out by the Inspection Services, are mostly planned on the basis of a **social fraud-oriented risk analysis**, which helps identify possible targets. Several parameters are used in this framework:

- ★ Statistics of the Labour Inspectorate on the most important infringements in the most vulnerable (high risk) sectors;
- ★ Documents concerning some specific sectors (including checklists with labour related obligations in these sectors);
- ★ Data-mining information provided by the National Social Security Office;
- ★ Sectoral tripartite action plans for fair competition and tripartite collaboration agreements with social partners in certain sectors (e.g. construction, transport, cleaning, meat processing, surveillance, etc.). These action plans aim at combating national and cross border social fraud and social dumping;
- ★ Annual national action plans on the fight against social fraud), approved by the Government and executed under the surveillance of the Social Information and Investigation Service;
- ★ The Contact Point for Fair Competition (complaints and denunciations);
- ★ The general circular letter (i.e. a set of instructions) of the highest College of Prosecutors with a priority list for prosecution of the most severe infringements)
- ★ Labour exploitation of a group of TCNs is one of these top priorities.

### 4.2.2 TYPES OF IDENTIFICATION MEASURES, INCLUDING INSPECTIONS

All participating Member States<sup>64</sup> use **inspections to identify illegal employment of TCNs**. In addition, some Member States use other kinds of checks to identify this phenomenon<sup>65</sup>.

This includes border checks<sup>66</sup> (i.e. when establishing the purpose of entry and stay of the TCNs); checks by the Police<sup>67</sup>; checks of residence permits by the Immigration/Border Control authority<sup>68</sup> and checks of other authorities competent in curtailing illegal employment in general<sup>69</sup>.

<sup>63</sup> All Member States except Luxembourg and the UK where information was not available

<sup>64</sup> All Member States except Greece where no information was available.

<sup>65</sup> e.g. CZ, DE, EE, FI, HR, IE, NL, SK, SI and the UK

<sup>66</sup> e.g. CZ, EE, FI, HR, NL, SI and the UK

<sup>67</sup> e.g. CZ, ES, FI, IE, NL, SK

<sup>68</sup> e.g. CZ, ES, FI, IE, SK, UK

<sup>69</sup> e.g. DE

In all Member States<sup>70</sup>, these inspections are **carried out on-site** but they can be supplemented by other types of inspections in some Member States<sup>71</sup>. For example, in **Belgium** the inspection can also take place at a company's premises, at private premises (with the prior authorisation of a judge), at the office of lawyers or accounting social secretariats and even in the office of the inspectors themselves (e.g. for interviews). In some complex cases requiring a thorough enquiry, inspections can take place at the premises of clients of the employer: for instance, in cases of fraudulent and bogus companies, organised fraudulent illegal employment of TCNs etc. In the **United Kingdom**, immigration officers can conduct intelligence-led operations on workplaces where they have intelligence to suggest that illegal working is taking place asking the employer to provide evidence that right to work checks have been undertaken.

Inspecting authorities have the **power to enter the place of employment** to carry out the inspection. However, such powers may not extend to private homes and therefore illegal employment of TCNs in the sector of domestic work may escape detection. For example, in **Spain**, a specific judicial permit is required to enter a private home where it is the place of employment.

Commonly, inspections are conducted at random intervals and very often respond to external factors such as reports from other authorities or the general public. In **Ireland**, the Employment Permits Section of the Department of Jobs, Enterprise and Innovation selects a random sample of employment permit applications each month for further examination by the Workplace Relations Commission to detect TCNs who are working illegally.

In **Germany**, inspections are carried out randomly on a daily basis, but at least four times a year focussed inspections are carried out, in which all employees of the customs administration's special monitoring unit for undeclared work carry out inspections on the same day in a certain sector throughout the entire Federal Territory.

In all Member States participating in this Study, the inspections consist of **checking the documents establishing the employment**

**relationship** between the (illegally) employed and the employer.

This concerns both documents relating to the employee, such as the work contract, the working conditions, working time, working roster, salary, social security status, and also to the employer, including checks on payslips, contracts, invoices, company registration etc. In some Member States, the authorities check the work and residence permits of the employees to detect instances of illegal employment of TCNs<sup>72</sup>. In addition to checking documents, the inspectors may also interview employees only (AT) or both employees and employers<sup>73</sup>.

#### 4.3 TECHNICAL TOOLS AND METHODS USED FOR IDENTIFICATION

A number of technical tools and methods can be deployed for identification of illegal employment of TCNs, for example planning maps, criteria to select enterprises, manuals, operational guidelines, checklists and scripts for interviews, visit protocols and visit follow up procedures.

Member States fall into two categories: those with prescribed procedures and tools to carry out the inspections<sup>74</sup> and those which do not have such formal methods and tools<sup>75</sup>. In these countries, it was sometimes reported that the approaches are not standardised due to the case-by-case nature of inspections and thus it is difficult to apply one standard document or approach that would fit all situations.

In Member States where common methods and tools are available, these usually vary between the Member States but some commonalities could be identified. For instance, in Belgium, Estonia, Germany and Ireland, Slovenia a **guidance document for interviewing employers or employees** is available for the authorities conducting the inspection.

In **Austria, Belgium, Czech Republic, Estonia and Germany**, the inspectors are **equipped with laptops** and internet access to allow them to access relevant databases on the spot. **Checklists** for documents to review during the inspection are also tools that have been made accessible for inspections in Belgium, Finland and Ireland. Examples are provided in the blue box below.

<sup>70</sup> All Member States except Malta where no information was available

<sup>71</sup> BE, DE, FI, FR, HU, LV, SI, SK and the UK

<sup>72</sup> AT, BE, CY, CZ, DE, EE, FI, FR, EL, HU, LT, LU, NL, SK, SI and the UK

<sup>73</sup> BE, CY, CZ, DE, EE, ES, FI, FR, IE, LU, LV, NL, SK

<sup>74</sup> (AT, BE, CZ, DE, EE, ES, FI, IE, MT, NL, SI and SK)

<sup>75</sup> (LT, LV and SE)

### Examples of methods and tools used in identification

In **Ireland**, a manual entitled 'Inspection Service Case Management Procedures Manual' sets out the pre-inspection process for Workplace Relations Commission Inspectors, the procedures in relation to conducting the inspection and also contains a specific procedure for ensuring compliance with employment permits legislation.

In **the Netherlands**, the Labour Inspectorate works with a risk-controlled programme for inspections and the inspectors are educated and trained on checks to assess compliance with the minimum wage and the minimum holiday allowance, working time legislation and the placement of personnel by intermediaries.

In **Slovakia**, methodological guidelines, task planning, criteria for selection of the inspected businesses and visit reports are used to identify illegal employment in general, including illegal employment of TCNs. Labour inspectors carry out the inspections for illegal employment based on the Methodological Guideline for the Labour Inspections, issued by the National Labour Inspectorate which seeks to harmonise the work methods of labour inspectorates.

In **Spain**, labour inspectors have support information in migration field such as guidelines, best practices and examples on how to proceed. Training in specific areas is growing in importance (i.e. trafficking)

#### 4.4 LESSONS LEARNT, SUCCESS FACTORS AND CHALLENGES IN IDENTIFYING ILLEGAL EMPLOYMENT OF THIRD-COUNTRY NATIONALS

The most common success factor identified by several Member States<sup>76</sup> is the **effective cooperation and exchange of information** between the different authorities involved in identification (See Annex 2 for detailed list of authorities involved per Member State).

Forming inspections of teams from different authorities (e.g. labour inspectors and police officers) was identified by **Cyprus** and **Finland** as an effective method for monitoring problematic employers. In **Spain**, the high level of cooperation between the labour inspectorate and police has been identified as a success factor. A specific collaboration agreement has been signed by these two bodies. In **France**, the

Anti-Fraud Departmental Operational Committees (CODAF) bring together the different authorities involved in the fight against fraud at the local level. They aim at organising joint field operation and exchanging information between the different services in order to ensure more effective controls.

In Belgium, Estonia and Slovakia, **common databases** are made available to authorities and allow for a better detection of illegal employment through the cross-checking of data on taxes, social security and employment status. The need for access to this type of data was recognised by **the Czech Republic** and **Lithuania** as this was mentioned as one factor hindering the detection of illegal employment.

An important method for Swedish authorities to be able to check whether companies declare all their workers are **workplace attendance records**. While such records have been mandatory for business branches such as restaurants, hairdressers and laundries for a long time, also the construction industry is now required to keep such records. Since 1 January 2016, all construction sites in Sweden must have electronic attendance recorders that register entries and exits.

An **effective complaint mechanism** for workers can be an important way of identifying irregular employment, particularly exploitative working conditions and human trafficking, and facilitating sanctions on employers. Finally, an effective practice reported by **Ireland** and **Slovenia** as an effective way of detecting illegal TCNs was through **unannounced night inspections**. In these countries, based on previous observations, workers without permission tend to work in sectors where night work predominates and there can be a perception that it is 'safer' to work outside of normal working hours. A higher rate of detection was observed when carrying out this type of inspection.

Carrying out unannounced inspections has also been identified as a success factor by **Spain**.

With regard to **challenges in identification of illegally employed TCNs**, the language barrier was identified by Ireland, Finland and Slovakia as one of the weaknesses that can hinder the identification of illegal employment of TCNs. Indeed, due to a lack of awareness or **poor language skills**, a foreign employee may have

<sup>76</sup> BE, CY, DE, EE, ES, FI, FR, IE, MT, SI and SK

limited opportunities to obtain information on labour law and procedures or access complaint mechanisms. Communication between the authorities and employees may also be complicated by the lack of a common language. **Luxembourg** and **Slovakia** mentioned an **insufficient number of staff** as a factor preventing them to carry out the number of on-site inspections they would like and thus, detect illegal employment (see Annex 5 on statistics on the number of staff/ inspectors).

## 5 Sanctions for employers

Employers found to be illegally employing TCNs can face a number of sanctions. Whilst these do not vary significantly for irregularly and regularly staying third-country nationals, they are applied in different ways across Member States.

This section of the report presents the types of sanctions imposed for employers, including administrative and criminal sanctions (Section 5.1). It further analyses Member States' implementation of Art. 9(1) of the Employer Sanctions Directive with regard to criminal sanctions imposed for severe violations of employers (Section 5.2). Finally, this section presents lessons learnt in implementing sanctions to employers (Section 5.3). Annexes 3 and 4 provide detailed mapping of the sanctions for employers in Member States participating in this Study.

### 5.1 TYPES OF SANCTIONS FOR EMPLOYERS

The most common sanction applied by Member States is **fines** – all Member States participating in this Study apply this equally for employers of irregularly staying and illegally working TCNs<sup>77</sup>, and employers of regularly staying and illegally working TCNs.<sup>78</sup> However, it should be noted that different regulations apply to the two situations with different severity of sanctions for employers.

The sanction of **imprisonment** is applied in seventeen Member States<sup>79</sup> for employers of irregularly staying TCNs, and thirteen Member States apply it for employers of regularly staying TCNs<sup>80</sup>.

For example, in **Spain** imprisonment is a possible sanction for employers who hire a TCN without a work permit where there are aggravating circumstances. Other types of sanctions are examined in this section below.

In general, **procedures do not differ** if the employer did not **intentionally hire irregular workers**. This is mainly due to employers having a responsibility to conduct thorough checks and fulfil the necessary conditions to verify an employee's legal status. Nevertheless, in some Member States<sup>81</sup>, the severity of the sanction can vary according to whether the employer acted negligently or with intent. For cases where the employer **acted negligently**, these tend to be treated as administrative offences and financial sanctions are often imposed. Where the employer **intentionally employed illegally** TCN, this is treated in the vast majority of cases as a criminal offence, thus more severe criminal sanctions are imposed.

Some Member States<sup>82</sup> reported that if the employer was presented with **forged documents** and, despite carrying out the necessary checks, did not realise this, they will not be penalised. For example, **Estonia** reported that if the employer has followed in good faith the obligation to notify Police and Border Guard Board according to law, and the obligation to check the legal basis of stay and work of an employee, then the employer cannot be held responsible for providing illegal employment.

However, **Germany** and **Latvia** both reported that in practice, it is very difficult, if not almost impossible to employ a TCN illegally without knowing. In **Germany**, should it turn out that an employment relationship is illegal despite the employer having carefully fulfilled his requirements to inspect and retain a copy of the documents furnished by the employee, as well as to report the employment, the employer is not liable for the costs of the deportation or removal of the TCN, unless s/he knew that the documents used were forged.

In cases where the **residence permit of the employee was revoked**, the enforcement of sanctions against the employer can depend on whether the employer was aware of the illegal employment situation (e.g. AT, BE, CZ, DE, IE, LT<sup>83</sup>, LU, UK).

In **Sweden**, for example, sanctions can be avoided if an employer has checked whether the employee is entitled to stay in Sweden, has kept a record of the matter (e.g. copy of the residence permit), and has informed the relevant public authority of employing the person in question.

<sup>77</sup> AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, LT, LU, LV, MT, NL, SE, SK, SI, UK

<sup>78</sup> AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, LT, LV, MT, NL, SE, SK, SI, UK

<sup>79</sup> AT, BE, CZ, DE, EE, EL, ES, FI, FR, HU, IE, LT, LU, SE, SK, SI, UK.

<sup>80</sup> AT, CZ, DE, EL, ES, FI, FR, HU, IE, MT, SE, SI, UK.

<sup>81</sup> AT, CZ, EL, ES, FI, FR, HR, HU, LU, SE, SK, UK

<sup>82</sup> BE, DE, EL, LU, SK, UK

<sup>83</sup> In cases where the residence permit of the employee was revoked the enforcement of sanctions against the employer depends if the employer fulfilled all his obligations set in the Labour Code art. 98-1 (for example, did not inform the Labour exchange about employment of TCN).



In some of these cases (AT, DE, UK), the employer is not liable to sanctions (e.g. AT, DE, UK) or paying the costs of return of the TCN (e.g. AT, DE) if the document presented as a valid residence permit was forged and the employer was not aware of it and had carefully fulfilled his requirements to conduct the necessary checks.

In some Member States, the employer there is notified when the residence permit is revoked. For example, in **Bulgaria**, when the residence permit is revoked the employer must be notified by the Employment Agency, while in **Luxembourg**, there is no active obligation of the Directorate of Immigration to inform the employer that the residence permit/authorisation of stay has been revoked.<sup>84</sup>

### 5.1.1 FINES FOR EMPLOYERS

**Fines are applied as a sanction** by all Member States participating in this Study for employers of both **irregularly and regularly staying** and illegally working TCNs<sup>85</sup>. In **Luxembourg**, fines are only applied in cases of **irregularly** staying and illegally working third-country nationals, and **Malta** only applies fines in cases of **regularly** staying and illegally working TCNs. However, it should be noted that different regulations apply to the two situations with different severity of sanctions for employers. For example, in **Spain**, fines are imposed for employers who hire irregular staying and regularly staying illegally working TCNs.

However, the amount of the fine is significantly higher in the first cases (irregularly staying) than in the second cases (regularly staying).

The way how sanctions are calculated and applied differs across Member States. For example, in **France**, **special and fixed contributions** are two financial, administrative sanctions which may be imposed upon an employer, either a natural or legal person, having employed directly or not an illegally working or an irregularly staying third-country national.<sup>86</sup>

In some cases Member States reported that fines are applied per illegally hired employee<sup>87</sup>. Despite most Member States applying such sanctions, their respective minimum and

maximum fine amounts vary significantly. (See Annex 3 for more details)

### 5.1.2 IMPRISONMENT

In regards to the **sanction of imprisonment**, eighteen Member States apply this for employers of **irregularly staying** and illegally working TCNs<sup>88</sup>. Thirteen Member States apply it for employers of **regularly staying** and illegally working third-country nationals<sup>89</sup>. The sanction of imprisonment and the exact length of the sentence can **depend on the severity of the crime**. Section 5.2 below provides in detail on criminal sanctions for employers as per Art. 9 (1) of the Employers' Sanctions Directive.

### 5.1.3 CONFISCATION OF FINANCIAL GAINS AND EQUIPMENT

This sanction is applied in nine Member States for employers of **irregularly staying** and illegally working TCNs<sup>90</sup>, and by seven Member States for employers of **regularly staying** and illegally working TCNs<sup>91</sup>. In **France**, the confiscation of equipment is applied to without distinction between employers of **irregularly staying** and illegally working TCNs and employers of **regularly staying** and illegally working TCNs.

In these Member States, this sanction can apply to assets which were obtained through the offence (e.g. the labour of illegally employed TCNs), that served to commit the offence, and that arose from the offence (e.g. BE, EE, UK), or only in cases of criminal sanctions (AT, CZ). In **Germany**, any assets that have been illegally obtained by an employer can be seized in the form of asset recovery should criminal proceedings be initiated against the employer pursuant to the Code of Criminal Procedure.

### 5.1.4 INELIGIBILITY OF PUBLIC CONTRACTS

Employers who illegally employ TCNs may be excluded from tender procedures for public contracts. Fourteen Member States impose this sanction of ineligibility of public contracts for employers of **irregularly staying** and illegally working TCNs<sup>92</sup>, and thirteen Member States may impose it for employers of **regularly staying** and illegally working TCNs<sup>93</sup>.

<sup>84</sup> Articles 12 and 14 of the Constitution of the Grand Duchy of Luxembourg of 17 October 1868 published by Memorial 23 of 22 October 1868. Coordinated text of 20 October 2016.

<sup>85</sup> AT, BE, BG, CY, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IE, LT, LU, LV, MT, NL, SE, SK, SI, UK

<sup>86</sup> The **special contribution** applies to employers who employ foreign workers without a work permit, enabling them to undertake paid work in France. The **fixed contribution**, representing the costs of returning the foreigner to their country of origin, applies to employers who employ foreign nationals without any residence permit and who are, hence in an irregular situation.

<sup>87</sup> AT, BE, CZ, EL, ES, FR, HR, HU, LU, LV, SE, UK

<sup>88</sup> AT, BE, BG, CZ, DE, EE, EL, ES, FI, FR, HU, IE, LT, LU, SE, SK, SI, UK

<sup>89</sup> AT, CZ, DE, FI, EL, ES, FR, HU, IE, MT, SE, SI, UK

<sup>90</sup> AT, BE, CZ, DE, EE, FI, HU, SI, UK

<sup>91</sup> AT, BE, CZ, EE, FI, HU, UK

<sup>92</sup> AT, BE, DE, EE, EL, ES, FI, FR, HU, LT, MT, SE, SI, SK

<sup>93</sup> AT, BE, DE, EE, ES, FI, FR, HU, LT, MT, SE, SK, SI

- ★ **Germany** reported that employers' tendering offers for public contracts in the building, public supply and service sectors, must confirm that they have not been convicted or fined for offences relating to the illegal employment (incl. of TCNs).<sup>94</sup>
- ★ Exclusion from all public contracts is temporary in **Greece** and can only last for up to five years.<sup>95</sup>

### 5.1.5 TEMPORARY/DEFINITIVE CLOSURE

Thirteen Member States<sup>96</sup> impose the sanction of temporary/definitive closure for employers of **irregularly staying** and illegally working third-country nationals, and twelve Member States impose this sanction for employers of **regularly staying** and illegally working TCNs<sup>97</sup>.

- ★ In the **Czech Republic**, the imposition of the sanction of temporary/definitive closure is possible only in cases of criminal sanctions.
- ★ In the **UK**, the Immigration Act introduced the power to close business premises for up to 48 hours for employers who repeatedly break the law by employing illegal workers and evading sanctions.

If the employer cannot prove they have conducted right to work checks, there can be continued closure for a period of time, followed by a re-opening of the business subject to a compliance regime and regular inspections.<sup>98</sup>

### 5.1.6 SUSPENSION OF ACTIVITY

In terms of **suspending the activity of employers of irregularly staying** and illegally working TCNs, fourteen Member States<sup>99</sup> apply this sanction, and ten Member States apply the sanction for **regularly staying** and illegally working TCNs<sup>100</sup>.

### 5.1.7 WITHDRAWAL OF TRADING LICENSE/DISBARMENT

Ten Member States may apply the sanction of withdrawal of trading license for employers of **irregularly staying** and illegally working TCNs<sup>101</sup> and eight Member States<sup>102</sup> apply it for employers of **regularly staying** and illegally working TCNs. In most of these cases (AT, BE,

FI, SE, SK, UK) the decision to impose this sanction depends on certain conditions, which include whether (it is possible that) the business owner commits the same/similar criminal offence (AT, SK), or if the business owner, after committing a serious infringement such as illegal employment, does not meet the reliability requirements for conducting a business (AT).

### 5.1.8 WITHDRAWAL OF RESIDENCE PERMIT IF THE EMPLOYER IS A THIRD-COUNTRY NATIONAL

Twelve Member States can apply the sanction of withdrawal of residence permit if the employer is a TCN, for employers of **irregularly staying** and illegally working TCNs<sup>103</sup>. Eleven Member States<sup>104</sup> can apply this sanction for employers of **regularly staying and illegally working** TCNs. In some of these cases, a withdrawal of residence permit would only be imposed if the offence was sufficiently serious or repeated (BE, DE, SK, and UK).

### 5.1.9 OTHER SANCTIONS

Sixteen Member States<sup>105</sup> reported that they impose other sanctions on employers of **irregularly staying** and illegally working TCNs, and thirteen Member<sup>106</sup> States impose other sanctions on employers of **regularly staying** and illegally working TCNs.

In some of the Member States (AT, BG, DE, EL, FR, LT, LU, SE), other sanctions involve **excluding employers from receiving public funding or benefits, state aid, or access to funds from the European Union (e.g. grants)**. Two Member States (LT, SE) reported that in such cases, employers are also obliged to repay part/all of any such funding which they have previously received.

Two of the Member States (SK, UK) reported that they impose a sanction where employers' **offences may be made public**, which consequently impacts their reputation. In **Slovakia**, there is a centralised public list of natural persons and legal entities who have breached the ban on illegal employment in the last five years.<sup>107</sup> The legal entity can also be punished by publishing their sentence in order to notify the public, which can damage the

<sup>94</sup> Section 21 subs. 1 of the Act to Combat Undeclared Work and Unlawful Work

<sup>95</sup> Article 87A b Law 4052/2012

<sup>96</sup> BE, CZ, EE, EL, ES, FI, FR, HR, HU, LU, MT, SK, UK

<sup>97</sup> BE, CZ, EE, EL, ES, FI, FR, HR, HU, MT, SK, UK

<sup>98</sup> Immigration Act 2016

<sup>99</sup> AT, BE, CZ (Applies according to Section 342 of Criminal Code), EL, ES, FI, FR, HR, HU, LU, MT, NL, SK, UK

<sup>100</sup> AT, BE, CZ, ES, FI, FR, HR, HU, MT, NL, UK

<sup>101</sup> AT, BE, ES, FI, FR, HU, LU, MT, SE, SK, UK

<sup>102</sup> AT, ES, FI, FR, HU, MT, SE, SK, UK

<sup>103</sup> BE, CZ, DE, EE, ES, FI, FR, HU, LU, MT, SK, UK

<sup>104</sup> BE, CZ, DE, EE, ES, FI, FR, HU, LU, MT, SK, SI

<sup>105</sup> AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, HU, LT, LU, LV, SE, SK, UK

<sup>106</sup> AT, BE, CY, CZ, DE, EE, FI, FR, HU, LT, LV, NL, SK, SI

<sup>107</sup> Labour Inspection Act. The register can be found here: <http://www.nip.sk/register/>



employer's reputation.<sup>108</sup> Similarly in the **UK**, the employer's business details may be published and they will be identified as an employer of illegally employed workers.

Another sanction that can be imposed by four Member States is restricting **employers' ability to employ TCNs in the future** (AT, BE<sup>109</sup>, BG, CY, CZ). In **Cyprus**, cases of illegal employment are taken into consideration in the examination of employers' applications for the employment of TCNs. Likewise in the **Czech Republic**, employers are unable to hire a foreign national for four months.<sup>110</sup> In **Bulgaria** this restriction is for 1 year in case of irregular employment of regularly staying TCNs and 2 years in case of irregularly staying TCNs<sup>111</sup>. In **Germany** employers that illegally employed TCNs are also liable for the costs of deportation or expulsion.

## 5.2 CRIMINAL SANCTIONS FOR EMPLOYERS AS PER ARTICLE 9 (1) OF THE EMPLOYERS' SANCTIONS DIRECTIVE

The previous section 5.1 identified a number of sanctions which depending on the Member State can be considered administrative or criminal. This section specifically examines the criminal sanctions available in Member States as per Article 9 (1) of the Employer Sanctions Directive. Legislation in seventeen Member States<sup>112</sup> participating in this Study provides for criminal sanctions for **all** of the following circumstances (as per Art. 9 para 1 of the Employers' Sanctions Directive (2009/52/EC)<sup>113</sup>, or domestic equivalent):

- ★ Infringement **continues** or is persistently **repeated**;
- ★ Infringement is in respect of the **simultaneous employment of a significant number** of irregularly staying third-country nationals;
- ★ Infringement is accompanied by particularly **exploitative working conditions**;
- ★ Infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an irregularly staying third-country national with the

knowledge that he or she is a **victim of trafficking in human beings**;

- ★ The infringement relates to the **illegal employment of a minor**.

Four Member States apply criminal sanctions for some, but not all, of these circumstances (CY, LV, NL, UK). The only Member State which does not apply any of these criminal sanctions is **Croatia**. In **Croatia**, criminal sanctions are not prescribed in the Foreigners Act, only penal provisions for employers are applied.

In terms of **changes made to national legislation**, 11 Member States participating in this Study<sup>114</sup> amended legislation on sanctions for employers for illegally employing TCNs since July 2014, and eleven Member States<sup>115</sup> have not made any changes. Four Member States (CZ, DE, NL and SK) made changes related to the **level of fines imposed** for illegal employment.

## 5.3 LESSONS LEARNT IN IMPLEMENTING SANCTIONS TO EMPLOYERS

This section examines the factors affecting sanctioning employers (5.3.1) and good practices in implementing sanctions (5.3.2.).

### 5.3.1 FACTORS AFFECTING SANCTIONING EMPLOYERS

Nine Member States reported that sanctioning employers who illegally employ TCNs **acts as a strong deterrent for employers** (AT, BE, DE, ES, CZ, FI, FR, NL, UK). A common sanction mentioned in this respect is **financial sanctions**, which was reported in six Member States to be sufficiently high and an effective way of combating illegal employment of TCNs through deterrence (AT, CZ, ES, FR, NL, UK). This is considered a simple and straightforward administrative sanction which takes into account the employer's behaviour (NL, UK).

On the other hand, in some Member States it was reported that sanctions in their MS are in fact either **too lenient** (FI, MT), or the **risk of sanctions is too low in comparison to the**

<sup>108</sup> Art. 251a of the Criminal Code and Art. 20 of Act No. 91/2016 Coll. on Criminal Liability of Legal Entities

<sup>109</sup> On a case by case basis.

<sup>110</sup> Section 37a of the Act On Employment

<sup>111</sup> Art. 11, para. 1, point 3 and 6 of the Law on Labour Migration and Labour Mobility

<sup>112</sup> AT, BE, BG, CZ, DE, EE, ES, FI, FR, GR, HU, LT, LU, MT, SE, SK, SI

<sup>113</sup> 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, OJ L 168/24.

<sup>114</sup> CY, DE, ES, FR, HR, HU, LT, MT, SE, SI, SK, UK

<sup>115</sup> AT, BE, BG, CZ, EE, EL, FI, IE, LU, NL

**potential profits** employers can gain from illegal employment (BE, FI).

- ★ **Belgium** reported that infringements by certain offenders keep occurring as the mere risk of financial sanctions is overshadowed by potential profits.
- ★ Similarly, **Finland** reported that, according to trade unions, irregularly employing TCNs does not pose a major risk for an employer, and the sanctions imposed are lenient and do not prevent exploitation.
- ★ **Malta** reported that the revision of its current legislation, which will come in to force in 2017, will strengthen and increase provisions, including financial sanctions, as the fines are currently significantly low.

Four Member States identified monitoring, **detecting and providing proof of illegal employment** as challenges, also highlighting that the **traces of such activity can be covered quickly** (BE, FI, GR, and LU).

Some actors in **Finland** (trade unions and employer organisations) considered that **monitoring resources (e.g. monetary, human) are insufficient** and that the Employer Sanctions Directive should include (as originally proposed) provisions regarding the extent of monitoring of illegal employment. These actors suggested for example that electronic services could be utilised increasingly to make it more convenient for employers to verify a foreign national's right to employment.

Illegally employed TCNs often do not declare themselves to the authorities or to labour unions, because of the **risks they face** (job loss, retaliation by employers, apprehension, detention and removal) and limited possibilities to access remedies (unpaid wages).

Even if they have been detected by the authorities, **some TCNs are reluctant to cooperate or unable to participate in the proceedings** because they do not have a residence permit and have limited legal and other support, thus making it difficult for the authorities to sanction employers. (e.g. LU)

Two Member States (BE, CZ) considered the

**nature of the process as being long, time-consuming and difficult.** It was reported that criminal proceedings can take place over long periods of time, as many investigative acts are needed in the process. Regarding cases of trafficking in human beings, **Belgium** reported that there is an added difficulty in regards to providing proof that the criteria required for a case to qualify as a crime of human trafficking are met.

As for **available resources**, it was argued by two Member States that technical, human resources, and financial capacity of inspections require strengthening (LU, SK). **Luxembourg** reported an insufficient number of staff at the agencies which are responsible for labour inspections and the control of illegal employment of TCNs.<sup>116</sup>

### 5.3.2 GOOD PRACTICES IN IMPLEMENTING SANCTIONS TO EMPLOYERS

Having a **streamlined, integrated and comprehensive policy and legal framework** was reported to be an important success factor in this respect (BE, EL, FI, FR, LT, SI).

- ★ In **Greece** an integrated framework for imposing both administrative and criminal sanctions has been formed through the relevant legislation.
- ★ Currently in **Lithuania**, liability for the illegal employment of TCNs is provided in three legal acts. However, a new Law on Employment, which is to enter into force in July 2017, aims at stipulating, in single law, all violations incurring administrative liability to employers for illegal employment. By providing a single liability legislation it should be easier to carry out controls and to hold employers liable in breach of the law.
- ★ In **France**, the sanction of closure of business, as well as the publicly available information in the local press and the publishing of the order of closure on the business premises act as strong dissuasive factors which prevent repeat offences and discourage other employers.

Ensuring an effective complaints mechanism was reported to be an important success factor by civil society,<sup>117</sup> as it enables the worker to denounce exploitative and irregular

<sup>116</sup> Response to Parliamentary Question n°2460, 18 November 2016, [http://www.chd.lu/wps/PA\\_ArchiveSolR/FTSShowAttachment?mime=application%2Fpdf&id=1395396&fn=1395396.pdf](http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2Fpdf&id=1395396&fn=1395396.pdf), p. 11, last accessed on 25 January 2017.

<sup>117</sup> The Platform for Undocumented Migrants (PICUM) has developed guidelines for developing complaints mechanisms for undocumented migrant workers. The guidelines set out the

main components necessary for TCN workers to be able to safely report and access remedies (while focusing on illegally employed TCNs, the principles also apply for many TCN workers who work permit is tied to a particular employer or job).

employment, and participate in the investigation and prosecution including the imposition of sanctions against employers.

## 6 Outcomes for TCNs found to be working illegally

Following identification of an illegally employed TCN, there are several possible outcomes, including return, possibly preceded by detention (which is an ‘intermediary outcome’ and in itself may lead to release, return or regularisation), fines, and identification as victims of trafficking in human beings and regularisation of residence/work status.

This section provides a comparative overview of the *possible* outcomes for TCNs found to be illegally employed. Possible outcomes means that these outcomes are not ‘definite’ (meaning that Member States will act in one way or another) but they are possibilities depending on the particular case (in some cases subject to discretion of Member States’ authorities). In some cases, outcomes are cumulative (e.g. detention may be accompanied by a return decision and an entry ban), while in other cases these outcomes are exclusive (meaning that only one of the outcomes is possible – e.g. return decision or regularisation). Detailed information can be found in the National Reports.

As can be seen in the table below, the most common outcome for illegally employed and irregularly staying TCNs is the issuance of a **return decision**, which in most cases includes a period for voluntary departure. In the case of regularly staying TCNs found to be working illegally, the main outcome would be the possibility of **losing residence rights**. A consequence would be the issuance of a return decision.

According to the information provided by Member States, regularisation of TCNs found to be working illegally (regardless of whether they are staying irregularly or regularly) is only possible in a limited number of Member States.

In most Member States, illegally employed TCNs can be identified as victims of human trafficking (if that is the case). The table below shows the possible consequences for TCNs in case of illegal employment.

