

**EMN STUDY 2016**

**Illegal employment of TCNs in the EU  
February 2017**

### **EMN FOCUSED STUDY 2016** **Illegal employment of TCNs in the EU**

#### **Top-line "Factsheet" (National Contribution of the Slovak Republic)**

*Overview of the National Contribution – introducing the Study and drawing out key facts and figures from across all sections of the National Contribution, with a particular emphasis on elements that will be of relevance to (national) policymakers. Please also provide a concise summary of the main findings of Sections 1-5 below, for example:*

- *Extent to which illegal employment of third-country nationals (TCNs) is an issue in general in your (Member) State;*
- *Key prevention and identification measures regarding illegal employment of TCNs in place in your (Member) State;*
- *Possible sanctions for employers and sanctions and other outcomes for TCNs;*
- *Mechanisms on access to justice and enforcement of rights of illegally employed TCNs;*
- *Challenges as well as good practices in the field.*

The Ministry of Labour, Social Affairs and Family of the Slovak Republic estimates approx. 50–60 thousand people worked illegally in Slovakia in 2013.<sup>1</sup> Available statistical data from checks on illegal employment show that the number of inspections of illegal employment as well as the number of illegally employed natural persons have been annually increasing since 2013. Labour inspection identified 2924 illegally employed people in 2016.

The main measures focusing on tackling illegal employment and illegal work in the Slovak Republic include the aforementioned inspections of illegal employment; sanctions for tackling undeclared work, which have been strengthened in recent years; suppression of illegal employment of foreigners and therefore of TCNs; reporting obligation of employers, under which an employer is obliged to report every employment before the commencement of the work and any termination of employment no later than on the second day following the completion; and prevention of undeclared work using temporary work contracts aimed at lowering the motivation to undertake illegal employment by extending the scope of external types of employment<sup>2</sup>. Reporting illegal employment to the responsible authority as well as providing counselling or information services aimed at preventing illegal employment can also be considered as effective measures in combating illegal employment.

The illegal employment of foreigners (including TCNs) amounted, both in 2014 and 2015, to only around 4% of all cases of identified illegally employed people in the individual years. The proportion of illegally employed TCNs amounted, both in 2014 and 2015, to approx. 2% of all cases of identified illegally employed natural persons, i. e. the intensity of it is not so significant. The majority of identified illegally employed TCNs held a valid residence permit, which means that their stay in the territory of the Slovak Republic as well as arrival was legal.

Important measures aimed at the prevention of illegal employment of TCNs and intended for employers include informational meetings organized by the OLSAFs, publishing information regarding the employment of TCNs on the National Labour Inspectorate (NLI) and the COLSAF websites, and the reporting obligation of employers of TCNs, set by the Slovak legislation. Prevention measures aimed at employees include providing information on entry and residence, living and working conditions, employment in the Slovak Republic using the websites of several institutions, providing free legal, social and work-related counselling via the IOM Migration Information Centre, providing information on administrative procedures during obtaining legal employment in Slovakia, on obligations to individual institutions,

---

<sup>1</sup> Source: <http://www.iness.sk/stranka/8489-Stat-ukazal-klucove-cislo-Nacierno-pracuje-60-tisic-Slovakov-Hospodarske-noviny.html> (consulted on 20/1/2017).

<sup>2</sup> BEDNÁRIK R.: Potieranie nedeklarovanej práce. Analýza opatrení v krajinách EÚ a na Slovensku. Správa z II. etapy riešenia VÚ Nedeklarovaná práca na Slovensku. [Fighting undeclared work. An analysis of measures taken in the EU countries and in Slovakia. A report from the II. stage of the "Undeclared work" research task.] Bratislava: Institute for Labour and Family Research, 2015. [[http://www.ceit.sk/IVPR/images/IVPR/vyskum/2015/Bednarik/bednarik\\_potieranie\\_2015.pdf](http://www.ceit.sk/IVPR/images/IVPR/vyskum/2015/Bednarik/bednarik_potieranie_2015.pdf)] (consulted on 20/1/2017)

## Illegal Employment of the TCNs in EU

on living and working conditions via OLSAFs as well as on legislation concerning the obligation to report a change of employer or a termination of employment.

Also economic activity sectors (sensitive sectors) are regularly identified in Slovakia. Illegal employment of TCNs is very prominent in these sectors. Checks of illegal employment of TCNs are therefore carried out especially in these sensitive sectors.

Several institutions are involved in the inspection of illegal work and illegal employment (such as the NLI, Labour Inspectorate (LI), COLSAF, BBAP PFP). They work under several ministries cooperating in compliance with the legislation and cooperation agreements, while they are also able to cooperate ad-hoc, if necessary. Identification of illegally employed TCNs, however, is not their primary task, apart from the BBAP PFP departments, which do not primarily focus on the checking of illegal employment. While identifying the illegally employed TCNs, the authorities do not distinguish between an illegally employed TCN without a residence permit (irregularly staying and illegally working TCN) and an illegally employed TCN with a residence permit (regularly staying and illegally working TCN). There are no institutions in the Slovak Republic that would specialize in the checking of illegal employment in individual sectors. Nor is there a special department/section within the LI, which would deal only with the checking of illegal employment of TCNs – as TCNs are identified within general checks of illegal employment. Within the general checks of illegal employment, including the checking of illegal employment of TCNs, several identification measures are used, such as inspections of workplaces, joint and security-improving ventures/inspections of business entities and ad-hoc inspections carried out by members of the Police Force. Checks on illegal employment of TCNs are carried out at random intervals and can be initiated based on the information provided by the general public or by illegally employed TCNs.

Regarding the good practices relating to the identification measures, they include the cooperation of the MoLSAF SR institutions with the Aliens Police as well as using electronic access to the database of insured persons and savers within the old-age pension scheme run by the Social Insurance Agency. The LI and COLSAF can access the database during an inspection of persons present in a place of employment. Another example of good practices is the existence of the departments of inspection of illegal employment – KOBRA, which were created in 2013 and since then have been working not only during regular office hours, but also in the afternoons, evenings, nights and during weekends and public holidays.

Sanctions for employers or natural persons who illegally employ TCNs, include, depending on the circumstances and the relevant Slovak legislation, the following: fines of €2,000–200,000; and in the case of illegal employment of 2 or more persons at the same time, at least €5,000; imprisonment for 6 months to 3 years; losing the right to apply for a subsidy from the State budget and for help and support from EU funds; limiting access to public procurement as well as withdrawal of trade license. It is also possible to penalize an employer, who is a legal entity, for the crime of illegal employment. The possibility has been recently introduced by Act No. 91/2016 Coll. on the Criminal Liability of Legal Entities. NLI maintains a centralized public list of natural persons and legal entities who have breached the ban on illegal employment in the last five years. Being listed in such public list can damage the reputation of the employer and make it harder for them to find new business partners, customers, or employees. The intention to participate in illegal employment or the lack of it is not a decisive factor, given the application of objective responsibility for this administrative offence; this is an important advantage related to the sanctioning of employers who illegally employ TCNs.

If an illegally employed TCN without a residence permit is identified during an inspection, the illegality must be sufficiently proved, as at the place of inspection only a suspicion of illegal employment arises. Members of the Border and Aliens Police look into the TCN in relation to the illegal residence. With respect to illegal employment, a TCN can be administratively expelled if they otherwise seriously or repeatedly breached the generally binding legal regulations. As there is a flight risk of a TCN without a residence permit during administrative expulsion procedure, such can be detained. Detention is also possible in the cases of avoidance or resistance to the preparation process of the enforcement of administrative expulsion or for the purpose of the execution of administrative expulsion or the execution of the punishment - the expulsion. If a TCN, who was illegally employed and whose residence is not legal, possesses travel documents and if there is no legal reason for detention, a deadline for leaving the country can be set and the TCN can leave the country in the framework of voluntary departure. If a TCN illegally resides in Slovakia or if they otherwise seriously or repeatedly breached the generally binding legal regulations, the Police Force department can, in the decision on administrative expulsion, impose an entry ban ranging from 1 to 5 years (in the case of unauthorized residence) and from 1 to 3 years (in the case serious or repeated breach of the generally binding legal regulations). Inspection bodies (COLSAF and OLSAFs) can impose a fine of max. €331 for the offence of illegal work. If an illegally employed TCN with a valid residence permit is identified during an inspection, the permit can be, in the case of repeated offences, withdrawn. Relevant Slovak legislation, however, does not contain a possibility to legalise the illegal employment of a TCN.

The Act on Illegal Work contains an explicit obligation of an employer (natural person or legal entity), upon whom a fine has been imposed for breaching the ban on illegal employment of a TCN without a residence permit, to make additional payments, i. e. the agreed amount of money owed to the person who was illegally employed; all the expenses related to transferring the salary to the country, to which the illegally employed person returned or was administratively expelled; and the taxes and contributions to social security and health insurance. The employer is, in the case of illegal employment of a TCN, also obliged to pay all the expenses related to the administrative expulsion. The inspection body is obliged to inform an illegally employed TCN, during the process of an inspection of illegal work and illegal employment, about the right to raise a claim to the NLI, if the agreed-upon salary was not paid, and the right to claim the owed salary and about the right to have the salary transferred to the country to which the TCN will return or will be administratively expelled. According to the LI information, the TCNs do not use these rights often.

### **Section 1: Contextual overview of the general situation regarding illegal employment in the (Member) States [maximum 1 page]**

*This introductory section of the Synthesis Report will aim at setting the scene for the Study and contextualize the Study in terms of providing a brief overview of the general situation in the (Member) State with regard to illegal employment of TCNs.*

**Q1. Please provide an overview of the general situation with regard to illegal employment on the basis of available research and information in your (Member) State, including, inter alia:**

*Q1a. Extent to which the grey and informal economy is present in your (Member) State;*

*Q1b. Extent to which fighting illegal employment is a political priority in your (Member) States;*

*Q1c. Public and/or policy debates in the area of illegal employment;*

*Q1d. Extent to which illegal employment of TCNs is an issue in your (Member) State (e.g. severity and intensity of the issue), in particularly concerning the TCNs;*

*Q1e. Available research on the main routes to an irregular employment situation in your (Member) State;*

*Q1f. Any (planned) changes in law or practice in the field of illegal employment;*

*Q1g. Issues with illegal employment in particular industries and sectors and particular types of employer (e.g. is it more prevalent in SMEs or larger businesses, start-ups or more established businesses?);*

*Q1h. Profiles of the illegally working individuals (EU, EEA or TCNs);*

*Q1i. Other related issues experienced in your (Member) State which may directly affect the extent of illegal employment in your (Member) State, such as corruption, trafficking in human beings, etc.*

*Please specify the reference/source of the information.*

According to available statistical data, the grey economy ratio in 2015 amounted to 14.10% of GDP, while being on the decrease since 2009<sup>3</sup>. According to the opinions of public administration employees on undeclared work obtained via the 2014 survey conducted by the Institute for Labour and Family Research<sup>4</sup>, the grey economy is more prevalent in some sectors and most often in smaller-scale businesses (such as sole proprietors or small enterprises). The survey has shown that the most significant parts of the grey economy, in order of severity, are probably tax evasions, profits from conducting unauthorized business, illegal employment of the unemployed, who at the same time receive unemployment benefits, untaxed income of employees from their side jobs, and illegal employment of Slovak nationals, while the illegal employment of foreigners is the least serious. According to the employees of the LI, COLSAF, Social Insurance Agency, Departments of Trade Business, Tax Offices, Customs Offices and Municipal Offices, the problems in the process of combatting illegal work are as follows: obsolete SR legislation, insufficient coordination of the institutions while tackling illegal work, insufficient numbers of inspections as well as insufficient involvement of municipalities and business associations<sup>5</sup>.

<sup>3</sup> SCHNEIDER F.: Size and Development of the Shadow Economy of 31 European and 5 other OECD Countries from 2003 to 2015. [<https://knoema.com/SDSE2015/size-and-development-of-the-shadow-economy-of-31-european-and-5-other-oecd-countries-from-2003-to-2015>] (consulted on 20/1/2017)

<sup>4</sup> For more information see: BEDNÁRIK R.: Nedeklarovaná práca na Slovensku. Prieskum názorov a postojov pracovníkov verejnej správy. Záverečná správa z VÚ č. 2170 [Undeclared work in Slovakia. A survey of opinions of public administration employees. Final report from research task No. 2170]. Bratislava: Institute for Labour and Family Research, 2014. [[http://www.ceit.sk/IVPR/images/IVPR/vyskum/2014/Bednarik/2170\\_bednarik.pdf](http://www.ceit.sk/IVPR/images/IVPR/vyskum/2014/Bednarik/2170_bednarik.pdf)] (consulted on 20/1/2017)

<sup>5</sup> BEDNÁRIK R.: Potieranie nedeklarovanej práce. Analýza opatrení v krajinách EÚ a na Slovensku. Správa z II. etapy riešenia VÚ Nedeklarovaná práca na Slovensku. [Fighting undeclared work. An analysis of measures taken in the EU countries and in Slovakia. A report from the II. stage of the

## Illegal Employment of the TCNs in EU

The sectors with the highest occurrence of illegal employment included the sensitive sectors such as construction, wholesale and retail trade, accommodation and food service activities, manufacturing industry, professional, scientific and technical activities and administrative and support service activities.

Illegal employment in 2015 mostly occurred, according to the NLI and COLSAF, in construction, wholesale and retail trade and in the accommodation and food service activities. The ban on illegal employment is mostly breached by employers with 1–9 employees. Those are micro-businesses most commonly of the “spoločnosť s ručením obmedzeným (limited liability company)” legal form of business. Illegal employment occurs least often in large companies with more than 250 employees<sup>6</sup>.

Illegal employment in 2016 mostly occurred, according to the NLI and COLSAF, in construction sector, administrative and support service activities, wholesale and retail trade. The ban on illegal employment is mostly breached by employers with 1–9 employees. Those are micro-businesses most commonly of the “spoločnosť s ručením obmedzeným (limited liability company)” legal form of business. Illegal employment occurs least often in companies with 50 to 249 employees.<sup>7</sup>

Combatting illegal employment and work is not among the main political priorities regarding the labour market, compared to issues such as promoting the growth of the employment rate or improving the living conditions of working people. However, detection and combatting of illegal work and illegal employment are considered strategic within this area.

The National Employment Strategy of the Slovak Republic until 2020 (hereinafter the National Strategy), which is a supra-sectorial document on employment promotion, considers illegal employment an unwanted phenomenon, which negatively impacts the labour market and at the same time constitutes both a social and economic problem. According to the National Strategy, illegal employment generally involves issues such as violations of generally binding legal regulations on employment, entrepreneurship, health and safety at work, entry and residence of aliens. Undeclared work and illegal employment should therefore be reduced and the measures related to monitoring activity of active and preventative nature should be used. The National Strategy proposes a specific strategy identifying a set of key changes, which need to be implemented in order to achieve the targeted employment status by 2020. As for working relationships, flexibility, working conditions, protection and culture of work, the Strategy states the need to promote a balance of rights and their corresponding obligations between employees and employers, as well as the creation of decent working conditions, with a particular emphasis on discussing these conditions with social partners alongside the provision to continue the clarification of the legal framework for the operation of temporary employment agencies, based on the findings related to searching and reducing undeclared work and illegal employment<sup>8 9</sup>.

Combatting illegal employment of TCNs is a part of several measures stemming from the Migration Policy of the Slovak Republic: Perspective until 2020, which was later, after the approval by the Slovak Government, developed into several action plans. The measures concern:

- A more thorough inspection of migrants aimed at preventing illegal residence, employment or entrepreneurship as well as at implementing equal working conditions including salaries and social contributions and aiming at their protection.

---

“Undeclared work” research task.] Bratislava: Institute for Labour and Family Research, 2015.

[[http://www.ceit.sk/IVPR/images/IVPR/vyskum/2015/Bednarik/bednarik\\_potieranie\\_2015.pdf](http://www.ceit.sk/IVPR/images/IVPR/vyskum/2015/Bednarik/bednarik_potieranie_2015.pdf)] (consulted on 20/1/2017)

<sup>6</sup> Informational Report on Detecting and Combatting Illegal Work and Illegal Employment in 2015. Available at [www.nip.sk/?id\\_fa=713&ins=nip](http://www.nip.sk/?id_fa=713&ins=nip) (consulted on 20/1/2017)

<sup>7</sup> Source: MOLSAF SR

<sup>8</sup> According to Art. 29 of Act No. 5/2004 Coll. on Employment Services and on changes and amendments to some acts, as amended (hereinafter Act on Employment Services), a temporary employment agency is a legal entity or a natural person employing a citizen in an employment relationship toward his/her temporary assignment to the using employer in the territory of the Slovak Republic in order to execute work under the supervision of the employer or in order to be dispatched under a specific regulation. Unless proven otherwise, such temporary assignment can also be an activity executed by the employees of a legal entity or a natural person, who is authorized to operate as a temporary employment agency, under a different legal relationship than the relationship established under a specific regulation for another legal entity or a natural person if a) another legal or natural person gives tasks to employees of the temporary employment agency, organizes, manages and controls their work; b) the activity is conducted mainly on the premises of another legal or natural person while using their work equipment; or the activity is mainly conducted using the work equipment of another legal or natural person and c) it is an activity, which the given legal or natural person has registered among their business activity subjects in particular registry.