Table 4: Possible outcomes for illegally employed TCNs

Consequences	Regularly/ irregularly residing TCNs	Member States
<b>May be issued with a return decision</b>	Irregularly residing TCNs	AT, BE, BG, CY, CZ, CY, DE, EE, ES, FI, FR, EL, HR, HU, IE, LT, LU, LV, MT, NL, SE, SK, SI, UK
	Regularly residing TCNs (only when losing residence rights, see below)	AT, BE, CY, CZ, DE, EE, FI, FR, HU, IE, LU, LV, MT, NL, SK, SI, UK
<b>Can lose residence rights</b>	Regularly residing TCNs	AT, BE <sup>118</sup> , CY, <sup>119</sup> CZ <sup>120</sup> , DE, <sup>121</sup> EE, <sup>122</sup> FI, FR, HU, IE, LU, LV, MT, NL, SK, SI, UK
<b>May be granted a period for voluntary departure</b>	Irregularly residing TCNs	AT, BG, CZ, DE, EE, ES, FI, FR, HR, IE, LT, LU, LV, MT, NL, SE, SI <sup>123</sup> , SK
	Regularly residing TCNs (when losing residence rights)	AT, BE, CZ, DE <sup>124</sup> , FI <sup>125</sup> , IE, SK
<b>May receive an entry ban</b>	Irregularly residing TCNs	AT, BE, CZ, BG, DE, EE, ES, FI, FR, HR, HU, IE, <sup>126</sup> LT, LU, LV, MT, NL, SE, SK, SI, UK
	Regularly residing TCNs when losing residence rights	AT, BE, CZ, DE <sup>127</sup> , FI <sup>128</sup> , FR, IE <sup>129</sup> , LU, UK, LV <sup>130</sup> , SK

PICUM, 2017. “Undocumented migrant workers: Guidelines for developing an effective complaints mechanism in cases of labour exploitation or abuse”. Available in Czech, Dutch, English and German at <http://picum.org/en/publications/reports/>.

<sup>118</sup> The residence rights are not automatically withdrawn. This is examined on a case by case basis.

<sup>119</sup> Only if the offence is repeated more than once

<sup>120</sup> Only in cases of temporary residence permits.

<sup>121</sup> Only in serious cases, while in less serious cases it is possible that the residence permit is not extended, or its validity is shortened

<sup>122</sup> Only in cases of temporary residence permits

<sup>123</sup> Not granted automatically and is decided on a case by case basis

<sup>124</sup> A period for voluntary return can be granted if the TCN is issued with an expulsion order.

<sup>125</sup> Only when losing residence rights

<sup>126</sup> If the applicant receives a 15-day letter notifying the individual of the Minister's intention to issue a deportation order.

<sup>127</sup> A ban on re-entry can be issued if the TCN is issued with an expulsion order or is deported.

<sup>128</sup> Only when losing residence rights and is removed due to criminal consequences

<sup>129</sup> If the applicant receives a 15-day letter notifying the individual of the Minister's intention to issue a deportation order.

<sup>130</sup> In practice there was no such case.

Consequences	Regularly/ irregularly residing TCNs	Member States
<b>May be detained</b>	Irregularly residing TCNs	AT, <sup>131</sup> BE, CY, CZ, DE <sup>132</sup> , FI, EL, ES, FR, HU, IE, LU, LV, MT, NL, SE, SK, SI, UK.
	Regularly residing TCNs (when losing residence rights)	BE <sup>133</sup> , CY, CZ, DE, FI, FR, HU, LU, LV, MT, SK, SI, UK
<b>May be fined</b>	Irregularly residing TCNs	AT, <sup>134</sup> BE <sup>135</sup> , BG, CZ, DE, FI, HR, IE, LV, SE, SK, SI, UK
	Regularly residing TCNs	BE, <sup>136</sup> BG, CY, CZ, DE, EE, ES, FI, HR, IE, LV, MT, SE, SK, SI, UK
<b>Identified as a victim of human trafficking (may be issued (temporary) residence and work permits)</b>	Irregularly residing TCNs	AT, BE, CY, CZ, DE, EE, ES, EL, FI, FR, HU, IE, LT, LU, LV, MT, NL, SE, SK, SI, UK
	Regularly residing TCNs	AT, BE, CZ, FI, LV <sup>137</sup> , LU
<b>May be regularized in terms of work and/or residence status</b>	Irregularly residing TCNs	AT, EL, ES <sup>138</sup> , FR <sup>139</sup> , IE, LU, SE, NL, SI,
	Regularly residing TCNs (his/her working rights being regularised - e.g. obtaining a work permit)	BE <sup>140</sup> , EL, ES, IE, NL, SE, SI

## 6.1 RETURN

In the event that an irregularly staying and illegally working TCN is detected, in all Member States participating in this Study, the TCN can be issued a return decision, meaning that the TCN has to leave the Member State concerned.<sup>141</sup>

The majority of Member States reported that irregularly staying and illegally working TCNs are granted a period for voluntary departure, which is usually between 7 and 30 days.<sup>142</sup> In some cases this period can be extended.

For example, in **Bulgaria** it can be extended for up to one year, if there are exceptional circumstances. In certain circumstances (for example, if the period for voluntary departure is not respected, or in case of removal), Member States may issue an entry ban to irregularly staying and illegally employed TCNs.<sup>143</sup>

The entry bans differ in duration across the Member States. They range from 1 year for voluntary return without assistance, to 10 years and indefinitely in case of forced return. For example, while in **Ireland** all deportation orders contain an inherent entry ban of indefinite duration, in both the **United Kingdom** and **Ireland** entry bans depend on whether the person in question departs voluntarily or was removed.

In the event that a regularly staying and illegally working TCN is detected, in 15 Member States, this can lead to loss of residence rights (AT, BE<sup>144</sup>, CY,<sup>145</sup> CZ<sup>146</sup>, DE, SI<sup>147</sup>, EE,<sup>148</sup> FI, FR, HU,

<sup>131</sup> Foreigners cannot be detained on account of illegal employment but in order to secure a procedure terminating residence or to guarantee removal.

<sup>132</sup> Detention awaiting deportation

<sup>133</sup> Only when the TCN's residence rights were withdrawn and the TCN is intercepted and it is established that he did not follow up on the order to leave the territory.

<sup>134</sup> Foreigners cannot be fined for being illegally employed but only for staying irregularly.

<sup>135</sup> In Belgium, any individual (including regularly and irregularly staying TCNs) can be issued an administrative fine when his employment is not declared, provided that he carried out the employment intentionally and knew that it was undeclared, and that a formal report was issued against the employer for this undeclared work. The administrative practice of the administrative fines service indicates that this fine is often not imposed if the TCN lodged a complaint to a social inspector against his/her employer himself/herself or if the TCN is a victim of trafficking in human beings or of exploitation.

<sup>136</sup> See footnote above.

<sup>137</sup> In Lithuania, a victim of human trafficking is granted a residence permit for up to 5 years with the right to work for any employer.

<sup>138</sup> some exceptional circumstances

<sup>139</sup> On a case-by-case basis, in exceptional circumstances

<sup>140</sup> In Belgium, the past work can be regularized when the employer declares the TCN's past activities and the past labour relation to Social Security. This may happen following an injunction from the Labour Inspectorate who proved the illegal work. An application for a new work permit can also be made by a new employer (provided the TCN did not lose his residence rights).

<sup>141</sup> AT, BE, BG, CY, CZ, CY, DE, EE, ES, FI, FR, EL, HR, HU, IE, LT, LU, LV, MT, NL, SE, SK, SI, UK

<sup>142</sup> AT, BG, CZ, DE, EE, FI, FR, ES, HR, IE, LT, LU, LV, MT, NL, SE, SI (not granted automatically and is decided on a case by case basis), SK, UK

<sup>143</sup> AT, BE, CZ, BG, DE, EE, ES, FI, FR, HR, HU, IE, LT, LU, LV, MT, NL, SE, SK, SI, UK

<sup>144</sup> The residence rights are not automatically withdrawn. This is examined on a case by case basis.

<sup>145</sup> Only if the offence is repeated more than once

<sup>146</sup> Only in cases of temporary residence permits

<sup>147</sup> Only in serious cases, while in less serious cases it is possible that the residence permit is not extended, or its validity is shortened

<sup>148</sup> Only in cases of temporary residence permits

IE, LU, LV, MT, NL, ,SK<sup>149</sup>, UK). A return decision is issued in the Member States when the TCN loses his/her residence rights.

## 6.2 DETENTION PENDING DEPORTATION

This section examines detention pending deportation in the context of a return procedure (and not as a criminal sanction, which is examined in Section 6.3 below). Articles 15 to 18 of the Return Directive regulate the situations where detention of TCNs for the purpose of return is permissible as well as the conditions for detention.

Nineteen Member States reported that detention of irregularly staying TCNs found to be working illegally can be applied in some cases.<sup>150</sup> The circumstances in which detention may be applied in conjunction with a return procedure vary; e.g. in some Member States TCN may be detained in cases where the TCN poses a threat to abscond or a threat to national security (e.g. BE<sup>151</sup>, CZ, DE, FI, FR, EL, LU, LV, NL), the TCN has destroyed their identity documents (e.g. CZ, IE, LU), or if a forced return decision has been issued (e.g. BE, CY, CZ).

In **Estonia**, if other alternatives to detention cannot be applied, the TCN found to be irregularly residing and illegally working might be placed under administrative detention for up to 48 hours.

In **Malta**, all TCNs found illegally employed are detained until a decision is taken on the issuance of any return decision and removal order. In eleven Member States regularly residing and illegally employed TCNs – who lost their residence rights - can be detained in certain cases.

## 6.3 IMPRISONMENT

One Member State participating in this Study – **Germany** - reported that imprisonment (besides the possibility of detention in conjunction with a

return decision) is a possible sanction in the case of persistent repetition of irregular employment. The person concerned may be subject to an imprisonment of up to one year or to a fine. This is also the case if illegally employed TCNs commit fraud against the social security system by, for example, receiving unemployment benefits parallel to working illegally.

## 6.4 FINES

In twelve Member States<sup>152</sup>, irregularly staying TCNs can be fined for illegal employment. However, in some Member States they are rather fined for irregular stay in the country (not for the employment itself) (AT) and/or for breaching legislation governing employment permits (IE). Table 6.1 in annex 6 shows the fines imposed by Member States. The fines range from €140-700 in **Latvia** and € 330 in **Slovakia** to up to €5,000 in **Germany and Slovenia** and up to £20,000 in **the UK**. Some Member States can also fine regularly staying, but illegally employed TCNs (BE,<sup>153</sup> BG, CY, CZ, DE, EE, ES, FI, HR, IE, LV, MT, SE, SK, SI, UK).

In the **Czech Republic**, the trend is to penalize the employer who allowed a natural person to perform illegal work. Fines are imposed on a natural person only in cases when illegal work has a substantial degree of social harm – illegal work is the direct intention of a worker, respectively is performed at the request of the worker, repeatedly, in an extensive scale etc. Even in such cases, the fines are usually imposed on the natural person at the lower end of its maximum possible amount which is approx. € 3 800 (100,000 CZK).

## 6.5 IDENTIFICATION AS A VICTIM OF TRAFFICKING OF HUMAN BEINGS

As provided by Directive 2004/81/EC<sup>154</sup>, residence permits of temporary duration may be issued to non-EU nationals who are victims of trafficking in human beings. The Directive aims

<sup>149</sup> However, illegal work itself does not constitute a reason to cancel the residence permit. In this case, the procedure follows the Act on Residence of Aliens, because different rules apply to different types of residence granted to TCNs. Each case is evaluated individually.

<sup>150</sup> AT, BE, CY, CZ, DE, FI, FR, EL, ES, HU, IE, LU, LV, MT, NL, SE, SK, SI, UK

<sup>151</sup> In BE, detention is always implemented with a view to return.

<sup>152</sup> BE, BG, CZ, DE, FI, HR, IE, LV, SE, SK, SI, UK

<sup>153</sup> In Belgium, any individual (including regularly and irregularly staying TCNs) can be issued an administrative fine when his employment is not declared, provided that he carried out the employment intentionally and knew that it was

undeclared, and that a formal report was issued against the employer for this undeclared work. The administrative practice of the administrative fines service indicates that this fine is often not imposed if the TCN lodged a complaint to a social inspector against his/her employer himself/herself or if the TCN is a victim of trafficking in human beings or of exploitation.

<sup>154</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities



to encourage them to cooperate with the competent authorities whilst providing them with adequate protection. If the irregularly staying TCN is identified as a victim of trafficking of human beings subject to labour exploitation, all Member States<sup>155</sup> reported that they may issue (temporary) residence and work permits.

## 6.6 REGULARISATION

Directive 2004/81/EC regulates the issuance of residence permits to TCNs who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

In addition to the residence permit granted under Directive 2004/81/EC, a limited number of Member States participating in this Study allow for the possibility for an irregularly staying TCN to be granted a work permit and/or residence permit in exceptional circumstances (AT, DE, EL, ES, FI, FR, IE, LU, SE).

The different circumstances under which a TCN staying irregularly and working illegally can be issued a work and/or residence permit are outlined in the examples below:

★ **Humanitarian residence permit:** In **Austria** and **Germany**, the TCN may be granted a humanitarian residence title in exceptional circumstances and also a work permit. **Greece** may issue such a permit, if the TCNs were employed under particularly exploitative working conditions or whilst minors. In **Croatia** and **Spain**, a TCN may be granted temporary residence under humanitarian grounds (with the right to work), if the TCN cooperates with the competent bodies and the participation is essential in the criminal procedure being conducted against the employer. In **Sweden**, an illegally staying TCN can apply for asylum, thus seeking to receive a right to stay on humanitarian or protection grounds, and a right to work.

★ **Other residence permits:** In addition to the humanitarian residence permit

described above, in **Greece** a work permit and insurance can be granted to irregularly staying TCNs for employment in the rural economy in order to address urgent needs if vacancies for subordinate and seasonal work in agriculture are not covered by the process of invitation for employment and seasonal work labourers, shepherds and beekeepers. **Ireland** introduced a time limited scheme (so-called 'timed out students') to prevent students affected by changes to the international student regime from becoming undocumented. **Spain** can issue an exceptional work and residence permit for these who demonstrate to have a specific labour link with the country, taking into account their personal circumstances (no criminal records).

In the case of regularly staying, but illegally working TCNs illegal work has no direct effect on the TCN's residence rights in some Member States (BG, CZ<sup>156</sup>, EE, ES, SE). In some of the analysed Member States (BE<sup>157</sup>, EL, IE, NL, SE, SI) illegal work may be regularized in exceptional circumstances. For example, in **Sweden** there may be rare cases, in which a person that is entitled to stay in Sweden but does not have the right to work can be issued a residence permit that includes a right to work, or be exempted from the requirement to have a work permit.<sup>158</sup> In **Spain**, an application for a status change should be logged if the TCN wants to work in the country.

Regarding the consequences for TCNs who have a temporary or permanent residence permit in one EU country and are illegally employed in another Member State, the same rules apply as for other TCNs in case of their illegal employment.<sup>159</sup> In some cases the TCN would be sent back to the Member State where she/he has a permanent residence permit (e.g. DE, ES, LU, LV<sup>160</sup>, MT, SK, SI, UK). In other cases, such as for example in the **Netherlands**, depending on the residence status, the TCN may stay in the country.

<sup>155</sup> AT, BE, CY, CZ, DE, EE, EL, ES, FI, FR, HU, IE, LT, LU, LV, MT, NL, SE, SK, SI, UK

<sup>156</sup> This is the case for long-term residence for the purposes of family reunification, studies, research, or a resident of another MS.

<sup>157</sup> In Belgium, the past work can be regularized when the employer declares the TCN's past activities and the past labour relation to Social Security. This may happen following an injunction from the Labour Inspectorate who proved the illegal work. An application for a new work permit can also be made by a new employer (provided the TCN did not lose his residence rights).

<sup>158</sup> This depends on the individual circumstances of each case. For example, there can be cases in which an asylum seeker is

entitled to work even if the Migration Agency has not officially confirmed this

<sup>159</sup> AT, BE, CZ, DE, EE, FI, HR, HU, IE, LT, LU, LV, SE, SK, SI, UK

<sup>160</sup> TCNs with permanent residence permit would not be sent back. Person with permanent residence permit have no restrictions for right to work. But person with temporary resident permit could be sent back, if a resolution regarding annulment of the residence permit is adopted, in such resolution the person is imposed a duty to leave Latvia, and the person will be allowed to return to the country where it holds a residence permit.

## 6.7 POSSIBILITY FOR COMPENSATION OF UNPAID WAGES AND TAXES

Twenty Member States reported that TCNs who are found to be illegally employed (regardless of whether they are residing regularly or irregularly) can make claims against their employer for compensation of unpaid wages for the duration of their employment as under a valid employment contract<sup>161</sup> (including in cases when they have been returned). Most Member States, third parties with legitimate interest (such as trade unions, organisations of migrant workers), may act on behalf or in support of TCNs.<sup>162</sup> In some Member States<sup>163</sup> the employer may be obliged to cover other expenses as well, such as living expenses or expenses for return of illegally employed TCNs. The different types of expenses are shown below:

- ★ State income taxes and social security contribution: AT, BE, BG, CY, CZ, DE, EE, EL, FI, FR, LT, LU, NL, SE, SK, SI
- ★ Costs for return: BE, BG, CY, DE, EE, EL, FI, FR, SE,<sup>164</sup> LT, LU, NL, SE, SK, SI
- ★ Other expenses (e.g. living expenses): AT, BE, DE, SI.

In addition to employers, direct contractors and other immediate subcontractors can be liable and obliged to pay any outstanding taxes to the state and remuneration due to the third-country national. In some Member States, the company contracting out services (e.g. contractors and intermediate contractors) may be liable as well:<sup>165</sup>

- ★ In **Germany** if a company hires another company, the prime contractor is also liable for illegal employment at the intermediate contractor, unless the prime contractor or the intermediate contractor were not aware that the employer has employed foreigners who lack the authorisation for employment required or the authorisation to pursue an economic activity required.
- ★ In **Austria**, if an employee was subcontracted to another company, this company may be liable for outstanding remuneration. The company which has

contracted out services is liable for the compensation of unpaid wages due by any (sub-) contractor if it did not comply with its duty of inquiry/notification or if it knowingly tolerated the illegal employment – but only as a deficiency guarantor<sup>166</sup>.

- ★ In **Hungary** as well as in **Lithuania**, contractors are jointly liable with the subcontractor for payment of remuneration and other costs of the TCN. However, contractors that could not have been aware that the employment was without a permit even if undertaking due-diligence obligations, are not liable.
- ★ In **Spain**, a joint and several liability<sup>167</sup> is established

Some Member States reported on difficulties encountered in relation to claims for back payments.<sup>168</sup> For example, **Belgium** and **Finland** reported that TCNs seldom file a complaint about their working conditions.

They can be reluctant to cooperate with police forces or inspectorates, because they face direct risks of the outcomes described above (a return decision, with possible detention and forced removal and entry bans), and due to challenges participating in proceedings (including with legal assistance) and proving their employment. The very limited number of cases where the worker actually receives due compensation for wage theft limits possibilities and willingness for the TCN to engage in the process.

## 6.8 PROVISION OF INFORMATION ON RIGHTS

While the majority of Member States provide general information on employment without specifically targeting illegally employed TCNs, a number of the Member States<sup>169</sup> reported that they provide for information **specifically to illegally employed TCNs** on their rights.

There is variation in terms of when any information on rights is provided to the TCN, by whom and in what way; all of which can impact on understanding and ability to act on the information. For example, in **Slovakia** and in **France** illegally employed TCNs are informed of their rights during the inspections performed by

<sup>161</sup> AT, BE, BG, CY, CZ, DE, EE, ES, FI, FR, EL, HU, IE, LT, LU, LV, NL, SE, SK, SI

<sup>162</sup> AT, BE, BG, CZ, DE, EE, ES, FI, EL, HR, HU, IE, LT, LU, LV, NL, SE, SK

<sup>163</sup> AT, BE, BG, CY, DE, EE, FI, EL, LT, LU, NL, SE, SK, SI

<sup>164</sup> In Sweden, an employer can be subject to a financial sanction ('special charge'). This charge is considered to include the costs of a forced return on a lump-sum basis, which means that the charge is the same irrespective of whether the person is forcefully returned or not.

<sup>165</sup> BE, BG, CY, CZ, EE, FI, EL, HU, LT, LU, NL, SE, SI, SK

<sup>166</sup> This means that the company which has contracted out services is only liable for paying outstanding remuneration if the subcontractor cannot pay.

<sup>167</sup> As a legal term, 'joint and several liability' is when multiple parties can be held liable for the same event or act and be responsible for all restitution required.

<sup>168</sup> BE, CY, DE, FI, HU, IE, LT, LU, SK

<sup>169</sup> AT, BE, CZ, EE, ES, FR, LT, LU, LV, MT, SK, SI



inspection bodies. It is also incorporated in the legislation on Illegal Work.

In **France**, the information leaflet on rights of illegally employed TCNs is available in French and six other languages. In **Austria** the Drop-in Centre for Undocumented Workers (UNDOK)<sup>170</sup> provides information to TCNs.

According to UNDOK there is a general lack of knowledge and misinformation about the rights of illegally employed foreigners, not only among the foreigners themselves but also among institutions, which causes difficulties. Further challenges in informing illegally employed foreigners about their rights are caused by the language barrier. These can, however, be tackled by providing counselling in various languages and through interpreters. Also, due to the precarious situation of illegally employed TCNs and the risk of losing their residence rights, it is a challenge to establish trust in counselling situations.

## 6.9 GOOD PRACTICES IN PROVIDING OUTCOMES FOR ILLEGALLY EMPLOYED TCNS

Some Member States (BE, DE, ES, FI, LV, SE, SK, UK) reported on good practices in the area of outcomes for illegally employed TCNs. While some of the Member States below reported good practices regarding information provision and protection of illegally employed TCNs, others reported on good practices with regard to sanctions on employers and claims in cases of illegal employment:

- ★ Information provision and protection: **Finland** reported on the need for a low-threshold service that employees could easily contact to obtain information on employment and their right to gainful employment. In **Germany**, several trade union initiatives offer counselling and legal support for TCNs working illegally. The initiative "migration and work" of the German Trade Union Confederation (DGB) carries out about 30 consultations per year and helps the TCNs claim their outstanding remuneration by establishing direct contact with the employer, sending written assertions or filing lawsuits with the responsible labour court. In **Latvia**, the association Shelter "Safe House" provides information in Latvian, Russian and English on penalties and sanctions that may be applied to a TCN for illegal employment.<sup>171</sup> In 2008, the **Swedish** trade unions

established the 'Swedish Trade Union Centre for Undocumented Migrants' to support irregularly staying TCNs that are being exploited on the Swedish labour market. TCNs who experience problems such as discrimination or exploitation can contact the centre for any assistance. To get help, there is no obligation to be a member of a trade union, and TCNs may choose not to disclose their identity. The services of the centre are free of charge. An information leaflet is available in several languages.<sup>172</sup>

- ★ Claims against employers/ for back payments: Three Member States identified good practices in relation to claims for back payments (AT, BE, IE). For example, in **Belgium**, TCNs can lodge a complaint against their employer directly with the Labour Inspectorate, who guarantees the anonymity of their complaint. Furthermore, cooperation between labour inspectorates and NGOs regarding the back-payment of wages has recently been introduced. Although the cooperation has only started, there are some positive results and the cooperation should continue. In **Finland**, trade unions and the trade unions under them may provide advice to non-members. In certain cases that are important in principle or particularly serious, trade unions have the possibility of providing pro bono legal aid to a non-member. Advice can also be provided by other parties, such as the occupational safety and health authorities. In Spain, the introduction of a legal specific provision about the effects of not having a residence and work permit on the labour contract has added legal certainty in the rights of the TCN worker.

## 7 Case studies

This section illustrates the findings of the previous chapters regarding outcomes for TCNs found to be working illegally, by highlighting the varying consequences and procedures in six hypothetical case studies. Overall, the most likely outcome across all scenarios is the issuance of a **return decision**, which at least half of the contributing Member States reported in each case study. In terms of the least likely outcomes across all scenarios, these include the possibility of **receiving a work permit** / the illegal work being **tolerated or regularised**. The possible consequences for each scenario are

<sup>170</sup> <http://undok.at/>

<sup>171</sup> Association Shelter "Safe House" resource for immigrants, [www.dzivotlatvija.lv/en](http://www.dzivotlatvija.lv/en)

<sup>172</sup> The English version of the leaflet is available at: [http://www.fcfp.se/wp-content/uploads/2015/06/Papperslösa\\_Eng\\_A5-folder.pdf](http://www.fcfp.se/wp-content/uploads/2015/06/Papperslösa_Eng_A5-folder.pdf).

presented in the following sections. It should be noted that applications for international protection and their consequences subsequent to the detection of illegal employment by the respective authorities are not subject of the case studies.

### 7.1 A THIRD-COUNTRY NATIONAL RESIDING AND WORKING IRREGULARLY

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

This case study examines whether residing irregularly, will have an impact on the TCN's ability to apply for and receive a legal residence permit after receiving a work contract from an employer.

Table 5: Possible consequences in case of illegally employed irregular TCNs

Possible consequences	Member States
<i>Is/may be issued with a return decision</i>	AT, BE, BG, CZ, DE, EE, FI, FR, HU, IE, LT, LU, LV, NL, SE, SK, UK
<i>Is/may be granted a period for voluntary departure</i>	AT, CZ, DE, FI, IE, LU, LV, SI, SE
<i>(may) receives an entry ban</i>	AT, BE, CZ, DE, IE, LV, NL, SK
<i>Is/may be fined</i>	BE <sup>173</sup> , BG, CZ, DE, FI, IE, LV, SE, SK, UK
<i>Is/may be detained</i>	AT, BE, CZ, DE, FI, HR, NL, SK, UK
<i>(may) receives work permit</i>	EL, FI, HR, ES
<i>(may) receives residence permit</i>	AT, <sup>174</sup> CY <sup>175</sup> , CZ, FI, EL, HR <sup>176</sup> , MT, ES, FR

<sup>173</sup> In Belgium, any individual (including regularly and irregularly staying TCNs) can be issued an administrative fine when his employment is not declared, provided that he carried out the employment intentionally and knew that it was undeclared, and that a formal report was issued against the employer for this undeclared work. However, the administrative practice of the service of administrative fines indicates that the fine is often not imposed if the worker lodged a complaint himself against his employer and in cases of human trafficking or labour exploitation.

<sup>174</sup> Mr. Shire could apply for asylum, a humanitarian residence title or other residence titles.

### Other sanctions/outcomes

CY, UK

In such a situation, seventeen Member States may issue Mr. Shire with a **return decision**<sup>177</sup> and in nine of these Member States<sup>178</sup> reported that they may grant him a **period for voluntary departure**. Exception to this in some Member States is when TCNs are unable to leave for certain reasons, such as humanitarian reasons (e.g. CZ, DE, LV, LT). Ten Member States reported that they may issue him with a **fine**.<sup>179</sup> In **Belgium**, any individual (including regularly and irregularly staying TCNs) can be issued an administrative fine when the employment is not declared, provided that s/he carried out the employment intentionally and knew that it was undeclared.

However, the administrative practice of the service of administrative fines indicates that the fine is often not imposed if the worker lodged a complaint himself against his employer and in cases of human trafficking or labour exploitation. In **Germany**, the administrative fine proceedings are often closed, as the person concerned has to leave the country or is issued with an expulsion and deported. Nonetheless, the proceedings are set in motion.

In nine Member States, Mr Shire **may be detained**, usually awaiting deportation.<sup>180</sup> In **the Netherlands**, custody is possible both on criminal grounds and on grounds for awaiting deportation. In the case of illegal employment, particularly of TCNs, officers of the Aliens Police, Identification and Trafficking in Human Beings Department have the authority to place an illegally working TCN who is not in possession of valid residence documents in custody. Nine Member States may allow Mr Shire to **receive a residence permit** given certain conditions were met and depending on the specific circumstances.<sup>181</sup> This would depend on factors such as humanitarian reasons (AT, CZ<sup>182</sup>, EL, MT), other mitigating factors such as, in this case, having an underage child (CY), or if the individual was not detected (HR).

<sup>175</sup> Mr. Shire may only apply for a residence permit if he acquires the approval of the Minister of Interior.

<sup>176</sup> If Mr. Shire is not caught in illegal activities and was offered a contract, he would need to first apply for a residence permit at the Ministry of the Interior.

<sup>177</sup> AT, BE, BG, CZ, DE, EE, FI, FR, HU, IE, LT, LU, LV, NL, SE, SK, UK

<sup>178</sup> AT, CZ, DE, FI, IE, LU, LV, SI, SE

<sup>179</sup> BE, BG, CZ, DE, FI, IE, LV, SE, SK, UK

<sup>180</sup> AT, BE, CZ, DE, FI, HR, NL, SK, UK

<sup>181</sup> AT, CY, CZ, FI, EL, HR, MT, ES, FR

<sup>182</sup> Only a long-term visa/residence permit for the purpose of "tolerated stay".

**Finland** reported Mr. Shire may apply for a residence permit if he held a travel document and had confirmation of employment.

Additionally, he must not have been guilty of circumventing the rules on entry or be considered a risk to public order or security. A similar solution has been provided for in **Spain**.

**Sweden** reported that Mr Shire could apply for asylum, thus trying to regularise his situation. In **Greece**, the TCN can, after obtaining certificate of non-removal, work in agriculture and livestock, the domestic work sector and the clothing sector. If he is not detected, it is not possible to accept the job offered to him and be granted a residence and work permit because he entered Greece illegally.

**Cyprus** reported that even if Mr. Shire's request for a residence permit is rejected, no measures will be taken for the family's repatriation during the school year, if the child attends school, or until the child is in a position to travel. His stay would therefore be tolerated for a certain period of time.

## 7.2 A THIRD-COUNTRY NATIONAL ON A STUDENT PERMIT EMPLOYED MORE HOURS THAN ALLOWED

*Ms. Svitlana Ivanenko, a student holding Ukrainian citizenship, aged 22, moved to your Member State one year ago. Svitlana is enrolled in a two year master's programme at university. She holds a residence permit for students. For the past six months she was also employed for 10 hours per week at a local café<sup>183</sup>. During some months of the academic year as well as the summer break at university, Svitlana started to work longer hours at the café, leading to work of almost 45 hours per week during term time for 3 months without changes in her part-time student contract. What happens after the labour inspectorate detected that Svitlana was working 40 hours per week? Please specify the maximum hours per week that students are allowed to work in your Member State.*

This case study looks at the potential consequences for a TCN who is on a student permit, but who might have breached the terms in regards to number of hours they are allowed to work.

Table 6: Possible consequences in case of TCNs on a student permit employed more hours than allowed

Possible consequences	Member States
<i>s/he can lose residence rights</i>	AT, BE <sup>184</sup> , CY, DE, EE, FI, HU, IE, LT, LU, LV, NL, UK
<i>s/he is/may be issued a return decision (if loses residence rights)</i>	AT, BE, CY, DE, FI, HU, LT <sup>185</sup> , LV
<i>s/he is/ may be fined</i>	BE <sup>186</sup> , DE, FI, IE, LV
<i>the illegal work is (may be) tolerated or regularized</i>	BE <sup>187</sup> , BG <sup>188</sup>
<i>Other sanctions/outcomes</i>	BG, CZ, FI, FR, HR, LV, NL, SE, SI, SK,

In such a situation thirteen Member States reported that the student could **lose her residence rights**<sup>189</sup>, which was the most common consequence. Related to this, the student may be issued a return decision in seven Member States.

In **Estonia**, **Finland** and **Lithuania**, this will happen only if the Ms Ivanenko has failed to complete the study or has dropped out of the programme. In **Latvia**, Svitlana can lose her residence rights only if the violation was done repeatedly, otherwise she will receive a warning. In **the Netherlands**, there will be a weighing up of interests which could be to the benefit of the student if her study results are good. It is also possible to change the restriction or purpose of stay (even if the residence permit is revoked).

Five Member States reported that the student could receive a **fine**<sup>190</sup>. Five Member States

<sup>183</sup> Based on Directive 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast) allowing students to take up employment of at least 15 hours per week. IE and the UK are not participating in this Directive.

<sup>184</sup> The residence rights are only withdrawn in exceptional cases, for example when the illegal work influenced the results of the studies. This is examined on a case by case basis.

<sup>185</sup> In case residence permit is revoked, the return decision will be issued.

<sup>186</sup> In Belgium, any individual (including regularly and irregularly staying TCNs) can be issued an administrative fine when his employment is not declared, provided that he carried out the employment intentionally and knew that it was undeclared, and that a formal report was issued against the

employer for this undeclared work. However, the administrative practice of the service of administrative fines indicates that the fine is often not imposed if the worker lodged a complaint himself against his employer and in cases of human trafficking or labour exploitation.

<sup>187</sup> In Belgium, the past work can be regularized when the employer declares the TCN's past activities and the past labour relation to Social Security. This may happen following an injunction from the Labour Inspectorate who proved the illegal work.

<sup>188</sup> An inspection clarifies whether the person has the need to obtain a work permit and if its absence is a violation, or exceeding the specified number of hours is a violation.

<sup>189</sup> AT, BE (in exceptional cases), CY, EE, FI, HU, IE, LT, LU, LV, NL, UK)

<sup>190</sup> BE, DE, FI, IE, LV

reported that, subject to certain conditions, there would be **no consequences** for the student (CY, FR, HR, SE, SK).

- ★ In **Croatia**, the **Czech Republic** and **Sweden**, students have free access to the labour market and, in practice, may work as much as they want. If her studies are still ongoing, then she can work without limitation. **Sweden** reported that this only applies so long as the student shows progress made with their studies.
- ★ In **Germany**, the temporary residence permit for educational purposes shall entitle the holder to take up employment totalling no more than 120 days or 240 half-days per year, and to take up part-time student employment. This shall not apply in the first year of residence during a stay for the purpose of preparatory measures for a course of study, except during university holidays and in the case of residence pursuant to subsection 1a" (Section 16 subs. 3 of the Residence Act). If the person wishes to work more than this, a permit of the Federal Employment Agency for the pursuance of an economic activity is required.
- ★ **Slovakia** reported that in this case, the student did not exceed the permitted number of working hours in the calendar year. It would only be considered illegal if she continued to work after she had worked the maximum permitted number of working days in the calendar year.

### 7.3 A THIRD-COUNTRY NATIONAL WHO RESIDED AND WORKED REGULARLY, BUT WHOSE PERMIT HAS EXPIRED

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

This case study looks at the potential consequences for a TCN who continue working after their permit expires, having previously worked and resided regularly. It looks at whether such a situation would have an impact on their ability to continue working if they have an offer of employment.

Table 7: Possible consequences in case of illegally employed regular TCNs

Possible consequences	Member States
s/he can lose residence rights	AT, BE <sup>191</sup> , CY, CZ, DE, FI <sup>192</sup> , FR, HU, IE, LT, LV, NL, SE, SK
s/he may be issued a return decision (if loses residence rights)	AT, BE, CY, CZ <sup>193</sup> , DE, EE, FI <sup>194</sup> , FR, HU, IE, LT, NL, MT, SE <sup>195</sup> , SK, LV
s/he may be detained (if loses residence rights)	AT, BE <sup>196</sup> , CZ, DE, HR, IE, NL
the illegal work may be tolerated or regularised	BE <sup>197</sup> , EE, IE <sup>198</sup> , LU <sup>199</sup>
s/he may be fined	AT, BE, <sup>200</sup> CZ <sup>201</sup> , DE, FI, IE, LV, SK, SI

<sup>191</sup> The residence rights are not automatically withdrawn. This is examined on a case by case basis.

<sup>192</sup> If the person's residence permit is valid when he begins employment with another IT company as a special expert, he may be employed in that position. If the previous residence permit has already expired, he may apply for a new permit under the new employer.

<sup>193</sup> Ban of up to 5 years during which they are not allowed to enter the territory of the Member States of the European Union (according to the Section 119, paragraph 1 letter b) point 3).

<sup>194</sup> If the person is not issued with a new residence permit, he or she may be deported.

<sup>195</sup> She would face criminal charges but, as her offence is likely to be considered minor, she would probably not face a criminal conviction.

<sup>196</sup> Only when the TCN's residence rights were withdrawn and the TCN is intercepted and it is established that he did not follow up on the order to leave the territory

<sup>197</sup> In Belgium, the past work can be regularized when the employer declares the TCN's past activities and the past labour relation to Social Security. This may happen following an injunction from the Labour Inspectorate who proved the illegal work. An application for a new work permit can also be made by a new employer (provided the TCN did not lose his residence rights).

<sup>198</sup> May be eligible to apply for the Reactivation Scheme, which provides a path for persons who had held an employment permit but who have fallen out of compliance with the system (i.e. non-renewal) through no fault of their own, to regularise their situation and obtain a new employment permit.

<sup>199</sup> Dependent on the type of permit previously held. If this was a highly qualified worker permit, and if the new job is considered to fall under this category, then the residence permit can be renewed. Likewise if this was a residence permit for all professions.

<sup>200</sup> In Belgium, any individual (including regularly and irregularly staying TCNs) can be issued an administrative fine when his employment is not declared, provided that he carried out the employment intentionally and knew that it was undeclared, and that a formal report was issued against the employer for this undeclared work. However, the administrative practice of the service of administrative fines indicates that the fine is often not imposed if the worker lodged a complaint himself against his employer and in cases of human trafficking or labour exploitation.

<sup>201</sup> There is this possibility to be fined, but the imposition of sanction is not commonly applied.



Possible consequences	Member States
Other sanctions/outcomes	BG <sup>202</sup> , NL, SK, SI, UK <sup>203</sup>

In thirteen Member States, Ms Bao could **lose her residence rights** and in fifteen Member States, she could be **issued a return decision**<sup>204</sup>. In **Belgium**, the residence rights are not automatically withdrawn but this is examined on a case by case basis. In four Member States, Ms Bao may be **detained** following the return decision.

In **the Netherlands**, custody is possible both on criminal grounds and on grounds for awaiting deportation. In the case of illegal employment, particularly of TCNs, officers of the Aliens Police, Identification and Trafficking in Human Beings Department have the authority to place an illegally working TCN who is not in possession of valid residence documents in custody. This authority is derived from the compulsory identification requirement which is in force in the Netherlands. This would mean custody on criminal grounds. Custody is also possible if there is a risk of evading supervision, related to deportation.

Nevertheless, five Member States reported that under certain circumstances the illegal work would be tolerated or regularised (BE<sup>205</sup>, EE, FI, IE, and LU). This can depend on the type of permit and/or employment previously held (FI, LU). In the case of **Ireland**, the TCN may be eligible to obtain a new employment permit if they have fallen out of compliance with the system through no fault of their own.

Four Member States reported that in such a situation, the third-country national could face an **entry ban** (BE<sup>206</sup>, CZ, NL, and SK).

#### 7.4 A THIRD-COUNTRY NATIONAL PRESENT AS A TOURIST

*Marija Bogdanovic, a Serbian citizen, aged 45 has entered your (Member) State as a tourist one month ago. Due to visa liberalization for the Western Balkans countries, Marija has the*

*right to remain in your (Member) State for up to 90 days per six-month period as a tourist without requiring a visa<sup>207</sup>. During her stay in your (Member) State, Marija has been working for a family she met through friends as a housekeeper and babysitter. She has been living with the family and has been paid cash for her work. After two months the family asks Marija to stay and work for them full time.*

*They offered to grant her a work contract and asked her to apply for a residence permit. Marija intends to apply for a residence in permit in your (Member) State during the 90 days period she enjoys visa liberalization. However, Marija is detected by the authorities in your (Member) State before applying for the permit. What would be the consequence for Marija?*

This scenario presents the potential outcomes for a TCN who is a tourist with visa liberalisation, and who has been working during their stay. The case study presents the potential consequences for the individual if they wish to apply for a residence permit having received a work contract.

Table 8: Possible consequences in case of illegally employed TCNs staying in the EU as tourists

<sup>202</sup> If the inspection finds her employment at the new workplace, she will be held criminally and administratively responsible for working without issued work permit.

<sup>203</sup> She is subject to enforcement action. She may apply for permission to extend her stay, however, her illegal immigration status will be taken into account and she is unlikely to be granted permission to remain in the UK to work.

<sup>204</sup> BE, AT, CY, CZ, EE, FI, FR, HU, IE, LT, NL, MT, SE, SK, LV

<sup>205</sup> In Belgium, the past work can be regularized when the employer declares the TCN's past activities and the past labour relation to Social Security. This may happen following an injunction from the Labour Inspectorate who proved the illegal work.

<sup>206</sup> This is only possible if he loses his residence rights and is issued a return decision. This is examined on a case by case basis.

<sup>207</sup> Based on the visa free travel decision adopted by the EU Member States on 30 November 2009 (European Commission, *Visa free travel for citizens of the former Yugoslav Republic of Macedonia, Montenegro and Serbia before Christmas*. IP/09/1852, Brussels, 30 November 2009, available at [http://europa.eu/rapid/press-release\\_IP-09-1852\\_en.htm?locale=fr](http://europa.eu/rapid/press-release_IP-09-1852_en.htm?locale=fr) (accessed on 23 January 2017)).



Possible consequences	Member States
<i>the illegal work may be tolerated or regularized</i>	BG
<i>s/he may be fined</i>	BE <sup>208</sup> , BG, CZ <sup>209</sup> , DE, FI, IE, LV, SE, SK
<i>s/he may be detained</i>	AT, BE, CZ, DE, NL <sup>210</sup>
<i>s/he may be issued a return decision</i>	AT, BE, CY, CZ, DE, EE <sup>211</sup> , ES, FI <sup>212</sup> , FR, HR, HU, IE, LT <sup>213</sup> , LV, LU, MT <sup>214</sup> , NL, SE <sup>215</sup> , SI, UK
<i>Other sanctions/outcomes</i>	AT, HR, LV, NL, SE, SK

The most common consequences, which was reported by twenty Member States, is that she could be **issued a return decision**.

In **Latvia**, a person residing in the country within the visa-free regime may submit the documents for requesting a residence permit while staying in Latvia.

However, they may be refused a residence permit if during the last year he/she had been employed without the right to employment.

Nine Member States reported that the TCN could receive a fine, and four Member States reported that she may be **detained**. **Bulgaria** reported that Ms. Bogdanovic first has to leave the country and then could apply for a long-stay visa and then obtain a permit for continuous stay on the basis of a work permit issued by the Employment Agency.

In the case of **Ireland**, an individual in such a situation may present their case to the immigration authorities on their individual merits, and such cases would be considered. Four Member States reported that the TCN could be issued an **entry ban** for a certain period of time (AT, BE, CZ, HR).

<sup>208</sup> In Belgium, any individual (including regularly and irregularly staying TCNs) can be issued an administrative fine when his employment is not declared, provided that he carried out the employment intentionally and knew that it was undeclared, and that a formal report was issued against the employer for this undeclared work. However, the administrative practice of the service of administrative fines indicates that the fine is often not imposed if the worker lodged a complaint himself against his employer and in cases of human trafficking or labour exploitation.

<sup>209</sup> There is this possibility to be fined, but the imposition of sanction is not commonly applied.

<sup>210</sup> Custody is in case that there is a risk of evading supervision, related to deportation.

<sup>211</sup> The period of stay may be terminated prematurely if there is doubt to believe that the alleged purpose of the entry into the territory of the member states of the Schengen Convention of an alien does not correspond to the actual purpose.

<sup>212</sup> She may exceptionally be issued a residence permit applied for in Finland under certain conditions.

<sup>213</sup> If Marija is staying regularly in the Republic of Lithuania and is in possession of a work permit and other documents that must be submitted along with an application for the issue of a

**Latvia, Lithuania and Slovakia** reported that the third-country national could indeed apply for a residence permit during the 90 days. **Slovakia** reported that during the 90-day period of visa-free travel, Maria could already have applied for temporary residence for the purpose of employment. However, she would not be able to legally work until the receipt of the official decision, and after the 90 days period she would be obliged to leave the Schengen Area.

## 7.5 A THIRD-COUNTRY NATIONAL SEASONAL WORKER

*Mr. Karim Harrak, a 25 year old from Morocco entered your Member State as a seasonal worker for strawberry picking. He has been residing on a seasonal worker permit and is required to leave your Member State after the legally allowed duration for stay for the time of the seasonal work expired.<sup>216</sup> However, after his contract expired he remained in your Member State and took on another job in a hotel. He thus remained in your (Member) State longer than the legally allowed duration. After a few months in the second job, he applied again as a seasonal worker for strawberry picking. However, he is detected that he has overstayed in the country. What would be the consequences for Karim?*

This case study looks at the potential consequences faced by third-country nationals who are seasonal workers and who continue working in the same Member State after their contract has expired. It also presents the potential outcomes for the third-country national if they then decide to apply again as a seasonal worker.

multiple-entry visa or a temporary residence permit in the Republic of Lithuania, she may lodge an application for the issue of one of these documents. If she cannot lodge such an application, she will be required to leave from the Republic of Lithuania before the expiry of a visa-free stay. The fact of previous illegal employment does not prohibit Marija from obtaining a multiple-entry visa or a temporary residence permit, since she worked while staying regularly in Lithuania.

<sup>214</sup> She may request to re-enter Malta, should an employment licence be issued after her repatriation.

<sup>215</sup> She will be allowed to remain in Sweden as long as her passport entitles her to (up to 90 days), but then she will need to leave. If the Police conducts a criminal investigation into Ms Bogdanovic's employers and she is needed as a witness, the person in charge of the criminal investigation may apply for a temporary residence permit for Ms Bogdanovic.

<sup>216</sup> Based on Directive 2014/36/EU – Seasonal workers – allowing third-country nationals to reside in a Member State between five months and nine months in any 12-month period. The permit is renewable. IE and the UK are not participating in this Directive.

Table 9: Possible consequences in case of illegally employed TCN seasonal workers

Possible consequences	Member States <sup>217</sup>
<i>s/he may be fined</i>	BE <sup>218</sup> , CZ <sup>219</sup> , DE, FI, HR, IE, LV, SE, SK, SI.
<i>s/he may be detained</i>	AT, BE, CZ, DE, HR, NL <sup>220</sup> , SK,
<i>s/he may be issued a return decision</i>	AT, BE, CY, CZ, DE, EE, ES, FI <sup>221</sup> , FR, HR, HU, IE, LT, LU, LV <sup>222</sup> , MT, NL, SE, SI, SK
<i>the illegal work is tolerated or regularized</i>	EE, EL
<i>Other sanctions/outcomes</i>	HR, NL, SK

In response to such a scenario, twenty Member States reported that the seasonal worker could be **issued a return decision**. Five of these Member States (AT, BE, CZ, HR, NL, SK) also reported that the individual could also receive an **entry ban** for a certain period of time.

Additionally, six Member States stated that the individual could be **fined** (BE, CZ, FI, HR, IE, SE, and SK, SI) and three Member States stated that Mr. Harrak could be **detained** (BE, CZ, HR, SK and NL). Only two Member States reported that the illegal work could be **regularised** (EE, EL). In the case of **Estonia**<sup>223</sup>, the TCN can apply for a seasonal work permit staying in the third-country, but the application may be refused depending on the relevant circumstances. **Greece** stated that a work permit would only be granted to the irregularly staying third-country national in order to be employed in farms for

emergency response, if the positions required for this are not covered.

## 7.6 A THIRD-COUNTRY NATIONAL WORKING FOR AN INTERNATIONAL TRADING COMPANY

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

This case study looks at a situation where a third-country national, who has been residing and working illegally, decides to declare her irregular status in order to be able to sue her employer.

Table 10: Possible consequences in case of illegally employed TCNs working for an international trading company

Possible consequences	Member States
<i>may be issued with a return decision</i>	AT, BE <sup>224</sup> , CY, CZ, DE, EE, FI, FR, HU, IE, LT,

<sup>217</sup> The scenario is not applicable to the UK as it does not have a seasonal worker scheme.

<sup>218</sup> In Belgium, any individual (including regularly and irregularly staying TCNs) can be issued an administrative fine when his employment is not declared, provided that he carried out the employment intentionally and knew that it was undeclared, and that a formal report was issued against the employer for this undeclared work. However, the administrative practice of the service of administrative fines indicates that the fine is often not imposed if the worker lodged a complaint himself against his employer and in cases of human trafficking or labour exploitation.

<sup>219</sup> There is this possibility to be fined, but the imposition of sanction is not commonly applied.

<sup>220</sup> Custody is possible both on criminal grounds and on grounds for awaiting deportation. In the case of illegal employment, particularly of third-country nationals, officers of the Aliens Police, Identification and Trafficking in Human Beings Department have the authority to place an illegally working third-country national who is not in possession of valid residence documents in custody. This authority is derived from the compulsory identification requirement which is in force in the Netherlands. This would mean custody on criminal

grounds. Custody is also possible if there is a risk of evading supervision, related to deportation.

<sup>221</sup> He may exceptionally be issued a residence permit applied for in Finland under certain conditions.

<sup>222</sup> Amendments to the Immigration Law, where legal framework for employing seasonal workers will be provided, is currently being discussed in the Latvian Parliament on the draft stage.

<sup>223</sup> Short-term employment of an alien as a seasonal worker may be registered if the alien commences work in the area of activity dependent upon season listed in the regulation established on the basis of subsection 110 (3) of The Aliens Act and if an employer has entered into a short-term employment contract with an alien before the submission of an application for registration of short-term employment or has made a job offer by which the employer expresses his or her will to be legally bound with the employment contract to be concluded and undertakes to employ the alien under the conditions determined in the concluded contract entered into or the job offer made.

<sup>224</sup> If the worker is controlled on the workforce during an inspection, regardless of whether he lodged a complaint or not,

	LU, LV, NL, SE <sup>225</sup> , SK, SI, UK
<b>may be granted a period for voluntary departure</b>	AT, CZ, DE, FI, IE, LV, SE
<b>(may) receives an entry ban</b>	AT, BE, CY, CZ, DE, IE, <sup>226</sup> LV, NL, SK, SI
<b>May be fined</b>	BE <sup>227</sup> , CZ, DE, FI, IE, LV, SE, SK, LV
<b>May be detained</b>	AT, BE, CZ, DE, NL <sup>228</sup> , SK,
<b>receives work permit</b>	
<b>(may) receive residence permit</b>	FI <sup>229</sup>
<b>Other sanctions/outcomes</b>	CZ, LV <sup>230</sup> , MT, SI

In terms of the most common consequence in such a scenario, sixteen Member States stated that the third-country national could be **issued with a return decision**. Seven of these Member States reported that the individual could also receive an **entry ban** for a certain period of time. France reported that her employer will have to cover costs resulting from back payment of unpaid wages in her return country.

Two Member States reported that the third-country national would be able to remain in the country for the proceedings against her employer (CZ, MT).

The **Czech Republic** reported that Mrs. Diop could theoretically get a visa for the purpose of 'tolerated stay'. If it was a criminal complaint against the employer, then the Section 33 paragraph 1 letter b) could be applied in this case – but only in cases which concern criminal proceedings. Similarly, **Malta** reported that Mrs. Diop would be allowed to stay pending proceedings, but any continued stay after that would need to be considered on its own merits.

In **Spain**, the case could be related to international crime and a specific residence

permit could be issued if Mrs. Diop cooperate with authorities.

In **Sweden**, if the offence that the TCN's employer has committed is severe enough for the prosecutor's office to press criminal charges, and if the TCN declares an intention to co-operate in the investigation (e.g. as a witness), he/she could, upon the prosecutor's initiative, be granted a temporary residence permit for that purpose.

## 8 Conclusions

This Study presents a **comparative overview** of the main findings of the EMN Focussed Study on *Illegal Employment of Third-Country Nationals (TCNs) in the EU* based on National Reports from twenty-three Member States. The aim of this Focussed Study is to map and analyse the measures in place at Member States level to fight the illegal employment of TCNs, possible problematic areas and obstacles in this field and strategies and good practices to overcome them.

### MAIN FINDINGS

- ★ Illegal employment of third-country nationals (TCNs) - defined as employment contravening migration and/or labour law - is **a source of concern in the EU for economic, migration-related and social and fundamental rights** reasons. It is also linked to trafficking in human beings for labour exploitation.
- ★ Due to its covert nature, illegal employment is **a 'hidden' phenomenon** linked to the informal economy of the Member States. It should be noted that available statistics on identification of illegally employed TCNs and

the Police/ Immigration Office will be contacted and a return decision may be issued.

<sup>225</sup> She can sue her employer from abroad.

<sup>226</sup> If the applicant receives a 15-day letter notifying the individual of the Minister's intention to issue a deportation order.

<sup>227</sup> In Belgium, any individual (including regularly and irregularly staying TCNs) can be issued an administrative fine when his employment is not declared, provided that he carried out the employment intentionally and knew that it was undeclared, and that a formal report was issued against the employer for this undeclared work. However, the administrative practice of the service of administrative fines indicates that the fine is often not imposed if the worker lodged a complaint himself against his employer and in cases of human trafficking or labour exploitation.

<sup>228</sup> Custody is possible both on criminal grounds and on grounds for awaiting deportation. In the case of illegal employment, particularly of third-country nationals, officers of the Aliens Police, Identification and Trafficking in Human Beings Department have the authority to place an illegally working third-country national who is not in possession of valid residence documents in custody. This authority is derived from the compulsory identification requirement which is in force in the Netherlands. This would mean custody on criminal grounds. Custody is also possible if there is a risk of evading supervision, related to deportation.

<sup>229</sup> She may be issued a residence permit on account of pre-trial investigations or court proceedings.

<sup>230</sup> Mrs. Diop would be punished administratively for residing in Latvia without a valid residence permit and for working without the right to employment.

convictions of employers reflect enforcement practices and thus does not provide a complete picture. Statistics provided by a limited number of Member States in the context of this Study shows that the number of identified illegally employed TCNs and the number of convictions and sanctions for employers **differ significantly** across Member States.

- ★ Agriculture, construction, manufacturing, hospitality and food services are the sectors in which the illegal employment of TCNs is most prevalent. The types of businesses considered at high risk of illegal employment are in the labour-intensive and low-skilled sectors, particularly those with a high turnover of staff and low wages.
- ★ Fighting illegal employment is a policy objective and priority for the EU as a whole and in the Member States participating in this Study. The EU has been mandated to adopt measures to prevent and tackle illegal employment of TCNs, most notably through the **Employers' Sanctions Directive 2009/52/EC** which tackles irregularly staying TCNs. At Member State level, the majority of Member States have recently adopted or are in the process of implementing new measures. These include introduction or increase of sanctions for illegally employed TCNs and employers; establishing lists of trusted or unreliable employers; addressing malpractice of employment intermediaries (e.g. employment agencies); setting up specific offices; running communication campaigns and stepping up and improving inspections.
- ★ As outlined in the **2015 EU Agenda on Migration** and as demonstrated by the findings of this Study, although Member States have adopted a number of safeguards and measures in this field, action against illegal employment of TCNs needs to be stepped up, notably in introducing and implementing protective measures and risk assessments to improve identification. Such measures (if effectively implemented) are expected to ultimately increase the number of identified cases and convictions for employers, which is still very low in some Member States (as demonstrated by the partial data provided in this Study).

*Preventive measures and incentives and success factors contributing to their effectiveness*

With regard to preventive measures for employers, **information campaigns** targeted at employers on the risks and liabilities of illegal employment have been implemented in 19 Member States. In seven of these Member States, these campaigns focus on illegal employment in general (and not specifically on TCNs). **Information support** for employers is another preventive mechanism provided by all Member States participating in the Study, typically through online platforms. Furthermore, all Member States require employers to notify national authorities when employing TCNs.

Similar preventive measures for employees include information campaigns (implemented by thirteen Member States); information support (available in different forms in all Member States) and notification obligations for commencing employment and changing employer. Protective measures as established by Directive 2009/52/EC also include establishing a **complaints mechanism**, which is available in most Member States participating in this Study.

*Use of risk assessments by Member States to establish the sectors and industries at risk*

As stipulated by the Employer Sanctions' Directive (Art. 14 (2)), Member States should identify the sectors of activity which are at greater risk of illegal employment of TCNs. Risk assessments are carried out in all Member States participating in this Study with the exception of **Cyprus**. Depending on the Member State, the authorities most commonly involved in risk assessment are labour inspectorates; immigration authorities; police, border guard and customs authorities and Ministries of Finance and tax authorities.

Risk assessments are used by Member States to better target inspections.

*Identification of illegal employment of TCNs*

In the majority of Member States, **labour inspectorates** are responsible for identifying illegal employment and carrying out inspections. Depending on the Member State (see details in the Synthesis report) other competent authorities may include police, border guard and customs authorities, financial police and immigration authorities.

In all Member States, the competent authorities do not have separate functions to specifically target illegal employment of TCNs but are carry out inspections for all the population (including nationals of the Member State and EU nationals).

In all Member States, inspections are based on the results of the **risk assessments** of sectors at risk. Inspections can be triggered from signals



from the public, including signals from the illegally employed TCNs. The majority of Member States have a dedicated **hotline where** any individual can call to signal a case of illegal employment but in most cases this hotline is not specifically dedicated to signal a case of illegal employment of TCNs, but for signals in general (including nationals and TCNs).

In all Member States, inspections are carried out **on-site of the workplace**, but can also take place in some Member States at private premises (typically with an authorisation from a judge); company premises and/or offices of intermediaries.

While in most Member States, **technical tools and methods** (such as planning maps, manuals, operational guidelines, interview scripts, etc.) are systematically applied, a few Member States (e.g. LT, LV, SE) reported that such formal tools are not applied and inspections are carried on a case-by-case manner without using common methods and tools.

The effective **cooperation and exchange of information** between different authorities involved in identification, including using common databases is a common success factor. An effective **complaints mechanism** as a protective measure also contribute to successful identification, especially where the TCN has been subject to particularly exploitative conditions.

**Challenges** identified by Member States include **language barriers** for TCNs to obtain and share information on their rights and communicate effectively during inspections and **insufficient number of staff** to carry out inspections.

#### *Sanctions for employers and factors affecting their implementation*

The most common **sanction** – applied by all Member States participating in this Study - is **fines**. Although applied for both regularly and irregularly staying illegally employed TCNs, the severity of the sanction for employing irregularly staying TCNs is much higher in most Member States. **Imprisonment** is applied as a possible sanction with regard to irregularly staying TCNs in 17 Member States and regularly staying TCNs in 13 Member States.

Other less commonly applied sanctions include **confiscation of financial gains and equipment** (applied in nine Member States for irregularly staying and seven Member States for regularly staying TCNs); **ineligibility for public contracts** (applied in fourteen Member States for irregularly staying and fourteen Member States for regularly staying TCNs);

**temporary/definitive closure** (applied in thirteen Member States for irregularly staying and twelve Member States for regularly staying TCNs); **withdrawal of trading license** (applied in ten Member States for irregularly staying and eight Member States for regularly staying TCNs) and withdrawal of residence permit if the employer is a TCN (applied in twelve Member States for irregularly staying and eleven Member States for regularly staying TCNs).

In general, **procedures do not differ** if the employer did not **intentionally hire irregular workers**. This is mainly due to employers having a responsibility to conduct thorough checks and fulfil the necessary conditions to verify an employee's legal status. Art. 9(1) of the Employer Sanctions' Directive stipulates that criminal sanctions should be applied in severe cases of illegal employment. The Study found that seventeen Member States of the participating twenty-three Member States comply with the provision, while three Member States (CY, LV and NL) do not apply criminal sanctions in all of the severe circumstances and **Croatia** does not apply any of the provisions of Art. 9 (1) (*IE and UK have opted out of the Directive*).

Sanctions for employers are found to have a **deterrent effect** in some Member States but limited effect in others. Not only the strictness of legislation and levels of sanctions but also the actual application of sanctions is a key factor in deterring employers from illegally employing TCNs. Furthermore, practices of making publicly available the names of employers ('naming and shaming') have been identified as successful in some Member States (e.g. FR, SK).

#### *Possible outcomes and/or sanctions for identified illegally employed TCNs*

Following identification of an illegally employed TCN, there are several **possible outcomes**, including **return**, possibly preceded by **detention** (which is an 'intermediary outcome' and in itself may lead to release, return or regularisation), **fines**, **identification as victims of trafficking in human beings** and **regularisation of residence/work status**. 'Possible outcomes' means that these outcomes are not 'definite' (meaning that Member States will act in one way or another) but they are possibilities depending on the particular case (in some cases subject to discretion of Member States' authorities). In some cases, outcomes are cumulative (e.g. a return decision may be accompanied by a detention order and an entry



ban), while in other cases these outcomes are exclusive (meaning that only one of the outcome is possible – e.g. return decision or regularisation).

The most common outcome for illegally employed and irregularly staying TCNs is the issuance of a **return decision**, which in most cases includes a period for voluntary departure. Member States may also issue an entry ban to irregularly staying and illegally employed TCNs. In the case of regularly staying TCNs found to be working illegally, the main outcome would be the possibility of **losing residence rights**. A consequence would be the issuance of a return decision.

Nineteen Member States reported that detention of irregularly staying TCNs found to be working illegally can be applied in some cases. The circumstances in which detention may be applied vary; e.g. in some Member States TCN may be detained in cases where the TCN poses a threat to abscond or a threat to national security (e.g. BE<sup>231</sup>, CZ, DE, FI, FR, EL, LU, LV, NL SK), the TCN has destroyed their identity documents (e.g. CZ, IE, LU), or if a forced return decision has been issued (e.g. BE, CY, CZ). In eleven Member States regularly residing and illegally employed TCNs – who lost their residence rights – can be detained in certain cases.

As provided by Directive 2004/81/EC<sup>232</sup>, residence permits of temporary duration may be issued to non-EU nationals who are victims of trafficking in human beings. If the irregularly staying TCN is identified as a victim of trafficking of human beings subject to labour exploitation, twenty-one Member States reported that they may issue (temporary) residence and work permits. In **Germany**, besides the above mentioned possibility of detention in conjunction with a return decision, **imprisonment** is a possible sanction for the TCNs in the case of persistent repetition of irregular employment or if illegally employed TCNs commit fraud against the social security system.

Financial fines are applicable in twelve Member States for irregularly staying illegally employed TCNs. The fines range significantly across Member States – e.g. from €140-700 in **Latvia** and € 330 in **Slovakia** to up to €5,000 in **Germany** and **Slovenia** and up to £20,000 in **the UK**.

**Regularisation** of TCNs (meaning regularising their status by issuing a residence and/or work

permit) found to be working illegally is only possible in 9 Member States for irregularly staying illegally employed TCNs and in 7 Member States for regularly staying illegally employed TCNs (i.e. regularising their work permit). This is usually done on the basis of a **humanitarian residence permit in exceptional circumstances**.

*Possibilities for illegally employed TCNs to receive back payments and compensation of unpaid wages*

In twenty Member States, TCNs who are found to be illegally employed (regardless of whether they are residing regularly or irregularly) can make claims against their employer for compensation of unpaid wages for the duration of their employment as under a valid employment contract (including in cases when they have been returned). In most Member States, third parties with legitimate interest (such as trade unions, organisations of migrant workers), may act on behalf or in support of TCNs. In addition to employers, direct contractors and other immediate subcontractors can be liable and obliged to pay any outstanding taxes to the state and remuneration due to the TCN.

However, some Member States reported that **in practice TCNs seldom file complaints** about their working conditions. In addition to the language barrier, TCNs can be reluctant to cooperate with police forces or inspectorates, because they face direct risks of the outcomes described above (a return decision, with possible detention and forced removal and entry bans), and due to challenges participating in proceedings (including with legal assistance) and proving their employment. Although statistics are not available, Member States reported that in practice, there are few cases where the worker actually receives due compensation.

*Provision of information to illegally employed TCNs*

While the majority of Member States provide general information on employment without specifically targeting illegally employed TCNs, only a limited number of the Member States (11 Member States) reported that they provide for information **specifically to illegally employed TCNs** on their rights.

There is variation in terms of when any information on rights is provided to the TCN, by

<sup>231</sup> In BE, detention is always implemented with a view to return.

<sup>232</sup> Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are

victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

whom and in what way; all of which can impact on understanding and ability to act on the information. Initiatives by civil society and social partners have been implemented in a number of Member States, including offering counselling and legal support for TCNs working illegally, in particular those TCNs that are subject to exploitation.