<sup>9</sup> National Employment Strategy of the Slovak Republic until 2020. Available at <https://www.employment.gov.sk/files/slovensky/praca-zamestnanost/podpora-zamestnanosti/national-employment-strategy-slovak-republic-until-2020.pdf> (consulted on 20/1/2017)

## Illegal Employment of the TCNs in EU

Within this measure, MoI SR shall cooperate with MoLSAF SR in the detection of the illegal employment of, and illegal work by foreigners, especially in activities aiming at the elimination of clientelism<sup>10</sup>, avoidance of the provisions of the Act on Employment Services (especially the issues concerning the legal persons with a foreign element), forging of documents and other related frauds. MoI SR in cooperation with MoLSAF SR shall also improve the tactics and inspection methods aimed at the detection of illegal employment of, and illegal work by foreigners in the Slovak Republic.

- Adoption of legislative, organizational and administrative measures to prevent illegal migration related to monitoring and sanctioning of the illegal employment of migrants.
- Improving general awareness via informational campaigns on illegal work, smuggling, human trafficking, possible risks related to economic migration and available help. Putting up leaflets and brochures on illegal work, smuggling, human trafficking, possible risks related to economic migration and the availability of help in the department of Aliens Police of the Police Force shall be continued within this measure. General awareness of illegal work, smuggling, human trafficking, possible risks related to economic migration and the availability of help shall also be improved via the work of diplomatic missions and consular offices of the Slovak Republic<sup>11</sup>.

Moreover, the Integration Policy of the Slovak Republic from 2014 is also concerned with the illegal employment of TCNs. It underlines the need to cover issues pertaining to forced labour and to strengthen the legislative and institutional framework for the cases of work exploitation of migrants, which do not necessarily correspond to the definition of the crime of human trafficking<sup>12</sup>. The Summary Report on the Fulfilment of Objectives and Measures of the Integration Policy for 2015 states that the risks related to the integration policy of the Slovak Republic can be expected in the following areas: participation of foreigners in illegal work, illegal employment and in the exploitation of such persons, especially where adequate work-related legislation does not exist, by failing to provide working conditions and meet the necessary health and safety requirements. Labour inspection authorities therefore cooperate in labour law-related aspects of the integration of foreigners. They focus mainly on the group of economic migrants. Typical features of various groups employing foreigners depend on their geographical origin, the nature of the sector in which the work is performed and the overall context of their migration-related situation<sup>13</sup>.

Public and political discussions have recently been dominated mainly by topics concerning legislative changes, which extended the responsibility for illegal employment<sup>14</sup> (see Q17b), LI inspections<sup>15</sup> and specific cases and trends in illegal employment<sup>16</sup>. However, illegal employment of TCNs cannot be considered a high-profile issue. Information about the LI inspections focused on foreigners were covered only sporadically<sup>17</sup>.

Illegal employment of foreigners (including TCNs) amounted, both in 2014 and 2015, to only 4% of all cases of identified illegally employed natural persons in individual years<sup>18</sup>. The proportion of EU citizens as well as illegally employed TCNs amounted, both in 2014 and 2015, to approx. 2% of all cases of identified illegally employed natural persons. This means that the number of foreigners in either of the groups detected during inspections<sup>19</sup> were similar.

<sup>10</sup> Practice of mediating work, which is common especially among the TCNs from Ukraine.

<sup>11</sup> Source: Summary Report on the Fulfilment of Objectives and Measures of the Migration Policy for 2015. Available at: <https://www.slov-lex.sk/legislativne-procesy/-/SK/dokumenty/LP-2016-353> (consulted on 20/1/2017)

<sup>12</sup> Integration Policy of the Slovak Republic. Available at: <http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Mater-Dokum-162052?prefixFile=m> (consulted on 20/1/2017)

<sup>13</sup> Source: Summary Report on the Fulfilment of Objectives and Measures of the Integration Policy for 2015. Available at: [https://www.slov-lex.sk/legislativne-procesy?p\\_p\\_id=processDetail\\_WAR\\_portletset&p\\_p\\_lifecycle=2&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_cacheability=cacheLevelPage&p\\_p\\_col\\_id=column-2&p\\_p\\_col\\_count=1&\\_processDetail\\_WAR\\_portletset\\_fileCooaddr=COO.2145.1000.3.1381850&\\_processDetail\\_WAR\\_portletset\\_file=vlastnymat.rtf&\\_processDetail\\_WAR\\_portletset\\_action=getFile](https://www.slov-lex.sk/legislativne-procesy?p_p_id=processDetail_WAR_portletset&p_p_lifecycle=2&p_p_state=normal&p_p_mode=view&p_p_cacheability=cacheLevelPage&p_p_col_id=column-2&p_p_col_count=1&_processDetail_WAR_portletset_fileCooaddr=COO.2145.1000.3.1381850&_processDetail_WAR_portletset_file=vlastnymat.rtf&_processDetail_WAR_portletset_action=getFile) (consulted on 20/1/2017)

<sup>14</sup> For instance the "objective" responsibility of employers, which should apply to illegal employment. Available at: <http://www.etrend.sk/podnikanie/v-nelegalnom-zamestnavani-ma-platit-objektivna-zodpovednost-zamestnavatelov.html> or Od 18.6.2016 budú za nelegálne zamestnávanie zodpovední a trestaní všetci podnikatelia! [Starting on 18 June 2016, all entrepreneurs will be liable and punishable for illegal employment!] Available at: <https://www.podnikajte.sk/pravo-a-legislativa/c/2605/category/zakonne-povinnosti-podnikatela/article/nelegalne-zamestnavanie-trestne-2016.xhtml> (consulted on 20/1/2017)

<sup>15</sup> For instance, the Labour Inspectorate focused on employers: Nelegálne pracovné sily a zneužívanie dohodárov! [Illegal workforce and exploitation of workers under the Temporary Work Agreement!] Available at: <https://www.cas.sk/clanok/343643/inspektorat-prace-si-posvietil-na-zamestnavatelov-nelegalne-pracovne-sily-a-zneuzivanie-dohodarov/> (consulted on 20/1/2017)

<sup>16</sup> For instance Nelegálne zamestnávanie na diaľniciach pri Žiline preverí polícia [The Police will look into illegal employment at highway near Žilina.] Available at: <http://archiv.netky.sk/clanok/nelegalne-zamestnavanie-na-dialniciach-pri-ziline-preveri-policia> or Nelegálne zamestnávanie v Košickom kraji prekvitá [Illegal employment in Košice region flourishes]. Available at: <https://kosice.korzar.sme.sk/c/8134020/nelegalne-zamestnavanie-v-košickom-kraji-prekvita.html> (consulted on 20/1/2017)

<sup>17</sup> For instance, Previerky zamerané na pracovné podmienky cudzincov [Inspections focused on working conditions of foreigners]. Available at: [http://www.nip.sk/?id\\_af=475](http://www.nip.sk/?id_af=475) or Šéf reštaurácie nechcel klamať, dostal pokutu [Restaurant manager did not want to lie and was fined]. Available at: <https://dennikn.sk/76296/sef-restauracie-nechcel-klamat-dostal-pokutu/> (consulted on 20/1/2017)

<sup>18</sup> Labour Inspectorate and COLSAF inspections identified a total of 2,335 illegally employed natural persons in 2014 and 2,686 illegally employed natural persons in 2015. Labour inspection identified 2924 illegally employed natural persons in 2016.

<sup>19</sup> Informational Report on Detecting and Combatting Illegal Work and Illegal Employment in 2013 and 2015. Available at: [http://www.nip.sk/?id\\_af=126&ins=nip](http://www.nip.sk/?id_af=126&ins=nip) (consulted on 20/1/2017).

## Illegal Employment of the TCNs in EU

The number of illegally employed foreigners (including TCNs) increased in 2016, amounting to 10,3 % (301 persons) of all the detected cases of illegal employment of natural persons (2924 persons). The share of EU citizens on all detected cases of illegally employed natural persons constituted approx. 2,8 % and the share of TCNs on all detected cases of illegally employed natural persons amounted to 7,5 % (See Table **A9** in Annex). Looking at the origin of EU citizens, the following were the most frequent: Hungarian nationals (most often worked in construction, transportation and storage), Czech nationals (most often worked in construction and in professional, scientific and technical activities), and Croatian nationals (most often worked in transportation and storage and administrative and support service activities)<sup>20</sup>.

There are no EEA citizens (European Free Trade Association Member States apart from Switzerland) in the statistics of illegal employment<sup>21</sup>. As for TCNs, the highest representation (see Table **A.9b** in Annex) was that of Serbia (most often in administrative and support service activities and in real estate activities sector), Ukraine (most often in manufacturing industry, in construction, transportation and storage and in the field of activities of the extraterritorial organisation and associations) and Vietnam (most often in accommodation and food service activities and wholesale and retail trade).

Although illegal employment of TCNs in the Slovak Republic does occur, it is infrequent. The proportion of illegally employed TCNs is minor, given the overall number of identified illegally employed persons<sup>22</sup>. Relevant statistical data in Annex (see Table **A.9a**) attest to that.

There is no research or publications dealing with the main routes to illegal employment of TCNs in Slovakia. Statistical data from the last three years (see Annex) suggest that the majority of identified illegally employed TCNs held a valid residence permit, which means that their presence in the territory of the Slovak Republic was legal and also that they arrived legally. TCNs arrive to Slovakia to work at a previously agreed upon work position, while the recruitment is organized in the country of origin in cooperation with Slovak employers and work agencies or by means of informal family or friends networks. Issues in Slovakia, ranging from mediation of work to help with accommodation, are mostly helped with by individuals from the given community. These services are often paid<sup>23</sup>.

In the past years, illegal employment of TCNs has most frequently, occurred in administrative and support service activities, reaching the peak in 2016, in accommodation and food service activities, wholesale and retail and in construction (see Table **A.8a** in Annex). In absolute numbers in 2016 the most frequent sectors where illegal employment of TCNs was detected were the already mentioned administrative and support service activities, accommodation and food service activities and construction. TCNs are most often employed by employers in micro-businesses. An interesting finding from 2016 identified 88 cases of illegal employment of TCNs in large companies with more than 250 employees (see Table **A.8b** in Annex), which made illegal employment in large companies the second most likely in the last three years, based on the size of the employer. Spoločnosť s ručením obmedzeným (limited liability company) and natural persons/businesses were the most often legal forms of business employing TCNs (see table **A.8c** in Annex).

Within the monitored period of 2014-2016 TCNs were most frequently illegally employed in the region of Nitra, Bratislava and Žilina (see Table **A.8d** in Annex).

The most frequent employer mistakes related to illegal employment of TCNs include mainly the failure to register an employee in the database of insured persons and savers within the old age pension scheme run by the Social Insurance Agency after establishing the working relationship as well as failure to fulfil the conditions for their employment (TCNs have a different residence purpose). Cases without an established working relationship with a TCN also occurred.<sup>24</sup>

No practical or legislative changes concerning illegal employment of TCNs are planned in the foreseeable future, since this issue is not significant in Slovakia as explained before<sup>25</sup>.

A survey conducted within the research<sup>26</sup> as a part of the Causes, Forms and Consequences of Violence against Third-Country Nationals project<sup>27</sup> implemented in 2013, with 690 TCN - participants living in the Slovak Republic, resulted in

---

<sup>20</sup> Source: MOLSAF SR

<sup>21</sup> Ibidem.

<sup>22</sup> Source: Survey of Labour Inspectorate a Ministry of Labour, Social Affairs and Family of the Slovak Republic.

<sup>23</sup> BLAŽEK, M., ANDRÁŠOVÁ, S., PAULENOVÁ, N.:Skúsenosti migrantov a migrantiek na Slovensku s násilím [Migrants' Experience with Violence in Slovakia.]. Bratislava: IOM, 2013. [<http://www.iom.sk/sk/aktivity/integracia-migrantov/na-stiahnutie?download=158:skusenosti-migrantov-v-sr-s-nasilim-vyskum>] (consulted on 20/1/2017)

<sup>24</sup> For more information see: Informational Report on Detecting and Combatting Illegal Work and Illegal Employment in 2013-2015. Available at: [http://www.nip.sk/?id\\_af=126&ins=nip](http://www.nip.sk/?id_af=126&ins=nip) (consulted on 20/1/2017)

<sup>25</sup> Source: Questionnaire by NLI.

<sup>26</sup> BLAŽEK, M., ANDRÁŠOVÁ, S., PAULENOVÁ, N.:Skúsenosti migrantov a migrantiek na Slovensku s násilím [Migrants' Experience with Violence in Slovakia.]. Bratislava: IOM, 2013. [<http://www.iom.sk/sk/aktivity/integracia-migrantov/na-stiahnutie?download=158:skusenosti-migrantov-v-sr-s-nasilim-vyskum>] (consulted on 20/1/2017)

<sup>27</sup> The aim of the project was to undertake complex analysis of the phenomenon of violence against TCNs in Slovakia, especially as a basis for an implementation of effective legal, political and practical measures to prevent and identify violence and to cope with its consequences.

## Illegal Employment of the TCNs in EU

important findings concerning the forced and exploitative work of TCNs. The survey suggested that in nearly 11.3% cases of working migrants, experience with forced labour can be assumed, while the most frequent examples included a failure to provide a salary or pay cuts as well as detention or imprisonment in the workplace. As for work-related exploitation, the most frequently identified cases included contracts written in a language different from the native language of the employee, while the employer relied on their insufficient knowledge of English and no command of Slovak; English and Slovak versions of contracts differed or the employee in fact carried out activities outside the scope of the official contract. A very serious issue identified within the research concerned a conscious neglect of health and safety as well as the failure to pay social insurance contributions, while the employers relied on corruption and bribery in the event of workplace inspections. The most vulnerable migrant groups by country of origin were, according to the authors of the research, Ukrainian nationals, migrants from communities with the lowest integration rate, in which employment within the community prevails and where the employers themselves experience disadvantage (such as Vietnam or China), as well as migrants coming to work in specific and extra-vulnerable sectors (such as Thai massages or Indian restaurants). The findings correspond to the up-to-date statistical data concerning illegal employment of TCNs by the country of origin and the SK NACE indicator (see above) collected over the last three years.

## Section 2: Prevention measures [maximum 5 pages]

This section of the Synthesis Report will provide a comparative overview of the prevention measures of illegal employment of TCNs available in the (Member) States. Particular distinction will be made between (i) measures and incentives for employers and (ii) measures and incentives for employees. Furthermore, a cross-cutting distinction will be made between the two main categories of TCNs subject to examination of this Study: (i) **irregularly staying and illegally working TCNs** and (ii) **regularly staying and illegally working TCNs**. The section will also examine how risk assessments are carried out. Moreover, any good practices and success stories in prevention measures will be highlighted in the Synthesis Report under this section.

### Q2. Please describe the types of preventive measures targeting TCNs as well as employers of TCNs to discourage them from employing a TCN illegally in your (Member) State:

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

| Measure/incentives for employers   | <u>Irregularly staying and illegally working TCNs</u><br><i>*Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. **Please specify if these measures are established to tackle illegal employment or are general incentives.</i>   | <u>Regularly staying and illegally working TCNs</u><br><i>*Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. **Please specify if these measures are established to tackle illegal employment or are general incentives.</i> |
|--|--|--|
| <p><b>a.1. Information campaigns targeted at employers</b></p> <p><i>Outreach/awareness-raising activities to inform employers on the criteria by which they can hire TCNs</i></p> <p>For each campaign that has been run in your MS indicate:</p> <ul style="list-style-type: none"> <li>- Which sectors were targeted?</li> <li>- How the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.)</li> </ul> | <p>Yes.</p> <p>In 2016, OLSAFs 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. NLI and LI employees take part on seminars where the topic is explained to public. The issue is also a part of the media appearances. OLSAFs also organize individual visits to employers<sup>28</sup>.</p> <p>It is a general incentive.</p> | <p>Yes. The same information which covers illegally working TCNs without a residence permit applies here.</p>  |
| <p><b>a.2. Information support for employers</b></p>   | <p>Yes.</p> <p>Information about employing TCNs for employers is published on the NLI<sup>29</sup> and COLSAF<sup>30</sup> websites.</p>   | <p>Yes. The same information which covers illegally working TCNs without a residence permit applies here.</p>  |

<sup>28</sup> Questionnaire by COLSAF.

<sup>29</sup> [http://www.safework.gov.sk/?id\\_af=484&ins=nip](http://www.safework.gov.sk/?id_af=484&ins=nip) (consulted on 20/1/2017).