## Annex 1 Prevention measures

**Table A1.1 Preventive measures and incentives for employers (1)**

	Information campaigns		Information support	
	I	R	I	R
AT	Not applicable	Not applicable	No distinction is made between irregularly and regularly staying illegal employees.  See right-hand column	Federal Government's website ( <a href="http://www.migration.gv.at">www.migration.gv.at</a> ) provides information in German and English on requirements to be met for immigration to Austria. Interested individuals can get in touch with respective authority through contact form.
BE	Existing information campaigns focus on combating social fraud and social dumping in general. Different actions in this field have been carried out, such as press releases by the inspection authorities to inform the public about recent activities in the area of illegal employment (of third-country nationals), or the organisation of "road-shows" when new rules and regulations regarding social law enter into force. In addition, information between inspections authorities is exchanged at seminars, congress events, etc.	See left-hand column.  In the context of the refugee crisis, some tools on the employment of asylum seekers or beneficiaries of international protection were launched. For example, the Flemish Public Employment Service provided employers with information regarding the employment of refugees on its website: <a href="https://www.vdab.be/werkgevers/vluchtelingen/weten">https://www.vdab.be/werkgevers/vluchtelingen/weten</a>	Information is provided by government authorities online as well as by non-state actors (NGOs).  Examples include the Belgian contact point (Belgium.be); the Federal Public Service Employment, Labour and Social Dialogue; the Social Information and Investigation Service; and the National Social Security Office.	See left-hand column.
BG	The labour inspectorate reaches out to employers, employers' organizations and trade unions using media and other sources of information as: - Radio and TV broadcasts; - Press communications; - Newsletters; - Special Events (e.g. campaigns on occupational Safety).	See left-hand column	Not applicable	Not applicable
CY	Information is provided by trade unions and district labour offices.	See left-hand column	Information is available on the website of the Labour Department and the Public Employment Service as well as other relevant organisations.	See left-hand column
CZ	The State Labour Inspection Office occasionally publishes press releases and other informational materials on its website. In addition, public awareness campaigns are carried out.	See left-hand column	At the level of individual regional labour inspectorates, seminars and meetings are organised with the participation of social partners.	See left-hand column
DE	Information for employers on the liability of illegal employment of third-country nationals as well as the advantages of employing third-country nationals legally was disseminated in various ways in different sectors and on different levels (local, regional, federal) in the course of the past years. These	See left-hand column  Note: Existing campaigns target illegal employment more broadly; illegal employment of third-country nationals is not specifically targeted.	To date no campaigns were carried out with the explicit aim of preventing illegal employment of third-country nationals. However, different institutions offer a wide range of information for employers on possibilities of legal employment of third-country nationals. Most	See left-hand column

Information campaigns			Information support	
	I	R	I	R
	information campaigns were organized and financed both by governmental and non-public entities. Measure included flyers and nation-wide campaigns.		extensively this is done by the Federal Employment Agency and its International Placement Services (ZAV)	
EE	The Police and Border Guard Board regularly organise seminars aimed at sharing relevant information with employers on employing third-country nationals.	See left-hand column	Relevant information is shared on the webpage of the Police and Border Guard Board.	Left-hand column Starting from 01.03.2017 a consultation service is offered by the PBGB with the aim to give personal and trustworthy advice on migration to Estonia to foreigners, employers and organisations who wish to employ foreigners. The service is available to foreigners who already live in Estonia or who are planning to live in Estonia, as well as to employers, universities, NGOs etc.
ES	Existing informational campaigns focus on combating social and labour fraud in general.	See left-hand column	To date no specific information support on preventing illegal employment of third-country nationals has been established. But, different institutions offer a wide range of information for employers on possibilities of legal employment of third-country nationals. Most extensively this is done by the General Secretariat for Immigration and Emigration. Websites play a key role in information support.	See left-hand column
FI	An extensive communication campaign was organised in Finland entitled "Grey Economy, Black Future". The campaign was launched in 2012 as part of the sixth programme for combating the informal economy. The campaign is a general campaign on the prevention of the informal economy and it is aimed at employees, employers and consumers. The campaign participants comprise a large number of public authorities as well as employer and employee organisations. In addition, the Helsinki Region Chamber of Commerce has launched the "At Work in Finland" project as part of the COME project, of which one part aims to increase awareness among enterprises and employers regarding non-Finnish-speaking labour and labour.	See left-hand column	The Confederation of Finnish Industries (EK) and its member organisations give guidance to employers regarding the hiring of foreign employees and the content of the Aliens Act is always part of the training organised on this front. Additional information is available on their website.	See left-hand column
FR	A national information campaign is planned in 2017. At the local level, the Prefects use press releases or articles in the local press to inform public about consequences and sanctions related to	See left-hand column (No distinction is made between irregularly and regularly staying illegal employees).	Information is available on the website of the General Directorate of Labour, on the websites of the Regional Directorate for Business, Competition, Consumer Affairs,	See left-hand column (No distinction is made between irregularly and regularly staying illegal employees).

Information campaigns			Information support	
	I	R	I	R
	the most significant cases of social fraud and illegal employment. In addition, awareness-raising meetings are organised within the companies in the most affected sectors.		Labour and Employment (DIRECCTE) and other relevant organisations.	
GR	Not applicable	See left-hand column	Law 3996/2011 “Reforming the Labour Inspectorate, social security arrangements and other provisions” provides that the Labour Inspectorate is responsible for providing information to employers and employees on the most effective means for the fulfilment of its provisions (Article 2).	See left-hand column  No distinction is made between illegally staying and illegally working.
HR	Campaigns have been introduced aimed at combating illegal employment since 2014.	See left-hand column	Website of Ministry of Interior	Website of Ministry of Interior
HU	A project aimed at “Development of workplace health and safety, development of labour inspections.”	See left-hand column	Inspection guidelines of the labour inspectorate are published on the authority's website.	See left-hand column
IE	No distinction is made between irregularly and regularly staying third-country nationals.	The Employment Permits Unit of the Department of Jobs, Enterprise and Innovation gives presentations on the employment permits regime and initiatives at various fora.	See right-hand column	The Workplace Relations Commission provides general Information on employment law, equality and industrial relations to both employers and employees in line with the provisions of the Workplace Relations Act, 2015. Their aim is to provide both employers and employees with the information they require to ensure they comply with employment rights and industrial relations legislation. Additional information is provided to third-country nationals on the website of the Workplace Relations Commission.
LT	General information is provided on the website of the Migration Department and the Lithuanian Labour Exchange.	See left-hand column	General information is provided on the website of the Migration Department and the Lithuanian Labour Exchange.	See left-hand column
LU	The ITM included information campaigns aimed at construction site managers. These campaigns target working conditions, health and security at the workplace and social dumping. The aim of these campaigns was to raise awareness amid real-estate project developers that non-compliance with the existing legislation can have far-reaching economic consequences, which will likely interfere with the progress of the construction site. This information campaign has been carried out in collaboration with the Ministry of the Interior and the municipalities	Left-hand column	The ITM as well as the Directorate of Immigration provide information through their websites on the conditions that an employer as well as third-country nationals have to fulfil in order to conclude an employment contract.	See left-hand column



Information campaigns			Information support	
	I	R	I	R
LV	Not applicable	Not applicable	Not applicable  However, information about the conditions for the employer who wants to employ third-country nationals is available on SEA website and the OCMA website.	See left-hand column
MT	Agency for the Welfare of Asylum Seekers organised a job fair to inform migrants and employers about their rights and duties.	Left-hand column	One of the core functions of MEUSAC is to provide plain and simple information to constituted bodies, civil society and the general public on EU policy and legislation. MEUSAC provides assistance on queries received in relation to EU issues. Employers may also request useful information via MEUSAC particularly those dealing with employment.	See left-hand column
NL	Not applicable	Not applicable	General information is available on websites of Ministry of Social Affairs and Employment and the SZW Inspectorate.	See left-hand column
SE	The Swedish Construction Industry in Collaboration (Byggbranschen i Samverkan), a joint organisation featuring employers and trade unions in the construction sector, has been running the project "Clean Construction Industry". The target groups for this project are students and teachers in secondary schools' vocational programmes, college and universities, as well as the industry and the public. This project aims to change attitudes towards undeclared work in the construction sector.  For the period 2015-2018, the government has instructed the Swedish Work Environment Authority to increase its monitoring and control of companies that are violating health and safety regulations to gain competitive advantages. This mandate also includes increased cooperation with other Swedish agencies, as well as consultations with the social partners, in order to develop <b>information campaigns</b> specifically targeted at sectors and companies with high rates of undeclared work.	See left-hand column	The Swedish Migration Agency, Tax Agency and Swedish Work Environment Authority provide information on their website, targeting employers and informing them about the fact that most foreigners who are not EU-nationals need a work permit to work in Sweden.	See left-hand column

Information campaigns		Information support	
I	R	I	R
SI	<p>In 2016, OLSAFs (offices of Labour, Social Affairs and Family) organized informational meetings titled "Breakfast with employers" aimed at providing information about legislative changes, possibilities of employment for EU citizens and TCNs in the Slovak Republic. Information was of a general nature and did not focus on specific economic sectors</p>	<p>Upon entry into force of the Employment, Self-Employment and Work of Aliens Act, the Employment Service of Slovenia and the Ministry of Labour, Family, Social Affairs and Equal Opportunities conducted regional consultations with employers and local administrative units. The presentations addressed new legislation and consequences of illegal employment.<sup>233</sup></p> <p>The public <b>campaign "Let's stop the illegal work and employment together"</b> <sup>234</sup> (<i>Skupaj ustavimo delo in zaposlovanje na črno</i>) is carried out by the Ministry of Labour, Family, Social Affairs and Equal Opportunities (<a href="http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja/delo_na_crno/javna_kampanja/">http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja/delo_na_crno/javna_kampanja/</a>).</p> <p>The campaign addresses the general public in Slovenia and presents undeclared work – main actors in undeclared work and employment, its incidence, and the possibility of action. Sponsors of the campaign against illegal work and employment are Chamber of Craft and Small Business of Slovenia and Slovenian Chamber of Commerce, and the campaign is supported by the Chamber of Commerce and Industry of Slovenia, Association of Employers of Slovenia, Association of Employers in craft and business of Slovenia, and Slovenian Trade Union Confederation Pergam.</p> <p>In the field of <b>employment of posted (foreign) workers</b>, the Ministry of Labour, Family, Social Affairs and Equal Opportunities is carrying out a campaign on posted workers (<a href="http://www.napotenidelavci.si/sl/">http://www.napotenidelavci.si/sl/</a>). A thematic website was launched and an online manual was prepared as part of the project, with the aim of increased accessibility, transparency and coherency of information on posting of workers for different target groups: workers, employers and competent public officials. The website and manual were prepared within the project Posting of workers: Sharing experiences, promoting best practices and improving access to information, co-financed by the European Commission under the EU Programme for Employment and Social Innovation, and the Ministry of Labour, Family, Social Affairs and Equal Opportunities. Following Slovene entities</p>	<p>Information about employing TCNs for employers is published on the NLI (National Labour Inspectorate) and COLSAF (Central Office of Labour, Social Affairs and Family) websites.</p> <p>The <b>Ministry of Labour, Family, Social Affairs and Equal Opportunities</b> provides information on illegal work and employment, sanctions and supervision on its website (<a href="http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja_in_pravice_iz_dela/delovna_razmerja/delo_na_crno/">http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja_in_pravice_iz_dela/delovna_razmerja/delo_na_crno/</a>).</p> <p>The <b>Employment Service</b> collected all information on employment, self-employment and work of aliens (third country nationals) on its website (<a href="http://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tu_jcev/">http://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tu_jcev/</a>). The website primarily targets employers and provides information on single permit, work permit, registration of services and short-term work of the representative, on free access to labour market and on employment, work and housing of aliens.</p>

<sup>233</sup> Interview with Mr Miho Šepec, Department of Legal Affairs, Employment Service of Slovenia. Ljubljana, 29 March 2017.

<sup>234</sup> Dedicated for Slovene nationals.

Information campaigns			Information support	
	I	R	I	R
		participated in the project: Research Centre of the Slovenian Academy of Sciences and Arts, Slovenian Migration Institute (Project Coordinator), Ministry of Labour, Family, Social Affairs and Equal Opportunities, Labour Inspectorate, the Association of Free Trade Unions of Slovenia, and Chamber of Commerce and Industry of Slovenia. The website is available in Slovene, English, German and Croatian language.		
UK	Operation Magnify was launched by Home Office Immigration Enforcement in the UK Home Office in 2015 to tackle illegal working in the construction industry and other sectors of the economy where illegal working is considered significant. It is a UK-wide multi-agency campaign against illegal working and includes activity to support employer compliance, as well as enforcement, in high risk sectors of the economy. Promotional material, including posters and videos explaining the responsibilities of employers, was created for this campaign.	See left-hand column	The gov.uk website provides information on the responsibilities of employers to ensure that they do not employ a TCN illegally: <a href="https://www.gov.uk/penalties-for-employing-illegal-workers">https://www.gov.uk/penalties-for-employing-illegal-workers</a> The right to work tool enables employers to check whether a potential employee is able to work in the UK legally: <a href="https://www.gov.uk/legal-right-work-uk">https://www.gov.uk/legal-right-work-uk</a>	See left-hand column

Table A1.2 Preventive measures and incentives for employers (2)

Partnership agreements with social partners			Obligations to notify authorities		Other measures	
	I	R	I	R	I	R
AT	Not applicable	Not applicable	No distinction is made between irregularly and regularly staying illegal employees.  See right-hand column	Employers have to notify the regional branch of the Public Employment Service (within three days of employment) and the relevant health insurance. This measure is not specifically targeted at third-country nationals, but at illegally employed in general.	No distinction is made between irregularly and regularly staying illegal employees.  See right-hand column	Employers are obliged to disclose number and name of employed foreigners to national/regional branches of the Public Employment Service, the health insurance, and the tax authorities.

Partnership agreements with social partners			Obligations to notify authorities		Other measures	
	I	R	I	R	I	R
BE	<p>Protocols of cooperation between the social partners, the labour inspectorates and the government, which contain commitments made by the social partners and the inspectorates to combat social fraud and illegal work, have been concluded for specific sectors. For example, the Inspectorates are asked for controls on social fraud, social dumping and illegally working TCNs. The partners in those tripartite protocols also share knowledge about infringements in their sectors and the best way to tackle them.</p> <p>Plans for fair competition between social partners, the labour inspectorates and the government have also been concluded, with a view to combating illegal work, social fraud and social dumping in specific sectors. Within the framework of the Plans for fair competition, administrative guidelines for employers on the interpretation of Belgian and European rules have been established for the transport sector, as well as checklists for employers (“what can an inspector request during an inspection?”) for the transport and construction sectors. Such protocols of cooperation and plans for fair competition are already signed for several sectors, including construction, meat transformation, transport, cleaning, and surveillance. Plans for other sectors are a work in progress.</p>	<p>The protocols of cooperation and Plans for fair competition also apply to regularly staying third-country nationals.</p>	<p>Employers have a legal obligation to notify the authorities about employing third-country nationals (Article 175 of the Social Criminal Code)</p>	<p>See left-hand column</p>	<p>Recent legislative changes introduced social clauses into public procurement procedures (See law on public procurement from 17 June 2016).</p> <p>The Social Criminal Code stipulates that the employer may be imposed a sanction level 4 when he has not carried out the following actions when employing a TCN: i) verify in advance whether the TCN possesses a valid residence permit or other residence authorisation, ii) keep either the information on or a copy of the TCN's residence permit or other residence authorization available to the competent inspection services and at least for the duration of the employment, iii) make a declaration of the start and the end of the TCN's employment.</p>	<p>No information available</p>
BG	<p>Not applicable</p>	<p>Not applicable</p>	<p>In this case Migration Directorate of the Ministry of Interior is to be notified in its capacity of the control body for the TCNs' residence in Bulgaria.</p>	<p>Not applicable</p>	<p>Not applicable</p>	<p>Not applicable</p>
CY	<p>No information available</p>	<p>No information available</p>	<p>An irregular migrant is not allowed to work. Only the Minister of Interior, by law, has the power to grant special work permits to irregular migrants. In case this special permit is granted, TCN is considered legal, and follows the procedure</p>	<p>Employers need prior approval of the Labour Department before they can employ third-country nationals. Moreover, based on the Single Permit Directive, which has been transposed to national law (Cap. 105). a TCN receives</p>	<p>Employers who employ irregularly staying third-country nationals are subject to administrative sanctions. It is considered a penal offence to employ third-country nationals without approval of the Labour Department.</p>	<p>See left-hand column</p>

Partnership agreements with social partners			Obligations to notify authorities		Other measures	
	I	R	I	R	I	R
			described in the right-and column.	a residence and work permit under a single application. This provides for an employment contract to be approved and stamped by the Labour Department.		
CZ	No information available	No information available	<p>According to the Act on Employment, the regional branch of the Labour Office shall be notified about:</p> <ul style="list-style-type: none"> <li>- commencement of employment by third-country national (including seconded foreigners)</li> <li>- failure to commence employment by third-country nationals</li> <li>- termination of employment or secondment</li> <li>- reasons of termination of employment</li> <li>- situations when the foreign national does not need any permission anymore (for example he/she obtains permanent residence, changes his/her status to a family member of an EU citizen, etc.)</li> <li>- changes of identification details of the foreign national</li> </ul>	See left-hand column	The obligation for the employer to keep a residence permit or other authorisation during the employment is specified by the Section 136 of the Act No. 435/2004 on Employment which states that the natural person or legal entity in the position of an employer is obliged to keep copies proving the existence of the labour-law relationship at his workplace. The fulfilment of the obligation under the first sentence is not required if the employer has fulfilled the obligation to notify the regional social security administration about the date of commencement of employment of an employee which established his/her participation in sickness insurance under the sickness insurance law.	See left-hand column
DE	In Germany trilateral partnerships between the Federal Ministry of Finance, employers' associations and the trade unions exist on federal level and on level of the Federal States since 2004 in those sectors especially affected by illegal employment. To date, nine such alliances exist on federal level: in the building industry, the meat industry, in the industrial cleaning business, in the freight, transport, and related logistics industries, in the painting and decorating trades, in the industrial laundry and textile care industry, the electrician trade, in the scaffolding trade as well as the hairdressing industry. Further, 13 regional alliances exist, especially in the construction	<p>See left-hand column</p> <p>Note: Illegal employment is targeted more broadly, illegal employment of third-country nationals is not specifically targeted.</p>	A separate procedure for employers to notify authorities of the employment of third-country nationals does not exist. Employers are obliged to register employees from third countries with social security (pursuant to Section 28a of the Fourth Book of the Social Code) and with the taxation office (to request the electronic data necessary for determining the wage tax (German: elektronische Lohnsteuermerkmale)). In general, third-country nationals can only be employed if they dispose of the relevant permission. Further, since 2009	See left-hand column	<p>The customs administration's monitoring unit for undeclared work has carried out a range of further measures, such as the short term placement of its staff in companies to raise awareness for the work of the Inspectorate.</p> <p>Furthermore in certain sectors tax benefits were created to incentivize the registration of employment contracts. This is the case, for example, for employees with minor employment contracts as domestic aids up to €450 (pursuant to Section 8a of the</p>	



Partnership agreements with social partners		Obligations to notify authorities		Other measures	
I	R	I	R	I	R
industry and the industrial cleaning business. The alliances aim to educate employers, employees and the general public about the negative and legal consequences of illegal employment and to ensure and improve the information exchange between the customs administration's monitoring unit for undeclared work and the employers' associations. They also aim to develop practical approaches to a more effective curtailing of illegal employment through working groups on federal level.		a general requirement exists to instantly register employment in different risk industries (Section 28a subs. 4 of the Fourth Book of the Social Code). This regulation, that was introduced explicitly to curtail illegal employment, sets out that employers are to register the commencement of employment with the German Pension Fund on the day the employment contract commences or, at the latest, on the day the employment is taken up. This requirement applies to the following sectors: the building industry, the hotel and restaurant industry, the passenger transport industry, the freight, transport, and related logistics industries, the fairground entertainment industry, companies in the forestry sector, the industrial cleaning business, companies involved in the assembly and disassembly of trade fairs and exhibitions, the meat industry.		Fourth Book of the Social Code).  When hiring third-country nationals, employers are obliged to determine whether the residence title, permission to stay pending the asylum decision or the certificate showing that the deportation has been temporarily suspended authorises such economic activity. They must also retain a copy of this document for the duration of employment. This copy can be either electronic or in print (Section 4 subs. 3 fourth and fifth sentences of the Residence Act).	
EE	Not applicable	Not applicable	See left-hand column	According to the Aliens Act an employer is required to verify that a third-country national who is employed by the employer would have a legal basis for the stay and employment in Estonia.	See left-hand column
		An employer is required to notify the Police and Border Guard Board: •of the commencement of employment by an alien for the employer, •of a failure to conclude a contract forming a basis for work relations with the alien who has registered short-term employment, •of a failure of an alien to commence employment, •of any change in the conditions of employment determined in the temporary residence permit for employment, •of the premature termination of the contract forming the basis for work relations and •of the actual termination of employment of an alien			

	Partnership agreements with social partners		Obligations to notify authorities		Other measures	
	I	R	I	R	I	R
ES	Not available	Not available	Employers have to notify the labour and social security authorities. This measure is not specifically targeted at third-country nationals.	See left-hand column		
FI	<p>Finland has a strong tradition of tripartite cooperation in preparing and drafting legislation. Employers, employees and the State participate together in activities including the drafting and monitoring of legislation and the dissemination of information. This also applies to the prevention of the informal economy and illegal employment.</p> <p>The construction industry has organised a joint information event for employers and employees on the topic of the employment of foreign nationals. A similar event is also planned in the social and health care sector.</p> <p>The cities of Helsinki, Espoo and Vantaa, the Helsinki-Uusimaa Regional Council, the Uusimaa employment and economic development administration, the Network of Multicultural Associations Moniheli, the Central Organisation of Finnish Trade Unions (SAK) and the Helsinki Region Chamber of Commerce have launched a project aimed at establishing the International House Helsinki (IHH) service in the Helsinki region. IHH would be a one-stop service point for immigrants close to working life and employers to deliver all of the services provided by the authorities that are required for employment/residence in Finland.</p>	See left-hand column	Pursuant to Section 86a of the Aliens Act, an employer who employs a person other than a union citizen or comparable person or his or her family member must inform the Employment and Economic Development Office and the occupational safety and health representative of the employee's name and the applicable collective agreement.	See left-hand column	<p>Employers are not required to notify the Finnish Immigration Service of employing a third-country national. However, pursuant to Section 86a of the Aliens Act, the employer must ensure that the foreign employee has the required residence permit for an employed person or that he or she does not need a residence permit.</p> <p>The employer is also required to keep information at the workplace on the foreign employees employed there and their duties in such a way that the occupational safety and health authorities can check the information as necessary.</p>	See left-hand column
FR	Partnership agreements are signed between the State and economic and social partners. They contribute to the fight against illegal employment by raising awareness and mobilizing different sectors. In France, different professional sectors, in particular transport, agriculture, and private security, are engaged in this action. The last partnership agreements have been signed with the following professional sectors: private security, house-moving, and construction.	See left-hand column. No distinction is made between irregularly and regularly staying illegal employees.	<p>1) According to article L.5221-8 of the Labour Code, employers have to verify with the prefecture the legal status of the foreign applicant (i.e. if the third-country national is regularly staying and has a work permit).</p> <p>2) Employers have to register any employee (third-country national or not) prior to employment (déclaration préalable à l'embauche (DPAE)).</p>	See left-hand column. No distinction is made between irregularly and regularly staying illegal employees.		

	Partnership agreements with social partners		Obligations to notify authorities		Other measures	
	I	R	I	R	I	R
	The national plan for the fight against illegal employment 2016-2018 (PNLTI 2016-2018) recommends the development of preventive actions with social partners, including the renewal of the partnership agreement in the agriculture sector and the signature of new partnership agreements in the performing arts sector and the domestic work sector.		3) A new tool (déclaration sociale nominative (DSN)) has been implemented in 2017, aiming at reducing administrative burden for the employer by communicating electronically information related to the payslip to the social security and the administration.			
GR	Not applicable	Not applicable	The obligation of employers to notify the Employment Agency concerning any new hiring is a general measure to combat illegal employment and also applies to TCNs who are legally staying in Greece	See left-hand column	Law 3996/2011 provides that the companies, which are required to install the work card system and timely pay insurance contributions and the employees of these companies, enjoy a discount of up to ten per cent of the respective contributions (Article 26). The work card system installation ensures daily information in real time of IKA - ETAM (insurance foundation) on working time and the arrival and departure time of the company's employees.	See left-hand column
HR	The Social Council, consisting of the Croatian government, trade unions and employers' association aims to eradicate illegal employment.	See left-hand column	Employers need to seek permission from Ministry of Interior before employing third-country nationals.	Left-hand column	Employers can face administrative and punitive sanctions for illegally employing foreign workers.	See left-hand column
HU	Not applicable	Not applicable	Employers are required to report to relevant authorities the hiring of a third-country national.	Left-hand column	Not applicable	Not applicable
IE	See right-hand column	Joint Labour Committees are composed of an equal number of employers and employees in a given sector, could agree terms and conditions, including pay, to apply to specified grades or categories of workers in the sector. These agreements could become legally enforceable if on the recommendation of the Labour Court, the Minister for Jobs,	See right-hand column	Section 2(4) of the Employment Permits Act 2003 requires from the employer of a third country national to carry out reasonably thorough checks in order to be satisfied that a prospective employee does not require an employment permit, or that where an employment permit is required, one has been obtained. Applications for employment permits act as notification where the TCN is employment permit required.		A number of changes were brought in to regulate international student employment, including: An Interim List of Eligible Programmes (ILEP) containing approved higher education and institutions and English language providers was published and has been updated at various cycles. This was introduced as a mechanism to combat abuses in the sector and to protect students. The ILEP guidelines were reviewed during 2016 and updated criteria and

Partnership agreements with social partners			Obligations to notify authorities		Other measures	
	I	R	I	R	I	R
		Enterprise and Innovation signed an Order giving effect to the agreement. These agreements then became known as Employment Regulation Orders (ERO) and NERA was empowered to ensure compliance with the terms of the ERO. TCN workers, like all workers in a given sector, benefited from these EROs. However, third-country nationals were not included in these agreements.				application forms for both Higher Education and ELT providers were published in December.
LT	On 21 January 2008, the SLI, the PD, the MD, and the SBGS signed the Agreement on Cooperation in the Area of Control and Prevention of the Illegal or Irregular Employment of Aliens and Their Irregular Stay or Residence. Under this Agreement, the institutions undertook to cooperate at central and local levels in implementing the control and prevention of illegal or irregular employment of aliens and their irregular stay or residence in the Republic of Lithuania.	See left-hand column	The employer is under the obligation to notify the relevant authorities only about a regularly staying and legally employed or dismissed alien.	See left-hand column	Not applicable	Not applicable
LU	Not applicable	Not applicable	The employer of a third country national is obliged to notify the minister in charge of immigration the date when the employment contract starts in a deadline of three working days after the first day of work of the third-country national. If the employer is a physical person and the employment is for private reasons the reporting deadline is of 7 working days from the first day of employment. .	See left-hand column	The employer is obliged to require from the TCN employee, before the employment contract starts, that s/he has a valid authorisation of stay/residence permit and the employee must show it to the employer. The employer also must keep during the entire duration of the labour contract a copy of the authorisation of stay/residence permit in case of a possible inspection.	See left-hand column
LV	Not applicable	Government signed cooperation memorandum with	Employers cannot legally employ third-country nationals which are illegally residing in the country.	Employer has to register employee with SRS prior to employment. The OCMA has to be informed if	The law determines that a third country national has to show identification document to the representatives of the State	The law determines that a third country national has to show identification document to the

Partnership agreements with social partners			Obligations to notify authorities		Other measures	
	I	R	I	R	I	R
		organisations from construction sector.		employment conditions change or are terminated.	Labour Inspection or/and the State Border Guard.	representatives of the State Labour Inspection or/and the State Border Guard.
MT	MEUSAC takes part in the consultation process on EU policies.	See left-hand column	Not applicable	Employers are by law required to notify authorities about the employment of a third-country national.	Not applicable	Not applicable
NL	Third-country nationals who carry out domestic work in households and are united in the group 'United Migrant Domestic Workers', are members of the Dutch Trade Union Confederation FNV. This union is lobbying to formalise domestic work.	See left-hand column	If employer wants to employ a third-country national he has to contact the authorities and submit an application. The start of the employment is authorized by issuing the documents that have been applied for.	See left-hand column	First of all, in the Netherlands, the compulsory identification requirement is in force. This means that every singly person should be able to identify him/herself in case this is asked by the police. Additionally, as concerns foreigners working in the Netherlands, there is obligation to show a work permit accompanying the residence permit, if asked by authorities.	See left-hand column
SE	Swedish Construction Industry in collaboration with employers and trade union in the construction sector has been running the project "Clean Construction Industry".	See left-hand column	According to Chapter 6, Section 13a of the Swedish Aliens Ordinance, employers are obliged to check whether a third-country national that they want to hire has the necessary permit to stay and work in Sweden. They also have to keep a record (e.g. photocopy) of the document they checked. Employers also need to notify the Swedish Tax Agency when they employ a third country national.	See left-hand column	There are penal sanctions against employers who intentionally or through negligence have an alien in their employment, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. Failure to report the employment of a third-country national, or submitting incorrect information, can also result in fines or, in aggravating circumstances, to imprisonment.	See left-hand column
SK	Not applicable	Not applicable	The employer must inform the respective OLSAF (offices of Labour, Social Affairs and Family) (or COLSAF - (Central Office of Labour, Social Affairs and Family)) in writing on commencing employment, at the latest by 7 days after commencement. Fines imposed on employers for illegal employment of TCNs	See left-hand column	Not applicable	Not applicable
SI	Not applicable	The public campaign "Let's stop the illegal work and	Not applicable	Registration for compulsory disability and pension insurance, compulsory	Not applicable	As incentives for employers, simplified procedures for employment of aliens in



Partnership agreements with social partners		Obligations to notify authorities		Other measures	
I	R	I	R	I	R
	<p><b>employment together"</b> (<i>Skupaj ustavimo delo in zaposlovanje na črno</i>) (a.1.) was joined by the Chamber of Craft and Small Business of Slovenia and Slovenian Chamber of Commerce as sponsors, and the campaign is supported by the Chamber of Commerce and Industry of Slovenia, Association of Employers of Slovenia, Association of Employers in craft and business of Slovenia, and Slovenian Trade Union Confederation Pergam.</p>		<p>health insurance, parental protection and unemployment insurance for aliens in the Republic of Slovenia shall be arranged in accordance with the regulations governing compulsory insurance scheme registration and deregistration.<sup>235</sup></p> <p>A foreign employer may post workers to provide services connected to the supply of goods and maintenance in the Republic of Slovenia based on the registration of the commencement of the provision of services.<sup>236</sup> The employer referred to in the first paragraph of this Article shall register the commencement of the provision of services with the Employment Service prior to the start thereof. The Employment Service shall issue a certificate of registration.<sup>237</sup></p> <p>An alien entered, in accordance with the law, in the court register of the Republic of Slovenia as a representative of a legal entity may be engaged to represent a legal entity, to conclude legal transactions, and to supervise and give instructions, and may also perform other similar tasks which can only be carried</p>		<p>deficit occupations can be mentioned, as in this case, it is not necessary to carry out the verification process of whether workers are already available in the labour market (this applies for the permits without labour market control).<sup>240</sup></p>

<sup>235</sup> Employment, Self-Employment and Work of Aliens Act, Article 8/1.

<sup>236</sup> Employment, Self-Employment and Work of Aliens Act, Article 36/3.

<sup>237</sup> Employment, Self-Employment and Work of Aliens Act, Article 36/1.

<sup>240</sup> Interview with Mr. Miho Šepec, Department of Legal Affairs, Employment Service of Slovenia. Ljubljana, 29 March 2017.

Partnership agreements with social partners		Obligations to notify authorities		Other measures	
I	R	I	R	I	R
			out by a representative on the basis of the registration of the work of a representative. <sup>238</sup> The alien shall register the commencement of such work with the Employment Service prior to commencing work as a representative. The Employment Service shall issue a certificate of registration. <sup>239</sup>		
UK	There are no partnership agreements in place, as described. However, the Home Office works closely with key stakeholders in high risk sectors of the economy to encourage measures to prevent illegal working. For example, in the case of the construction industry, many large construction firms are members of a trade body called 'Considerate Construction' which has a code of best practice for its members to abide by in their activities. This code includes the aim of prevention of illegal working. Home Office officials have regular meetings with representatives of high risk sectors to discuss practical ways of improving compliance with the law on the prevention of illegal working.	See left-hand column	Where an employer sponsors a non-EEA migrant subject to immigration control to come to the UK to undertake skilled work under Tier 2 of the points based scheme in order to meet particular skill or labour shortages, the Home Office is notified that the employer has issued a certificate of sponsorship for the migrant as part of the process of issuing a visa. Sponsors are obliged to notify the Home Office if the Tier 2 migrant worker they have sponsored subsequently leaves their employment, and the Home Office monitors That the employer fulfils their sponsor duties.	See left-hand column	If an employer is aware they are employing someone who does not have the right to work in the UK, they are advised to inform the Home Office. A financial penalty against the employer may be reduced if the employer notifies and cooperates with the Home Office's investigations.

I=Irregularly staying and illegally working TCNs

R=Regularly staying and illegally working TCNs

<sup>238</sup> Employment, Self-Employment and Work of Aliens Act, Article 37/1.

<sup>239</sup> Employment, Self-Employment and Work of Aliens Act, Article 37/2.