<sup>30</sup> [http://www.upsvar.sk/sluzby-zamestnanosti/zamestnavanie-cudzincov.html?page\\_id=272197](http://www.upsvar.sk/sluzby-zamestnanosti/zamestnavanie-cudzincov.html?page_id=272197) (consulted on 20/1/2017).

## Illegal Employment of the TCNs in EU

|  |  |   |
|--|--|---|
| <p><i>Simplification of administrative procedures and information support for employers recruiting TCNs (e.g. helpline, information on government website etc.)</i></p>  | <p>No informational helpline for employers to deal with queries on employment of TCNs is available. Employers can present their queries to their respective LI, which will provide a free of charge counselling on employing TCNs: basic professional information on how to comply with valid legislation regulating the supervision of labour inspection.</p> <p>It is a general incentive.</p>   |   |
| <p><b>a.3. Partnership agreements and initiatives by Social Partners</b></p> <p><i>Conclusion of agreements between trade unions and employer organisations in the same sector (e.g. construction industry) establishing bilateral agreements of actions to curb illicit activities.</i></p> | <p>No.</p>   | <p>No.</p>  |
| <p><b>a.4. Obligation of the employer to notify the authorities about employing a TCN</b></p>  | <p>Yes.</p> <p>The employer must inform the respective OLSAF (or COLSAF) in writing on commencing employment, at the latest by 7 days after commencement.</p> <p>A copy of the work contract must be included in the written notification. In the case of TCNs, who are required to submit the confirmation of the possibility to fill a vacancy corresponding to highly-qualified employment, the confirmation of the possibility to fill a vacancy, or the work permit, the employer attaches a copy of work contract or of a work contract on work outside the scope of employment.</p> <p>Employer is also obliged to require the TCN to submit a valid document attesting to the residence or other residence permit, and keep a copy of this document during the whole employment period of the TCN.</p> <p>Employer is also obliged to inform the OLSAF, in writing, if a TCN with work permit or with a granted temporary residence for the purpose of employment based on a confirmation of the possibility to fill a vacancy, did not commence the employment; within seven working days from the date agreed as the date of commencement of employment. In the case of a TCN holding an EU Blue Card, the COLSAF must be informed within seven working days from the date agreed as the date of commencement of employment.</p> <p>Employer is also obliged to report every commencement of employment of a TCN before the start of work, and every termination of employment of a TCN no later than the second day of cessation of work, to the Social Insurance Agency, via a</p> | <p>Yes. The same information which covers illegally working TCNs without a residence permit applies here.</p> |

## Illegal Employment of the TCNs in EU

|   |   |    |
|---|---|----|
|   | <p>registration letter, which can be submitted electronically to a branch of the Agency.</p> <p>It is a measure established to tackle illegal employment.</p> |    |
| <b>a.5. Other measures/incentives for employers</b> | NA  | NA |

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

| <b>Measure/incentive for employees</b>   | <u><i>Irregularly staying and illegally working TCNs</i></u><br><i>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</i> | <u><i>Regularly staying and illegally working TCNs</i></u><br><i>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</i>  |
|--|---|--|
| <p><b>b.1. Financial incentives for employees</b></p> <p><i>Financial and fiscal incentives, including social security incentives – i.e. any social security incentives aimed at encouraging employers to legally register their employees</i></p> | No.   | <p>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.</p> <p>With respect to health insurance, the conditions for TCNs are the same as those for Slovak citizens. Mandatory health insurance applies to all TCNs employed in the Slovak Republic. Establishment of health insurance is connected to the establishment of its cause, i.e. the day of the commencement of employment. If a TCN is not eligible for the public health insurance scheme, the obligation to have a commercial insurance of medical costs applies during their entire residence in the Slovak Republic. The scope of this kind of healthcare is not guaranteed by legislation and stems from the contract between the TCN and the commercial insurance company<sup>31</sup>.</p> |

<sup>31</sup> DROZD, P.: Prístup migrantov k sociálnemu zabezpečeniu a zdravotnej starostlivosti v Slovenskej republike: politiky a prax [Access of migrants to social security and healthcare in the Slovak Republic: policies and practice]. Report of the National Contact Point of the European Migration Network for the Slovak Republic. Bratislava: IOM, 2013. [[https://www.emn.sk/sk/studie-emn/item/download/1028\\_30f0647eac0b703f643f6b42506bd2f0.html](https://www.emn.sk/sk/studie-emn/item/download/1028_30f0647eac0b703f643f6b42506bd2f0.html)] (consulted on 21/1/2017)

## Illegal Employment of the TCNs in EU

|   |  |   |
|---|--|---|
|   |  | <p>If a TCN does not need a work permit or a confirmation of the possibility to fill a vacancy or if s/he hold an EU Blue Card, s/he can be employed based on an agreement on work performed outside the employment relationship. In this case, a person who is not a retiree or a student and has irregular income (i.e. salary, which is not paid monthly) does not pay contributions to sickness and unemployment insurance so the scope of contributions amount to 11% instead of 13.4%. Employer's contributions amount to 32.8% instead of 35.2% in such cases. In the case of students and retirees working under an agreement, the amount of contributions is more favourable<sup>32</sup>.</p> |
| <p><b>b.2. Information campaigns targeted at employees (potential or current)</b></p> <p><i>(including pre-departure campaigns and post-departure campaigns in third countries)</i></p> <p>For each campaign that has been run please:</p> <ul style="list-style-type: none"> <li>- Provide detail of the campaigns, including who are the target groups; what country, type of workers, etc.</li> <li>- Explain how the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.)</li> </ul> | <p>No.</p> <p>There are no activities in this area. In 2008, the MOLSAF SR, however, submitted a proposal to build information centres in selected third countries with the highest number of Slovaks living abroad. The centres were to inform about vacancies and the employment legislation in the Slovak Republic. However, the proposal was suspended due to the economic crisis. The SR later returned to the proposal and the creation of information centres in the countries of origin was stated as one of the measures within the Migration Policy 2011. The measure entailed the creation of information and consulting centres for migrants in the countries of origin aimed at improving access to information about entry, residence, living and working conditions via immigration portals, online (multilingual) websites of the ministries involved and the active involvement of the Office for Slovaks Living Abroad and consular offices of the SR in this activity as well as via the introduction of pre-entry information for migrants in the countries of origin, information centres, brochures, leaflets and websites<sup>33</sup>.</p> <p>The Slovak Republic, via diplomatic missions and consular offices of the SR (consular departments at embassies and consulates general), strives to improve the pre-entry awareness of migrants by providing information on entry and residence, living and</p> | <p>No. The same information as listed in the part of the report dealing with illegally employed TCNs without residence permit applies.</p>  |

<sup>32</sup> For more information see: <http://finanza.sk/praca-na-dohodu-ake-zmeny-nastanu-po-novom-roku/> (consulted on 20/1/2017).

<sup>33</sup> DROZD, P., FRKÁŇOVÁ, A., ULRICHOVÁ, N.: Získavanie vysokoškvalifikovaných a kvalifikovaných štátnych príslušníkov tretích krajín do Slovenskej republiky [Attracting highly-qualified and qualified TCNs to the Slovak Republic]. A small thematic study of the National Contact Point of the European Migration Network in the SR. Bratislava: IOM, 2013. [[http://www.emn.sk/phocadownload/emn\\_studies/emn-sk\\_studia\\_ziskavanie\\_vysokokvalifikovanych\\_a\\_kvalifikovanych\\_tcn\\_do\\_sr.pdf](http://www.emn.sk/phocadownload/emn_studies/emn-sk_studia_ziskavanie_vysokokvalifikovanych_a_kvalifikovanych_tcn_do_sr.pdf)] (consulted on 20/1/2017)

## Illegal Employment of the TCNs in EU

|   |  |  |
|---|--|--|
|   | working conditions in Slovakia (using the websites of diplomatic missions, MoFEA SR and the respective institutions in Slovakia as well as MIC brochures) <sup>34</sup> .  |  |
| <p><b>b.3. Information support for employees from third countries</b></p> <p><i>(e.g. One-stop shop information points)</i></p>                           | <p>Yes.</p> <p>Information on the employment of TCNs is published on the MoLSAF SR website<sup>35</sup> and IOM Migration Information Centre<sup>36</sup> 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. Multilingual informational leaflets and brochures on TCN employment in Slovakia are available, too. The main services provided by the MIC include work and social counselling as well as counselling for TCNs on labour market orientation, assistance in their job search, preparing CVs and cover letters, help in communication with employers, preparation for job interviews and contacting relevant institutions as well as assistance in arranging social security benefits. Within this area, the MIC also conducts field social work<sup>37</sup>.</p> <p>TCNs can also obtain information on the administrative procedures for obtaining legal employment in the SR, on obligations to institutions and on living and working conditions in the SR – in OLSAFs (EURES stations)<sup>38</sup>.</p> | Yes. The same information which covers illegally working TCNs without a residence permit applies here. |
| <p><b>b.4. Other measures/incentives for employees</b> (incl. obligation of TCN to notify the authorities about any changes in employment conditions)</p> | <p>Yes.</p> <p>If a work permit is required by a TCN wishing to change employer, they must 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.</p> <p>If there is a requirement for submission of a confirmation of the possibility to fill a vacancy corresponding to highly-qualified employment a TCN has to report a change of employer, during the change of employment process, to the Aliens Police by submitting a work contract or a promise of an employer, as well as the decision on</p>   | No.  |

<sup>34</sup> Summary Report on the Fulfillment of Objectives and Measures of the Migration Policy for 2015. Available at: <https://www.slov-lex.sk/legislativne-procesy/-/SK/dokumenty/LP-2016-353> (consulted on 20/1/2017)

<sup>35</sup> <https://www.employment.gov.sk/sk/informacie-cudzincov/zamestnavanie-cudzincov/>(consulted on 20/1/2017).

<sup>36</sup> <http://www.mic.iom.sk/sk/praca/zamestnavanie-cudzincov-na-slovensku.html>(consulted on 20/1/2017).

<sup>37</sup> Source: <http://www.mic.iom.sk/sk/kontakt-info/o-nas.html>(consulted on 20/1/2017).

<sup>38</sup> Questionnaire by COLSAF.

## Illegal Employment of the TCNs in EU

recognition of proof of education. The new employer must report a vacancy at least 30 working days before submitting the notice about the change of employment to the Aliens Police. (The legislative changes to 1<sup>st</sup> of May 2018 assume shortening of time limit to 20 working days).

If there is a requirement for submission of a confirmation of the possibility to fill a vacancy, a TCN has to report a change of employer, during the change of employment process, to the Aliens Police and submit a new work contract. Subsequently, the department of Aliens Police of the Police Forces will send the completed form of the application for the possibility to fill a vacancy for the purpose of a single permit to reside and work, work contract, decision on the recognition of proof of education or a proof of the highest level of education achieved to the respective OLSAF.<sup>39</sup> In case a positive decision of OLSAF is delivered to DAP PF, it issues a new document "Additional Information on Employment" to the TCN, where it provides information on the new employer. In case of a change of the employer, the originally granted residence remains valid if a new contract has been submitted to the DAP PF during the announcement of the change of an employer. The new employer must report a vacancy at least 30 working days before submitting the notice about the change of employment to the Aliens Police. (The legislative changes to 1<sup>st</sup> of May 2018 assume shortening of time limit to 20 working days).

A TCN can commence employment with a new employer only after obtaining a new document containing information about the new employer and work position. OLSAF conducts the labour market tests at every change of employment and is not obliged to issue a new work permit.

If a work permit, confirmation of the possibility to fill a vacancy corresponding to highly-qualified employment or a confirmation of the possibility to fill a vacancy is not required from the TCN, s/he can, during their legal residence in the Slovak Republic, change employment without restrictions, provided that an exception under the Act on Employment Services applies to the TCN also in the new employment.

In case of termination of employment before the end of the period for which the temporary residence for the purpose of employment was granted to TCN, the Aliens Police will cancel the temporary residence for the purpose of employment, after the end of the 30-day protective period<sup>40</sup>, which starts at the day of the termination of employment. The protective period is 3 months long in the case of a Blue Card

<sup>39</sup> District Directorate of Alien Police does not ask TCN for the new proofs of education but uses the documents that are already stored in the TCNs' file.

<sup>40</sup> For the protection of the acquired legal status of TCN due to the loss of employment, Act on Residence of Aliens contains a so called "protective period" of 30 days from the termination of employment, during which it is not possible to cancel the residence permit for the lapse of this type of temporary residence purpose.

## Illegal Employment of the TCNs in EU

holder. If a TCN wants to stay in the Slovak Republic, they have to apply for a change of the purpose of stay or report the change of employer to the Aliens Police during the protective period. Their residence in Slovakia is considered to be authorized during the period of decision about the application. Termination of employment before the end of the period, for which the temporary residence for the purpose of employment was granted to the TCN, must be reported by the employer in writing to the respective OLSAF within 7 working days as well as to the competent department of the Aliens Police within 3 working days. The lapse of the residence purpose (i.e. termination of employment) must be reported, by the TCN, to the respective department of the Aliens Police within 3 working days. If they fail to do so, a fine of €300, administrative expulsion or a prohibition of residence can be imposed.

If a confirmation of the possibility to fill a vacancy is needed during employment of a TCN, the TCN applies for a temporary residence for the purpose of employment. The police department issues a residence document to the TCN, with temporary residence for the purpose of employment stated on it. Alongside this document, the Police department also issues the "Additional Information on Employment" – a document with the name, address and ID number of the employer, type of work and period of employment -- to the TCN. In case of a change of data in the document, the TCN is obliged to inform the Police department about this change within 5 working days<sup>41</sup>.

A change of employer (change of employer's ID number), transfer of place of work into another district, change of type of work or period of employment in the "Additional Information on Employment" document is only possible if a vacancy of the new employer was reported to OLSAF at least 30 working days before informing the Police department about the change of information in the document. The employer must indicate an interest to employ a TCN in the reported vacancy in the respective section of the document<sup>42</sup>.

<sup>41</sup> Source: [http://www.upsvar.sk/sluzby-zamestnanosti/zamestnavanie-cudzincov/1.-zamestnanie-statneho-prislusnika-tretej-krajiny-s-potvrdenim-o-moznosti-obsadenia-vpm.html?page\\_id=363510](http://www.upsvar.sk/sluzby-zamestnanosti/zamestnavanie-cudzincov/1.-zamestnanie-statneho-prislusnika-tretej-krajiny-s-potvrdenim-o-moznosti-obsadenia-vpm.html?page_id=363510)(consulted on 22/1/2017).

<sup>42</sup> Source: [http://www.upsvar.sk/sluzby-zamestnanosti/zamestnavanie-cudzincov/zamestnavanie-cudzincov-s-miestom-vykonu-prace-na-uzemi-slovenskej-republiky-od-1.1.2016.html?page\\_id=363495](http://www.upsvar.sk/sluzby-zamestnanosti/zamestnavanie-cudzincov/zamestnavanie-cudzincov-s-miestom-vykonu-prace-na-uzemi-slovenskej-republiky-od-1.1.2016.html?page_id=363495)(consulted on 22/1/2017).

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

*Please indicate if there are differences between the two main categories of TCNs: No.*

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

*If Yes, please describe:*

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

When conducting general checks of illegal employment, the labour inspectors focus mostly on the sectors in which there has been the highest number of illegally employed persons detected in the past as well as on the sectors that has been identified as sensitive due to assessment of the percentage, compared to the numbers of inspected natural persons, of the detected breach of ban on illegal employment.

For the selection of the inspected subjects reports from the public, former employees or third persons highlighting the breach of ban on illegal employment on specific work places as well as notifications on the posting of employees during the cross-border provision of services, carried out by the hosting employers and also data from the registry of COLSAFs about the employment of foreigners including TCNs are used as a supporting source of information.<sup>43</sup>

According to the Act on Illegal Work and Illegal Employment<sup>44</sup>, an inspection body (LI, COLSAF or OLSAFs) assesses the risk of illegal employment of irregularly staying TCNs<sup>45</sup> (i. e. without a residence permit) by regularly identifying the economic activity sectors (sensitive sectors), in which the illegal employment of TCNs concentrates.

Checking of illegal employment of TCNs is subsequently carried out especially in the sensitive sectors. Those are identified based on the number of identified cases of illegal employment of regularly staying and illegally working TCNs. The risk indicator in these sectors is the ratio of identified illegally employed persons to the overall number of inspected persons in the given sector<sup>46</sup>. Inspection bodies therefore regularly assess previous inspection findings in order to identify sectors in which the illegal employment of TCNs is likely to be most dense.

The numbers of illegally employed foreigners (EU citizens, TCNs without residence permit and with residence permit) are also evaluated in the annual informational reports on illegal work and illegal employment published by the NLI. The numbers are grouped by SK NACE; i. e. the sensitive sectors, including the prevalence of illegal employment in individual sectors, are assessed.

The NLI also prepares annual information (pertaining to the previous calendar year) about the number of inspections of illegal employment of TCNs in individual sensitive sectors, the percentage of inspected employers versus the overall number of employers in every sensitive sector and about the results of inspections conducted in individual sensitive sectors.

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

As stated above, risk assessment of illegal employment of TCNs is done by inspection bodies, i. e. LI, COLSAF and OLSAFs.

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

Inspection of illegal employment of TCNs is subsequently targeted mainly on sensitive sectors.

### **Q4a. What are the strengths and weaknesses of prevention measures of illegally employed TCNs in your (Member) State? Please reference the sources of the information provided.**

---

<sup>43</sup> Source: NLP.

<sup>44</sup> Art. (5)(a) of Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and on changes and amendments to some acts, as amended.

<sup>45</sup> Act No. 404/2011 Coll. on Residence of Aliens and on changes and amendments to Act No. 75/2013 Coll. and Act No. 480/2002 Coll. on Asylum and on the amendment and supplementation of certain Acts as amended by further regulations.

<sup>46</sup> Ad-Hoc Query on inspections to control the employment of irregular migrants.

There are no prevention measures targeted specifically at TCNs. Measures are targeted at illegal employment and illegal work in general and are mostly of a repressive nature (sanctions)<sup>47</sup>.

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

Good practices in the area of prevention of illegal employment and illegal work include providing counselling on how to effectively comply with legislation that bans illegal employment and illegal work. LIs provide free of charge counselling on legislation banning the illegal employment and illegal work to employers, natural persons (entrepreneurs), who are not employers and to employees. The counselling focuses on basic information and advice on how to effectively comply with legislation on illegal employment<sup>48</sup>.

## **Section 3: Identification of illegal employment of TCNs [maximum 7 pages]**

*This section of the Synthesis Report will aim to provide an overview of the identification practices of illegal employment of TCNs in the (Member) States. It will start with a descriptive overview of the types of national authorities involved in the identification of TCNs as well as look into specific identification measures in place and how these are carried out in practice.*

### **Q5a. Which types of *national authorities* are responsible for identification of illegally employed TCNs?**

*\*Please indicate if there are any differences in the approach to identification between the two main categories of TCNs: (i) irregularly staying and illegally working TCNs and (ii) regularly staying and illegally working TCNs.*

*\*\*Please specify if these authorities are specifically tasked to identify illegally employed TCNs or involved in general checks on illegal employment.*

According to the Act on Labour Inspection, state administration authorities, i. e. MoLSAF SR, NLI and LIs<sup>49</sup>, are responsible for labour inspection (including supervision over compliance with the legislation banning illegal work and illegal employment). MoLSAF SR governs and supervises the NLI, which in turn oversees individual LIs in individual districts and the COLSAF, which oversees individual OLSAFs.

According to the Act on Illegal Work and Illegal Employment and Act on Employment Services, inspection bodies, i. e. LIs, COLSAF, and OLSAFs, carry out the inspection of illegal work and illegal employment. The institutions are also responsible for the identification of illegally employed TCNs; however, they identify them as a part of general checks of illegal employment. Identification of illegally employed TCNs is therefore not their dedicated task. In identifying illegally employed TCNs, the authorities do not distinguish between an illegally employed TCN without a residence permit (irregularly staying and illegally working TCNs) and an illegally employed TCN with a residence permit (regularly staying and illegally working TCNs).

In the identification of illegally employed TCNs the Police Force (within the MoI SR) is also involved – most often the Bureau of the Border and Aliens Police of the Police Force Presidium with subordinate departments at the national (National Unit to Combat Irregular Migration of the BBAP PFP), regional (directorates of the Border and Aliens Police of the Police Force Presidium) and local levels. According to the Art. 75 of the Act on Residence of Aliens, a Police department is authorised to check whether the residence is authorised, the conditions of the residence are complied with, the duties of a TCN under the Act are fulfilled, and other natural persons and legal entities fulfil their duties relating to the residence under the provisions of this Act. The responsible department of the Border and Aliens Police is authorized to enter places designated for business, employment or study as well as accommodation facilities during the check. Checks in cooperation with LIs and OLSAFs focus on identification and detection of illegal work and illegal

<sup>47</sup> Questionnaire by NLI.

<sup>48</sup> Questionnaire by National Labour Inspectorate (NLI) a Ministry of Labour, Social Affairs and Family of the Slovak Republic.

<sup>49</sup> Since October 2013, also the departments of inspection of illegal employment (KOBRA) have been a part of the illegal employment inspection system. They are specialized teams of labour inspectors, who mostly focus on inspecting the compliance with ban on illegal work and illegal employment also during weekends and public holidays, in the afternoons, evenings and nights. The National Labour Inspectorate guides their work in terms of methodology.

## Illegal Employment of the TCNs in EU

employment of TCNs in the Slovak Republic, compliance of TCNs with their duties defined by the Act on Employment Services and on identification of victims of human trafficking.

Apart from these institutions, illegal employment is also encountered by employees of the Social Insurance Agency belonging under the MoLSAF SR, employees of Tax and Customs Offices belonging under the Financial Administration of the Slovak Republic, public administration employees at the Departments of Trade Business at District Offices belonging under the MoI SR, and partially also by employees of Municipal Offices during joint ventures.

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

No. There are no institutions in Slovakia that specialize in illegal employment inspection in specific sectors. COLSAF and NLI cooperate in checking illegal employment in sectors agreed upon in advance<sup>50</sup>.

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

There is no department/section within the LI targeted at checking illegal employment of TCNs, as the TCNs are detected within the general inspection of illegal employment, as stated above. A special function, which would deal with inspection of illegal employment of TCNs in specific sectors, does not exist within the LI<sup>51</sup>.

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

Cooperation between the authorities included in the inspection of illegal employment is carried out on the basis of legislation and cooperation agreements, while ad-hoc cooperation is also possible.

Cooperation among authorities inspecting illegal work and illegal employment (LI, COLSAF and OLSAFs) is defined by the Act on Illegal Work and Illegal Employment. The Act obliges them to cooperate and exchange information in the scope of their respective responsibilities.

According to the Act on Labour Inspection, the LI reports cases of illegal work and illegal employment including the facts listed in the Protocol on the Result of the Inspection, to the Social Insurance Agency, COLSAF, respective OLSAF, respective tax office and in the case of an illegally working TCN, also to a department of the Police Force. If the trading license is to be withdrawn, LI shall also notify the competent Trade Licensing Office about the repeated breach of the ban on illegal employment. In the period of 2014 – 2016 there has been 185 cases of repeated breach of the ban on illegal employment detected by the LIs.

In order to inform state administration authorities and cooperate in the inspection of illegal employment, Art. 67 of the Act on Employment Services states the obligation of the LI to notify the COLSAF and OLSAFs about detection of illegal work and illegal employment, stating the business name of the employer, their address, ID number and the date of detection of illegal employment, a list of all detected natural persons working illegally for an employer according to the first point, including the name and surname, social security number and permanent residence of the natural person as well as the date of detection of illegal work<sup>52</sup>.

The COLSAF registers the detected cases of the illegal work and illegal employment in the information system ISSZ (Employment Service Information System/ Informačný systém služieb zamestnanosti). Based on the Agreement on Cooperation between COLSAF and NLI from 9. January 2013 these data are once per week downloaded and transposed to the publicly available NLI database of persons who breached the ban on illegal employment.

The COLSAF shall, under the Act on Employment Services, report the detected cases of illegal work and illegal employment to Social Security Agency and if the case concerns an illegally employed TCN, also to the competent department of the Police Force.

The LI and the department of the Police Force obtain the information on TCNs, necessary for their work, from the COLSAF informational system<sup>53</sup>.

---

<sup>50</sup> Ad-Hoc Query on inspections to control the employment of irregular migrants.

<sup>51</sup> Questionnaire by NLI.

<sup>52</sup> Questionnaire by MoLSAF SR

<sup>53</sup> Ibidem.

## Illegal Employment of the TCNs in EU

The cooperation of the MoI SR and MoLSAF SR in the inspection of illegal employment (including checking of business entities) is governed by the Agreement on the Cooperation in the Inspection of Illegal Work and Illegal Employment between the MoI SR and COLSAF from 10 June 2013 and by the Agreement on Joint Inspection of Business Entities between the MoI SR and NLI of 30 December 2013<sup>54</sup>. Supervisory authorities and the BBAP PFP and the departments of the Aliens Police of the Police Force can also cooperate on an ad-hoc basis. The Police Force is obliged, under the Act on Labour Inspection, to offer cooperation and protection during a labour inspection, to a labour inspector, upon their request or upon the request of LI. Departments of Regional Directorates of the PF (RD PF) provide the supervisory authorities with assistance during checks under Art. 3 of Act No. 171/1993 Coll. on Police Force.

The legislation also governs cooperation with other institutions. The Statistical Office of the Slovak Republic is obliged to enable NLI and LI free of charge access to registry of economic entities. State administration bodies responsible for labour inspection also cooperate with other state administration authorities, municipalities, employees' organizations, public institutions as well as with other natural or legal persons during their work. State administration bodies, municipalities and public institutions provide, upon the request of the state administration authorities responsible for labour inspection, documents and information needed for their work.

The Social Insurance Agency, which runs a database of insured persons and savers included in the old age pension scheme, into which an employer is obliged to register an employee at the latest before the commencement of work, has an agreement with the NLI of 16 November 2012 regarding the cooperation in exchange of information from the informational system of the Social Insurance Agency on the supervision of the compliance with the ban on illegal employment of natural persons by the LI<sup>55</sup>. Social Insurance Agency and COLSAF has signed a similar agreement on cooperation.

The Financial Administration considers the facts related to possible illegal employment and illegal work during their activities related to the administration of taxes<sup>56</sup> in order to correctly levy taxes on income from employment or in order to detect tax entities, which did not fulfil their registration and reporting duty towards Tax Offices. If they detect facts suggesting a breach of labour and social law, the respective authorities are informed in the scope allowed by tax secrecy rules<sup>57</sup>.

***Q5e. Please provide statistics on the number of staff/inspectors involved in identification/inspections on illegal employment per authority and if available, per sector for 2015 (or if not available for latest available year). Please specify if the staff is specifically dedicated to identifying illegally employed TCNs or are involved in general checks on illegal employment.***

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>58</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)<sup>59</sup>.

The overall number of COLSAF and OLSAFs employees involved in checks of illegal employment amounted to 134 in 2015. The employees were not specifically dedicated to the inspection of illegally working TCNs, but involved in the general inspection of illegal employment. They most frequently participate in inspections of illegally employed TCNs within joint ventures, based on a request from District Directorates of the Police Force or of the Aliens Police of the Slovak Republic<sup>60</sup>.

Statistical data on the number of members of the Police Force (BBAP PFP) actively involved in inspections of illegal employment of TCNs in 2015 is not available<sup>61</sup>.

Data on the number of employees involved in general checks of illegal employment in 2015 for individual sectors is not available, as this is not monitored.

---

<sup>54</sup> Questionnaire by BBAP PFP.

<sup>55</sup> Informational Report on Detecting and Combatting Illegal Work and Illegal Employment in 2015. Available at [www.nip.sk/?id\\_fa=713&ins=nip](http://www.nip.sk/?id_fa=713&ins=nip) (consulted on 20/1/2017)

<sup>56</sup> Act 563/2009 Coll. on administration of taxes (tax procedure code) and on amendment and supplement of other acts, as amended by later acts Slovakia.

<sup>57</sup> Informational Report on Detecting and Combatting Illegal Work and Illegal Employment in 2015. Available at [www.nip.sk/?id\\_fa=713&ins=nip](http://www.nip.sk/?id_fa=713&ins=nip) (consulted on 20/1/2017)

<sup>58</sup> A candidate for labour inspector works alongside a labour inspector.

<sup>59</sup> Questionnaire by NLI.

<sup>60</sup> Questionnaire by MoLSAF SR

<sup>61</sup> Questionnaire by BBAP PFP.

### **Q6. What *identification measures* regarding illegal employment of TCNs exist in your Member State? (e.g. inspections; border checks; checks of premises by migration officials; other types of checks) Please describe.**

Several identification measures are used within the general inspection of illegal employment and inspection of illegal employment of TCNs, such as labour inspections in cooperation with other authorities -- joint and security-enhancing/repressive ventures/checks of business entities (by members of the Police Force and OLSAFs) and ad-hoc checks by members of the Police Force.

Labour inspection within the inspection of illegal work and illegal employment is carried out as:

- planned country-wide and regional tasks, as well as
- extraordinary (country-wide) tasks<sup>62</sup>,
- investigation of notifications from legal and natural persons,
- subsequent checking of the fulfilment of imposed measures,
- examination of events (such as accidents at work and occupational diseases),
- cooperation with other bodies<sup>63</sup>.

Inspection of persons present at the place of work of an employer is carried out as a separate task within a labour inspection. It is aimed at checking the compliance with the ban on illegal employment, but mostly it is also a part of labour inspections aimed at compliance with work legislation, health and safety regulations and regulations concerning the social legislation in transportation<sup>64</sup>.

According to the Act on Labour Inspection, an inspection by LI, COLSAF or OLSAFs is carried out in all workplaces of employers or natural persons, who are entrepreneurs and are not employers, including workplaces located in private premises and in the homes of natural persons as well as in all other places, where a home-based employee is working on an agreed upon task or a task under an agreement on work performed outside the employment relationship.

During a workplace inspection, the natural person or legal entity is, under the Act on Illegal Employment, obliged to disclose all available information, documents, statements and other documents necessary for the inspection to be carried out as well as for all the duties to be fulfilled. If a legal entity or natural person employing a TCN is involved, they are obliged to also disclose a copy of the residence permit or other permit attesting to the residence of the TCN, to the body which is carrying out the inspection of illegal work and illegal employment. An individual is obliged to prove their identity and show a document containing their social security ID number to the inspection body. They are also obliged to provide a reason for their presence at the workplace. If a TCN is involved, s/he is obliged to provide the inspection body that carries out the check of the illegal work and illegal employment with a valid residence permit or other authorisation to reside in the country.

Police officers working in departments within individual directorates of the Border and Aliens Police of the Police Force regularly execute security-enhancing/repressive ventures/checks in cooperation with LI and OLSAFs. The ventures are aimed at detection of illegal work and illegal employment; residence authorization checks; checks of residence regimen compliance; fulfilment of obligations of TCNs; prevention of free movement of persons, who could be a threat to state security, public order or public health; detection, investigation and resolving offences and other administrative delicts; searching for information on crime, related to unauthorized residence or on other types of crime; detection of forged and altered travel and other documents; detection of explosives, guns and ammunition smuggling; searches for persons and objects etc.<sup>65</sup>

The National Unit to Combat Irregular Migration of the BBAP PFP, in cooperation with responsible directorates of the Border and Aliens Police of the BBAP PFP and respective LIs, execute inspections, especially of business entities susceptible of illegally employing TCNs. Choosing entities to be inspected (which can also be involved in the crime of human trafficking for forced labour or sexual exploitation) is primarily within the scope of the competence of the NLI. Preparation of security-enhancing/repressive ventures is also based on the security situation in illegal migration and on

---

<sup>62</sup> E.g. in 2015, one country-wide check of illegal work and illegal employment was carried out under the working name "ISTOTA". It concerned all districts and took one week. It was jointly executed by NLI, LI and COLSAF. In particular, SMEs in trade and services, accommodation and food service activities and restaurants and other facilities (sensitive sectors) were checked. A total of 1,225 employer entities and 3,297 employees were inspected. Illegal employment was detected in 76 employers employing 112 persons illegally. Source: Informational Report on Detecting and Combatting Illegal Work and Illegal Employment in 2015. Available at [www.nip.sk/?id\\_fa=713&ins=nip](http://www.nip.sk/?id_fa=713&ins=nip) (consulted on 20/1/2017).

<sup>63</sup> Informational Report on Detecting and Combatting Illegal Work and Illegal Employment in 2015. Available at [www.nip.sk/?id\\_fa=713&ins=nip](http://www.nip.sk/?id_fa=713&ins=nip) (consulted on 20/1/2017)

<sup>64</sup> Ibidem.

<sup>65</sup> Questionnaire by BBAP PFP.

## Illegal Employment of the TCNs in EU

the current risk analysis of illegal migration in the Slovak Republic. During inspections, PF members focus mainly on detection of persons who are irregularly resident TCNs and on identification of the victims of human trafficking<sup>66</sup>.

Checks to detect illegal work and illegal employment can also be conducted on an ad-hoc basis by respective Police departments, i.e. based on current need, on a suspicion of potentially illegally employed or illegally working TCNs being present in a particular area, at a specific workplace<sup>67</sup>.

### **Q7. How are inspections carried out in your (Member) State?**

*\*Please provide information if any differences exist between the two main categories of TCNs: (i) irregularly staying and illegally working TCNs and (ii) regularly staying and illegally working TCNs.*

There are no differences between the two categories.