**Table A1.3 Preventive measures and incentives for employees (1)**

	Financial incentives for employees		Information campaigns	
	I	R	I	R
AT	Not applicable	Not applicable	No distinction is made between irregularly and regularly staying illegal employees. See right-hand column	A coalition of the Austrian Trade Union for Production Workers (Pro-GE) and agricultural workers' activists is running in cooperation with non-governmental organizations an information campaign for seasonal workers in the agricultural sector. Free access to counselling is also provided.
BE	Not applicable	Not applicable	Structured and sustained information campaigns have not been implemented. However, short-term and focused campaigns have been carried out. In addition, information and prevention campaigns on irregular migration to Belgium have been carried out in third countries, warning about the risks of illegally migrating to Belgium.	See left-hand column
BG	Not applicable	Not applicable	Not applicable	Not applicable
CY	Not applicable	Not applicable	No information available	No information available
CZ	No financial and fiscal incentives exist for irregularly (regularly) staying and illegally working TCNs.		MoLSA participated in the creation and distribution of several information materials having a preventive function (aimed not only at employers, but also employees), like e.g. leaflet of the Labour Office regarding the employment and necessary caution when foreigners seek work abroad, flyer titled Informed Migration=Safe migration/Let us Not be Indifferent to Labour Migration (which was aimed at prevention of labour exploitation of the foreigners from Bulgaria, however the results should be valid also for TCNs). At <a href="http://prace-v-cr.cz/">http://prace-v-cr.cz/</a> can also be found an interactive map of living situations created by the project Foreigners (realized by the fund for Further Education which is subsidized organization of the MoLSA).	
DE	Not applicable	Not applicable	Information provided by the Central Custom Authority online available in German, English and French.	See left-hand column
EE	Not applicable	Not applicable	Not applicable	Not applicable
ES	Not applicable	Not applicable	Existing informational campaigns focus on combating social and labour fraud in general. Consulates also offers information about how to get a residence and work permit to work in Spain.	Existing informational campaigns focus on combating social and labour fraud in general. Consulates also offers information about how to get a residence and work permit to work in Spain.
FI	Not applicable	Not applicable	There has been a campaign in Finland entitled "Grey Economy, Black Future": <a href="http://www.mustatulevaisuus.fi/">http://www.mustatulevaisuus.fi/</a> . The campaign participants include various Government ministries, the Police, the Tax Administration and various central organisations of trade unions. The campaign communicates information about the informal economy and undeclared employment and provides advice on what people can do to contribute to the prevention of the informal economy. In addition, the Ministry of Foreign Affairs also engages in communications aimed at countries of departure and transit to some extent.	Not applicable

	Financial incentives for employees		Information campaigns	
	I	R	I	R
FR	Not applicable	See left-hand column. No distinction is made between irregularly and regularly staying illegal employees.	Information campaigns do not specifically target employees.	See left-hand column. No distinction is made between irregularly and regularly staying illegal employees.
GR	Not applicable However, for irregularly staying and illegally working TCNs, the employer must pay to the competent authorities an amount equal to any taxes and social security contributions that he/she would have paid if the TCN had been legally employed (Article 81 par. B Law 4052/2012). This measure concerns only irregularly staying in Greece TCNs and aims at addressing their undeclared work and avoiding their exploitation by employers.	See left hand-column	Not applicable	Not applicable
HR	Not applicable	Not applicable	Media campaigns have been planned as part of the project “Strengthening policy and capacity for combating undeclared work”.	See left-hand column
HU	Not applicable	Not applicable	A project aimed at “Development of workplace health and safety, development of labour inspections.”	Left-hand column
IE	Not applicable	Not applicable	No distinction is made between irregularly and regularly staying. See right-hand column	The WRC noted that they answer queries and cooperate with international actors (usually equivalent labour inspectorates) through the ILO and EU cooperation mechanisms in relation to Irish practice and employment compliance requirements. Responses may include provision of existing materials and publications on WRC practices, data exchange, staff exchange and technical assistance.
LT	Not applicable However, measures which are common for all employees apply: legally employed persons are provided with social and health guarantees, their length of employment is continued, etc. Specific measures in respect of third-country nationals have not been envisaged.	See left-hand column	The website of the Migration Department provides information on opportunities of regular and irregular migration. The website of the SLI (Ministry of Social Security and Labour) provides a helpline where cases of illegal employment can be reported.	See left-hand column
LU	Not applicable	Not applicable	Not applicable	Not applicable
LV	Not applicable	Not applicable	Not applicable	Not applicable

	Financial incentives for employees		Information campaigns	
	I	R	I	R
MT	Not applicable	Not applicable	Not applicable	AWAS - During 2016, AWAS held information sessions in the various reception centres. Further one-to-one sessions are held on daily basis, in the presence of the care-team and the clients. AWAS - Support workers from AWAS are stationed on 24/7 basis in the various reception centres, where they can give continuous support and information to all TCNs residing in these centres.
NL	Not applicable	If the third-country national is in possession of a residence permit, whereby this person may work in the Dutch labour market, then legitimate work offers the possibility to pay tax and to accrue social security benefits.	Not applicable	Not applicable
SE	There are no direct financial or fiscal incentives, but third-country nationals who are staying in Sweden irregularly do not have access to certain benefits or insurance payments, such as unemployment benefits.	See left-hand column	Over recent years, there have been no particular campaigns in this regard. However, the Swedish Migration Agency provides information on its website, targeting prospective labour immigrants and other migrants that intend to come to Sweden for various purposes, see <a href="http://www.migrationsverket.se/Privatpersoner.html">http://www.migrationsverket.se/Privatpersoner.html</a> .	See left-hand column
SK	Not applicable	Not applicable  However, all employees belong to the mandatory scheme of sickness pension insurance and unemployment insurance. After fulfilling the conditions in the legislation, they can receive benefits from the insurance.	Not applicable	Not applicable
SI	Not applicable	Not applicable	Not applicable	The public campaign <b>"Let's stop the illegal work and employment together"</b> ( <i>Skupaj ustavimo delo in zaposlovanje na črno</i> ) (a.1.) is carried out by the Ministry of Labour, Family, Social Affairs and Equal Opportunities ( <a href="http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja_in_pravice_i_z_dela/delovna_razmerja/delo_na_crno/javna_kampanja/">http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja_in_pravice_i_z_dela/delovna_razmerja/delo_na_crno/javna_kampanja/</a> ). The campaign addresses the general public and presents undeclared work – main actors in undeclared work and employment, its incidence, and the possibility of action. Sponsors of the campaign against illegal work and employment are Chamber of Craft and Small Business of Slovenia and Slovenian Chamber of Commerce, and the campaign is supported by the Chamber of Commerce and Industry of Slovenia, Association of Employers of Slovenia, Association of Employers in craft and business of Slovenia, and Slovenian Trade Union Confederation Pergam
UK	Employers are not required to register their workers because they are migrants. They are however, under a	See left-hand column	No information available	No information available



Financial incentives for employees		Information campaigns	
I	R	I	R
duty to register all employees for tax purposes.			

Table A1.4 preventive measures and incentives for employees (2)

Information support for employees from third countries			Other measures	
	I	R	I	R
AT	No distinction is made between irregularly and regularly staying illegal employees.  See right-hand column	The Drop-in Centre for Undocumented Workers (UNDOK) <sup>241</sup> provides information to migrant workers (and in particular to TCNs) about their labour rights to prevent wage and social dumping. . Other sources include the website of the Federal government <a href="http://www.migration.gv.at">www.migration.gv.at</a> .	Not applicable	Not applicable
BE	Information provided by public authorities at the federal and regional level via different means, including official websites. Trade unions and NGOs also provide employees with information, e.g. through websites, contact points or brochures.	See left-hand column	Not applicable	See left-hand column
BG	Not applicable	Not applicable	Not applicable	Not applicable
CY	Not applicable	Not applicable	No information available	The employer may give a release paper to the third-country national, in case they mutually want to terminate the contract. The third country national has a one-month notice period to find a new employer otherwise he/she has to depart. A new residence and work permit needs to be issued, if work is secured at a new employer. The employees are also allowed to give a one-month notice to the employer, if there is no consent of the employer to terminate the contract. The one-month notice period applies again.
DE	The Federal Employment Agency offers a wide range of information. The Virtual Welcome Centre of the International Placement Services (ZAV) offers comprehensive counselling and information on labour market access, on the required residence title, on the legal basis, as well as on further links and publications. In addition, the Federal Employment Agency offers a 'Migration-Check' for third-country nationals. The online portal 'Make it in Germany' <sup>242</sup> , which is run jointly by several federal ministries and the Federal Employment	See left-hand column	Generally speaking, all employees are obliged to notify different government authorities when changing their workplace. In the case of third-country nationals, whose residence title is attached to a specific employment, a specific sector or a specific employer, there normally exists the requirement to apply for changing their employer or their sector. This application is filed with the local foreigner's authority that draws its decision on the application in	See left-hand column

<sup>241</sup> UNDOK - Anlaufstelle zur gewerkschaftlichen Unterstützung UNDOKumentiert Arbeitender, <http://undok.at/> (accessed on 28 November 2016).

<sup>242</sup> [www.make-it-in-germany.com](http://www.make-it-in-germany.com)

Information support for employees from third countries		Other measures	
I	R	I	R
	Agency, offers detailed information on work and residence provisions, especially for qualified employees. Different offers of information and counselling exist for irregularly-staying and illegally employed third-country nationals living in Germany. They are mostly provided by trade unions and are of local scope, as they aim for providing counselling and consultation on the ground.	coordination with the Federal Employment Agency.	
EE	There is an employment portal with useful information about employment in Estonia. <a href="http://www.workinestonia.com/for-employers/employment-register/">http://www.workinestonia.com/for-employers/employment-register/</a>	A TCN is required to notify the PBGB of any change in the conditions of employment determined by the temporary residence permit for employment, of the termination of the contract and the end of work relations.	An alien is required to notify the Police and Border Guard Board of any change in the conditions of employment determined by the temporary residence permit for employment, of the termination of the contract and the end of work relations.
FI	Public authorities, municipalities and labour market organisations make websites and advisory services available to foreign nationals employed in Finland.	Foreign workers are not obligated to notify authorities such as the Finnish Immigration Service of changes in their terms of employment. According to the instructions of the Finnish Immigration Service, if a person has been issued with a residence permit for an employed person and he or she wishes to change jobs, he or she is usually required to submit a new residence permit application.	See left-hand column
GR	Law 3996/2011 "Reforming the Labour Inspectorate, social security arrangements and other provisions" provides that the Labour Inspectorate is responsible for providing information to employers and employees on the most effective means for the fulfilment of its provisions (Article 2). This	Illegally employed TCNs (or those acting on their behalf with their acquiescence) are able, like any legally employed worker, to submit complaints before local labour centres.	See left-hand column
HR	Website of the Ministry of Interior	Employers can face administrative and punitive sanctions for illegally employing foreign workers.	Employers can face administrative and punitive sanctions for illegally employing foreign workers.
HU	Inspection guidelines of the labour inspectorate are published on the authority's website.	Not applicable	Not applicable
IE	See right-hand column	See right-hand column	Employment permit holders are required to notify the Employment Permit Unit in event there is a change to the terms and conditions of the employment in respect of which the Employment Permit was granted (e.g. shorter working week, change in location); to do otherwise could negatively impact on the renewal of their Employment Permit.

Information support for employees from third countries			Other measures	
	I	R	I	R
LT	The website of the SLI provides a helpline where cases of illegal employment can be reported.	See left-hand column	There are currently no requirements and incentives applicable to workers from third countries. However, upon the entry into force of the Law on Employment, the employer will be subject to the duty to give a written notice of the commencement and termination of employment to the State Labour Inspectorate within three working days from the conclusion or termination of an employment contract with a third-country national.	See left-hand column
LU	The ITM (Inspectorate of Labour and Mines) as well as the Directorate of Immigration provide information through their websites on the conditions that an employer as well as third-country national have to fulfil in order to conclude an employment contract. NGOs such as CLAE provide information and support (In situ JOBS) for TCN employees. Another NGO, ASTI has a site called <a href="http://www.bienvenue.lu">www.bienvenue.lu</a> where the TCN employee can find information.	See left-hand column	There is no explicit obligation for TCNs to notify the authorities about any changes in employment conditions. However, the Immigration law requires that any change of sector or profession during the first year has to be communicated to the Directorate of Immigration in order to verify if the conditions for granting the salaried worker residence permit are still being fulfilled.	See left-hand column
LV	Not applicable	Relevant information is available on the website of the association Shelter "Safe House" as well as other associations.	Not applicable	Not applicable
MT	Not applicable	Jobsplus is responsible for employment guidance, information on licences to all third-country nationals.	Not applicable	Not applicable
NL	The website of the Dutch Immigration and Naturalisation Service provides information on the rights and obligations of third-country nationals in the Netherlands.	See left-hand column	Not applicable	Not applicable
SE	See column on information campaigns	See left-hand column	Residence and work permits issued in the framework of labour immigration to Sweden are always temporary at the beginning. Permits are granted for the time of employment, or – in case the position is permanent – for a maximum of two years, with the possibility of an extension. During the first two years, the residence permit is linked to a specific employer and a clearly defined occupation. After that, the foreign worker may change employer, but not occupation. After a total time of four years, a permanent residence permit can be granted, which then allows for full labour market access.	See left-hand column
SK	Information on the employment of TCNs is published on the MoLSAF SR (Ministry of	See left-hand column	If a work permit is required by a TCN wishing to change employer, they must	Not applicable

Information support for employees from third countries		Other measures		
I	R	I	R	
	Labour, Social Affairs and Family of the Slovak Republic) website and IOM Migration Information Centre websites, the latter is co-financed by the EU and MoI SR. MIC also provides free of charge legal, social and work-related counselling for migrants at the premises of the centres in Bratislava and Košice (Eastern Slovakia) as well as via a discounted helpline or email.	submit a new application to the OLSAF in the place of their new employment, for a work permit for the employment which will be carried out at the selected employer. This must be done 30 days before the end of the validity of current work permit at the latest. An application for extension is not sufficient. The new employer must report a vacancy to the respective OLSAF, at least 15 working days before submitting the application for a work permit.		
SI	<p>The <b>Employment Service</b> provides information on employment, self-employment and work of aliens (third country nationals) on its website (<a href="http://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tujcev">http://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tujcev</a>). Until 30 September 2015, an Info point for aliens operated within the Employment Service of Slovenia; after this date, individuals can address local administrative units with questions regarding employment of aliens and obtaining or renewing the single permit. The Employment Service provides information on employment of aliens through its <b>Contact Centre</b> (via free helpline).</p> <p>The <b>Counselling office for workers</b> (<i>Delavska svetovalnica</i>) as an organisation, which aims at advocacy, protection, promotion and development of labour, social and statutory rights of most vulnerable groups, provides information to migrants, refugees and asylum seekers. The Counselling Office provides information on entry and residence of aliens, rights stemming from work/employment, social rights, education, and rights and obligations of asylum seekers and refugees, and posted workers (<a href="http://www.delavskasvetovalnica.si/">http://www.delavskasvetovalnica.si/</a>).</p>	<p>The <b>Employment Service</b> provides information on employment, self-employment and work of aliens (third country nationals) on its website (<a href="http://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tujcev">http://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tujcev</a>). Until 30 September 2015, an Info point for aliens operated within the Employment Service of Slovenia; after this date, individuals can address local administrative units with questions regarding employment of aliens and obtaining or renewing the single permit. The Employment Service provides information on employment of aliens through its <b>Contact Centre</b> (via free helpline).</p> <p>The <b>Counselling office for workers</b> (<i>Delavska svetovalnica</i>) as an organisation, which aims at advocacy, protection, promotion and development of labour, social and statutory rights of most vulnerable groups, provides information to migrants, refugees and asylum seekers. The Counselling Office provides information on entry and residence of aliens, rights stemming from work/employment, social rights, education, and rights and obligations of asylum seekers and refugees, and posted workers (<a href="http://www.delavskasvetovalnica.si/">http://www.delavskasvetovalnica.si/</a>).</p>	Not applicable	Not applicable
UK	No information available	Migrants who are granted leave to enter/remain in the UK (for example through a student or work visa) will be advised on their rights to work at the	TCNs are required to inform the Home Office of any changes in their circumstances. Their stay in the UK, They must observe any restrictions on the type of work they can do, or the hours they can work. They must be registered for tax purposes i.e. not engaged in undeclared work.	

Information support for employees from third countries			Other measures	
	I	R	I	R
		time of issue of a visa or biometric residence permit. Asylum seekers will also be informed that they are not allowed to work at the time they lodge their application for asylum. Those granted refugee status will be notified of their entitlement to work when granted leave to remain.	including their work, must comply with their conditions of stay.	



## Annex 2 List of national authorities

**Table A2.1 National authorities involved in identification of illegal employment and risk assessment**

	National authorities involved in risk assessment	National authorities involved in identification of illegal employment <sup>243</sup>
AT	Financial Police	- The Financial Police operating under the Federal Ministry of Finance
BE	Police forces Labour inspectorate Social Information and Investigation Service (SIOD/SIRS) Judicial authorities Cabinets of the relevant ministers Social partners	<b>At federal level:</b> <ul style="list-style-type: none"> <li>- The Social Inspectorate of the Federal Public Service Social Security;</li> <li>- The Labour Inspectorate of the Federal Public Service Employment, Labour, and Social Dialogue;</li> <li>- The Inspectorate of the National Social Security Office;</li> <li>- The Inspectorate of the National Employment Office.</li> <li>- The Federal Police</li> </ul> <b>At regional level:</b> <ul style="list-style-type: none"> <li>- The Regional Inspection authorities (Brussels Region, Walloon Region, Flemish Region)</li> <li>- The local Police</li> </ul>
BG	Labour inspectorate	The General Labour Inspectorate – Directorate International Labour Migration, as well as any other inspection directorate on central and territorial level within GLI.
CZ	National and regional labour inspectorates Customs	<ul style="list-style-type: none"> <li>- National and regional labour inspectorates</li> <li>- Customs</li> </ul>
DE	Central Customs Authority, Directorate VII	<ul style="list-style-type: none"> <li>- The customs administration`s monitoring unit for undeclared work (as part of the Customs Authorities)</li> <li>- Other authorities carrying out inspection duties (i.e. police, tax authorities, the German Pension Fund, etc.).)</li> </ul>
EE	Labour inspectorate Police, Boarder Guard and Customs authority Tax administration	<ul style="list-style-type: none"> <li>-Police and Border Guard Board</li> <li>- Labour Inspectorate</li> <li>- Tax and Customs Board</li> <li>- Other state or non-state actors, can only notify Police and Border Guard Board.</li> </ul>
EL	Labour inspectorate	<ul style="list-style-type: none"> <li>- The Police and Border Guard Board</li> <li>- The Tax and Customs Board</li> <li>- The Labour Inspectorate</li> </ul>
ES	Labour inspectorate	Labour inspectorate. In doing the identification of illegal employment, other actors cooperate with Labour Inspectorate (i.e. tax board, police board, social security boards). Sometimes, cooperation with regional authorities is also established.
FI	Ministry of Social Affairs and Health Ministry of Economic Affairs and Employment Ministry of the Interior Police, Border Guard and Immigration Service Tax administration	<ul style="list-style-type: none"> <li>- The occupational safety and health units of Regional State Administrative Agencies operating under the Ministry of Social Affairs and Health</li> <li>- The Police and Boarder Guard</li> <li>- The Tax Authority</li> <li>- The Customs</li> <li>- The Finnish Immigration Service</li> </ul>
FR	General Directorate of Labour (Ministry for Labour, Employment, Vocational Training and Social Dialogue) National Delegation for the Fight against Fraud (Ministry of Economy and Finance)	<ul style="list-style-type: none"> <li>- The Labour inspectorate</li> <li>- The Police</li> <li>- The Customs Office</li> </ul>
HR	Labour inspectorate	<ul style="list-style-type: none"> <li>- The Labour Inspectorate</li> <li>- The Financial Police and the Social Security Foundation when doing inspections</li> </ul>

<sup>243</sup> Please note that when no distinction is made between the two main categories of TCNs, then the same national authorities are responsible for the identification of both categories.

	National authorities involved in risk assessment	National authorities involved in identification of illegal employment <sup>243</sup>
HU	Labour inspectorate	<ul style="list-style-type: none"> <li>- The Ministry of Labour and Pension System</li> <li>- The Ministry of the Interior</li> <li>- The Ministry of Finance and other relevant bodies within the means of their jurisdiction.</li> </ul>
IE	Workplace Relations Commission	<ul style="list-style-type: none"> <li>- The Labour Inspectorate</li> </ul>
LT	Ministry of Social Security and Labour	<ul style="list-style-type: none"> <li>- The Labour Inspectorate</li> <li>- State Tax Inspectorate</li> <li>- Financial Crime Investigation Service</li> <li>- The Police</li> </ul>
LU	Inspectorate of Labour and Mines	<ul style="list-style-type: none"> <li>Inspectorate of Labour and Mines</li> <li>- Grand-Ducal Police</li> <li>- Agents of the Customs and Excise Administration</li> <li>- Agents of the Directorate General of Small and Medium Sized Enterprises</li> </ul>
LV	State Labour Inspectorate State Border Guard State Revenue Service.	<ul style="list-style-type: none"> <li>State Labour Inspectorate</li> <li>State Border Guard</li> </ul>
MT	Jobsplus	
NL	The State Labour Inspectorate (i.e. Inspectorate Social Affairs and Employment)	<ul style="list-style-type: none"> <li>- The State Revenue Service</li> <li>- The State Labour Inspectorate</li> <li>- The State Border Guard</li> </ul>
SE	Police and Tax Agency	<ul style="list-style-type: none"> <li>- Swedish Police</li> <li>- Swedish Tax Agency (Skatteverket)</li> <li>- Employment Service (Arbetsförmedlingen)</li> <li>- Swedish Migration Agency (Migrationsverket, for checks regarding work permits)</li> <li>- Work Environment Authority (Arbetsmiljöverket)</li> <li>- Municipal authorities</li> </ul>
SK	The Government Commission for detecting and preventing illegal work and employment guides joint actions by supervisory bodies for detection and prevention of illegal work. Article 20 of the Prevention of Undeclared Work and Employment Act provides that the Commission defines on yearly basis economic activities in which it believes third-country nationals are most often illegally employed, and develops an inspections' plan. The Commission also prepares yearly report on implemented inspections and informs the European Commission on main findings. Members of the Commission are representatives of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, Ministry of Justice, Ministry of Economic Development and Technology, Ministry of Finance, Labour Inspectorate, Market Inspectorate, Inspectorate of Infrastructure, Inspectorate for Agriculture, Forestry, Hunting and National Labour Inspectorate (NLI), Labour inspectorates (LI), Central Office of Labour, Social Affairs and Family (COLSAF) and Offices of Labour, Social Affairs and Family OLSAF), Inspectorate for the Environment and Spatial Planning, Health Inspectorate, Inspectorate for Education and Sport, Financial Administration, General Police Directorate, and employers' and employees' representatives.	Labour Inspectorate and Financial Administration are responsible for identification of illegally employed third-country nationals. Financial Administration exercises supervision over illegally staying and illegally employed third-country nationals, while the Labour Inspectorate exercises supervision over legally staying and illegally employed third-country nationals.- NLI, LI, COLSAF, OLSAF
SI	Government Commission for detecting and preventing illegal work and employment (Members of the Commission are representatives of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, Ministry of Justice, Ministry of Economic Development and Technology, Ministry of Finance, Labour Inspectorate, Market Inspectorate, Inspectorate of Infrastructure, Inspectorate for Agriculture, Forestry, Hunting and Fisheries, Inspectorate for the Environment and Spatial Planning, Health Inspectorate, Inspectorate for Education and Sport, Financial Administration, General Police Directorate, and employers' and employees' representatives)	<ul style="list-style-type: none"> <li>- Labour Inspectorate</li> <li>- Financial Administration</li> </ul>
UK	Immigration Enforcement (Home Office)	<ul style="list-style-type: none"> <li>- The Police</li> <li>- HM Revenue &amp; Customs</li> <li>- The Employment Service</li> </ul>

Table A2.2 Number of staff/inspectors involved in identification/inspections on illegal employment per authority and if available, per sector for 2015

	Number of staff/inspectors involved in identification/inspections on illegal employment per authority	Staff specifically dedicated to identifying illegally employed TCNs
AT	Financial police: 477 staff members	No. There is no staff specifically dedicated to identifying illegally employed TCNs.
BE	Total of the four main federal inspectorates <sup>244</sup> : 1000 inspectors	No. These inspectors are not specifically dedicated to identifying the illegal employment of TCNs, but they do deal with this issue in the framework of their general activities.
BG	This task is performed by all labour inspectors – 301, including the 6 inspectors of the specialised International Labour Migration Directorate within the General Labour Inspectorate.	No. See left column.
CY	12 inspectors are involved in joint inspection units.	Not available in the report
CZ	176 inspectors in total at the division for inspection of illegal employment of the State Labour Inspection Office (information as of January 2017)	No. These inspectors deal with general inspections of illegal employment (meaning that they do not deal exclusively with identification of third-country nationals).
DE	Around 6,700 staff members are employed by the customs administration's monitoring unit for undeclared work with 85% of employees working in Department E on inspections and investigations (also in the field). These employees are tasked with inspecting workplaces and subsequent follow-up investigations. The other approx. 15% of the personnel work in Department F (penalties), processing regulatory offence procedures regarding illegal employment. They do not work in the field	N/A
EE	306 persons are employed by the Police and Border Guard Board all migration surveillance related proceedings and inspections, including identifying illegally employed TCNs.	No. The identification of illegally employed TCNs is only one of their tasks.
EL	Not available in the report	Not available in the report
ES	According to data provided in the Labour Inspectorate report 2015, around 1,700 people are employed by the Labour Inspectorate.	No. The identification of illegally employed TCNs is only one of their tasks
FI	The occupational safety and health units employ some 450 people, the majority of whom are occupational safety and health inspectors. All five of the occupational safety and health units have inspectors who specialise in monitoring the use of foreign labour. A total of 12 inspectors are primarily engaged in the monitoring of foreign labour, including both EU and third country nationals. Regarding the other authorities (the police and border guard and the tax authorities) it was not possible to ascertain the number of staff, as the monitoring and inspection of foreigners and illegal employment form only a small part of the duties assigned to each of them.	Yes (partly). 12 inspectors are primarily engaged in the monitoring of foreign labour but this includes both EU and third country nationals.

<sup>244</sup> The Social Inspectorate of the Federal Public Service Social Security; the Labour Inspectorate of the Federal Public Service Labour, Employment and Social Dialogue; the Inspectorate of the National Social Security Office; the Inspectorate of the National Employment Office

	Number of staff/inspectors involved in identification/inspections on illegal employment per authority	Staff specifically dedicated to identifying illegally employed TCNs
FR	2,200 control officers of the Labour Inspection are involved in inspections of illegal employment (in the field). At the regional level, the Labour Inspection is organised in control units within the Regional Directorate for Business, Competition, Consumer Affairs, Labour and Employment (DIRECCTE). The labour inspectorates' network is also composed of a specialized staff at the regional level who is involved in large-scale operations and of a small group at the national level dedicated to more complex operations.	No. There is no staff specifically dedicated to identifying illegally employed TCNs.
HR	The Labour Inspectorate employs 235 civil servants, of which 224 civil servants deployed to work with authorities to perform inspection tasks.	No. There are no specific positions dedicated to identifying illegally employed TCNs.
HU	The number of inspectors involved in on-site inspections is approximately 230.  The Office of Immigration and Nationality does not have staff specifically dedicated to identifying and inspecting illegal employment.	No. here are no employees dedicated specifically to the inspection of illegal employment of TCNs as all government officials involved in labour inspections perform inspections in all sectors; there is no specialisation per economic sector.
IE	The staff of the Workplace Relations Commission Inspector Services numbered 70.2	
LT	State Labour Inspectorate has 295 employees – 205 of them are civil servants. 155 are inspectors who perform labour law, occupational safety and safe working environment checks. 87 are engineers (performing safety checks), 59 lawyers (performing labour law checks) and 9 health officers.	N/A
LU	In 2015, there were 63 labour inspectors but only 10 of those carried out on-sight inspections.	No. The inspectors of the ITM are not specifically dedicated to identifying illegally employed TCNs, but are involved in general labour inspections.
LV	The number of the SLI and the SBG officials participating in the inspections varies (from 4 to 20). There are usually from 8 to 12 SLI and SBG inspectors participating in the inspection; the number of inspectors and their composition is determined by the initiator. The initiator can be both the SLI and the SBG. Similarly, the number and the composition of inspectors is determined by taking into account the size of the object, the area of activity and the possible number of inspected persons in the object.	No. The officials involved in inspections are not specially employed only for identification of illegally employed TCNs.
MT	Immigration Police involved in this sector amounts to around 20 officials.	No. These staff have other duties concerning field immigration checks.
NL	- For the Inspectorate for Social Affairs and Employment, in total: 1185 full-time employees, of which 743 were inspectors, detectives and researchers.  - For the Aliens Police, Identification and Trafficking in Human Beings Department (AVIM):  1184 full-time employees in total. Although 1/3 of all posts are associated with investigations, these can be supplemented by staff from the other areas of responsibility like the detectives department and/or other policing colleagues.	No. The Labour Inspectorate does not have specific positions dedicated to identifying illegally employed TCNs.

	Number of staff/inspectors involved in identification/inspections on illegal employment per authority	Staff specifically dedicated to identifying illegally employed TCNs
SE	Such statistical data is not available in Sweden.	N/A
SI	On 31 December 2015, the Labour Inspectorate employed 77 inspectors. Among them, 41 inspectors were working in the field of employment relationships, encompassing also prohibition of illegal employment; 32 inspectors for work carried out inspection in the field of ensuring safety and health at work; and 4 inspectors were working in the field of social inspection. <sup>245</sup> On 31 December 2016, 42 inspectors were responsible for employment relationships, 31 inspectors were responsible for safety and health at work and 5 inspectors for social inspection. <sup>246</sup> On 1 January 2016, the Financial Administration employed 180 officials in mobile units and 320 financial inspectors who additionally to the tasks under the Prevention of Undeclared Work and Employment Act also exercise supervision under provisions of other legislation under the responsibility of the Financial Administration. <sup>247</sup> On 31 December 2016, the Financial Administration employed 2.697 authorized officials, of which 433 inspectors, 510 financial advisers, 167 investigators, 263 customs officers, 914 controllers and 410 debt-collectors.	NA - The number of employees refers to performing all tasks within the competence of certain authority, not specifically to identification of illegally employed third-country nationals.
SK	As all the inspectors of LIs deals with inspections of illegal employment, a total of 310 labour inspectors and candidates for labour inspectors were involved in general checks on illegal employment in 2015 <sup>248</sup> . At LIs, there is also a specific Department of Inspection of Illegal Employment, which is responsible for illegal employment in general: (in 2015, 36 inspectors worked at these Departments in Slovakia). The overall number of COLSAF and OLSAFs employees involved in checks of illegal employment amounted to 134 in 2015.	N/A - The employees were not specifically dedicated to the inspection of illegally working TCNs, but involved in the general inspection of illegal employment.
UK	Information not available	N/A

<sup>245</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

<sup>246</sup> Interview with Ms. Jasmina Rakita Cencelj, directress of the Inspection of supervision of employment relationships, Ms. Romana Košorok, Inspector Counselor, and Ms. Sonja Konestabo, Secretary, Labour Inspectorate. Ljubljana, 24 March 2017.

<sup>247</sup> Report on activities and effects of prevention of illegal employment and work for 2015 (The Government Commission for detecting and preventing illegal work and employment).

<sup>248</sup> A candidate for labour inspector works alongside a labour inspector.



### Annex 3 Sanctions and consequences for employers

Table A3.1 Sanction and consequences for employers of **irregularly** staying and illegally working third-country nationals

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
AT	✓ Minimum fine € 1,000 per illegally hired employee.	✓ Employment of a minor or higher number of irregularly staying foreigners may be punished with imprisonment of up to six months, or up to two years for particularly serious cases. Organised illegal employment may be punished with imprisonment of up to two years.	✗ May confiscate assets obtained through a criminal offence.	✓ Employers may be excluded from tender procedures.	✗	✗ May confiscate assets obtained through a criminal offence.	✓ If employer was convicted for organised illegal employment, sentenced to imprisonment for more than three months, or to a fine equivalent to more than 180 days' imprisonment, and whose conviction has not been deleted from the record.	✓ Imposed if business owner falls under the exclusion grounds, and if that individual could conceivably commit the same/similar criminal offence. Also if business owner does not meet necessary reliability requirements to conduct the business.	✗	✓ -Ineligibility for work permit -Prohibition of employment of foreigners -Ineligibility for public funding -Return decision
BE	✓ Fine for both negligence and intentionality.	✓ Prison sentence can be between six months to three years.	✓ Applies on matters that are subject of the offence, that served or were destined to commit the offence (if property of the convicted), and that arise from the offence. Also applies on capital gains derived from the offence, on the goods and values laid down in its place and on the income from invested benefits.	✓ Candidates and tenderers who employ illegally staying TCNs are excluded from government contracts.	✓ Only prohibiting operations or ordering whole/partial closure if necessary to end infringements or prevent their recurrence.	✓ Applies on matters that are subject of the offence, that served or were destined to commit the offence (if property of the convicted), and that arise from the offence. Also applies on capital gains derived from the offence, on the goods and values laid down in its place and on the income from invested benefits.	✓ Temporary closure of the company can be pronounced by the judge.	✓ Only in some cases.	✓/✗ No automatic withdrawal of employer's residence permit - case examined and different elements taken into account (length of stay, which level of penalisation, family, health situation, etc.).	✓ Regarding human trafficking, the guilty will be sentenced to deprivation of their rights to enter employment in public services. Cover the costs of the forced return of irregularly staying and illegally working TCNs, as well as daily sum for the costs of accommodation, living and health.

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
BG	✓ Art. 77 of the Law on Labour Migration and Labour Mobility and Art. 48c of the Law on Foreigners in the Republic of Bulgaria	✗	✗	✗	✗	✗	✗	✗	✗	✓ Employers, sanctioned according Art. 77 LLMLM in the previous 24 months, cannot hire TCNs and their applications are denied Art. 11, para. 1, point 3 of LLMLM
CY	✓ Fines imposed by the courts to employer. Administrative fine imposed by the Director of the Migration Department.	✓ In aggravated circumstances, for both physical or legal persons, imprisonment not exceeding 5 years, and/or fine not exceeding €20,000.	✗	✓ Ineligibility of public contracts for a period not exceeding 5 years.	✓ It concerns the infrastructure used to commit the offence	✗	✓	✗	✓ <i>Information not provided.</i>	✓ Cases of illegal employment are taken into consideration in examination of employers' applications for employment of third-country nationals.
CZ	✓ Regulation 435/2004 Coll., Act on Employment - Section 140 paragraph 1 point e). Administrative sanctions concern only the imposition of fines.	✓ Section 342 of Criminal Code. Unauthorised employment of foreigners. 1) Who systematically, repeatedly, under particularly exploitative working conditions or in a greater extent illegally employ or mediate the employment of a foreign national who is illegally staying in the Czech Republic or does not have a valid work	✓ Possible in cases of criminal sanctions.	✗	✓ Section 342 of Criminal Code. Unauthorised employment of foreigners.	✓ Section 342 of Criminal Code. Unauthorised employment of foreigners.	✓ Section 342 of Criminal Code.	✗	✓ Section 119 of the Act on Residence of Foreign Nationals in the Territory of the Czech Republic – expulsion.	✓ Inability to rehire a foreign national for four months.

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
		<p>permit, if this is required by another legal regulation, will be punished by imprisonment for up to six months, by confiscation or by prohibition of activity.</p> <p>2)Equally will be punished a person who employs or mediates the employment of a foreign national who is a child and who is illegally staying in the Czech Republic or does not have a valid work permit under another legal regulation.</p> <p>3)By imprisonment for up to one year the offender shall be punished by committing the offense referred to in paragraph 1 or 2</p> <p>a.as a member of an organized group,</p> <p>b.against payment, or</p> <p>c.repeatedly</p> <p>4)By imprisonment for six months up to three years an offender shall</p>								

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
		be punished if he/she obtains a significant benefit for himself/himself or someone else's for the act referred to in paragraph 1 or 2. 5)By imprisonment for one to five years, or in addition to this punishment, by the confiscation of property, an offender shall be punished if he/she obtains by an act referred to in paragraph 1 or 2 for him/her or for someone else benefit of a large scale.								
DE	✓ Regulatory offence punishable by fine of up to €500,000 regardless of whether the illegal employment was due to intent or negligence.	✓ Different offences leading to imprisonment of up to between one to three years. Longer sentence if offence committed out of gross self-interest or if committed repeated acts.	✗ Only seize illegally obtained assets under criminal proceedings.	✓ Exclusion from public supply, building and service contracts after conviction. Tendering offers must confirm they have not been convicted or fined for offences relating to the illegal employment of third-country nationals.	✗ No legal norm for this but severity of sanctions can indirectly result in insolvency.	✗	✗ There is no legal norm for closing a company due to illegal employment of third-country nationals. However, a company may be partially or completely banned from a trade due to unreliability pursuant to the Trade Regulation Code. No legal norm but a	✗ Temporary employment agency permit is an exception.	✓ The sentence shall determine whether expulsion is considered. Residence permit is null and void if its holder is expelled. Public interest plays a part in the outcome.	✓ -Exclusion from subsidies -Liability for deportation or expulsion

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
							company may be partially/ completely banned from trade activity due to unreliability.			
EE	✓ Fine up to 300 fine units if employer failed to perform obligations provided by law. If committed by a legal person, fine is up to € 3,200.  *A fine unit is the base amount of a fine and is equal to 4 euros. 300 units is equal to 1200 euros.	✓ Act punishable by a pecuniary punishment or up to three years' imprisonment.	✓ Court confiscates assets acquired through an offence if these belong to the offender.	✓ Public contracts not awarded to, and exclude from procurement, a tenderer who has been convicted.	✓ Ministry of the Interior can submit to court the petition for compulsory dissolution of a legal person whose actions are against law, public order or good morals.	✓ Objects of confiscation may be all assets, rights, and other benefits that may be subjects of law. In case of occurrence of conditions stipulated by law, it is possible to confiscate assets, which belong to a third person.	X	X	✓ Temporary residence permit cancelled if a prerequisite for the issue of a residence permit to an alien or extension is not complied with.	✓ Temporary residence permit for employment refused if employer: -has been punished for a criminal offence, human trafficking or illegal employment in aggravating circumstances -has tax arrears -has a criminal record for illegal employment -failed to perform the notification obligation provided for by law -there is ground to doubt their trustworthiness -salary/wages of third-country national does not guarantee their subsistence
EL	✓ Penalty of € 5,000 per illegally employed third-country nationals is imposed on the employer by the relevant Labour Inspectors.	✓ Punishment, regardless of administrative sanctions, with imprisonment of at least five months, or six if employing minors or if related to human trafficking.	X	✓ Exclusion from all public contracts for up to five years.	✓ Temporary or permanent revocation of premises license in which the infringement was committed.	X	✓ Temporary suspension of activity of a specific production process, section(s)/whole operation in which a violation has occurred.	X	X	✓ Exclusion from some/all public benefits, aid or subsidies, including EU funding, for up to five years.
ES	✓ A fine € 10,000.1 to	✓ Employment of a higher number	X	✓ Employers may be excluded	✓ May establish the closure of the	✓ May confiscate equipment due	✓ If employer was convicted for	✓ If employer was convicted for	Employer may be issued a	Information on this point has not been provided.

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
	100,000 per illegally hired employee.	of irregularly staying foreigners may be punished with imprisonment of six months up to six years for particularly serious cases. Employment of a minor or of irregularly TCN on a continuous way may be punished with imprisonment from three months up to eighteen months, or up to six years for particularly serious cases. Organised illegal employment may be punished with imprisonment from two years of up to five years.		from tender procedures.	company due to an administrative offence and also due to a criminal offence (If employer was convicted for crimes against workers, sentenced to imprisonment)	to a criminal offence in some specific cases.	crimes against workers, sentenced to imprisonment, suspension of activity could also be ordered.	crimes against workers, sentenced to imprisonment, withdrawal of trading license could be a consequence of the discloser of the company.	return decision under certain circumstances	
FI	✓ In Finland, fines may be imposed on employers for a violation of the Aliens Act and unauthorized use of foreign labour. Employers may also be sentenced to a fine for work discrimination and	✓ Imprisonment for unauthorised use of foreign labour up to one year.	✓ Criminal Code of Finland 39/1889 Chapter 10 – Forfeiture: The proceeds of crime shall be ordered forfeit to the State.	✓ Excluded from competitive bidding if tenderer has been convicted for a work safety offence.	✓ If employer guilty of criminal activity or neglected their statutory duties.	✓ See confiscation of financial gains, possible to include equipment as well.	✓ If employer guilty of criminal activity or neglected their statutory duties.	✓ If employer guilty of criminal activity or neglected their statutory duties.	✓ Fixed-term residence permit may be cancelled if the grounds on which it was issued no longer exist.	✓ -Not issuing residence permits for employed persons -Employer to compensate for costs of return provided that employer has influenced the employees' entry/residence



	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
	extortionate work discrimination. The same legislation applies to situations involving an irregularly staying and a regularly staying TCN.									
FR	✓ The amount of the fine depends on different factors (type of fraud, natural or legal person, etc.). Penalty from € 15,000 to € 100,000.	✓ Imprisonment from 5 years to 10 years if the offense was committed by an organised group.	✓ Confiscation of part or all of the assets, regardless of their nature.	✓ Exclusion from public contracts for up to five years.	✓ Temporary or definitive closure of the establishment in which the infringement was committed.	✓ Confiscation of equipment that served directly or indirectly to commit the offence.	✓ Suspension of the activity of the employer in which the infraction has been committed, for a maximum duration of five years.	✓	✓ Residence permit may be withdrawn to any employer having illegally employed a third-country national.	✓ Excluding employers from receiving public aid / reimbursement of public aid.
HR	✓ Fine per foreigner imposed on employer (natural person), or larger fine if employer is a legal entity.	X	X	X	✓ Administrative measures will, for 30 days, prohibit the employer undertaking activities or providing services to a foreign employer in the supervised business facilities, if it finds that during the control the foreigner was working for the employer contrary to the provisions of the Foreigners Act. These measures will be annulled if	X	✓ Administrative measures will, for 30 days, prohibit the employer undertaking activities or providing services to a foreign employer in the supervised business facilities, if it finds that during the control the foreigner was working for the employer contrary to the provisions of the Foreigners Act. These measures will be annulled	X	X	X

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
					employer pays fine per foreigner within five days of pronouncing the measure.		if employer pays fine per foreigner within five days of pronouncing the measure.			
HU	✓ Labour inspection - fine payable for each employee employed irregularly. The amount of the fine is progressive and depends on the previous record and status of the offender.	✓ Imprisonment not exceeding two years. For human trafficking, imprisonment not exceeding three years.	✓ The payment obligation of the fines imposed by the labour inspectorate constitutes outstanding public dues that shall be enforced as taxes.	✓ Excluded from participating in public procurement procedure as a tenderer, candidate, subcontractor or organisation participating in the certification of suitability.	✓ If labour inspection finds that temporary/permanent closure of facilities used, or temporary/permanent revocation of the business licence, may be justified (or if third-country national is a public threat).	✓ If labour inspection finds that temporary/permanent closure of facilities used, or temporary/permanent revocation of the business licence, may be justified (or if third-country national is a public threat).	✓ If labour inspection finds that temporary/permanent closure of facilities used, or temporary/permanent revocation of the business licence, may be justified (or if third-country national is a public threat).	✓ If labour inspection finds that temporary/permanent closure of facilities used, or temporary/permanent revocation of the business licence, may be justified (or if third-country national is a public threat).	✓ If labour inspection finds that temporary/permanent closure of facilities used, or temporary/permanent revocation of the business licence, may be justified (or if third-country national is a public threat).	✓ Public safety fine – employer subject to penalty for protection of public policy. If illegally employed third-country national has valid residence permit, there may be a review of their residency entitlement.
IE	✓ On summary conviction - fine not exceeding € 3,000, or on conviction on indictment - fine not exceeding € 250,000.	✓ On summary conviction, to imprisonment not exceeding 12 months, or on conviction on indictment, to imprisonment not exceeding 10 years.	✗	✓ Disclosure to 'public contracting authorities' information on contravention of employment legislation by a contractor.	✗	✗	✗	✗	✓ Section 3(2)(h) of the Immigration Act 1999, as amended provides that an order may also be made in respect of 'a person who, in the opinion of the Minister, has contravened a restriction or condition imposed on him or her in respect of landing in or entering into or	

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
									leave to stay in the State'.	
LT	✓ Fine from € 1,000 up to EUR € 5,000. If offence committed repeatedly, fine up to € 6,000.	✓ Punishment by a fine, by arrest, or by a custodial sentence for up to two years.	✗	✓ Employers subject to restriction on participation in public procurement.	✗	✗	✗	✗	✗	✓ Restrictions: - Deprivation of the right to receive subsidies, benefits or other state aid, including some support from the EU, for up to five years; - Obligation to repay part/all subsidies, benefits or other state aid, including some support from the EU, granted over 12 months.
LU	✓ The Ministry in charge of Labour, Employment and Social and Solidarity Economy can establish an administrative fine against employer of €2,500 per irregular third-country national worker.	✓ Employer may also be liable to imprisonment from eight days up to one year and to a fine of € 2,501 up to € 20,000 per irregular third-country national, or to one of these sanctions if certain conditions are fulfilled.	✗	✗	✓ Temporary foreclosure up to five years or definitive foreclosure of company or establishment that was used for the primary infraction.	✗	✓ Provisional suspension of the activity of the employer. Maximum duration of three years to exercise the professional or social activity which has permitted to commit directly or indirectly the infraction.	✓ Ministry in charge of the authorisation of establishment can withdraw authorisation of establishment.	✓ If the employer is a third-country national and s/he violates the law the authorisation of stay can be withdrawn in accordance with the seriousness of the offence but each case is assessed individually.	✓ -Under certain conditions, employer is excluded for three years to certain State aid -Employer pays the remuneration to the third-country national and covers costs resulting from back payment of unpaid wages to third-country national's return country -Employer assumes costs of unpaid social contributions and taxes, administrative fines, legal and attorney fees -Employer covers costs in case a return procedure occurred -Control agents inform tax and social security authorities of the infractions
LV	✓	✗	✗	✗	✗	✗	✗	✗	✗	✓

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
	Employer imposed a fine for individuals from € 210 up to € 500.								Residence permit may be annulled, but each case is assessed individually.	Additional penalty – a ban to take certain positions in commercial companies, is foreseen. Additional penalty has never been applied so far.
MT				✓	✓		✓	✓	✓	
NL	✓ Policy rule for imposing a fine under the Foreign Nationals Employment Act - fine is increased by 50% when foreign national has no legal residency status in NL.	✗	✗	✗	✗	✗	✓ Shutdown of no more than three months of work after a warning and repetition of the infringement.	✗	✗	✓ An action to recover back wages can be instituted over the last six months, on the basis of the Minimum Wages and Minimum Holiday Allowance Act.
SE	✓ Fine or special charge paid to the state for each illegally employed person.	✓ Imprisonment up to one year.	✗	✓ Employer in certain circumstances excluded from public contracts.	✗ A worksite may only be sealed or close temporarily if needed for a criminal investigation.	✗	✗ Suspension of activity may be direct or indirect result of an ongoing investigation, but it is not a sanction.	✓ It could happen in extraordinary, aggravating circumstances	✗ Loss of residence and expulsion is only relevant in the case of relatively serious crimes.	✓ In certain circumstances employers can be excluded from receiving (or are required to return) public support, state contributions or benefits.
SK	✓ Inspection bodies obliged to impose fine if the ban on illegal employment is breached. Amount of fine depends on seriousness, duration, and	✓ Length of sentence depends on whether it is a re-offender; if victim is a protected person or acting in a more serious manner occurred; working	✗	✓ Provision of subsidy from state budget, aid and support from EU funds, or participation in public procurement are only available to entities that have not	✓ Repeated breach of ban on illegal employment is especially serious, based on which the trading licence shall be withdrawn. Legal entity status withdrawn if activity was of criminal nature	✗	✓ Disqualification if legal entity convicted of crime of illegal employment. This prohibits them from pursuing business objectives or activities that require special	✓ Repeated breach of ban on illegal employment is especially serious, based on which the trading licence shall be withdrawn.	✓ In relation to illegal work, a third-country national can be expelled due to serious or repeated infringements of the law; however, this has to be	✓ -Centralised public list of natural persons and legal entities who have breached ban on illegal employment, which can damage employer's reputation - Legal entity can be punished by publishing their sentence or its part if it is needed to notify

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
	consequences of illegal actions, repeated breach of obligation, and number of obligations breached.	conditions; human trafficking.		breached the ban on illegal work and employment.	(applies for illegal employment).		permits, which are subject to special regulation.		sufficiently backed.	the public about the sentence. They publish their conviction at their own cost in the Trade Journal and in one or more establishments/departments pertaining to the legal entity
SI	- employer and the responsible person of the employer <sup>249</sup> who illegally employs a third-country national; <sup>250</sup> - employer and the responsible person of the employer <sup>251</sup> or an individual who fails to settle all obligations within 15 days of detecting a violation or fails to submit proof of payment to the supervisory authority within 8 days of the deadline for payment <sup>252</sup>	Whoever consecutively or permanently or in a substantial number employs foreigners who are not nationals of an EU Member State and are illegally staying on the territory of the Republic of Slovenia, shall be sentenced to imprisonment for not more than two years	A legal person, a foreign legal entity or a self-employed person who employs illegally staying third-country national, shall repay public funds, including European Union funds granted on the basis of a public call or public invitation for employment and training programmes which constitute State aid or aid under the de minimis rule, disbursed over a period starting 12 months prior to the supervisory	A legal person, a foreign legal entity or a self-employed person who employs a third-country national illegally residing in the Republic of Slovenia shall be excluded from public procurement procedures for five years from the final decision imposing a fine for a minor offence under the fifth indent of paragraph (1) of Article 23 of this Act and shall lose the right to public funds or have limitations imposed	/	/	/	/	/	/

<sup>249</sup> Prevention of Undeclared Work and Employment Act, Article 23/2.

<sup>250</sup> Prevention of Undeclared Work and Employment Act, Article 23/1, 5<sup>th</sup> indent.

<sup>251</sup> Prevention of Undeclared Work and Employment Act, Article 23/12.

<sup>252</sup> Prevention of Undeclared Work and Employment Act, Articles 23/8 and 23/9.

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
			authority's first report and ending when a decision on the fine imposed for a minor offence becomes final	thereon, including European Union funds granted on the basis of a public call or public invitation for employment and training programmes which constitute State aid or aid under the de minimis rule						
UK	✓ Civil penalty up to £20,000 per illegal worker. Larger fine if successful prosecution against employer.	✓ Successful prosecution can lead to custodial sentence up to five years.	✓ Financial gains may be seized as the proceeds of crime. Wages paid to illegal workers over £1,000 can also be seized from the worker.	✗	✓ Close business premises for up to 48 hours for employers who continue to flout the law. If employer cannot prove they have conducted right to work checks, there can be continued closure for a period.	✓ Criminal and Financial Investigation unit responsible for confiscation of property.	✓ Close business premises for up to 48 hours for employers who continue to flout the law. If employer cannot prove they have conducted right to work checks, there can be continued closure for a period.	✓ Mandatory immigration checks into licensing regimes for high-risk sectors. Compliance with immigration laws required to maintain license. Immigration offences are ground for seeking revocation of a license.	✓ If the offence was sufficiently serious.	✓ -Disbar employer from being company director -May impact on an employer's sponsor licence and ability to bring in overseas migrants -Offence taken into account in immigration application of employers with limited immigration status -Court cases to enforce payment of a civil penalty debt will impact employers' credit reference rating -Employer's business details may be published and identified as an employer of illegal workers



Table A3.2 Sanction for employers of regularly staying and illegally working third-country nationals

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
AT	✓ Minimum fine € 1,000 per illegally hired employee.	✓ Organised illegal employment is punishable with imprisonment of up to two years.	✗ May confiscate assets obtained through a criminal offence.	✓ Employers may be excluded from tender procedures.	✗	✗ May confiscate assets obtained through a criminal offence.	✓ Applicable if employer was convicted for organised illegal employment, sentenced to imprisonment for more than three months, or to a fine equivalent to more than 180 days' imprisonment, and whose conviction has not been deleted from the record.	✓ Imposed if business owner falls under the exclusion grounds, and if that individual could conceivably commit the same/similar criminal offence. Also if business owner does not meet necessary reliability requirements to conduct the business.	✗	✓ -Ineligibility for work permit -Prohibition of employment of foreigners for public funding -Return decision
BE	✓ Fine imposed if employer let third-country national work without the necessary authorisation /permit or not in line with the terms set out.	✗	✓	✓	✓ Prohibiting operations or ordering whole/partial closure for one month to three years. Only imposed if necessary to end infringements or prevent their recurrence.	✓ Applies on matters that are subject of the offence, that served or were destined to commit the offence (if property of the convicted), and that arise from the offence. Also applies on capital gains derived from the offence.	✓ A temporary closure of the company can be pronounced by the judge.	✗	✓ / ✗ No automatic withdrawal of employer's residence permit - case has to be examined and different elements are taken into account.	✓ Regarding human trafficking, the guilty will be sentenced to deprivation of their rights to enter employment in public services.
BG	✓ Art. 76 of the Law on Labour Migration and Labour Mobility and Art. 48 of the Law on Foreigners in	✗	✗	✗	✗	✗	✗	✗	✗	✓ Employers, sanctioned according Art. 76 LLMLM in the previous 12 months cannot hire TCNs and their applications are denied Art. 11, para. 1, point 6 of LLMLM

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
	the Republic of Bulgaria									
CY	✓ Fines imposed by the courts to employer.	✗	✗	✗	✗	✗	✗	✗	✓ <i>Information not provided.</i>	✓ Cases of illegal employment taken into consideration in the examination of employers' applications for the employment of third-country nationals
CZ	✓ Regulation 435/2004 Coll., Act on Employment - Section 140 paragraph 1 point c). Administrative sanctions concern only the imposition of fines.	✓	✓ Possible in cases of criminal sanctions. Section 342 of Criminal Code.	✗	✓ Section 342 of Criminal Code.	✓ Section 342 of Criminal Code	✓ Section 342 of Criminal Code	✗	✓ Section 119 of the Act on Residence of Foreign Nationals in the Territory of the Czech Republic – expulsion-	✓ Inability to rehire a foreign national for four months Section 37a of the Act on Employment.
DE	✓ Regulatory offences punishable by fine of up to € 500,000 regardless of whether the illegal employment was due to intent or negligence.	✓ Different offences leading to imprisonment of up to between one to three years. Longer sentence if offence committed out of gross self-interest or if committed repeated acts.	✗ Only seize illegally obtained assets under criminal proceedings.	✓ Exclusion from public supply, building and service contracts after conviction. Tendering offers must confirm they have not been convicted or fined for offences relating to the illegal employment of third-country nationals.	✗ No legal norm for this but severity of sanctions can indirectly result in insolvency of a company.	✗	✗ There is no legal norm for closing a company due to illegal employment of third-country nationals. However, a company may be partially or completely banned from a trade due to unreliability pursuant to the Trade Regulation Code.	✗ Temporary employment agency permit is an exception.	✓ The sentence shall determine whether expulsion is considered. Residence permit is null and void if its holder is expelled. Public interest plays a part in the outcome.	✓ -Exclusion from subsidies for or -Liability for deportation or expulsion
EE	✓ Fine up to 300 fine units if employer	✗	✓ In case of human trafficking, court	✓ Public contracts not awarded to, and exclude from	✓ Ministry of the Interior can submit to court the petition for	✓ The confiscation of objects or assets is stipulated by	✗	✗	✓ There is ground to doubt trustworthiness of employer for	✓ Human trafficking

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
	<p>failed to perform obligations provided by law. If committed by a legal person, fine is up to € 3,200.</p> <p>*A fine unit is the base amount of a fine and is equal to 4 euros. 300 units is equal to 1200 euros.</p>		<p>confiscates assets acquired through an offence if these belong to the offender.</p>	<p>procurement, a tenderer who has been convicted. Also applies when crime related with human trafficking.</p>	<p>compulsory dissolution of a legal person whose actions are against law, public order or good morals (human trafficking can be considered as such an activity).</p>	<p>Penal Code articles 83-85. The objects of confiscation may be all assets, rights and other benefits that may be subjects of law. The Penal Code stipulates, that if the assets acquired by an offence in the meaning of § 831 of Penal Code or assets acquired by a criminal offence in the meaning of § 832 of Penal Code, instrument by which a criminal offence was committed or direct object of a criminal offence have been transferred, consumed or the confiscation thereof is impossible or unreasonable for another reason, the court may order payment of an amount which corresponds to the value of the assets subject to confiscation. In case of occurrence of</p>			<p>any other reason (human trafficking cases).</p>	

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
						<p>conditions stipulated by Penal Code, it is also possible to confiscate assets, which belong to a third person. Confiscated objects shall be transferred into state ownership or, in the cases provided for in an international agreement, shall be returned. In the case of confiscation, the rights of third persons remain in force. The state shall pay compensation to third persons, except in the cases stipulated by law.</p>				
ES	✓ A fine up to € 500 per illegally hired employee.	✓ Employment of a higher number of irregularly foreigners may be punished with imprisonment of six months up to six years for particularly serious cases. Employment of a minor or of irregularly TCN on a continuous way may be punished with imprisonment	✗	✓ Employers may be excluded from tender procedures.	✓ May establish the closure of the company due to a criminal offence (If employee was convicted for crimes against workers,	✓ May confiscate equipment due to a criminal offence in some specific cases.	✓ If employer was convicted for crimes against workers, sentenced to imprisonment, suspension of activity could also be ordered.	✓ If employer was convicted for crimes against workers, sentenced to imprisonment, withdrawal of trading license could be a consequence of the disclosure of the company.	Employer may be issued a return decision under certain circumstances	Information on this point has not been provided.

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
		from three months up to eighteen months, or up to six years for particularly serious cases. Organised illegal employment may be punished with imprisonment from two years of up to five years.			sentence d to imprisonment)					
EL	✓ Fine of € 1,500 for each legally staying but illegally working foreigner.	✓ If violation promotes prostitution of third-country nationals; if victim is a minor; if the crime was committed by fraudulent means.	✗	✗	✓ If convicted, can cancel operating license of business where offense was committed, for at least twelve months. By taking into account all circumstance license can be definitively withdrawn.	✗	✗	✗	No response provided.	✗
FI	✓ In Finland, fines may be imposed on employers for a violation of the Aliens Act and unauthorized use of foreign labour. Employers may also be sentenced to a fine for work discrimination and	✓ Imprisonment for unauthorised use of foreign labour up to one year.	✓ The Criminal Code of Finland 39/1889 Chapter 10 – Forfeiture : The proceeds of crime shall be ordered forfeit to the State.	✓ Excluded from competitive bidding if tenderer has been convicted for a work safety offence.	✓ If employer guilty of criminal activity or neglected their statutory duties.	✓ See confiscation of financial gains, possible to include equipment as well.	✓ If employer guilty of criminal activity or neglected their statutory duties.	✓ If employer guilty of criminal activity or neglected their statutory duties.	✓ Fixed-term residence permit may be cancelled if the grounds on which it was issued no longer exist.	✓ -Not issuing residence permits for employed persons -Employer to compensate for costs of return provided that employer has influenced the employees' entry/residence

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
	extortionate work discrimination. The same legislation applies to situations involving an irregularly staying and a regularly staying Third-country national.									
FR	See table A3.1 above (no distinction between <b>regularly staying</b> and illegally working third-country nationals and <b>irregularly staying</b> and illegally working third-country nationals)									
HR	✓ Fine per foreigner imposed on employer (natural person), or larger fine if employer is a legal entity.	✗	✗	✗	✓ Administrative measures will, for 30 days, prohibit the employer undertaking, performing activities or providing services to a foreign employer in the supervised business facilities, if it finds that during the control the foreigner was working for the employer contrary to the provisions of the Foreigners Act. These measures will be annulled if an employer pays a fine per foreigner within 5 days of the day of pronouncing the measure.	✗	✓ Administrative measures will, for 30 days, prohibit the employer undertaking, performing activities or providing services to a foreign employer in the supervised business facilities, if it finds that during the control the foreigner was working for the employer contrary to the provisions of the Foreigners Act. These measures will be annulled if an employer pays a fine per foreigner within 5 days of the day of pronouncing the measure.	✗	✗	✗



	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
HU	✓ Labour inspection - fine payable for each employee employed irregularly. The amount of the fine is progressive and depends on the previous record and status of the offender.	✓ Imprisonment not exceeding two years. For human trafficking, imprisonment not exceeding three years.	✓ The payment obligation of the fines imposed by the labour inspectorate constitute outstanding public dues that shall be enforced as taxes.	✓ Excluded from participating in public procurement procedure as a tenderer, candidate, subcontractor or organisation participating in the certification of suitability.	✓ If labour inspection finds that temporary/permanent closure of facilities used, or temporary/permanent revocation of the business licence, may be justified (or if third-country national is a public threat).	✓ If labour inspection finds that temporary/permanent closure of facilities used, or temporary/permanent revocation of the business licence, may be justified (or if third-country national is a public threat).	✓ If labour inspection finds that temporary/permanent closure of facilities used, or temporary/permanent revocation of the business licence, may be justified (or if third-country national is a public threat).	✓ If labour inspection finds that temporary/permanent closure of facilities used, or temporary/permanent revocation of the business licence, may be justified (or if third-country national is a public threat).	✓ If labour inspection finds that temporary/permanent closure of facilities used, or temporary/permanent revocation of the business licence, may be justified (or if third-country national is a public threat).	✓ Public safety fine – employer subject to penalty for protection of public policy. If illegally employed third-country national has valid residence permit, there may be a review of their residency entitlement.
IE	✓ On summary conviction - fine not exceeding € 3,000, or on conviction on indictment - fine not exceeding € 250,000.	✓ On summary conviction, to imprisonment not exceeding 12 months, or on conviction on indictment, to imprisonment not exceeding 10 years.	✗	✓ Disclosure to 'public contracting authorities' information on contravention of employment legislation by a contractor.	✗	✗	✗	✗	✓ Section 3(2)(h) of the Immigration Act 1999, as amended provides that an order may also be made in respect of 'a person who, in the opinion of the Minister, has contravened a restriction or condition imposed on him or her in respect of landing in or entering into or leave to stay in the State'.	
LT	✓ Fine from € 1,000 up to € 5,000. If offence committed repeatedly,	✗	✗	✓ Employers subject to restriction on participation in public procurement.	✗	✗	✗	✗	✗	✓ Restrictions: -Deprivation of the right to receive subsidies, benefits or other state aid, including some

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
	fine up to € 6,000.									support from the EU, for up to five years  -Obligation to repay part/all subsidies, benefits or other state aid, including some support from the EU, granted over 12 months
LU	X Employer only fined if they do not comply with imposed delay to correct the violation.	X	X	X	X	X	X	X	✓ If the employer is a third-country national and s/he violates the law the authorisation of stay can be withdrawn in accordance with the seriousness of the offence but each case is assessed individually.	X
LV	✓ Fine imposed for individuals or the Board Member from € 140 up to € 430 if employing up to five third-country nationals. If employing more than five third-country nationals, the fine is from € 430 to € 700.	X	X	X	X	X	X	X	X Residence permit may be annulled, but each case is assessed individually.	✓ Additional penalty – a ban to take certain positions in commercial companies, is foreseen. Additional penalty has never been applied so far.
MT	✓ Different fines	✓ Employers liable to imprisonment		✓	✓		✓	✓	✓	

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
	imposed under different circumstances - Employment and Training Services Act (Chapter 343 of the Laws of Malta).	for up to one year, or to both fine and imprisonment.								
NL	✓ Policy rule for imposing a fine under the Foreign Nationals Employment Act - fine is increased by 50% when three or more foreign nationals are involved in the infringement.	✗	✗	✗	✗	✗	✓ Shutdown of no more than three months of work after a warning and repetition of the infringement.	✗	✗	✓ An action to recover back wages can be instituted over the last six months, on the basis of the Minimum Wages and Minimum Holiday Allowance Act.
SE	✓ Fine or special charge paid to the state for each illegally employed person.	✓ Imprisonment up to one year.	✗	✓ Employer in certain circumstances excluded from public contracts.	✗ A worksite may only be sealed or close temporarily if needed for a criminal investigation.	✗	✗ Suspension of activity may be direct or indirect result of an ongoing investigation, but it is not a sanction.	✓ It could happen in extraordinary, aggravating circumstances	✗ Loss of residence and expulsion is only relevant in the case of relatively serious crimes.	✗
SK	✓ Inspection bodies obliged to impose fine if ban on illegal employment is breached. Amount depends on	✗	✗	✓ Provision of subsidy from state budget, aid and support from EU funds, or participation in public procurement are only	✓ Repeated breach of ban on illegal employment is especially serious, based on which the trading licence shall be withdrawn. Legal entity status	✗	✗	✓ Repeated breach of ban on illegal employment is especially serious, based on which the trading licence shall be withdrawn.	✓ In relation to illegal work, a third-country national can be expelled due to serious or repeated infringements of the law;	✓ -There is a centralised public list of natural persons and legal entities who have breached the ban on illegal employment in the last five years, which can damage

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
	seriousness, duration, and consequences of illegal actions, repeated breach of obligation, and number of obligations breached.			available to entities that have not breached the ban on illegal work and employment.	withdrawn if activity was of criminal nature (applies for illegal employment).				however, this has to be sufficiently backed.	employer's reputation. -Legal entity can be punished by publishing their sentence to notify the public. They publish their conviction at their own cost in the Trade Journal and in one or more establishments/departments pertaining to the legal entity.
SI	✓ - employer and the responsible person of the employer who fails to require a third-country national to submit proof of his legal residence in the Republic of Slovenia prior to concluding an employment contract; - employer and the responsible person of the employer who fails to keep a copy of the proof of legal residence in the Republic of Slovenia for the	✓ Whoever contrary to the regulations employs two or more workers and does not register them for the appropriate insurance or employs several foreigners or persons without the citizenship without suitable work permits shall be punished by a fine or imprisonment for not more than one year. If the offence under the preceding paragraph was committed by employing workers, who are not qualified to perform works that required special	X	✓ Under the Prevention of Undeclared Work and Employment Act, the Financial Administration is obliged to inform the Ministry of Public Administration on the names of employers for which with a final minor offence decision the offence of illegal employment of third-country nationals has been detected. This refers to a list of employers with negative reference, which are as a result of conducted offence for 5	X	X	✓ only in the case if the company employed only foreigners and the prohibition of employment, self-employment and work of foreigners would produce the effect of the inability to perform the activity.	X	✓ Yes if the Employment Service would revoke the consent to the single permit of the foreigner; consequently, the person would also lose his or her residence permit	✓ Prohibition of employment and work of foreigners or provision of services

	<b>Fines</b>	<b>Imprisonment</b>	<b>Confiscation of financial gains</b>	<b>Ineligibility of public contracts</b>	<b>Temporary/definitive closure</b>	<b>Confiscation of equipment</b>	<b>Suspension of activity</b>	<b>Withdrawal of trading license/disbarment</b>	<b>Withdrawal of residence permit if the employer is a third-country national</b>	<b>Other sanctions/consequences</b>
	duration of the employment of a third-country national; - employer and the responsible person of the employer who allows an alien holding a temporary residence permit not issued for employment, self-employment or work to carry out work in contravention of the conditions and elements of employment stated in the official informative document. - employe and the responsible person of the employer who allows an alien to carry out work for which a consent was not granted in the	authorisations, or by interfering with the physical or mental integrity of an individual or under particularly exploitative working conditions, or by exploitation of victims of trafficking or by employment of a minor, the perpetrator shall be sentenced to imprisonment for not more than three years.		years from the final decision excluded from public procurement procedures or lose or are limited the right to public funds, including EU funds.						