More specifically, please answer the following questions:

**Q7a. What methods are used for selecting/sampling employers to be inspected (targeted labour inspections to specific sectors/categories of TCNs)?**

Targeted labour inspections are carried out based on the assessment of sensitive sectors which received attention during labour inspections in the previous periods<sup>68</sup>. Selection of the entities to be inspected is also carried out by the LIs and supervisory bodies of OLSAFs and COLSAF, within their territorial scope and within their discretion, while they can follow the relevant recommendations (e.g. the Inspectorates are given specifications of tasks including recommendations within task planning of the NLI). The selection of entities to be inspected can be undertaken also in cooperation with the Police Force or with other institutions, i.e. the selection can be done by another public administration body. Knowledge coming from notifications or from other tasks of labour inspection can be also used in the selection. The Information System of Labour Protection (ISOP) can be also used. It contains information on whether an inspection has already been carried out in a given entity and on the type of tasks carried out there. Labour inspection can be targeted on entities, which had been inspected in the past. Regarding required tasks (such as investigation of events or acting on notifications), the entity is defined in detail.

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

As stated in Q6, labour inspections by NLI, LI and supervisory bodies of OLSAFs and COLSAF aimed at the compliance with the ban on illegal employment and illegal work are conducted within the planning of country-wide and regional tasks, extraordinary tasks, investigation of notifications from legal entities and natural persons, subsequent checking of fulfilment of imposed measures, examination of events (such as accidents at work and occupational diseases) and cooperation with other bodies. The inspections are therefore conducted based on a notification or a report, or based on an internal decision. Inspection of illegal employment of TCNs by an inspecting body is targeted mainly on sensitive sectors, which are regularly identified.

OLSAFs prepare separate plans of inspections of illegal work and illegal employment for the given year. In those plans, the number of inspections is included, however, it is not strictly defined and depends on the inspector as well as on the decision of COLSAF or OLSAFs directors.

Inspections of illegal work and illegal employment are part of control activities' plans of the CoLSAF and OLSAF for the respective calendar year.<sup>69</sup> On the initiative of the Alien Police, COLSAF's inspection authorities also implement operative joint inspections targeting illegal employment of foreigners. Moreover, inspection of illegal work and illegal employment can be also initiated based on the phone calls from citizens through a telephone line which serves for reporting abuse of a social system and illegal employment.

**Q7c. Could inspections be triggered by reporting/signals from (a) the general public (e.g. whistleblowers) and (b) from illegally employed TCNs? Is there a hotline established to signal illegal employment cases? If yes, please describe.**

Checks/inspections of illegal employment of TCNs can be conducted based on information coming from the general public or from illegally employed TCNs. Notifications and reporting, which suggest a breach in the ban on illegal

---

<sup>66</sup> Ibidem.

<sup>67</sup> Ibidem.

<sup>68</sup> Questionnaire by NLI.

<sup>69</sup> E.g. the country-wide monothematic checks on illegal employment, NEZÁBUDKA I. a NEZÁBUDKA II. (2014) and ISTOTA I. a ISTOTA II. (2015)

## Illegal Employment of the TCNs in EU

employment, can be submitted in writing, orally on record, by fax, by e-mail or by telephone, to the competent LI<sup>70</sup>, or to the NLI, as well as via a free of charge helpline at the COLSAF.

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

The NLI and individual LIs decide whether to carry out inspections of illegal employment. The subject and scope of the inspection can be, within LI, decided based on the content of the task decided by NLI, on an order or directive from a superior body, Chief Labour Inspector or a department head or coordinator. It can also be based on the request of other state or public administration authority, on the decision of labour inspector and on the contents of the notification or reporting.

The inspection activity of COLSAF and OLSAFs depends on the definition of tasks for the 1<sup>st</sup> and 2<sup>nd</sup> half of the year, is aimed at the examination of written notifications from natural persons and legal entities coming from the helpline at COLSAF, at extraordinary country-wide tasks and inspections, and depends on the decision of the head of COLSAF or the directors of OLSAFs<sup>71</sup>.

Regarding the BBAP PFP, the bureau is informed by the NLI about selected entities to be inspected. After the list of entities to be inspected is received, the BBAP PFP conducts operative inspections of the entities. Based on the results of the inspections, the BBAP PFP informs the respective LI about the date and place of a joint inspection. Joint ventures can also be planned based on the information obtained during the course of work of the parties involved in them<sup>72</sup>.

As for the involvement of the BBAP PFP in the inspection of the illegal employment of TCNs, conducting a joint inspection targeting both illegal employment and illegal work is initiated either by the BBAP PFP, NLI or COLSAF based on the information available or the need to conduct such a control. NLI selects subjects which are to be inspected based on the reports to carry out labour inspection. If such reports are not available, NLI bases its activity on the previous labour inspection practice. Consequently, NLI informs about the selected subjects the BBAP PFP. After delivering the list of selected subjects for labour inspection, the BBAP PFP units carry out operative inspection of the respective subjects. Based on the results of the operative inspections, the BBAP PFP informs the respective LI about the date and place of the joint inspection. Carrying out joint inspections is planned based on the information obtained operatively within the activity of the parties to the agreement of the relevant subjects. The involved subjects inform each other about the results of the carried out inspection.<sup>73</sup>

See also Q5a.

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

Labour inspectors gather documents, which can be used as a base to conclude the existence of employment. During inspections of illegal employment of TCNs the following are inspected: work contracts, payslips, records of working time, minutes of the information submitted, work and residence permits.

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

According to the Act on Labour Inspection<sup>74</sup>, during the inspection, labour inspectors are authorized to free and time-unlimited entry to the inspected premises and workplaces; to the necessary extent, they can also enter private property and roads; they can carry out inspections, examinations and other activities aiming at discovering, whether the ban on illegal employment and illegal work is complied with. The inspection can also request information and explanations pertaining to the implementation of legislation, records and other documents needed during the inspection from an employer, a natural person, who is an entrepreneur but not an employer, an employee and all other persons defined in the legislation; copies of those documents may also be requested. They are authorized to use technical equipment to obtain photo-, video- and sound-records needed for the labour inspection, provided that the use of those is not forbidden by specific regulations. They may also request a proof of identity from an individual present at the premises of the

---

<sup>70</sup> Labour Inspectorates contact details can be found on <http://www.safework.gov.sk>.

<sup>71</sup> Questionnaire by MoLSAF SR

<sup>72</sup> Questionnaire by BBAP PFP.

<sup>73</sup> Source: BBAP PFP.

<sup>74</sup> COLSAF and OLSAF inspectors conduct the inspections based on the Act on Illegal Work and Illegal Employment as well as on the Act n. 10/1996 Coll. on Control in State Administration, setting down the detailed rights and duties of the employees of the inspection as does the Act on Inspections for the NLI and LI inspectors.

## Illegal Employment of the TCNs in EU

employer as well as the explanation as to why that person is present there; in the case of a TCN, they may also request a residence permit or other permit allowing residence under a specific regulation.

Labour inspectors cooperate with the Aliens Police. It usually takes the form of a check with at least one labour inspector present, or alternatively -- with one Police Force member from the BBAP PFP and one Police Force member from the Bureau of Combating Organized Crime of the Presidium of the Police Force, at a previously planned time and place<sup>75</sup>. Upon a request by an inspector or LI, the Police Force is also obliged to offer cooperation and protection during labour inspection.

As stated in Q5d, COLSAF, OLSAFs and LI shall report discovered cases of illegal work and illegal employment of TCNs to a department of the Police Force. This applies to detected cases/suspicions of exploitation.

*Q7g. How often are inspections carried out in different sectors? Are inspections conducted at random intervals? If so, please give an indication of time between visits.*

Inspections of illegal employment of TCNs are conducted at random intervals.

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

Inspections of illegal employment of TCNs are conducted as on-site procedures including checks and interviews with workers (see Q7f). The labour inspector obtains the necessary background material (such as photo documentation, copies of documents, notification from an individual or alternatively witness testimony, after the commencement of administrative proceedings) or any other material proving detected facts<sup>76</sup>.

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

Several technical methods and tools, such as methodological guidelines, task planning, criteria for selection of the inspected businesses and visit reports, are used to identify illegal employment in general, i.e. including illegal employment of TCNs.

Labour inspectors carry out the inspections of the illegal work and illegal employment based on the Methodological Guideline for the Labour Inspections with the focus on the checks of the breach of ban on the illegal work and illegal employment, issued by the NLI for the purpose of unification and rationalisation of the work methods of LIs.

As stated above, NLI prepares an annual plan of country-wide tasks. The tasks are to be fulfilled by individual LIs. Extraordinary tasks can be set, too. Each task has a content focus, which includes information, recommendations and criteria regarding the selection of sites.

If shortcomings are detected regarding the inspected employer or a natural person, who is an entrepreneur but not an employer, the labour inspector is, under the Act on Labour Inspection, obliged to create a Protocol on the Results of Inspection, and review it with the employer or the person authorized by the employer, or with the natural person, who is the entrepreneur but not an employer. If no breach of legislation is detected, the record of the results of inspection is written up. Also the employees of COLSAF and OLSAFs prepare, under the Act No. 10/1996 Coll. on Control in State Administration as amended, a similar protocol on the result of inspection, including the interim, partial protocol and an annex to the protocol. Inspected persons (including TCNs) prove their identity to the interim protocol, they dictate and subsequently verify the reason of their presence at the work place by their hand-written signature, including the description of the conducted work s/he had been interrupted at by the inspecting authority. Then the inspecting authority verifies the legality of the work conducted – the inspected person is instructed on his/her right for an interpreter in case, s/he does not understand. Later in the offence procedure the inspecting authority ensures that the official interpreter is present for the hearing of the TCN.

The protocol on the result of inspection contains mainly an identification of the body conducting the inspection; names, surnames and titles of employees who conducted the inspection; time and place of the inspection; subject of the inspection and inspected period; proved findings of the inspection; list of appendices to the protocol; date of drafting the protocol and the date of informing the superordinate of the inspected entity about the protocol; hand signatures of inspecting employees and the signature of the superordinate of the inspected entity, who had been familiarized with

---

<sup>75</sup> Questionnaire by NLI.

<sup>76</sup> Ibidem.

the protocol; appendices to the protocol and the report on identified shortcomings, if a shortcoming is considered as such under a special regulation<sup>77</sup>. The inspected entity has a deadline for commenting or objecting the protocol on the result of inspection. The inspecting authority is obliged to respond in written. Detected illegal employment is supported by evidence that include the interim protocol with the signature of the inspected entity as a main evidence. Inspection is concluded by reading out and signing the minutes both by the inspected entity and inspecting authority.

### **Q9. What are the strengths and weaknesses of identification measures of illegally employed TCNs in your (Member) State? What good practices can be identified in your (Member) State in the area of identification of illegal employment? What were the particular success factors with measures that can be identified as good practices?**

The language barrier sometimes prevents identification measures aimed at checking illegally employed TCNs<sup>78</sup>.

The main issue, which does not only concern employed TCNs, is proving the claims of employees about employers paying them a part of the salary "cash in hand" -- as the claim cannot be proved at the moment of conducting the labour inspection without specific evidence. A claim of the employee, which cannot be supported by evidence, is rebutted by with a claim of the employer denying such practices<sup>79</sup>.

The persistently low number of labour inspectors along with the fact that, besides the inspection of illegal employment and illegal work, they are also responsible for work safety prevent the inspectors from dealing with the inspected subjects in a more dignified manner.<sup>80</sup> Also the low number of the inspection employees of the COLSAF and OLSAFs is problematic as conducting the inspections on the breach of ban on illegal work and illegal employment constitute approx. 15-30% of the overall amount of the conducted external and internal inspections.<sup>81</sup>

Cooperation with the Aliens Police can be considered good practice<sup>82</sup>. Another effective means used to improve the efficiency and speed of inspections of illegal work and illegal employment is the electronic access to the database of insured persons and savers within the old age pension scheme run by the Social Insurance Agency – The LI and COLSAF can access the database during the inspection of natural persons present on the premises of the inspected entities. Labour inspectors and COLSAF examiners also have technical equipment and GRID cards, which give them access to information at the time of inspection. Such inspection can be conducted, in case of the LI, without inspectors being physically present at the site. The departments of inspection of illegal employment - KOBRA (within LI), which were created in 2013 and since, have been working not only during regular office hours, but also in the afternoons, evenings, nights and during weekends and public holidays which has contributed significantly to the results of the inspections<sup>83</sup>.

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

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

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

| <b>Sanctions for employers</b> | <b><u>Irregularly staying and illegally working TCNs</u></b><br>*Please indicate if this sanction is imposed in your (Member) State (Yes/No), and if yes in which cases<br>** Please provide reference to the specific legal provisions | <b><u>Regularly staying and illegally working TCNs</u></b><br>*Please indicate if this sanction is imposed in your |
|--------------------------------|---|--|
|--------------------------------|---|--|

<sup>77</sup> Act No. 10/1996 Coll. on Control in State Administration, as amended.

<sup>78</sup> Questionnaire by NLI.

<sup>79</sup> Source: Report on the result of inspections of selected tools of active labour market policy, illegal work and illegal employment. Available at <https://www.nku.gov.sk/documents/10157/1638fd6b-1d95-4062-99a4-68602e438ae7> (consulted on 25/1/2017)

<sup>80</sup> BEDNÁRIK R.: Potieranie nedeklarovanej práce. Analýza opatrení v krajinách EÚ a na Slovensku. Správa z II. etapy riešenia VÚ Nedeklarovaná práca na Slovensku. [Fighting undeclared work. An analysis of measures taken in the EU countries and in Slovakia. A report from the II. stage of the "Undeclared work" research task.] Bratislava: Institute for Labour and Family Research, 2015. [[http://www.ceit.sk/IVPR/images/IVPR/vyskum/2015/Bednarik/bednarik\\_potieranie\\_2015.pdf](http://www.ceit.sk/IVPR/images/IVPR/vyskum/2015/Bednarik/bednarik_potieranie_2015.pdf)] (consulted on 25/1/2017)

<sup>81</sup> Source: MOLSAF SR.

<sup>82</sup> Questionnaire by NLI.

<sup>83</sup> Informational Report on Detecting and Combatting Illegal Work and Illegal Employment in 2014 and 2015. Available at: [http://www.nip.sk/?id\\_af=126&ins=nip](http://www.nip.sk/?id_af=126&ins=nip) (consulted on 25/1/2017)

## Illegal Employment of the TCNs in EU

|  |  | <i>(Member) State(Yes/No),<br/>and if yes in which cases<br/>** Please provide reference<br/>to the specific legal<br/>provisions</i>   |
|--|--|---|
| <p>Fines (e.g. fines imposed per illegally hired employee)</p> | <p>Yes.</p> <p>Inspection bodies are obliged to impose a fine if the ban on illegal employment is breached.</p> <p>Pursuant to Art. 68a of the Act on Employment Services and Art. 19(2a,1) of the Labour Inspection Act, COLSAF and Labour Offices shall impose a fine on the employer (legal entity) or natural person if they breach the ban on illegal employment as provided in the Act on Illegal Work and Illegal Employment amounting to €2,000 – €200,000; if the number of illegal employees in question exceeds one, the minimum fine is €5,000.</p> <p>When imposing a fine, the seriousness of the identified deficiencies and their consequences, repeated identification of the same deficiency, and if the case is related to the ban on illegal employment, also the number of illegal employees is taken into consideration.</p> <p>The fine can be imposed by COLSAF or OLSAFs within one year after the breach of the obligation was detected, however, within up to three years since the day it was last breached. LI can impose the fine up to two years after the protocol was examined, and three years after the obligation was last breached.</p> <p>Pursuant to the Act on Illegal Work, a legal entity or natural person cannot be fined for illegal employment if the inspected entity has already been fined by another authority authorized to do so by the special regulations.</p> <p>Pursuant to the Act on Residence of Aliens, if an employer fails to provide a written notice about terminating the employment of a TCN in three working days, a fine of up to €3,300 can be imposed on them.</p> <p>A fine in the same amount can be imposed on a legal entity or natural person (individual-entrepreneur) who prevented the Police from performing the inspection, and also a legal entity or natural person (individual-entrepreneur), who provided false, incomplete or misleading information in their application to verify an invitation, or provided false or altered documents, or a document belonging to another person.</p> <p>The fine can be imposed within one year after the breach of the obligation was detected, however, it can be imposed within three years since the day it was breached at the latest. In calculating the amount of fine, seriousness, duration, and consequences of illegal actions, repeated breach of obligation if applicable, and the number of obligations breached are taken into consideration.</p> <p>Pursuant to Art. 251 of Criminal Code (see the paragraph below) and Act No. 91/2016 Coll. on Criminal Liability of</p> | <p>Yes. The same information as listed in the part dealing with illegally employed TCNs without a residence permit, except for the crime of illegal employment as provided in Art. 251a of the Criminal Code which is not applicable to persons with legal residence.</p> |