	<b>Fines</b>	<b>Imprisonment</b>	<b>Confiscation of financial gains</b>	<b>Ineligibility of public contracts</b>	<b>Temporary/definitive closure</b>	<b>Confiscation of equipment</b>	<b>Suspension of activity</b>	<b>Withdrawal of trading license/disbarment</b>	<b>Withdrawal of residence permit if the employer is a third-country national</b>	<b>Other sanctions/consequences</b>
	<p>procedure for issuing or extending a single permit or an EU Blue Card or a written authorisation or for which no seasonal worker permit was issued; employer and the responsible person of the employer legally engaged in the supply of temporary agency work for concluding a contract of employment with an alien not residing in the Republic of Slovenia on the basis of an EU Blue Card, or who was not granted a consent to employment, self-employment or work in the procedure for issuing or extending a single permit or issuing a</p>									

	Fines	Imprisonment	Confiscation of financial gains	Ineligibility of public contracts	Temporary/definitive closure	Confiscation of equipment	Suspension of activity	Withdrawal of trading license/disbarment	Withdrawal of residence permit if the employer is a third-country national	Other sanctions/consequences
	written authorisation , or who does not have free access to the Slovenian labour market.									
UK	✓ Civil penalty up to £20,000 per illegal worker. Larger fine if successful prosecution against employer.	✓ Successful prosecution can lead to custodial sentence up to five years.	✓ Financial gains may be seized as the proceeds of crime. Wages paid to illegal workers over £1,000 can also be seized from the worker.	✗ No Currently eligibility for public contracts is not affected	✓ Close business premises for up to 48 hours for employers who continue to flout the law. If employer cannot prove they have conducted right to work checks, there can be continued closure for a period.	✓ Yes [Criminal and Financial Investigation Unit is part of IE in the Home Office and is responsible for the confiscation of property under the Proceeds of Crime Act (2002)].	✓ Close business premises for up to 48 hours for employers who continue to flout the law. If employer cannot prove they have conducted right to work checks, there can be continued closure for a period.	✓ Mandatory immigration checks into licensing regimes for high-risk sectors. Compliance with immigration laws required to maintain license. Immigration offences are ground for seeking revocation of a license.	This may be done if the offence was sufficiently serious	



## Annex 4 Criminal sanctions for employers

Table A4.1 Criminal sanction for employers (as per Art. 9 (1) of the Employer Sanctions Directive 2009/52)

	infringement continues or is persistently repeated	infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	infringement is accompanied by particularly exploitative working conditions	infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying TCN with the knowledge that he or she is a victim of trafficking in human beings	the infringement relates to the illegal employment of a minor
AT	✓ Employing a significant number of irregularly staying foreigners for more than one month is a criminal offence (Art. 28c para 2 sub-para 3 Act Governing the Employment of Foreigners).	✓ Employing an irregularly staying minor or a significant number <sup>253</sup> of irregularly staying foreigners is a criminal offence (Art. 28c para 1 Act Governing the Employment of Foreigners).	✓ Employing an irregularly staying foreigner under particularly exploitative working conditions is a criminal offence (Art. 28c para 2 sub-para 1 Act Governing the Employment of Foreigners).	✓ Where an irregularly staying foreigner is forced to perform work or services and the employer makes use of that person's work or services under the knowledge that the person is a victim of trafficking in human beings, the employer commits a criminal offence (Art. 28c para 2 sub-para 2 Act Governing the Employment of Foreigners).	✓ Employing an irregularly staying minor or a significant number of irregularly staying foreigners is a criminal offence (Art. 28c para 1 Act Governing the Employment of Foreigners).
BE	✓ As stipulated in article 175 of the Social Criminal Code, an employer, his appointee or proxy who had work performed or let be performed by a foreign national who is neither allowed nor authorised to stay more than 3 months in Belgium or to take up residence in Belgium will be sanctioned with a sanction level 4 (i.e. imprisonment, criminal fine and administrative fine). Regarding the situation described (i.e. the infringement continues or is persistently repeated: There is no distinction between a 'one shot infringement' and a series of continuous occupations of illegally working TCNs.	✓ As stipulated in article 175 of the Social Criminal Code, an employer, his appointee or proxy who had work performed or let be performed by a foreign national who is neither allowed nor authorised to stay more than 3 months in Belgium or to take up residence in Belgium will be sanctioned with a sanction level 4 (i.e. imprisonment, criminal fine and administrative fine).  The fact that the infringement is in respect of the simultaneous employment of a significant number of illegally staying third country nationals has no effect as such on the sanction, except (as a general rule) for the multiplication of the sanction by the number of third-country nationals concerned.	✓ As stipulated in article 175 of the Social Criminal Code, an employer, his appointee or proxy who had work performed or let be performed by a foreign national who is neither allowed nor authorised to stay more than 3 months in Belgium or to take up residence in Belgium will be sanctioned with a sanction level 4 (i.e. imprisonment, criminal fine and administrative fine).  Regarding the situation described (i.e. the infringement is accompanied by particularly exploitative working conditions): In most cases of penal prosecution, there is concurrence of infringements of different nature. In the assessment of the whole of these several distinct infringements, each one of them possibly leading to a distinct sanction, the most severe sanction amongst them will be applicable.	✓ As stipulated in article 175 of the Social Criminal Code, an employer, his appointee or proxy who had work performed or let be performed by a foreign national who is neither allowed nor authorised to stay more than 3 months in Belgium or to take up residence in Belgium will be sanctioned with a sanction level 4 (i.e. imprisonment, criminal fine and administrative fine).  Regarding the situation described (i.e. the infringement is committed by an employer who uses work or services exacted from an illegally staying third country national with the knowledge that he or she is a victim of trafficking): This is a separate offence. If a third country national is recognized as a victim of trafficking, the employer can be prosecuted on the basis of article 433quinquies of the Criminal Code.	✓ As stipulated in article 175 of the Social Criminal Code, an employer, his appointee or proxy who had work performed or let be performed by a foreign national who is neither allowed nor authorised to stay more than 3 months in Belgium or to take up residence in Belgium will be sanctioned with a sanction level 4 (i.e. imprisonment, criminal fine and administrative fine).  Regarding the situation described (i.e. the infringement related to the illegal employment of a minor): In cases where the qualification of trafficking in human beings is applicable, the sanction is more severe when a minor was the victim of the exploitation (article 433septies of the Criminal Code). The sanction can be an imprisonment for 10 to 15 years and a fine from € 1,000 to €

<sup>253</sup> Ten persons or more may be considered a "significant number".

	infringement continues or is persistently repeated	infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	infringement is accompanied by particularly exploitative working conditions	infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying TCN with the knowledge that he or she is a victim of trafficking in human beings	the infringement relates to the illegal employment of a minor
<b>BG</b>	✓ Art. 227 of the Penal Code, Para. 4	✓ Art. 227 of the Penal Code, Para. 1	✓ Art. 227 of the Penal Code, Para. 5	✓ Art. 227 of the Penal Code, Para. 2	✓ Art. 227 of the Penal Code, Para. 3
<b>CY</b>	✓ Art.14B and Art.18PH(1)(a) of the Aliens and Immigration Law – Cap.105	✓ Art.18PH(1)(b) of the Aliens and Immigration Law – Cap.105	✗	✓ Art.18PH(1)(c) of the Aliens and Immigration Law – Cap.105	✗
<b>CZ</b>	✓ Section 342 of the Criminal Code Unauthorised employment of foreigners. 1) Who systematically, repeatedly, under particularly exploitative working conditions or in a greater extent illegally employ or mediate the employment of a foreign national who is illegally staying in the Czech Republic or does not have a valid work permit, if this is required by another legal regulation, will be punished by imprisonment for up to six months, by confiscation or by prohibition of activity. 2) Equally will be punished a person who employs or mediates the employment of a foreign national who is a child and who is illegally staying in the Czech Republic or does not have a valid work permit under another legal regulation. 3) By imprisonment for up to one year the offender shall be punished by committing the offense referred to in paragraph 1 or 2 a. as a member of an organized group, b. against payment, or c. repeatedly 4) By imprisonment for six months up to three years an offender shall be punished if he/she obtains a	✓ Section 342 of the Criminal Code	✓ Section 342 of the Criminal Code	✓ Section 342 of the Criminal Code	✓ Section 342 of the Criminal Code

	infringement continues or is persistently repeated	infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	infringement is accompanied by particularly exploitative working conditions	infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying TCN with the knowledge that he or she is a victim of trafficking in human beings	the infringement relates to the illegal employment of a minor
	significant benefit for himself/himself or someone else's for the act referred to in paragraph 1 or 2. By imprisonment for one to five years, or in addition to this punishment, by the confiscation of property, an offender shall be punished if he/she obtains by an act referred to in paragraph 1 or 2 for him/her or for someone else benefit of a large scale.				
DE	✓ Employers who persistently employ third-country nationals without an appropriate residence title authorising economic activity, a permit authorising the same, or without authorisation for the same shall be imprisoned for up to one year or pay a fine (Section 11 subs. 2a of the Act to Combat Undeclared work and Unlawful Work). 'Persistent' refers to employers who have already violated the prohibition once and continuously violate it out of disregard or indifference. Employers acting out of 'gross self-interest' shall be imprisoned for three years. According to current legal commentary, this is when the employer 'allows himself to be guided by his drive for his own benefit to a particularly objectionable degree', such as failing to make social security contributions in order to enrich him/herself. (Erbs/Kohlhaas 2016: Section 11 of the Act to Combat Undeclared work and Unlawful Work, margin no. 17).	✓ If more than five third-country nationals without an appropriate residence title authorising economic activity, a permit authorising the same, or without authorisation for the same are employed or engaged to provide works or services, the employer shall be imprisoned for up to one year or pay a fine (Section 11 subs. 1 no. 1 of the Act to Combat Undeclared work and Unlawful Work). As with cases of persistently repeated violation, the sentence for an offence committed out of gross self-interest is extended to three years (Section 11 subs. 2 of the Act to Combat Undeclared work and Unlawful Work).	✓ An employer who employs third-country nationals without an appropriate residence title authorising economic activity, a permit authorising the same, or without authorisation for the same under conditions that are noticeably disproportionate to the working conditions of German employees performing the same or similar activity, shall be imprisoned for up to three years or pay a fine (Section 10 subs. 1 of the Act to Combat Undeclared work and Unlawful Work). The law provides for imprisonment of six months to five years for cases in which the employer commits repeated acts or acts out of gross self-interest (Section 10 subs. 2 of the Act to Combat Undeclared work and Unlawful Work).	✓ An employer who exploits the predicament of third-country nationals who are victims of forced prostitution (Section 232a of the Criminal Code) or forced labour (Section 232b of the Criminal Code) shall be imprisoned for up to three years or pay a fine (Section 10a of the Act to Combat Undeclared work and Unlawful Work), regardless of whether the exploitation of the third-country nationals was originally for sexual exploitation or exploitation of labour. It is irrelevant who put the third-country nationals in this situation –only the employer's conscious exploitation of the situation matters. (Erbs/Kohlhaas 2016: Section 11 of the Act to Combat Undeclared work and Unlawful Work, margin no. 17).	✓ In the event an employer hiring minor third-country nationals without an appropriate residence title authorising economic activity, a permit authorising the same, or without authorisation for the same, Section 11 subs. 1 no. 3 of the Act to Combat Undeclared work and Unlawful Work prescribes imprisonment of up to one year or a fine. The provision does not require that the minor was employed under less favourable conditions than comparable German employees, or was the victim of human trafficking. If the offence was committed out of gross self-interest, punishment can be extended to up to three years or a fine (Section 11 subs. 2 of the Act to Combat Undeclared work and Unlawful Work).
EE	✓ Penal Code Article 260 <sup>1</sup> The Penal Code Article 260 <sup>1</sup> states that the provision of employment by an employer in Estonia for an alien	✓ Penal Code Article 260 <sup>1</sup> The Penal Code Article 260 <sup>1</sup> states that the provision of employment by an employer in Estonia for an alien	✓ Penal Code Articles 260 <sup>1</sup> and 133 In addition to the penal code article 260 <sup>1</sup> , article 133 defines the notion of trafficking in human beings and	✓ Penal Code Article 260 <sup>1</sup> The Penal Code Article 260 <sup>1</sup> states that the provision of employment by an employer in Estonia for an alien	✓ Penal Code Articles 260 <sup>1</sup> and 175 In addition to the penal code article 260 <sup>1</sup> , article 175 defines the notion and punishments regarding human

	<b>infringement continues or is persistently repeated</b>	<b>infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals</b>	<b>infringement is accompanied by particularly exploitative working conditions</b>	<b>infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying TCN with the knowledge that he or she is a victim of trafficking in human beings</b>	<b>the infringement relates to the illegal employment of a minor</b>
	<p>staying in Estonia without legal basis if the act does not contain the necessary elements of an offence (provided for in §§ 133, 133<sup>1</sup> or 175 of the Penal Code) and:</p> <p>1) the act is committed systematically;</p> <p>2) employment is provided for three or more aliens;</p> <p>3) employment is provided for a minor alien;</p> <p>4) employment is provided for an alien victim of a crime relating to human trafficking; or</p> <p>5) this causes a danger to the life or health of the alien or the alien is subject to inhuman or degrading treatment;</p> <p>is punishable by a pecuniary punishment or up to three years' imprisonment.</p>	<p>staying in Estonia without legal basis if the act does not contain the necessary elements of an offence (provided for in §§ 133, 133<sup>1</sup> or 175 of the Penal Code) and:</p> <p>1) the act is committed systematically;</p> <p>2) employment is provided for three or more aliens;</p> <p>3) employment is provided for a minor alien;</p> <p>4) employment is provided for an alien victim of a crime relating to human trafficking; or</p> <p>5) this causes a danger to the life or health of the alien or the alien is subject to inhuman or degrading treatment;</p> <p>is punishable by a pecuniary punishment or up to three years' imprisonment.</p>	<p>states that the penalty for such exploitive behaviour is punishable by one to seven years of imprisonment; or by a pecuniary punishment if committed by a legal person.</p>	<p>staying in Estonia without legal basis if the act does not contain the necessary elements of an offence (provided for in §§ 133, 133<sup>1</sup> or 175 of the Penal Code) and:</p> <p>1) the act is committed systematically;</p> <p>2) employment is provided for three or more aliens;</p> <p>3) employment is provided for a minor alien;</p> <p>4) employment is provided for an alien victim of a crime relating to human trafficking; or</p> <p>5) this causes a danger to the life or health of the alien or the alien is subject to inhuman or degrading treatment;</p> <p>is punishable by a pecuniary punishment or up to three years' imprisonment.</p>	<p>trafficking in order to take advantages of minors.</p>
<b>EL</b>	<p>✓</p> <p>According to Article 88 par. 1a of Law 4052/2012 an employer who employs intentionally illegally staying third-country nationals whose employment continues or is persistently repeated, is subject to imprisonment of at least five months regardless of administrative sanctions applied.</p>	<p>✓</p> <p>According to Article 88 par. 1b of Law 4052/2012 an employer who employs intentionally and simultaneously a significant number of illegally staying third-country nationals, is subject to imprisonment of at least five months regardless of administrative sanctions applied.</p>	<p>✓</p> <p>According to Article 88 par. 1c of Law 4052/2012 an employer who employs intentionally illegally staying third-country nationals whose employment is accompanied by particularly exploitative working conditions, is subject to imprisonment of at least five months regardless of administrative sanctions applied.</p>	<p>✓</p> <p>According to Article 88 par. 3 of Law 4052/2012 the infringement is committed by an employer who uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings, he/she is subject to the anticipated sentence of paragraph 3 of Article 323 A of the Penal Code of at least six months, unless for the same employee and the same act the employer has already been prosecuted or convicted under the same article of the Penal Code.</p>	<p>✓</p> <p>Whoever employs illegally staying minors, who are citizens of third countries, shall be punished with at least six months' imprisonment (Article 88 Paragraph 2 Law 4052/2012).</p>
<b>ES</b>	<p>✓</p> <p>If a number of irregularly staying foreigners is employed on a continuous way, this is a criminal offence (Art. 311 bis Criminal Code).</p>	<p>✓</p> <p>If a higher number of irregularly staying foreigners is employed, this is a criminal offence (Art. 311 Criminal Code). The Criminal Code introduce elements to identified "higher number".</p>	<p>✓</p> <p>If an irregularly staying foreigner is employed under particularly exploitative working conditions, this is a criminal offence (Art. 311 Criminal Code)</p>	<p>✓</p> <p>If the employer uses an irregularly staying foreigner's work or services which the foreigner has been forced to perform, knowing that the person is a victim of trafficking in human</p>	<p>✓</p> <p>If an irregularly staying minor is employed, this is a criminal offence (Art. 311 bis Criminal Code).</p>

	infringement continues or is persistently repeated	infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	infringement is accompanied by particularly exploitative working conditions	infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying TCN with the knowledge that he or she is a victim of trafficking in human beings	the infringement relates to the illegal employment of a minor
FI	<p>✓</p> <p>The Criminal Code of Finland 39/1889 Chapter 47 Employment Offences, Section 6a (30 April 2004/302), Unauthorised use of foreign labour. An employer or a representative thereof who hires or employs a foreigner not in possession of the residence work permit or otherwise a permit to work in Finland shall be sentenced for unauthorised use of foreign labour to a fine or to imprisonment for at most one year. A contractor, subcontractor or commissioner of work, or a representative thereof who neglects to ensure that the foreign employees in the contract or subcontract work that it has awarded a foreign company or the foreign employees placed at its disposal by a foreign company as contracted labour have a residence work permit or other permit to work in Finland, shall be sentenced for unauthorised use of foreign labour.</p>	<p>✓</p> <p>The Criminal Code of Finland 39/1889 Chapter 47 - Employment offences Section 6a (30 April 2004/302) Unauthorised use of foreign labour</p>	<p>✓</p> <p>The Criminal Code of Finland 39/1889 Chapter 47 - Employment offences Section 6a (30 April 2004/302) Unauthorized use of foreign labour Section 3a (30 April 2004/302) Extortionate work discrimination If in the work discrimination an applicant for a job or an employee is placed in a considerably inferior position through the use of the job applicant's or the employee's economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance, the offender shall, unless a more severe penalty has been provided elsewhere in law for the act, be sentenced for extortionate work discrimination to a fine or to imprisonment for at most two years.</p>	<p>beings, this is a criminal offence (Art. 311 Criminal Code)</p> <p>✓</p> <p>The Criminal Code of Finland 39/1889 Chapter 47 - Employment offences Section 6a (30 April 2004/302) Unauthorized use of foreign labour Section 3a (30 April 2004/302) Extortionate work discrimination Chapter 25 - Offences against personal liberty Section 3 - Trafficking in human beings (650/2004) Section 3(a) - Aggravated trafficking in human beings (650/2004)</p>	<p>✓</p> <p>The Criminal Code of Finland 39/1889 Chapter 47 - Employment offences Section 6a (30 April 2004/302) Unauthorized use of foreign labour Chapter 25 - Offences against personal liberty Section 3 - Trafficking in human beings Section 3(a) - Aggravated trafficking in human beings ----- In addition to the Criminal Code, Young Workers' Act (998/1993) (as amended by several acts, including No.1517/2009)</p>
FR	<p>✓</p> <p>Repeat offences and the proportion of employees affected are some of the elements taken into account when determining the amount or type of fines or the length of additional sentences (Articles L.8272-2 ad L. 8272-4, L.8253-1 of the Labour Code).</p> <p>Similarly, the amount of the fixed contribution includes changes in the rate according to the number of employees affected.</p>	<p>✓</p> <p>See left-hand column.</p>	<p>✓</p> <p>Since the Law of 13 April 2016 and the Order of 7 April 2016 controlling the application of employment legislation, labour inspectors' remits have been broadened to include reporting offences relating to trafficking in human beings, forced labour and bonded labour.</p> <p>The Order of 7 April 2016 introduced emergency procedures for employees who are minors. Inspectors may impose the immediate withdrawal of a minor who is working in a dangerous situation and may break</p>	<p>✓</p> <p>See left-hand column.</p>	<p>✓</p> <p>See left-hand column.</p>

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			the employment contract or internship agreement while maintaining the employee's remuneration. Similarly, access to documents is speeded up in the event of mental or sexual harassment and in relation to health and safety at work. This extended remit improves the efficiency of inter-Ministerial work between the DGT and OCLTI, the office responsible for the fight against all forms of labour exploitation. Their joint work aims not only to sanction non-compliance with workers' social rights, but also compliance with conditions relating to pay, undignified work and accommodation with, as the focal point, trafficking in human beings for the purposes of employment. The National Gendarmerie has units to combat illegal work and fraud ( <i>Cellules de Lutte contre le Travail Illégal et la Fraude</i> – CeLTIF), which can fight against these forms of exploitation.		
HR	<b>X</b> Criminal sanctions are not prescribed in Foreigners Act, only penal provisions for employers.	<b>X</b> Criminal sanctions are not prescribed in Foreigners Act, only penal provisions for employers.	<b>X</b> Criminal sanctions are not prescribed in Foreigners Act, only penal provisions for employers.	<b>X</b> Criminal sanctions are not prescribed in Foreigners Act, only penal provisions for employers.	<b>X</b> Criminal sanctions are not prescribed in Foreigners Act, only penal provisions for employers.
HU	✓ Act C of 2012 on the Criminal Code - Unlawful Employment of Third-Country Nationals <i>Section 356</i> (1) a): Any person who employs a third-country national on a regular basis or frequently without authorisation to undertake gainful employment is guilty of a misdemeanour punishable by imprisonment not exceeding two years.	✓ Act C of 2012 on the Criminal Code - Unlawful Employment of Third-Country Nationals <i>Section 356</i> (1) b): Any person who employs a substantial number of third-country nationals at one and the same time without authorisation to undertake gainful employment is guilty of a misdemeanour punishable by imprisonment not exceeding two years.	✓ Act C of 2012 on the Criminal Code - Unlawful Employment of Third-Country Nationals <i>Section 356</i> (2) a) The penalty shall be imprisonment not exceeding three years for a felony if the offender employs a third-country national without authorisation to undertake gainful employment under particularly exploitative working conditions. (3) For the purposes of this Section 'particularly exploitative working conditions' shall mean particularly	✓ Act C of 2012 on the Criminal Code - Unlawful Employment of Third-Country Nationals <i>Section 356</i> (2) The penalty shall be imprisonment not exceeding three years for a felony if the third-country national employed without authorisation to undertake gainful employment is the victim of trafficking in human beings.	✓ Act C of 2012 on the Criminal Code - Child Labour <i>Section 209 b</i> ): Any person who employs a third-country national under the age of eighteen years without authorisation to undertake gainful employment is guilty of a felony punishable by imprisonment not exceeding three years.

	infringement continues or is persistently repeated	infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	infringement is accompanied by particularly exploitative working conditions	infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying TCN with the knowledge that he or she is a victim of trafficking in human beings	the infringement relates to the illegal employment of a minor
IE		(3) For the purposes of this Section 'substantial number' shall mean at least five persons.	exploitative working conditions as defined by the Act on the Admission and Residence of Third-Country Nationals.		
	X Ireland does not participate in the Employer Sanctions Directive (2009/52).	X Ireland does not participate in the Employer Sanctions Directive (2009/52).	X Ireland does not participate in the Employer Sanctions Directive (2009/52).	X Ireland does not participate in the Employer Sanctions Directive (2009/52).	X Ireland does not participate in the Employer Sanctions Directive (2009/52).
LT	✓ The employer or a person authorised by him who, for business purposes, employs third-country nationals illegally staying in the Republic of Lithuania (Article 292 of the Criminal Code). The employer or the person authorised by him shall be punished by a fine or by arrest or by a custodial sentence for a term of up to two years. A legal entity shall also be held liable for the acts provided for in this Article.	✓ The employer or a person authorised by him who employs five or more third-country nationals illegally staying in the Republic of Lithuania (Article 292 of the Criminal Code). The employer or the person authorised by him shall be punished by a fine or by arrest or by a custodial sentence for a term of up to two years. A legal entity shall also be held liable for the acts provided for in this Article.	✓ The employer or a person authorised by him who employs a third-country national illegally staying in the Republic of Lithuania in the cases of particularly exploitative employment conditions (Article 292 of the Criminal Code). The employer or the person authorised by him shall be punished by a fine or by arrest or by a custodial sentence for a term of up to two years. A legal entity shall also be held liable for the acts provided for in this Article.	✓ A person who uses another person's work or services, including prostitution, while being aware or having to be and likely to be aware that the person performs this work or provides these services as a result of using against him, for exploitation purposes, physical violence, threats, deception or other means listed in Article 147 of the Code, shall be punished by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to two years (Article 147 of the Criminal Code).	✓ The employer or a person authorised by him who employs a third-country minor illegally staying in the Republic of Lithuania (Article 292 of the Criminal Code). The employer or the person authorised by him shall be punished by a fine or by arrest or by a custodial sentence for a term of up to two years. A legal entity shall also be held liable for the acts provided for in this Article.
LU	✓ Article L. 572 (5) 1 of the Labour Code establishes that the employer can be punished to a prison term of eight days up to a year and to a fine of € 2,501 up to € 20,000.	✓ Article L. 572 (5) 2 of the Labour Code establishes that the employer can be punished to a prison term of eight days up to a year and to a fine of € 2,501 up to € 20,000.	✓ Article L. 572 (5) 3 of the Labour Code establishes that the employer can be punished to a prison term of eight days up to a year and to a fine of € 2,501 up to € 20,000.	✓ Article L. 572 (5) 4 of the Labour Code establishes that the employer can be punished to a prison term of eight days up to a year and to a fine of € 2,501 up to € 20,000.	✓ Article L. 572 (5) 5 of the Labour Code establishes that the employer can be punished to a prison term of eight days up to a year and to a fine of € 2,501 up to € 20,000.
	X Section 280 of the Criminal Law <sup>254</sup> on the violation of provisions regarding employment of persons sets forth that for employing of more than five persons who are not entitled to reside in the Republic of Latvia the punishment applicable to the employer is temporary deprivation of liberty or community service, or a fine.	✓ Section 280 of the Criminal Law <sup>254</sup> on the violation of provisions regarding employment of persons sets forth that for employing a person who is not entitled to reside in the Republic of Latvia, if a person is employed in particularly exploitative working conditions, the punishment applicable to the employer is temporary	✓ Section 280 of the Criminal Law on the violation of provisions regarding employment of persons sets forth that for employing a victim of trafficking in human beings the punishment applicable to the employer is temporary deprivation of liberty or community service, or a fine.	✓ Section 280 of the Criminal Law on the violation of provisions regarding employment of persons sets forth that for employing a minor the punishment applicable to the employer is temporary deprivation of liberty or community service, or a fine.	✓ Section 280 of the Criminal Law on the violation of provisions regarding employment of persons sets forth that for employing a minor the punishment applicable to the employer is temporary deprivation of liberty or community service, or a fine.

<sup>254</sup> Criminal Law, Section 280, adopted on 17.06.1998, entered into force on 01.04.1999.



	infringement continues or is persistently repeated	infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	infringement is accompanied by particularly exploitative working conditions	infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying TCN with the knowledge that he or she is a victim of trafficking in human beings	the infringement relates to the illegal employment of a minor
MT	✓ (Ch. 217) (Police). Fines and prison sentences are normally higher when the infringement is persisted.	✓ (Ch. 217) (Police)	deprivation of liberty or community service, or a fine. ✓ (Ch. 217 & Ch.9) (Police)	✓ (Ch. 217) (Police)	✓ (Ch. 217) (Police)
NL	✗ This is not sentenced with criminal sanctions, but with higher fines (employer sanction).	✗ This is not sentenced with criminal sanctions, but with higher fines (employer sanction).	✓ Trafficking of human beings for the purpose of labour exploitation can be sentenced with criminal sanctions.	✗ The mere knowledge that the TCN is a victim of trafficking in human beings is not sanctioned on the basis of the Foreign Nationals Employment Act. However, the fact that the TCN has no legal residence in the Netherlands can lead with higher fines (employer sanction).	✗ This falls beyond the scope of Foreign Nationals Employment Act.
SE	✓ According to Chapter 20, Section 5 of the Swedish Aliens Act, a person who intentionally or through negligence has an alien in his or her employment shall be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. <i>If the infringement continues or is persistently repeated, this can be regarded as an aggravating fact; hence the criminal sanction can be imprisonment.</i>	✓ According to Chapter 20, Section 5 of the Swedish Aliens Act, a person who intentionally or through negligence has an alien in his or her employment shall be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. <i>This also applies in cases in which the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals.</i>	✓ According to Chapter 20, Section 5 of the Swedish Aliens Act, a person who intentionally or through negligence has an alien in his or her employment shall be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. <i>This also applies in cases in which the infringement is accompanied by particularly exploitative working conditions.</i>	✓ According to Chapter 20, Section 5 of the Swedish Aliens Act, a person who intentionally or through negligence has an alien in his or her employment shall be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. <i>This also applies in cases in which the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings.</i> It should be noted that trafficking in human beings is a criminal act in accordance with Chapter 4, Section 1a of the Swedish Penal Code.	✓ According to Chapter 20, Section 5 of the Swedish Aliens Act, a person who intentionally or through negligence has an alien in his or her employment shall be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year, if the alien does not have the right to be present in Sweden or is allowed to stay in Sweden but does not have the prescribed work permit. <i>This also applies in cases in which the infringement relates to the illegal employment of a minor.</i>
SK	✓ Act No. 300/2005 Coll. Criminal Code.	✓	✓	✓	✓