## Illegal Employment of the TCNs in EU

|  |   |  |
|--|---|--|
|  | Legal Entities, the penalty for the crime of illegal employment committed by a legal entity amounts to €1,500 – €1,600,000.   |  |
| Imprisonment of employers ( <i>Please indicate the aggravating circumstances</i> ) | <p>Yes.</p> <p>Pursuant to Art. 251a(1) of the Criminal Code, any offender who illegally employs a person who resides in the territory of the SR thus breaching a generally binding legal regulation, and this offender has been penalized for the same action in the last 24 months, shall be liable to a term of imprisonment of maximum 2 years.</p> <p>The offender shall be liable to a term of imprisonment of six months to three years if they illegally employed a person who resides in the territory of the SR thus breaching a generally binding legal regulation regardless of whether the offender has already been penalized for a similar action: if the victim of the crime is a protected person or acting in a more serious manner occurred; if there is an obvious disproportion between the working conditions of legally employed persons and those of the victim that impacts their health and safety; or if the victim has been subjected to human trafficking.</p>   | No.  |
| Confiscation of financial gains (e.g. share of profit or revenue of the employer)  | No.   | No.  |
| Ineligibility for public contracts   | <p>Yes.</p> <p>Provision of a subsidy from the state budget, aid and support from the funds of the European Union or participation in public procurement are only available to entities that have not breached the ban on illegal work and employment.</p> <p>State budget subsidies are only available to applicants who have not breached the ban on illegal employment in the last three years. The subsidy applicant must prove they met the requirements also by submitting a confirmation issued by the competent LI (not older than three months) that they have not breached the ban on illegal employment. Legal entities and natural persons (entrepreneurs) who have breached the ban on illegal employment of TCNs are obliged to return the subsidy provided within 12 months before the day the decision on imposing the fine for the breach of the ban on illegal employment in and 30 days after the decision enters into force. Aid from the European funds shall not be provided to an applicant who breached the ban on illegal employment for five years.</p> <p>Upon request, the LI issues a confirmation that the applicant has not breached the ban on illegal employment within seven days from submitting the request. It confirms that the applicant has met the requirements provided in the relevant legislation (e. g. Act No. 523/2004 Coll. on Budget Rules of the Public Service and of Change and Amendment of Some</p> | Yes. The same information as listed in the part dealing with illegally employed TCNs without a residence permit applies. |

## Illegal Employment of the TCNs in EU

|  |  |  |
|--|--|--|
|  | Acts; Act No. 528/2008 Coll. on the Aid and Support Provided from the EU Funds and in Accordance with the Framework Agreement as amended).   |  |
| Temporary or definitive closure of company or worksite | <p>Yes.</p> <p>Pursuant to Art. 1(3)(3) of Act No. 82/2005 on Illegal Work and Illegal Employment as amended, repeated breach of the ban on illegal employment is considered an especially serious breach of the ban based on which the trading licence shall be withdrawn from the offender.</p> <p>If the trading licence is to be withdrawn, LI shall notify the competent Trade Licensing Office about the breach of the ban on illegal employment.</p> <p>The competent local Trade Licensing Office which registers the given legal entity or natural person shall be responsible for the temporary or permanent closure of the establishment in question.</p> <p>Pursuant to Art. 58(4), the person from whom the trading licence has been withdrawn may not request a new one earlier than three years after the decision on the withdrawal of the business licence enters into force.</p> <p>Pursuant to Art. 12 of Act No. 91/2016 Coll. on Criminal Liability of Legal Entities, the court can penalize the offender by withdrawing their status of a legal entity residing in the SR, if their activity was completely or mostly of criminal nature, which also applies in case the crime of illegal employment was committed as provided in Art. 251a of the Criminal Code.</p> | Yes. The same information as listed in the part dealing with illegally employed TCNs without a residence permit, except for the crime of illegal employment as provided in Art. 251a of the Criminal Code which is not applicable to persons with legal residence. |
| Confiscation of equipment/property                     | No.  | No.  |
| Suspension of activity                                 | <p>Yes.</p> <p>Pursuant to Art. 16 of Act No. 91/2016 Coll. on Criminal Liability of Legal Entities, the court can penalize the offender by disqualification for a period of one to ten years if the legal entity has been convicted of a crime related to their activity (also applies in case the crime of illegal employment was committed as provided in Art. 251a of the Criminal Code). The penalty of disqualification means that the legal entity is prohibited from pursuing one or more business objectives or activities that require special permits, or which are subject to a special regulation.</p>  | No.  |
| Withdrawal of trading license/disbarment of activity   | <p>Yes.</p> <p>Pursuant to Art. 1(3)(3) of Act No. 82/2005 on Illegal Work and Illegal Employment as amended, repeated breach of the ban on illegal employment is considered an especially serious breach of the ban based on which the trading licence shall be withdrawn from the offender.</p>  | Yes. The same information as listed in the part dealing with illegally employed TCNs without a residence permit applies.   |

## Illegal Employment of the TCNs in EU

|  |  |   |
|--|--|---|
|  | <p>If the trading licence is to be withdrawn, LI shall notify the competent Trade Licensing Office about the breach of the ban on illegal employment.</p> <p>Pursuant to Art. 58(4), the person from whom the trading licence has been withdrawn may not request a new one earlier than three years after the decision on the withdrawal of the business licence enters into force.</p>  |   |
| <p>Withdrawal of residence permit if the employer is a TCN</p> | <p>The Act does not state this explicitly, however, Art. 82(2)(o) of the Act on Residence of Aliens states that a Police department can administratively expel a TCN if they otherwise seriously or repeatedly breached the generally binding legal regulations. In such case, illegal employment can be classified as a serious infringement of the law.</p> <p>If there is an illegally employed TCN identified during the joint inspection in the territory of the SR, who resides there unlawfully, APD PF will examine such person in relation to his/her unauthorised stay according to Art. 82 (1)(b) of the Act on Residence of Aliens. It means that in relation to illegal work a TCN can be expelled due to serious infringements of the law or due to repeatedly infringing the law, however, this has to be sufficiently backed. In practice it means that on the spot only a suspicion that the person is being illegally employed arises. The LI shall in such case decide and finish the proceeding about if it was illegal employment or illegal work and announce this finding to relevant authorities (APD PF), i.e. by sending a protocol to APD PF, which will clearly state that illegal employment of a TCN occurred. In this case employer is examined for illegal employment and a TCN for illegal work. According to Art. 82 (2)(o) the TCN will be subsequently expelled.</p> | <p>Yes. The same information as listed in the part dealing with illegally employed TCNs without a residence permit applies.</p>   |
| <p>Other sanctions</p>   | <p>Yes.</p> <p>Pursuant to the Labour Inspection Act, NLI maintains a centralized public list of natural persons and legal entities who have breached the ban on illegal employment in the last five years<sup>84</sup>; it provides their business name, place of business, residence, identification number, and the dates on which the breach was detected and the decision on imposing the fine entered into force. The register has been available since March 2010. Being listed in a public list can damage the reputation of the employer and make it harder for them to find new business partners, customers, or employees.</p> <p>Pursuant to Art. 251a of the Criminal Code and Art. 20 of Act No. 91/2016 Coll. on Criminal Liability of Legal Entities, the legal entity can be punished by publishing their sentence or its part if it is needed to notify the public about the sentence due to the circumstances or seriousness of the crime, or if it is necessary for protecting the health and safety of humans, animals, or property. The punishment of making the sentence public means that the convicted legal entity publishes their conviction or its part determined by the court at their own cost in the Trade Journal and in one</p>  | <p>Yes. The same information as listed in the part dealing with illegally employed TCNs without a residence permit, except for the crime of illegal employment as provided in Art. 251a of the Criminal Code which is not applicable to persons with legal residence.</p> |

<sup>84</sup> Pozri bližšie: <http://www.nip.sk/register/>

## Illegal Employment of the TCNs in EU

|  |  |  |
|--|--|--|
|  | <p>or more establishments or departments pertaining to the legal entity (if determined so by the court) and list the name and residence of the convicted legal entity. Data that would connect an individual who is different from the convicted legal person must be removed before the sentence is published. The court also determines the deadline by which the sentence is to be published.</p> |  |
|--|--|--|

**Q11a.** *Do the procedures differ if the employer did not intentionally hire irregular worker? How is this established? What if the residence permit of the employee was revoked?*

The relevant legal regulation does not distinguish between intentional and unintentional breach of the ban on illegal employment<sup>85</sup>. However, according to the Act on Illegal Work, legal entities or natural persons are not responsible for the illegal employment of a TCN who resides in the territory of the SR thus breaching the special regulation and performs dependent work if they met the requirements provided in the special regulation (if they employed a TCN in compliance with the Act on Employment Services), without being aware of the fact that the employee's residence permit or other similar document was forged. According to the Act, the employer must also fulfil the following obligations: require the TCN to submit a valid residence or other document proving authorisation to stay as provided in the special regulation, and keep a copy of this document during the whole employment period.

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

Pursuant to Art. 59(3) of the Labour Code, the employment of a foreigner or a person without any nationality, if not terminated otherwise, is terminated on the day their residence in the territory of the SR expires as provided in the decision on withdrawal of their residence permit in effect; or when the court order expelling the offender from the territory of the SR, or the period during which the person was legally permitted to stay in the territory has expired.

According to the Act on Employment Services, the employer can only employ a TCN if they are a holder of an EU Blue Card; they have been granted temporary residence for the purpose of employment based on a confirmation of the possibility to fill a vacancy; they have a work permit and temporary residence for the purpose of employment, unless special legislation provides otherwise; they have a work permit and temporary residence for the purpose of family reunion, a work permit and residence permit of a TCN with the status of long-term resident of an EU Member State, unless special legislation provides otherwise; or if they meet the requirements provided in Art. 23a of the Act.

If any of the aforementioned permits or the Blue Card expires, the work permit for the TCN also expires and they can no longer be employed. According to the Act on Residence of Aliens, the competent Police department notifies the TCN on the expiration of their temporary residence (for the purpose of employment, family reunion, or temporary residence for a long-term resident of a different member state) or Blue Card in written or electronic form within three working days. By the same deadline, the competent Police department notifies also COLSAF (in the case of Blue Card expiration) and the competent Labour Office (in the case one of the types of temporary residence expires).

**Q12a.** *Does legislation in your (Member) State provide for criminal sanctions for: a/b/c/d/e (as per Art.9.1 of the Employer Sanctions Directive 2009/52) or domestic equivalent?*

In the SR, it is also possible to penalize an employer who is not a legal entity for the crime of illegal employment. The possibility has been recently introduced by Act No. 91/2016 Coll. on the Criminal Liability of Legal Entities.

| Criminal sanctions for employers                           | Description  |
|--|--|
|  | <p><i>*Please indicate if this sanction is imposed in your (Member) State, and if yes in which cases</i></p> <p><i>** Please provide reference to the specific legal provisions</i></p>  |
| (a) the infringement continues or is persistently repeated | <p>Yes.</p> <p>Act No. 300/2005 Coll. Criminal Code as amended (hereinafter referred to as Criminal Code).</p> <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</p> |

<sup>85</sup> Questionnaire by NLI.

## Illegal Employment of the TCNs in EU

|   |  |
|---|--|
|   | <p>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 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 evocating 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> |
| <p>(b) infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals</p> | <p>Yes.</p> <p>Criminal Code</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 against several persons.</p> <p>Art. 127(12): For the purposes of this Act, several persons shall mean at least three persons.</p>  |
| <p>(c) the infringement is accompanied by particularly exploitative working conditions</p>  | <p>Yes.</p> <p>Criminal Code</p> <p>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 penalized 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>   |

## Illegal Employment of the TCNs in EU

|   |   |
|---|---|
| <p>(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings</p> | <p>Yes.</p> <p>Criminal Code</p> <p>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>(e) the infringement relates to the illegal employment of a minor</p>  | <p>Yes.</p> <p>Criminal Code</p> <p>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> <p>Art. 139(1)(a): A protected person shall mean a) a child.</p> <p>Art. 127(1): For the purposes of this Act, a child shall mean a person under eighteen years of age unless he has reached the legal age earlier.</p> |

Source: Correlation table on EU Legislation available at <http://www.rokovania.sk/File.aspx/Index/Mater-Dokum-155686> (consulted on 25/1/2017)

**Q12b.** *Has your Member State amended legislation on sanctions for illegally employed TCN since July 2014<sup>86</sup>? If so, please provide details.*

Yes. The SR amended the legislation related to sanctions for illegal employment of TCNs.

The new legislation related to illegal employment after 2014 is a ban on accepting work or service, together with related sanctions, effective from 18 June 2016. In connection to this amendment (the only one after July 2014), within the Act No. 82/2005 Coll. on Illegal Work and Illegal Employment Art. 7b(3-10) (Responsibility for Illegal Employment) were amended. All amended provisions are outlined in Q12b, Q17, Q19b, Q20.

Act No. 351/2015 Coll. on Cross-border Cooperation on posting employees to perform work concerning the provision of services as amended which has been valid from 5 December 2015 and entered into force on 18 June 2016 introduced several changes into the Act on Illegal Work (see also Q19b).

Art. 7b was amended by Paragraphs 7 to 10 as follows:

(7) Pursuant to Paragraph 5, an inspection body shall impose a fine of €2,000 to €200,000 on a natural person or legal entity (business) if they breach the ban to accept work or service; if the number of legal entities exceeds two, the minimum fine is €5,000.

(8) The fine as provided in Art. 7 can be imposed up to two years after the protocol was examined, and up to three years after the obligation was last breached.

(9) The fine as provided in Art. 7 cannot be imposed on a legal entity or natural person (individual entrepreneur) who has already been legally fined for the same offence by another inspection body.

(10) The fine shall represent state budget revenue.

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 irregularly staying TCNs specifies the following generally binding legal regulations incorporated into the legislation of the SR: Act No. 404/2011 Coll. on Residence of Aliens and on changes and amendments to some acts, Act No. 5/2004 Coll. on Employment Services and on changes and amendments to some acts, Act No. 523/2004 Coll. on Employment Services and on changes and amendments to some acts, Act No. 528/2008 Coll. on Aid and Support provided by the EU Funds and amendments to some acts, Act No. 82/2005 Coll. on

<sup>86</sup> The European Commission issued an implementation report on the Employers' Sanctions Directive on 22 May 2014. This EMN study aims to examine whether/and if so – to what extent there has been new legislation/practices following that date.

Illegal Work and Illegal Employment and on changes and amendments to some acts, Act No. 25/2006 Coll. on Public Procurement and on changes and amendments to some acts, Act No. 125/2006 Coll. on Labour Inspection and on changes and amendments to Act No. 82/2005 on Illegal Work and Illegal Employment and on changes and amendments to some acts, and also the aforementioned Act No. 300/2005 Coll. Criminal Code as amended<sup>87</sup>. Act No. 91/2016 Coll. on Criminal Liability of Legal Entities entered into force on 1 July 2016 introducing the possibility to also punish a legal entity for the criminal offence of illegal employment.

**Q13. What are the strengths and weaknesses in sanctioning employers who illegally employed TCNs in your (Member) State? What good practices can be identified in your (Member) State in the area of sanctions for employers? What were the particular success factors with measures that can be identified as good practices? Please reference the sources of the information provided.**

In evaluating the responsibility for illegal employment, it is not important whether the sanctioned employer did so on purpose or not, the principle of objective responsibility for the administrative offence is applied, which can be considered a strong point of the sanctioning system. Besides financial sanctions, the existence of a public central register of natural persons and legal entities who have breached the ban on illegal employment in the last five years also represents an effective measure in combating illegal employment. The related requirement regarding the provision of a confirmation that the employer has not breached the ban on illegal employment which determines whether the employer can apply for public funding or not represents another measure<sup>88</sup>.

Inspections and fines may seem discouraging, however, the technical, HR, and financial capacity of inspections in fact require strengthening.<sup>89</sup>

## Section 5: Outcomes for TCNs found to be working illegally [maximum 5-10 pages]

*This section of the Synthesis Report will aim to identify the possible outcomes and measures for TCNs found to be working illegally in the (Member) States. Hypothetical scenarios 'case studies' are presented under Question 21.*

**Q14. In the event that an irregularly staying and illegally working TCN is detected, please describe in which situations s/he is:**

**Q14a.** *issued with a return decision. Please also describe the procedure after an illegally employed TCN is detected and how is this communicated to immigration authorities.*

If the labour inspection identifies an illegally employed TCN without a residence permit, the fact must be sufficiently proved since the inspection on the spot gives only a ground for suspicion that the person is being employed illegally. The competent LI, Labour Office or COLSAF must finish proceedings to find out whether illegal employment or illegal work has factually occurred<sup>90</sup>. Inspection bodies are consequently obliged to notify the several other authorities<sup>91</sup> including the Aliens Police.

The LI sends a protocol on illegal employment/illegal work of a TCN to the competent Aliens Police Department. The competent Aliens Police Department consequently acts and begins the process of administrative expulsion.

The Border and Aliens Police forces examine the TCN with regard to his/her unauthorised residence. In terms of illegal work, a TCN can be administratively expelled if they seriously or repeatedly breached generally binding legal regulations.

<sup>87</sup> The Correlation Table regarding the EU Legislation is available at <http://www.rokovania.sk/File.aspx/Index/Mater-Dokum-155686> (consulted on 25/1/2017).

<sup>88</sup> Questionnaire by NLI.

<sup>89</sup> BEDNÁRIK R.: Potieranie nedeclarovanej práce. Analýza opatrení v krajinách EÚ a na Slovensku. Správa z II. etapy riešenia VÚ Nedeclarovaná práca na Slovensku. [Fighting undeclared work. An analysis of measures taken in the EU countries and in Slovakia. A report from the II. stage of the "Undeclared work" research task.] Bratislava: Institute for Labour and Family Research, 2015. [[http://www.ceit.sk/IVPR/images/IVPR/vyskum/2015/Bednarik/bednarik\\_potieranie\\_2015.pdf](http://www.ceit.sk/IVPR/images/IVPR/vyskum/2015/Bednarik/bednarik_potieranie_2015.pdf)] (consulted on 25/1/2017)

<sup>90</sup> Questionnaire by BBAP PFP.

<sup>91</sup> For more detailed information see Q5a.

## Illegal Employment of the TCNs in EU

Since during the administrative expulsion proceedings regarding the TCN with an unauthorised stay there is a risk of absconding<sup>92</sup>, the TCN can be detained. The TCN can also be detained if they avoid or hamper the preparation of their administrative expulsion or the removal process.

However, the LI practical experience shows that if a TCN has already been administratively expelled due to an unauthorised residence, it is impossible to complete the legal proceedings regarding their illegal work in the territory of the SR<sup>93</sup>.

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

As provided in Q14a, the competent Police Department can administratively expel a TCN, if they have an unauthorised stay or otherwise seriously or repeatedly breached the generally binding legal regulations. If the person has the relevant travelling documents, in the proceedings on administrative expulsion, they can be issued with a removal period and thus can travel within voluntarily departure. However, this does not apply if there is a lawful reason for their detention. According to the Act on Residence of Aliens, the competent Police Department does not determine a removal period in the decision on administrative expulsion in case there is a risk of TCN's absconding or a suspicion that the TCN will try to hamper the execution of the decision on administrative expulsion, especially if their identity cannot be established, they can be detained, or if they pose a threat to the state security, public order, public health, or rights and liberties of other people.

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

Pursuant to the Act on Residence of Aliens, the competent police department shall decide whether the TCN will be prohibited from entering the SR or all MS if the TCN failed to leave the country by the deadline provided in the decision on administrative expulsion. It does not apply if they have already been prohibited from entering by the decision on administrative expulsion. If the Police department does not determine a legal departure deadline in the decision on administrative expulsion, the TCN shall be automatically prohibited from entry.

If the TCN resides in the SR illegally or otherwise seriously or repeatedly breached generally binding legal regulations, the Police department can prohibit them from entering the country for the period of one to five years (in the case of illegal residence), or one to three years (in the case of serious or repeated breaching of generally binding legal regulations).

I. e. if there is evidence a TCN resided and worked in the territory of the SR illegally, they have seriously or repeatedly breached the generally binding regulations, pursuant to Art. 82(3) of Act on Residence of Aliens, they may be prohibited from entering the country for the period of one to five years.

In calculating the prohibition period, the Police department specifically takes into account whether the TCN has already been expelled or entered the territory of the SR during a prohibition period.

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

COLSAF and OLSAFs as inspection bodies are competent to impose a fine for illegal work. According to Act on Illegal Work, illegal work is considered an offence punishable by a fine up to €331.

The sanction for the offence of illegal work is therefore not imposed obligatorily in contrast to the sanction for illegal employment, therefore LI does not use it. COLSAF a OLSAFs also rarely impose sanctions on illegally employed TCNs. Between 2014 and 2016, only one TCN illegal worker was sanctioned by the fine amounting to €200<sup>94</sup>.

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.

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

According to Art. 88 of Act on Residence of Aliens, an illegally employed TCN who is not a holder of valid residence permit in the SR can be detained. The reasons stated in Q14a apply to the detention of a TCN who resides in the SR irregularly without being illegally employed as well as to a TCN who has been illegally employed. Whether a TCN

---

<sup>92</sup> According to the Act on Residence of Aliens, the risk of absconding of a TCN shall mean the condition when it can be anticipated, based on the reasonable apprehension or direct threat, that the TCN will escape or hide especially if it is impossible to identify them immediately, if they have no residence permit pursuant to this Act, or if there is a threat of their entry prohibition for a period of more than three years.

<sup>93</sup> Questionnaire by BBAP PFP.

<sup>94</sup> Questionnaire by NLI and COLSAF.

## Illegal Employment of the TCNs in EU

performed illegal work or they are suspected to having done so in no way affects whether they will or will not be detained<sup>95</sup>.

### Q14f. *receives work permit*

The relevant Slovak legislation does not provide the opportunity to grant a work permit to an illegally employed TCN who is not a holder of residence permit in the SR. LI does not tolerate any kind of illegal work<sup>96</sup>.

### Q14g. *receives residence permit*

A TCN who resides in the territory of the SR irregularly cannot apply for a residence permit in the SR. Pursuant to Art. 58 of Act on Residence of Aliens it is possible for them to apply for temporary tolerated stay while the relevant reasons last. However, a decision on administrative expulsion must be issued first<sup>97</sup>.

Pursuant to the Act on Residence of Aliens, the competent police department shall grant a tolerated stay to a TCN if there is no reason to reject their application, if there is a reason due to which they cannot be administratively expelled as provided in Paragraph 81 of the Act, or if their departure is impossible or serves no purpose. See also Q14h.

If requested by a law enforcement authority, the Police department can grant tolerated stay to a TCN who has been illegal employed under especially exploitative working conditions, or to an illegal employed minor, if the presence of the TCN in question is necessary for the purposes of criminal proceedings. Tolerated stay can be granted for 180 days and extended by further 180 days repeatedly until the criminal proceedings are finished, or until the TCN is paid the due amount of arrears for the work they have performed. The law enforcement authority or a person authorized by the Ministry of Interior of the SR shall inform the TCN on the possibility and conditions upon which they can be granted tolerated stay as well as their rights and responsibilities resulting from it.

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

A TCN identified as a victim of human trafficking who is at least 18 years old can decide whether they want to request tolerated stay for trafficked human beings within the process of forced return. They shall be informed on the possibility and conditions upon which they can be granted tolerated stay as well as their rights and responsibilities resulting from it. They shall be also informed on the possibility to join the Support and Protection of Victims of Trafficking in Human Beings programme<sup>98</sup>. A TCN who is a victim of human trafficking and who is at least 18 years old is eligible for a maximum period of 90 days of tolerated stay during which they can decide whether they wish to cooperate with the law enforcement authorities in order to investigate the crime related to human trafficking. A person authorized by the Ministry of Interior of the SR can request a further extension of 30 days. Granting of tolerated stay during this period does not depend upon the willingness to cooperate with the Police. However, further granting/extension of tolerated stay does depend upon the decision of the TCN to cooperate with law enforcement authorities. Pursuant to the Act on Residence of Aliens, the Police department grants residence to a TCN who is a victim of human trafficking and who is at least 18 years old for at least 180 days with the possibility of extension, if their presence in the territory of the SR is necessary for the purpose of criminal proceedings. However, the Police department shall not grant tolerated stay if the applicant did not cease or even voluntarily renewed their communication with the persons suspected of having committed the crime of human trafficking.

The Police department shall decide whether to grant tolerated stay or a request for its extension in 15 days after the request is submitted to the Police department. After all legal requirements are fulfilled, the legislation of the SR allows the TCNs who are victims of human trafficking and have been granted tolerated stay to also apply for temporary or permanent residence in the territory of the SR.

### Q14i. *Other sanctions/outcomes*

N/A

## **Q15. In the event that a regularly staying and illegally working TCN is detected, please describe in which cases:**

<sup>95</sup> Questionnaire by BBAP PFP.

<sup>96</sup> Questionnaire by NLI.

<sup>97</sup> Questionnaire by BBAP PFP.

<sup>98</sup> For more detailed information see KUBOVIČOVÁ, K.: Identifikácia obetí obchodovania s ľuďmi v procese medzinárodnej ochrany a nútených návratov v Slovenskej republike. Malá tematická štúdia Národného kontaktného bodu Európskej migračnej siete v Slovenskej republike [Identification of Victims of Trafficking in Human Beings in International Protection and Forced Return Procedures in the Slovak Republic. A small thematic study of the National Contact Point of the European Migration Network in the SR]. Bratislava: IOM, 2013. [[https://www.emn.sk/sk/studie-emn/item/download/1024\\_da56a4686a7ac221fbc743d06a7b38f6.html](https://www.emn.sk/sk/studie-emn/item/download/1024_da56a4686a7ac221fbc743d06a7b38f6.html) ]

### **Q15a.** *s/he can lose their residence rights*

If a regularly staying and illegally employed TCN is identified during an inspection, their residence permit can be withdrawn. 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. E. g. should the TCN who is a holder of temporary residence be administratively expelled, this permit would be legally withdrawn<sup>99</sup>.

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

The relevant Slovak legislation does not provide the possibility to grant an illegally employed TCN a work permit even though they hold a valid residence permit. As stated previously, illegal work shall not be tolerated<sup>100</sup>.

### **Q15c.** *fined*

See Q14d.

### **Q15d.** *detained*

According to Art. 88 of Act on Residence of Aliens an illegally employed TCN who is a holder of residence permit may be detained if a reason for their administrative expulsion has been identified.

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

An illegally employed TCN who is a holder of a residence permit may be administratively expelled. If illegal work was provably performed, it is possible to administratively expel the offender based on the fact that they performed a different activity than declared in their documents (temporary residence permit, visas) or if they have otherwise seriously or repeatedly breached the generally binding legal regulations. As mentioned previously, if the offender is a holder of a temporary residence permit and they have been administratively expelled, this permit is automatically cancelled.

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

N/A

## **Q16. What are the consequences for TCNs who have temporary or permanent residence permit in one EU country and is illegally employed in your (Member) State?**

Performance of illegal work is considered an offence in the SR. This offence is sanctioned by a fine up to €331. If a TCN who is a holder of residence permit in another EU MS repeatedly commits this offence or they have otherwise breached the generally binding legal regulations of the SR in the past, they may be administratively expelled due to performance of illegal work, and they may be prohibited from entering the SR for a period of 1 to 3 years.

If the TCN is a holder of a residence permit in another EU MS and they perform illegal work in the SR, the competent Police department shall contact the authorities of the MS which granted the TCN the residence permit and notify them that this person will be administratively expelled from the territory of the SR. Specific circumstances in each case are taken into account. Either the TCN is expelled from the SR into the territory of the MS which has granted them residence, if the MS agrees to it, or the MS cancels their permit, too, in accordance with the relevant legislation. Such cases are very specific in terms of the type of residence permit, and family and private life are also taken into consideration as well as whether the person has already breached any regulations of the MS, etc.<sup>101</sup>

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

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

*(i) outstanding remuneration*

---

<sup>99</sup> Questionnaire by BBAP PFP.

<sup>100</sup> Questionnaire by NLI.

<sup>101</sup> Questionnaire by BBAP PFP.

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

Art. 7a of Act No. 82/2005 Coll. on Illegal Work provides that the employer (natural person or legal entity) who was fined for breaching the ban on illegal employment of a TCN who is not a holder of residence permit shall pay additional payments – specifically, the unpaid wage to the person they employed illegally. The amount in question shall be transferred to the country to which the illegal employed person returned or was administratively expelled, as well as taxes and levies related to social and health insurance<sup>102</sup>.

If a legal entity or natural person on whom a fine has been imposed due to the breach of the ban on illegal employment of a TCN without a residence permit, or the illegally employed natural person proves otherwise, the amount of arrears related to their reward shall equal to the minimum salary pursuant to the relevant regulation<sup>103</sup>, or the salary agreed upon in the collective agreement for a comparable employee in case the collective agreement determines the salary to be higher than the minimum monthly salary.

If a legal entity or natural person on whom a fine has been imposed due to the breach of the ban on illegal employment of a TCN without a residence permit, or the illegally employed natural person proves otherwise, the calculation of amount of arrears related to their reward shall be based on the presupposition that the employment lasted three months.

According to Art. 7 of the Act on Illegal Work, the responsibility for additional payments can be also transferred to other persons such as suppliers who participated in the supply of goods, work or service in question (for more detailed information see Q17b).

According to Art. 7 of the Act on Illegal Work the inspection body competent to inspect illegal employment and work is obliged to inform the illegally employed TCN without a residence permit on their rights to submit a complaint if their salary has not been paid, to claim the amount of arrears related to their salary and to have the amount of arrears transferred to the country to which they will return or will be administratively expelled; and the natural person or legal entity on whom the fine was imposed shall bear the incurred costs.

### *b. Does your national legislation foresee that, in addition to employers, direct contractors and any intermediate subcontractor may also be required to pay any outstanding remuneration and taxes?*

The responsibility for illegal employment is laid out in Art. 7 of the Act on Illegal Work.

According to the Article, the obligation of the legal entity or natural person to, based on the executive decision, pay a fine for the breach of the ban on illegal employment or additional payments (amount of arrears related to the salary for the TCN and costs incurred by their transfer to the relevant country, to which the illegally employed natural person returned or was administratively expelled), is transferred to another legal entity or natural person if the claim could not be settled during the execution proceedings. The legal entity or natural person to whom the obligations are transferred is one that supplies work, goods or service to the original legal entity or natural person based on a contract, or it is a legal entity or natural person who mediates the supply of work, goods or service based on a contract on supplying work, goods or service.

The responsibility transfer shall be applied in case the statutory body of the second legal entity or natural person or their management knew of the fact that the original legal entity or natural person breached the ban on illegal employment.

The aforementioned procedure shall not apply to a legal entity or natural person who represents a business to which the ban to receive work or service applies. Based on this law, such business is prohibited from receiving work or service from a legal entity or natural person (individual entrepreneur) based on a contract with the service provider (legal entity or natural person) through a natural person who is employed illegally, or in the case of cross-border service provision exceeding five days per 12 months starting on the day the service was provided for the first time, or domestic provision of work, or cross-border provision of work (in this case – supply of workers from a temporary employment agency).

---

<sup>102</sup> As well as the additional payment amounting to the advance payment for income tax, income tax itself, income tax arrears, social insurance payment pursuant to the relevant regulation, compulsory contribution to the retirement savings pursuant to the relevant regulation, contribution to the supplementary retirement savings pursuant to the relevant regulation, and insurance payments for the compulsory public health insurance pursuant to the relevant regulation the employer would be obliged to pay if the illegally employed person was employed legally, including all relevant sanction and fines in accordance to special regulations.

<sup>103</sup> Act No. 663/2007 Coll. on Minimum Salary as amended

## Illegal Employment of the TCNs in EU

Upon request, the service provider is obliged to immediately provide the legal entity or natural person to whom they supply work or services with the relevant documents and personal information of the natural persons who perform the work or service in question. These documents are necessary to check whether this legal entity or natural person (individual entrepreneur) does not (in fact) breach the ban on illegal employment.

Any company that orders cross-border provision of work, domestic, or cross-border provision of work therefore using the services of a temporary employment agency is obliged to verify whether the workers provided by their supplier are employed legally. Such company must verify the relevant work contracts and compare them to the information listed in the identification documents of the workers; check the relevant social security systems, and verify whether the employer in fact registered the employees with the relevant office and whether all requirements pertaining to employment of foreigners have been met<sup>104</sup>.

*c. Please provide comments on difficulties encountered or success factors with measures that can be identified as good practices in relation to claims for back payments.*

The aforementioned obligation of the legal entity or natural person to pay the additional payments based on the executive decision may pose a legal obstacle. The transfer of the responsibility for paying the fine or additional payment shall be applied in case the statutory body of the second legal entity or natural person or their management knew of the fact that the original legal entity or natural person breached the ban on illegal employment<sup>105</sup>. Proving that this indeed was the case is very difficult in reality.

*d. In addition to back-payment, can an employer be ordered to cover other expenses, such as payment of living expenses (please define how living expenses are defined/ calculated) and cost of return of illegally employed TCNs*

Slovak legislation does not recognize the concept of living costs therefore they are not recovered from the employer. The employer who illegally employs a TCN is obliged to bear the costs related to administrative expulsion of the TCN.

Pursuant to the Act on Residence of Aliens the costs related to administrative expulsion include costs for the accommodation, food, transport and detention of the TCN, and all related necessary costs. In case the TCN is detained, the costs calculated based on their personal file including costs for food, medicaments, transports, etc. shall also be considered a part of the costs related to administrative expulsion. It is impossible to objectively calculate the accommodation costs for one detainee, therefore they are not included<sup>106</sup>.

Before a TCN is expelled, the competent Police department calculates the costs and delivers the report to the person responsible for bearing them.