	<b>infringement continues or is persistently repeated</b>	<b>infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals</b>	<b>infringement is accompanied by particularly exploitative working conditions</b>	<b>infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying TCN with the knowledge that he or she is a victim of trafficking in human beings</b>	<b>the infringement relates to the illegal employment of a minor</b>
	<p>Art. 37(m): An aggravating circumstance shall be as follows: the offender was already convicted for a criminal offence; the court, considering the nature of the previous conviction, may decide not to consider it as an aggravating circumstance.</p> <p>Art. 41(3): When sentencing an offender for another partial attack, which is a part of continuing criminal offence, whereof another partial attack was already tried at the first-instance court, which awarded a final and conclusive judgement; the court shall reverse the earlier statement determining the guilt in the continuing criminal offence and the joinder criminal offences, the entire statement specifying punishment as well as additional statements having their grounds in the aforesaid statement determining the guilt. The court, being bound by the facts found in the reversed judgement, shall again decide on the guilt of the continuing criminal offence including a new partial attack, or on joinder criminal offences as well as on a final punishment for the continuing criminal offence, which may not be less severe than the punishment awarded by the earlier judgement. The court may also decide on related statements, which have the grounds in the statement of the guilt. In cases that the punishment for several concurrent criminal offences is imposed, the provisions under Paragraphs 1 and 2 of Section 42 and 43 shall apply accordingly.</p> <p>Art. 122(9, 10, 12): The criminal offence is considered as having been</p>	<p>Criminal Code - Art. 251a(2)(b): The offender shall be liable to a term of imprisonment of between six months and three years if they commit the offence referred to in Paragraph 1 regardless of any previous penalty for the same criminal offence. Art. 138(b): Acting in a more serious manner shall mean that a criminal offence was committed against several persons.</p>	<p>Criminal Code - Art. 251a(2)(c): The offender shall be liable to a term of imprisonment of six months to three years regardless of whether the offender has already been penalised for a similar action marked with especially exploitative working conditions including discriminating working conditions if there is an obvious disproportion between the working conditions of legally employed persons that have an impact on their health and safety, and it infringes human dignity in comparison to the work conditions of the illegal employees.</p>	<p>Criminal Code - Art. 251a(2)(d): The offender shall be liable to a term of imprisonment of between six months and three years if they commit the offence referred to in Paragraph 1 regardless of any previous penalty for the same criminal offence, if the offence is against a person who is a human trafficking victim.</p>	<p>Criminal Code - Art. 251a(2)(a): The offender shall be liable to a term of imprisonment of between six months and three years if they commit the offence referred to in Paragraph 1 regardless of any previous penalty for the same criminal offence, if the offence is against a protected person.</p>

	infringement continues or is persistently repeated	infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	infringement is accompanied by particularly exploitative working conditions	infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying TCN with the knowledge that he or she is a victim of trafficking in human beings	the infringement relates to the illegal employment of a minor
	<p>committed repeatedly if the offender, through repeated separate acts, has committed a number of successive identical criminal offences, which are related to each other neither objectively nor subjectively, while the punishability of each of them shall be judged separately. The criminal offence is considered as having been committed continuously if the offender has been continuously committing the same criminal offence. The punishability of all the partial acts shall be considered as one criminal offence if all the partial acts by the identical offender are objectively related to each other with regard to time, a mode of their commission and the target of an act, and also subjectively related, in particular through a unifying intention of the offender to commit the criminal offence concerned; this shall not apply to partial acts committed outside of the territory of the Slovak Republic. A perpetual criminal offence means evoking and sustaining, or just sustaining, an unlawful state.</p> <p>Art. 251a(2)(b): The offender shall be liable to a term of imprisonment of between six months and three years if they commit the offence referred to in Paragraph 1 regardless of any previous penalty for the same criminal offence.</p> <p>Art. 138(b): Acting in a more serious manner shall mean that a criminal offence was committed for a longer period of time.</p>				
SI	<p>✓</p> <p>Whoever consecutively or permanently or in a substantial number employs foreigners who are</p>	<p>✓</p> <p>Whoever contrary to the regulations employs two or more workers and does not register them for the</p>	<p>✓</p> <p>If the offence under the preceding (a, b) paragraph was committed by employing workers, who are not</p>	<p>✓</p> <p>If the offence under the preceding (a, b) paragraph was committed by employing workers, who are not</p>	<p>✓</p> <p>If the offence under the preceding (a, b) paragraph was committed by employing workers, who are not</p>

	infringement continues or is persistently repeated	infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	infringement is accompanied by particularly exploitative working conditions	infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying TCN with the knowledge that he or she is a victim of trafficking in human beings	the infringement relates to the illegal employment of a minor
UK	<p>not nationals of an EU Member State and are illegally staying on the territory of the Republic of Slovenia, shall be sentenced to imprisonment for not more than two years.</p> <p>✓</p> <p><i>N.B. UK is not part of the Employer Sanctions Directive - responses reflect national legislation.</i> Criminal offence or civil penalty under the Immigration, Asylum and Nationality Act 2006 (sections 15 and 21); closure notice and compliance order under section 36 and schedule 6 of the Immigration Act 2016.</p>	<p>appropriate insurance or employs several foreigners or persons without the citizenship without suitable work permits shall be punished by a fine or imprisonment for not more than one year</p> <p>✓</p> <p><i>N.B. UK is not part of the Employer Sanctions Directive - responses reflect national legislation.</i> Criminal offence or civil penalty under the Immigration, Asylum and Nationality Act 2006 (sections 15 and 21); closure notice and compliance order under section 36 and schedule 6 of the Immigration Act 2016.</p>	<p>qualified to perform works that required special authorisations, or by interfering with the physical or mental integrity of an individual or under particularly exploitative working conditions, or by exploitation of victims of trafficking or by employment of a minor, the perpetrator shall be sentenced to imprisonment for not more than three years.</p> <p>✓</p> <p><i>N.B. UK is not part of the Employer Sanctions Directive - responses reflect national legislation.</i> Criminal offence or civil penalty under the Immigration, Asylum and Nationality Act 2006 (sections 15 and 21); closure notice and compliance order under section 36 and schedule 6 of the Immigration Act 2016. Possible consideration of section 25 of the Immigration Act 1971. If the exploitative working conditions amount to a case of slavery, servitude or forced or compulsory labour or human trafficking, the employer can be prosecuted for one of the offences in the Modern Slavery Act 2015.</p>	<p>qualified to perform works that required special authorisations, or by interfering with the physical or mental integrity of an individual or under particularly exploitative working conditions, or by exploitation of victims of trafficking or by employment of a minor, the perpetrator shall be sentenced to imprisonment for not more than three years</p> <p>✓</p> <p><i>N.B. UK is not part of the Employer Sanctions Directive - responses reflect national legislation.</i> Criminal offence or civil penalty under the Immigration, Asylum and Nationality Act 2006 (sections 15 and 21); closure notice and compliance order under section 36 and schedule 6 of the Immigration Act 2016. Possible consideration of section 25 of the Immigration Act 1971. If the exploitative working conditions amount to a case of slavery, servitude or forced or compulsory labour or human trafficking, the employer can be prosecuted for one of the offences in the Modern Slavery Act 2015.</p>	<p>qualified to perform works that required special authorisations, or by interfering with the physical or mental integrity of an individual or under particularly exploitative working conditions, or by exploitation of victims of trafficking or by employment of a minor, the perpetrator shall be sentenced to imprisonment for not more than three years</p> <p>✗</p> <p><i>N.B. UK is not part of the Employer Sanctions Directive - responses reflect national legislation.</i> The illegal working civil penalty and offence applies to workers who are subject to immigration control and over the age of 16 years. If the minor is being subjected to slavery, servitude or forced or compulsory labour or human trafficking, the employer can be prosecuted for one of the offences in the Modern Slavery Act 2015.</p>

## Annex 5 Statistical annexes

**Table A5.1 Number of convictions for employing irregularly staying third-country nationals (2014-2016) – total number of convictions**

	BE*	CY	CZ	EE	EL	FI	FR	IE	LT	LV	NL <sup>255</sup>	SE	SK	UK
<b>2014</b>	1,027 – does not include Ghent (provisional data)	402	1	29	:	175*	1,930	63	0	0	1,084	16	0	4
<b>2015</b>	889 (provisional data)	286	3	68	65	149*	1,388	71	0	:0	987	3	0	5
<b>2016</b>	657 (provisional data)	:	:	24	:	166*		:	0	:	:	:	0	:

: not available

znot applicable

\* For disaggregated data for Belgium, please see National Report

\*FI: The figure includes the total figure for convictions of unauthorized use of foreign labour and employer's violation of the Aliens Act. There is no distinction available for regularly or irregularly staying TCN

**Table A5.2 Type and number of sanctions for employers**

	Sanction for employer	Type of sanction for employers	2014	2015	2016	Methodological notes
<b>BE</b>	Imprisonment	Criminal	36	38	42	Excluding Ghent for the 2014 data.
<b>BE</b>	Penal fine	Financial	228	260	325	Excluding Ghent for the 2014 data.

<sup>255</sup> The figures concern breaches of the Foreign National Employment Act. This includes TCNs. Nonetheless, the definition of 'foreigner' is broader than TCNs only.

	Sanction for employer	Type of sanction for employers	2014	2015	2016	Methodological notes
BE	Administrative fine (federal level) for regularly and irregularly staying TCNs	Financial	994 (provisionally)	748 (provisionally)	414 (provisionally)	
BE	Confiscation of equipment and others (e.g. deposits on bank accounts).	Financial	5	10	18	
BG	Administrative sanction - a fine of 1,000 leva (total 2,000 leva) for violation of Art. 73, para. 2 in connection with Article 82a para. 1 of EPA (applicable at the time the infringement) In 2016 fines for employers amounted to 3,000 leva	Financial	2	0	1	Hired illegally residing/residing TCN. A fine of 1,000 leva (total 2,000 leva) for violation of Art. 73, para. 2 in connection with Article 82a para. 1 of EPA (applicable at the time the infringement) 2016 fined the employer amounted to 3,000 leva
BG	Administrative sanction - a fine for violation of Art. 70, para. 1 of the EPA (after 21:05:16 on - art. 76 par. 1 of ZTMTM	Financial	13	33	32	Aliens hired without authorized access to the labour market Administrative sanction - a fine for violation of Art. 70, para. 1 of the EPA (after 21:05:16 on - art. 76 par. 1 of ZTMTM
CY	Criminal sanctions (fine and/or imprisonment)	Criminal and financial	402	286	z	
CZ	Sanction for allowing illegal work	Financial	674 fines in the total amount of 180,219,000 CZK	573 fines in the total amount of 81,635,500 CZK	494 fines in the total amount of 69,871,000 CZK	Data concern fines for allowing illegal work in cases of all CZ citizens, EU citizens and also TCNs.
EE	Aliens Act § 300. Enabling employment to alien who is staying in Estonia without legal basis	Financial	19	35	17	
EE	Aliens Act § 301. Violation of conditions of employment of alien in Estonia	Financial	5	11	42	
EE	Aliens Act § 302. Payment of remuneration less than wage rate specified in Act	Financial	2	3	6	

	Sanction for employer	Type of sanction for employers	2014	2015	2016	Methodological notes
<b>EL</b>	Fines	Financial	145	61	:	
<b>EL</b>	Suspensions of operation of total duration of 13 days	Financial	:	4	:	Suspensions of operation of total duration of 13 days
<b>EL</b>	Suspensions of operation of a total duration of 377 days	Financial	51	:	:	Suspensions of operation of a total duration of 377 days
<b>FI</b>	Fines - Employer's violation of the Aliens Act	Financial	153	144	157	
<b>FI</b>	Fines - Unauthorized use of foreign labour	Financial	22	5	9	
<b>FI</b>	Fines - Work discrimination (please note that the figure includes all cases, also FI nationals)	Financial	82	83	65	the figure includes all cases, also FI nationals
<b>FI</b>	Fines - Extortionate work discrimination (please note that the figure includes all cases, also FI nationals)	Financial	39	19	65	the figure includes all cases, also FI nationals
<b>HR</b>	Indictments submitted by labour inspectors	Financial	99	96	z	
<b>HR</b>	Bans on performing activities imposed by labour inspectors	Financial	12	12	z	
<b>HU</b>	Labour inspection fine	Financial	3,509	1,367	1,349	2016: until 31/10
<b>HU</b>	Compulsory payment to the central budget for illegal employment of third-country nationals	Financial	46	35	38	2016: until 31/10
<b>HU</b>	Resolution obliging the employer to remedy the irregularity	Other	2,591	2,385	2,280	2016: until 31/10
<b>HU</b>	Resolution prohibiting further employment	Other	55	46	39	2016: until 31/10



	Sanction for employer	Type of sanction for employers	2014	2015	2016	Methodological notes
<b>HU</b>	Resolution forbidding the employer from pursuing its activity	Other	15	14	8	2016: until 31/10
<b>HU</b>	Warning (in case of first infringement committed by small and medium-sized enterprises)	Other	11,303	2,744	2,603	2016: until 31/10
<b>HU</b>	Administrative penalty	Financial	1,312	1,133	1,107	2016: until 31/10
<b>HU</b>	Ruling to order the client to cease certain unlawful actions	Other	1,852	1,568	1,225	2016: until 31/10
<b>HU</b>	Resolution imposing road traffic penalty	Criminal	3	0	0	2016: until 31/10
<b>HU</b>	Resolution on the non-compliance with the wage compensation rules	Other	2	0	0	2016: until 31/10
<b>HU</b>	Resolution establishing irregularity	Other	4,946	4,488	4,268	2016: until 31/10
<b>IE</b>	Sanctions imposed by a Court under the Employment Permits Acts	Other	63:	71:	:	
<b>LT</b>	Number of records of offences drawn up to employers under Article 413 of the Code of Administrative Offences for the illegal employment of aliens	Financial	6	11	12	Number of records of offences drawn up to employers under Article 413 of the Code of Administrative Offences for the illegal employment of aliens
<b>LT</b>	Number of records of offences drawn up to employers under Article 121 of the Law on the State Labour Inspectorate	Financial	9	13	8	Number of records of offences drawn up to employers under Article 121 of the Law on the State Labour Inspectorate
<b>LV</b>	Violating the prohibition of employment of foreigners (For employing one or more such persons (up to five persons), if the person concerned is entitled to reside in the Republic of Latvia)	Financial	36	17	:	

	Sanction for employer	Type of sanction for employers	2014	2015	2016	Methodological notes
LV	Violating the prohibition of employment of foreigners (For employing more than five-persons)	Financial	0	2	:	
LV	Violating the prohibition of employment of foreigners (For employing one or more such persons (up to five persons), if the person concerned is not entitled to reside in Latvia)	Financial	2	1	:	
NL	Financial sanctions (proceedings closed) <sup>256</sup>	Financial	1,078	982	:	
NL	Criminal sanctions (final decision imposing criminal sanctions) <sup>257</sup>	Criminal	6	5	:	
SE	Financial sanctions imposed (total sum)	Financial	111 000 SEK (8 cases)	243 900 SEK (10 cases)	:	
SE	Criminal sanctions imposed (fines)	Financial	313 400 SEK (16 cases)	27 600 SEK (3 cases)	:	
SI	Financial sanctions	Financial	:	37 fines in the total amount of 196.100 EUR	31 fines in the total amount of 174.500 EUR	
SK	Fines imposed on employers for illegal employment of TCNs	Financial	33	24	30	
SK	Imprisonment/conviction for illegal employment pursuant to Art. 251a of the Criminal Code	Financial	0	0	0	
SK	Sanctions and fines according to the regulations on labour inspection regarding illegal employment and illegal work	Financial	3	5	13	2014: 3 (administrative proceeding) 2015: 3 (administrative proceeding) 2 (sanction, fine, late payment interest, penalty)

<sup>256</sup> The figures concern breaches of the Foreign National Employment Act. This includes TCNs. Nonetheless, the definition of 'foreigner' is broader than TCNs only

<sup>257</sup> The figures concern breaches of the Foreign National Employment Act. This includes TCNs. Nonetheless, the definition of 'foreigner' is broader than TCNs only

	Sanction for employer	Type of sanction for employers	2014	2015	2016	Methodological notes
						2016: 1 (administrative proceedings) 9 (sanction, fine, late payment interest, penalty) 2 (other administrative offence) 1 (pecuniary claims – granting, withdrawing, change, amount, calculation, etc.)
SI	Fines imposed on employers for illegal employment of TCNs	Financial	/	37	31	
SI	Warning		/	6	/	
UK	Civil penalties (fixed financial penalty)	Financial	2,194	1,974	2,594	Source: Parliamentary Question no 39756 <a href="http://www.parliament.uk/written-questions-answers-statements/written-question/commons/2016-06-07/39756">http://www.parliament.uk/written-questions-answers-statements/written-question/commons/2016-06-07/39756</a> The data provided is for initial penalties only and penalties may have been reduced or cancelled at the objection or appeal stage. N.B The data provided is sourced from a Home Office management information system which is not quality assured under National Statistics protocols. Data is for financial year (April-March) of each year

:not available

:not applicable

**Table A5.3 Number of identified illegally employed TCNs (2014-2016)**

	BE	BG	CY	CZ	EE	EL	FI	FR	IE	LT	LV	MT	NL	SE	SI	SK
Number of cases of identified <u>irregularly</u> staying and illegally employed TCNs																

	BE	BG	CY	CZ	EE	EL	FI	FR	IE	LT	LV	MT	NL	SE	SI	SK
<b>2014</b>	769	2	651	46	19	202	1,564(d)	2,311	600 <sup>258</sup>	0	2	:	1,409(d)	157	:	0
<b>2015</b>	679	0	437	67	35	104	1,134(d)	1,774	531 <sup>259</sup>	32	1	:	863(d)	94	:	6
<b>2016</b>	605	1	282	209	17	:	:	:	:	0	:	:	:	:	31	42
Number of cases of identified <u>regularly</u> staying and illegally employed TCNs																
<b>2014</b>	161	13	:	299	:	:	See figure above	:	:	66	36	265	:	:	:	49
<b>2015</b>	231	33	:	554	:	:	See figure above	:	:	138	17	519	:	:	:	40
<b>2016</b>	231	32(d)	:	1,128	:	:	See figure above	:	:	58	:	932	:	:	107	178

: not available

ddefinition differs:

BG – Data for January-October 2016

FI - Data on TCNs detected during inspections. Total number, which includes **both illegally and legally staying TCNs** with irregularities regarding the right to employment

NL - The State Labour Inspectorate does not have figures about illegally employed Third Country Nationals who reside in the Netherlands. The only available figures concern breaches of the Foreign Nationals Employment Act (Wav) and the number of illegally employed persons (including both legal and illegal residence). When Inspection SZW detects a breach of the Wav by an employer, it is not registered whether the illegally employed persons have legal or illegal residence in the Netherlands. It is only registered whether or not the employed persons are

<sup>258</sup> Employment Permits legislation.

<sup>259</sup> Employment Permits legislation.

Table A5.4 Profiles of illegally employed TCNs (2015)

	Cases of identified <u>irregularly</u> staying and illegally employed TCNs			Cases of identified <u>regularly</u> staying and illegally employed TCNs			Methodological notes
	Top 10 nationalities	Age group	Sex (% of women)	Top 10 nationalities	Age group	Sex (% of women)	
<b>AT</b>	BIH, RS, TR, XK, MK, EG, UA, RU, MN (d) *see methodological notes	:(d))	20%(d))	See methodological notes			Please note that the data refers to the TOTAL number of illegally employed TCNs.
<b>BE</b>	MA, BR, PK, AO, MK CV, GW, ST	:	:	PK, BR, MA, DZ, TR, CV	:	:	Collection of statistics from the Social Information and Investigation Service (SIOD/SIRS).
<b>BG</b>	CN, IL	29-31	:	RU, UA, MK, RS, CN, SY	16-69	:	
<b>CY</b>	UA, VN, MD, RU, AL, CN KR, TR, TH, MK, IN, UZ	:	:	BD, VN, SY, LK, PH, PK, IN, EG, RU, NP (d)	18-34 (63%) 35-40 (19%) 41-64 (18%)	31%	Data only refers to illegally employed and not illegally staying
<b>CZ</b>	UA, VN, MD, RU, AL, CN KR, TR, TH, MK, IN, UZ	:	:	UA, VN, MD, RU, AL, CN KR, TR, TH, MK, IN, UZ (d)	:	:	Illegally employed foreign nationals
<b>EE</b>	:	:	:	Unnamed territories UA, RU, MD, CO, UZ	21-29 (30%) 30-39 (32%) 40-49 (21%) 50-56 (17%)	21%	
<b>FI</b>	:	:	:	RU, NP, NG, BD, Stateless ET, PK, UA, CN, TR(d)	20-24 (21%) 25-29 (26%) 30-34 (22%) 35-39 (16%) 40-44 (10%) 45-49 (2%) 50-54 (2%) 60-64 (1%)	:	Data from the Police on TCNs sentenced to a fine for a violation of the Aliens' Act. Deliberately, without right to gainful employment are gainfully employed.
<b>LT</b>	RU	:	0%	RU, UA, BY, MD	:	5%	
<b>MT</b>	:	:	:	SR, CN, ER, MK, LY, SY GH, TH, SO, IN	:	:	

Cases of identified <u>irregularly</u> staying and illegally employed TCNs			Cases of identified <u>regularly</u> staying and illegally employed TCNs			Methodological notes
Top 10 nationalities	Age group	Sex (% of women)	Top 10 nationalities	Age group	Sex (% of women)	
<b>SI</b> BIH	:	M: 90% (M) F: 10% (F)	Kosovo	:	M: 91% (M) F: 9% (F)	
<b>SK</b> UA	:	0%	CN, KR, VN, UA, TH	15-19 (4%) 20-24 (4%) 25-29(11%) 30-34(41%) 35-39 (15%) 40-44 (11%) 45-50 (11%) 50-54 (4%)	12%	Source: National Labour Inspectorate

: not available

ddefinition differs, see methodological notes.

**Table A5.5 Outcomes of identified illegally employed TCNs (2014-2016)**

	Illegally employed TCNs	2014	2015	2016
<b>BE</b>	Number of illegally employed TCNs who were given an order to leave the country following a labour inspection	614	720	680
<b>BE</b>	Number of illegally employed TCNs who were detained in view of their return following an inspection (no information available as to whether the return effectively took place).	308	282	334
<b>BE</b>	Number of new people assisted by one of the three specialized centres to obtain protection as a victim of THB. in human beings	156 <sup>260</sup>	135 <sup>261</sup>	:
<b>CZ</b>	Number of illegally employed TCNs who were given an order to leave the country following a labour inspection	387	684	1,418

<sup>260</sup> Number of people assisted by one of the three specialized centres in order to obtain the protection as a victim of THB.

<sup>261</sup> Idem.

	<b>Illegally employed TCNs</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>SI</b>	Number of illegally employed TCNs who were granted a period for voluntary return	:	104	218
<b>SK</b>	Number of illegally employed TCNs who were identified as victims of trafficking in human beings	0	0	0
<b>SK</b>	Number of decisions obliging employers to pay back payments/ amount equal to taxes and social security contributions	0	1	0

: not available

znot applicable

**Table A5.6 Types and number of sanctions for illegally employed TCNs (2014-2016)**

	<b>Sanctions available for illegally employed TCNs (e.g. fines, imprisonment, etc.)</b>	<b>Type of sanction</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>Methodological notes</b>
BE	Administrative sanction level 1 for TCN who have not been declared to the Social Security DIMONA (undeclared work)	Financial	0	0	1	
BG	Administrative fine for infringement of Art. 76 of the Law on Labour Migration and Labour Mobility	Financial	15	33	33	
CY	Fines and/or imprisonment imposed by the courts as a result of criminal sanctions	Criminal and financial	610	414	z	
CZ	Fine for illegal work	Financial	23 fines in the total amount of 488,000 CZK	9 fines in the total amount of 35,000 CZK	0	
EE	Aliens Act § 303. Employment of alien who is staying in Estonia without legal basis	Criminal	29	68	24	
EE	Aliens Act § 304. Violation of conditions of employment in Estonia of alien	Criminal	11	11	111	



	Sanctions available for illegally employed TCNs (e.g. fines, imprisonment, etc.)	Type of sanction	2014	2015	2016	Methodological notes
EE	Aliens Act § 306. Failure to perform notification obligation	Criminal	1	2	1	
FI	Fines for illegally employed TCNs	Financial	200	152	210	Information from the Police and the District Courts
HU	Compulsory payment to the central budget for illegal employment of third-country nationals	Financial	46	35	38	
LT	Number of records of offences drawn up to persons (aliens) for work performed without having obtained a business certificate	Administrative	1	7	4	
LV	Working without a work permit	Financial	67	78	:	Data provided by the State Border Guard and State Labour Inspection
SI	Fine	Financial	/	13 (2.000 EUR)	95 (49.000 EUR)	Fines in 2015: 2.000,00 EUR; Fine in 2016: 49.000,00 EUR
SI	Warning	Financial	/	7	9	
SK	Fine up to EUR 331	Financial	0	1 (amounting to €200)	0	

:not available

znot applicable

**Table A5.7 Number of complaints lodged against employers for employing illegally TCN**

	Number of complaints	2014	2015	2016	Methodological notes
<b>AT</b>	Total number of presumably illegal employed in criminal complaints (see methodological note)	3,436	3,142	4,003	The data was provided by the Financial Police, extracted from their database. It refers to the number of presumably illegal employed TCNs in criminal complaints against employers (lodged by the TCNs themselves, the Financial Police or others). <b>Example:</b> One complaint is lodged against an employer who is alleged of having illegally employed three TCNs – the three TCNs are counted here.
<b>AT</b>	Of which: infringement of Temporary Employment Act	1,192	958	815	
<b>AT</b>	Of which: infringement of Workers Relinquishment Act	165	152	299	
<b>AT</b>	Of which: infringement of Unemployment Insurance Act	101	87	85	
<b>AT</b>	Of which: infringement of Employment Contract Law Adaptation Act	418	475	1,314	
<b>AT</b>	Of which: infringement of Act Governing the Employment of Foreigners	1,560	1,470	1,490	
<b>BE</b>	Complaints lodged by a TCN to the Labour Inspectorate	4	1	5	
<b>BE</b>	Complaints lodged by a trade union to the Labour Inspectorate	2	3	1	
<b>BE</b>	Complaints lodged by an employers association to the Labour Inspectorate	10	1		
<b>BE</b>	Complaints lodged by an NGO (ORC.A.) to the Labour Inspectorate	17	32	16	
<b>BG</b>	Total number of complaints, including from individuals and institutions	10	7	z	

	Number of complaints	2014	2015	2016	Methodological notes
<b>CZ</b>	Illegal employment of foreign nationals outside EU	652	358	457	
<b>LT</b>	Illegal employment without conclusion of an employment contract	1,604	1,447	1,124	
<b>LT</b>	Including illegal employment of foreign nationals and stateless persons	11	16	26	
<b>MT</b>	The data provided does not distinguish between TCNs and EU Nationals and thus it includes all complaints.	1,076	397	359	
<b>SK</b>	Total number of convictions (Art. 251a of the Criminal Code)	0	0	0	

**Table A5.8 Profile of employers**

	Sector	Profile
<b>AT</b>	Construction Catering and tourism Agriculture Domestic care	Companies and private persons Small to medium-sized companies Small-sized producers Private households
<b>BE</b>	Construction Catering and tourism Horticulture	Small-scaled SMEs and private households Employers often have foreign nationalities or are of foreign origin.
<b>CZ</b>	Construction Manufacturing Wholesale and retail trade; repair of motor vehicles and motorcycles Professional, scientific and technical activities Accommodation and food service activities	Medium-sized businesses
<b>DE</b>	Building industry Hotel and restaurant services Passenger transport Freight, transport, and related logistics Fairground entertainment industry Forestry businesses Industrial cleaning businesses Businesses involved in the building and dismantling of fairs and exhibitions Meat industry	

	Sector	Profile
<b>FI</b>	Cleaning Construction Transport Catering and tourism	Small and large-scale businesses More often detected in smaller enterprises, but also observed in larger enterprises.
<b>FR</b>	Construction Catering and tourism Sales Agriculture	Small-scale businesses
<b>HU</b>	Agriculture Processing industry Construction Catering and tourism Catering	
<b>IE</b>	Catering Fast food and ethnic restaurants Fisheries	
<b>LT</b>	Wholesale and retail trade Motor vehicle repair services	Small-scale businesses
<b>MT</b>	Construction Catering and tourism Manufacturing industry Sales Services Transport	
<b>NL</b>	Hospitality and foodservice activities Wholesale and retail trade Administrative and support service activities Cleaning Construction	
<b>SE</b>	Catering and tourism Wholesale and retail	
<b>SK</b>	Agriculture, forestry, fishing Manufacturing industry Construction Wholesale and retail Transport and logistics Catering and tourism Information and communication Real estate	

	Sector	Profile
	Professional scientific and technical activities Education Healthcare and social assistance	
UK	Retail and manufacturing Catering and tourism Agriculture Care Construction	The scope for illegal working is most acute in labour intensive sectors where wages and skills are lower, and turnover is high.

**Table A5.9 Additional statistics and observations on the availability of the data**

	Comments
<b>AT</b>	The available data on illegal employment is based on the apprehensions resulting from inspections that were carried out by the Financial Police. Naturally, the number of apprehensions of illegally employed foreigners (as well as the nationality, age and sex disaggregation) is a reflection of control intensities and priorities as well as of access issues (e.g. restricted access to private households).
<b>BE</b>	In most cases, the databases used in this study do not allow to make a distinction on the basis of gender, age or nationality.
<b>DE</b>	Data on the number of inspections of the customs administration`s monitoring unit for undeclared work, as the centrally responsible authority, in which illegal employment of third-country nationals was proven or the number of illegally employed third-country nationals identified is currently not foreseen. Other available data (e.g. the police crime statistics) do not offer a full image of the phenomenon.
<b>FI</b>	The availability of data on illegal employment and the sanctions for employers' and employees is a challenge in Finland. Data on labour inspections are collected from the regional occupational safety and health authorities. The Police and the judicial system are responsible for the data on sanctions/convictions. The tax authorities are concerned with the questions of the informal (grey) economy. As the scale of the phenomenon overall is fairly small in Finland, it is even harder to find data on illegal employment disaggregated by nationality or by status of the immigrant (regular or irregular). Therefore the reliability of the presented data must be approached with caution.
<b>FR</b>	In most cases, the databases used in this study do not allow to make a distinction on the basis of gender, age or nationality. However, the FR national report gives information on the scale of the phenomenon, the most affected sectors, the type of infractions and the control procedures.
<b>LT</b>	All statistical information on illegal work, including TCNs, are provided twice a year to the Social Security and Labour Ministry of the Republic of Lithuania and the Government. This statistics are also provided to the Ministry of Internal Affairs, responsible for preparing a report the EU on human trafficking in Lithuania.  There is also information about third-party illegal for submissions to the Ministry of Internal Affairs, which is preparing a report to the EU on human trafficking Lithuania.
<b>LU</b>	Due to the reorganisation of the Inspectorate of Labour (ITM), the administration was not able to provide any information.
<b>LV</b>	Annual Report 2015 was provided.
<b>NL</b>	The State Labour Inspectorate (i.e. Inspectorate Social Affairs and Employment) does not have statistics about illegally employed Third Country Nationals who reside in the Netherlands. The only available figures concern breaches of the Foreign Nationals Employment Act (Wav) and the number of illegally employed persons (including both legal and illegal residence). When Inspection SZW detects a breach of the Wav by an employer, it is not registered whether the illegally employed persons have legal or illegal residence in the Netherlands. It is only registered whether or not the employed persons are allowed to work in the Netherlands. Statistics for 2016 were not (yet) available within the period of this EMN Focused Study.
<b>SK</b>	See information report on detecting and combating illegal work and illegal employment.
<b>UK</b>	The UK is not currently able to estimate the number of illegal migrants (or illegal workers). Further information is available in Chapter 6 of the UK National report for the EMN Study Practical Measures for Reducing Irregular Migration from 2012.

## Annex 6 Fines for illegally employed TCNs

Table A6.1 Fines in case of illegally employed TCNs

Member State	Fine
<b>Belgium</b>	<p>As stipulated in article 183/1 of the Social Criminal Code, individuals (including both irregular and regularly residing TCNs) can be fined when their employment is undeclared, provided that they carried out the employment intentionally and knew that it was undeclared, and that a formal report was issued against the employer for this undeclared work. The administrative practice of the administrative fines service indicates that this fine is often not imposed if the TCN lodged a complaint to a social inspector against his/her employer himself/herself or if the TCN is a victim of trafficking in human beings or of exploitation.</p> <p>The fine is a <b>sanction level 1</b>: as of 1 January 2017, from 80 to 800 EUR (with multiplication coefficient).</p>
<b>Bulgaria</b>	The Law on Foreigners in the Republic of Bulgaria provides in Art. 48, para 1, point 2 fine for the foreigner between 500 and 5000 BGN for work without a permit or registration.
<b>Czech Republic</b>	Illegal work is regarded as an offence. In such cases, a fine of up to 100,000 CZK can be imposed on a natural person in the position of an employee (contrary to the fine imposed on employers, the minimum amount of fine is not determined in this case).
<b>Germany</b>	Illegal work is considered a criminal offence in conjunction with a regulatory offence and can be fined with up to EUR 5,000.
<b>Estonia</b>	<p>Irregularly staying TCNs who are found to be illegally working are punishable by a fine of up to 300 fine units or by detention.</p> <p>*A fine unit is the base amount of a fine and is equal to 4 euros. 300 units is equal to 1200 euros.</p>
<b>Latvia</b>	An administrative fine from EUR 140 – 700 be imposed for working without a work permit. For residing in the territory of Latvia without a valid visa, residence permit or valid document a TCN is punished with a warning or a fine of up to EUR 350.
<b>Finland</b>	A fine for a violation of the Aliens Act. The amount of the fine is determined based on, for example, the number of days the person has stayed in the country without the necessary residence permit, or the number of days the person has been illegally employed. Based on the duration of the illegal stay or illegal employment, the person may be sentenced to 10–50 day-fines. The actual amount of the day-fine depends on the offender's ability to pay. The minimum day-fine is six euros. According to the police guidelines on fines, 0–7 days of illegal residence or employment equals 10 day-fines, while more than 15 months equals 50 day-fines.
<b>Slovakia</b>	According to Act on Illegal Work, illegal work is considered an offence punishable by a fine up to EUR 331.
<b>Slovenia</b>	According to Article 21(6) of Act on Prevention of Illegal Work and Illegal Employment, <i>individual person illegally working</i> is fined for an offence punishable by a fine from 1000 to 7000 EUR. A fine ranging from 500 to 2,500 euros shall be imposed on an individual who has been allowed by the employer to work without the conclusion of an employment contract, civil law contracts on the basis of which work may be performed, contracts for the provision of temporary or occasional work in accordance with the act regulating the market Work, or has allowed him to work in violation of the regulations governing the occasional or temporary work of students and students (the third paragraph of Article 23 of the Prevention of Undeclared Work and Employment Act). According to Act on Illegal Work, illegal work is considered an offence punishable by a fine up to EUR 331. <sup>262</sup> According to Act on Residence of Aliens, the third country nationals can be fined up to €1,600 for irregularly residing in the territory of the SR.
<b>United Kingdom</b>	All TCNs who work illegally are subject to a maximum custodial sentence of six months and/or a fine of the statutory maximum of £20,000.

<sup>262</sup> Between 2014 and 2016, only one TCN illegal worker was sanctioned by the fine amounting to €200.

**Table A6.2 Fines in case of illegally staying TCNs**

Four Member States provided information on fines in case of illegally staying TCNs.

<b>Austria</b>	TCN may be required to pay a fine of EUR 500 if the TCN is found to be residing irregularly in Austria (regardless of employment). If the fine is uncollectible the TCN may have to be imprisoned of at least up to two weeks
<b>Bulgaria</b>	The Law on Foreigners in the Republic of Bulgaria provides in Art. 48, para 1, point 1 and 3 fine for the foreigner between 500 and 5000 BGN for entry after expulsion or for overdue stay.
<b>Ireland</b>	Irregularly staying TCNs may be liable on summary conviction to a fine not exceeding €1,500 or to imprisonment for a term not exceeding 12 months or to both
<b>Slovakia</b>	According to Act on Residence of Aliens, the TCN can be fined up to €1,600 for irregularly residing in the territory of the SR.