In the case of an illegal employed TCN, their employer shall bear them. The responsibility for the costs related to administrative expulsion of the TCN shall be further transferred to the entity who mediated their illegal employment; or the entity to whom work, goods or services were provided based on a contract; or the entity who mediated the provision of such work, goods, and services based on a relevant contract. Pursuant to the Act on Residence of Aliens, if these costs for some reason cannot be paid by the above mentioned legal entities or natural persons, the responsibility shall be transferred to the person who has undertaken to bear the responsibility in an open invitation or by the transport service<sup>107</sup>.

As for paying the costs related to administrative expulsion, they shall be borne by: the entity who illegally employed the TCN; provides goods or services based on a contract; or mediates the provision of work, goods, and services based on a relevant contract, if the person who signed the contract on their behalf knew of the fact that the ban on illegal employment has been breached.

The competent Police department shall decide on the payment of the costs related to administrative expulsion. If it is not possible to pay the costs related to administrative expulsion, the state shall do so through of the Ministry of Interior of the SR.

*Q18a. Does the legislation in your (Member) State foresee the right of illegally employed TCN to make a claim against employer including in cases in which they have, or have been, returned?*

<sup>104</sup> Accacce Slovakia. News Flash 1 July 2016. Amendments to Act on Illegal Work and Illegal Employment entered into force on 18 June 2016. Available at: <http://accace.sk/newsroom/aktualne-novinky/114909/105003/zmeny-v-zakone-o-nelegalnej-praci-a-nelegalnom-zamestnavani-ucinne-od-1862016-news-flash> (consulted on 26/1/2016)

<sup>105</sup> Questionnaire by NLI.

<sup>106</sup> Ad-Hoc Query on Payment of the Costs Associated with (Administrative) Expulsion.

<sup>107</sup> Ibidem.

## Illegal Employment of the TCNs in EU

Yes. The legislation of the SR allows illegally employed TCNs to claim against their employer and claim their rights also if they have already been administratively expelled or returned to their country of origin.

As provided in Q17, the inspection body responsible for the inspection of illegal employment and work is obliged to inform an illegally employed TCN who is not a holder of the residence/work permit about their rights to submit a complaint if their salary has not been paid, to claim the amount of arrears related to their salary and to have the amount of arrears transferred to the country to which they will return or will be administratively expelled; and the natural person or legal entity on whom the fine was imposed shall bear the incurred costs.

The legal entity<sup>108</sup> whose objective is to protect the rights and interests of the TCN can be authorized to act on behalf of the TCN in the civil court proceedings regarding the protection of their rights. If the legal entity decides to represent the TCN, it shall authorize an employee to act on their behalf.

*b. if the answer is positive, is it a specific claim, or it falls under general provisions concerning the right to bring a case before civil or labour courts*

The provisions are of a general nature and relate to the right to court and other legal protection.

*c. may third parties with legitimate interest act on behalf or in support of TCN in relevant administrative or civil proceedings (e.g. trade unions, organisation of migrant workers, public authorities)*

Yes. For more detailed information see Q18a.

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

Based on the NLI information, TCNs rarely exercise their rights to complain to the LI if they were never paid their salary, claim the amount of arrears related to their salary, or transfer the arrears to the country to which they have returned or will be administratively expelled while the costs would be borne by the legal entity or natural person on whom the fine for breaching the ban on illegal employment has been imposed<sup>109</sup>.

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

Yes, as provided in Q17a and 18a, TCNs are informed on their rights during the inspections performed by inspection bodies (LI, COLSAF, and OLSAFs). It is also incorporated in the legislation: Art. 7c(1) of Act No. 82/2005 on Illegal Work.

See also Q18d.

**Q19b.** *Have any of measures referred to under questions 17-19 been introduced in your legislation after July 2014<sup>110</sup>? If yes, which ones?*

Yes. The SR amended the legislation regarding to additional payments and responsibility for them. Act No. 351/2015 Coll. on Cross-border Cooperation as regards posting employees to perform work as regards the provision of services as amended which has been valid from 5 December 2015 and entered into force on 18 June 2016 introduced several changes into the Act on Illegal Work.

The original version of the Act was giving right to transfer the responsibility for illegal employment (fine and additional payment) if the statutory body of the legal or natural person - entrepreneur or a person entitled by them to conclude a service or labour agreement - knew that the legal or natural person, from whom the obligation to pay fine or additional payment for breaching the ban on illegal employment, breached the ban on illegal employment.

---

<sup>108</sup> Established pursuant to the specific regulation: Act No. 83/1990 Coll. on Citizens Associations as amended, Act No. 147/1997 Coll. on Investment Funds and amendments to Act of the National Council of the SR No. 207/1996 Coll. as amended, Act No. 213/1997 Coll. on Non-profit Organisations Providing Social Welfare Services as amended and Act No. 34/2002 Coll. on Foundations amending the Civil Code as amended.

<sup>109</sup> Questionnaire by NLI.

<sup>110</sup> The European Commission issued implementation report on the Employers' Sanctions Directive on 22 May 2014. This EMN study aims to examine whether/and if so – to what extent there has been new legislation/practices following that date.

## Illegal Employment of the TCNs in EU

Since 18 June 2016, the amended Act applies this approach for situations when statutory body of a legal person or natural person – entrepreneur or their leading employee – knew about the illegal employment.

The updated Art. 7b (3) now reads:

(3) The procedure provided in Paragraph 2 shall only be applied if it is confirmed that the statutory body of the legal entity, pursuant to Letters a) or b), or natural person, pursuant to Letters a) or b) or their management knew of the fact that the original legal entity or natural person from whom the obligation to pay the fine or additional payment is transferred to them has breached the ban on illegal employment.

Paragraphs 4 to 10 were added into Art. 7b as follows:

(4) Pursuant to Paragraph 2, the aforementioned procedure shall not apply to a legal entity or natural person who represents a business to which the ban to receive work or service applies pursuant to Paragraph 5.

(5) The legal entity or natural person who represents a business is prohibited from receiving work or service provided by a legal entity or natural person (hereinafter referred to as "service provider") through a natural person who is employed illegally

in case of cross-border service provision exceeding five days per 12 months starting on the day the service was provided for the first time, or

b) domestic provision of work or cross-border provision of work.

(6) Upon request, the service provider is obliged to immediately provide the legal entity or natural person to whom they supply work or service pursuant to Paragraph 5 with the relevant documents and personal information of natural persons who perform the work or service in question. These documents are necessary to check whether this legal entity or natural person (business) in fact does not breach of the ban on illegal employment.

**Q20. What good practices can be identified in your (Member) State in the area of outcomes for illegally employed TCNs (sanctions and other outcomes)? What were the particular success factors with measures that can be identified as good practices? Please reference the sources of the information provided.**

As good practice has so far been identified strictness of sanctions towards entities which breach ban on illegal employment. In the period from amending the legislation in the field of illegal employment (with effect 18 June 2016), good practice seems to be also the new ban on accepting work or service. The amended Act No. 82/2005 Coll. forbids legal or natural person who is an entrepreneur to accept work or service which is being delivered or provided to them based on agreement by legal or natural person through natural person who is being employed illegally in case of cross-border provision of service for the period of more than five days during 12 months since the first provision of service or delivery of work from inside or outside the state. In case the entities providing cross-border services or in case of entities which assign employees temporarily to employers in the territory of the SR breach the ban on illegal employment, co-responsible is also beneficiary of the service or work, who can be issued a fine for breaching the ban on accepting the service or work in the same amount as to illegally employing service or work provider, i.e. amounting from 2,000 EUR to 200,000 EUR, and in case it concerns two or more individual persons at the same time, at least 5,000 EUR<sup>111</sup>.

### Q21. Case studies

*In order to better understand the different procedures used when authorities detect illegal employment of third-country nationals, five hypothetical case studies have been designed. It is recognised that outcomes for TCNs may largely differ depending on their particular situation. In this respect, the case studies will help to illuminate the elements which exist for national authorities to use discretion in response to this. For each of the case studies below, please describe the general procedure **after detecting illegal employment** and the consequences in your (Member) State for the third-country national. In order to determine the procedure and the consequences in accordance with the rules of your Member State, additional information about the particular circumstances of each case may be required. EMN NCPs are asked to identify the different circumstances relevant for each case.*

---

<sup>111</sup> Source: MOLSAF.

### Q21a. A third-country national residing and working irregularly

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

If illegal employment and work are identified, the competent authority performing the inspection of illegal employment and work, i. e. LI, COLSAF or OLSAFs, will begin administrative proceedings against Mr. Adawe Shire as well as an infringement procedure against Mr. Shire himself. In this case, the fine for the employer would amount to €2,000–€200,000 and the fine for the employer would amount to the maximum of €331.

The competent department of the Aliens Police would also begin administrative expulsion proceedings against Mr. Shire. Since Mr. Shire resides in the territory of the SR without a residence permit, the result of the proceedings would be administrative expulsion (except for the case in which an obstacle to administrative expulsion is identified). He could also be banned from entering the SR for a period of 1 to 5 years.

An unauthorized stay in the territory of the SR is also considered an infringement for which he may be fined up to €1,600.

The fact that the new employer offers Mr. Shire a work contract would not affect his situation in any way. The SR does not allow TCNs without a residence permit to legalize their residence in any way. The only exception is represented by granting of international protection or temporary legalization of their residence through a selected type of tolerated stay.

### Q21b. A third-country national on a student permit employed more hours than allowed

*Ms. Svitlana Ivanenko, a student holding Ukrainian citizenship, aged 22, moved to your (Member) State one year ago. Svitlana is enrolled in a two year master's programme at university. She holds a residence permit for students. For the past six months she was also employed for 10 hours per week at a local café<sup>112</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.*

The law of the Slovak Republic allows the TCN students who have been granted temporary residence for the purpose of studies who are enrolled in a university in the territory of the SR to work without a specific work permit for a maximum of 20 hours a week or an equivalent number of days or months a year. Exceeding the limit of working hours per week or multiple weeks is not considered an infringement of the regulations regarding illegal work unless the maximum number of working days in a calendar year was exceeded too.

If Svitlana was granted temporary residence for the purpose of studies for the whole calendar year, according to the law of the SR, she is allowed to work for a maximum of 12 months part-time (20 hours a week) or 6 months full-time (40 hours a week). Therefore the fact that she worked more during the summer break is not considered illegal work as she did not exceed the permitted number of working hours in the calendar year. In Svitlana's case, it would be considered illegal work and illegal employment only if she continued to work (regardless of the number of days she works per week) after she had the maximum permitted number of working days in the calendar year. This limit applies to work performed for all employers who employed the TCN. If Svitlana continued to work for another employer after reaching the maximum, it would also be considered illegal work.

It would not even be a problem that Svitlana's contract stated that her working time amounts to 10 hours a week unless her employer infringed the regulations on working overtime by letting her work longer hours.

---

<sup>112</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.

## Illegal Employment of the TCNs in EU

### Q21c. A third-country national who resided and worked regularly, but whose permit has expired

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

Jiao Bao was obliged to notify the competent department of the Aliens Police that the purpose of her residence in SR expired within three days after her employment contract with the first employer was terminated. Her employer shared the same obligation. If Jiao Bao failed to fulfil this obligation she may be fined up to €300. Her employer may be fined up to €3,300.

According to the legislation of the SR, after a foreigner's employment is terminated, their temporary residence permit for the purpose of employment shall remain valid for 30 more days for them to find a new employer. If they fail to notify the competent department of the Aliens Police about changing employers, temporary residence cancellation proceedings begin.

If LI finds out that Jiao Bao was employed illegally, i. e. she performed different work than the one she holds a permit for, the infringement procedure against her and her employer begins. In this case, the fine for the employer would amount to €2,000–€200,000 and the fine for Jiao Bao would amount to the maximum of €331. The fact that Jiao Bao found another employer who could employ her legally does not affect the situation.

As for Jiao Bao's residence situation, changing employers or renewal of her temporary residence permit for the purpose of employment would only be possible if this residence permit did not expire or was not legally withdrawn.

If Jiao Bao fails to notify the Aliens Police that the purpose of her residence expired (termination of employment), she could be administratively expelled due to repeated breaching of generally binding legal regulations (failure to notify the authorities on terminating the employment – first breach, illegal work – second breach) and banned from entering the SR from 1 to 3 years.

### Q21d. A third-country national present as a tourist

*Marija Bogdanovic, a Serbian citizen, aged 45 has entered your (Member) State as a tourist one month ago. Due to visa liberalisation for the Western Balkans countries, Marija has the right to remain in your (Member) State for up to 90 days per six-month period as a tourist without requiring a visa<sup>113</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 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?*

If illegal employment and work are identified, the competent authority performing the inspection of illegal employment and work, i. e. LI, COLSAF or OLSAFs begins administrative proceedings against Marija's employer as well as an infringement procedure against her. In this case, the fine for the employer could amount to €2,000–€200,000 and the fine for Marija could amount to the maximum of €331.

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 in the SR until the receipt of the official decision, and after the 90 days period she would be obliged to leave the Schengen Area.

### A21e. A third-country national seasonal worker

*Mr. Karim Harrak, a 25 year old from Morocco entered your (Member) State as a seasonal worker for strawberry picking. He has been residing on a seasonal worker permit and is required to leave your (Member) State after the legally allowed duration for stay expired<sup>114</sup>. The contract with his current employer is valid for six months. However, after his contract*

<sup>113</sup> Based on the visa free travel decision adopted by the EU Member States on 30 November 2009: [http://europa.eu/rapid/press-release\\_IP-09-1852\\_en.htm?locale=fr](http://europa.eu/rapid/press-release_IP-09-1852_en.htm?locale=fr)

<sup>114</sup> Based on Directive 2014/36/EU – Seasonal workers – allowing third-country nationals to reside in a Member State for 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.

## Illegal Employment of the TCNs in EU

*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?*

The law of the Slovak Republic allows TCNs to apply for temporary or permanent residence whilst present in the territory of the SR if they are staying there legally. Mr. Harrak's request for a temporary residence with the purpose of seasonal employment therefore would not be accepted. Moreover, if the competent Police department found out that Mr. Harrak stayed in the territory of the SR irregularly, it would begin administrative expulsion proceedings. If no obstacle was found for the administrative expulsion, Mr. Harrak would be expelled and prohibited from entering the territory of the SR for 1 to 5 years.

An unauthorized stay in the territory of the SR is also considered an infringement for which he may be fined up to €1,600.

Note. Directive 2014/36/EU of the European Parliament and of the Council was not transposed at the time the study was being processed.

### **A21f. A third-country national working from an international trading company**

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

The fact that Ms. Diop was residing in the territory of the SR irregularly in no way affects her right to claim her salary by legal action. However, if the competent authorities revealed that her employment and residence were illegal, she would be sanctioned. She could be fined up to €331 for performing illegal work. She would be fined €1,600 for illegal residence, expelled and prohibited from entering the territory of the SR for 1 to 5 years.

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

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

## 1 Annex 1 Statistical Annex

### 1. Inspections and sanctions for employers

The European Commission has collected data under the reporting requirements of the Employers' Sanctions Directive impose on (Member) States<sup>115</sup>.

The following data are therefore available:

- ★ Number of inspections carried out by sector (and as percentage of the total number of employers in the sector)
- ★ Number of inspections which detected third-country nationals (and as percentage of the total number of employees in each sector)
- ★ Sanctions, in particular how many proceedings have been opened following the inspections, how many have been closed and the total amount of the imposed fines
- ★ Criminal sanctions, in particular the number of prosecutions initiated following the inspections, the final decisions, the average duration of imprisonment imposed and the total sum of imposed fines

The statistics for 2015 has been made available on the IES in the Study folder: **EMN Outputs ->EMN studies ->.Illegal employment study - >Working Papers and Additional documents->Employer Sanctions Directive data**. EMN NCPs are encouraged to review the statistics and flag up any methodological issues or changes in the statistics. The Service Provider will make use of the statistics for the purposes of the Synthesis Report. EMN NCPs are also encouraged to use the statistics in the preparation of their national report.

Statistical data on sanctions against employers in 2015 are correct (the total number of instances ISTCN was detected is 5 per one labour inspection).

**A.1:** *Please provide statistics on a number of convictions for employing illegally staying TCNs for years 2014, 2015 and 2016, if possible broken down by specific criminal offences enlisted in Article 9. para 1 of Directive 2009/52/ES, i.e.:*

| <b>Convictions for employers</b>                             | <b>2014</b>   | <b>2015</b>   | <b>2016*</b>  |
|--|---------------|---------------|---------------|
| Total number of convictions (Art. 251a of the Criminal Code) | 0             | <b>0</b>      | <b>0</b>      |
| (a) infringement continues or is persistently repeated       | Not collected | Not collected | Not collected |

<sup>115</sup> IE and the UK do not participate in this Directive.

## Illegal Employment of the TCNs in EU

|   |               |               |               |
|---|---------------|---------------|---------------|
| (b) infringement is in respect of the simultaneous employment of a significant number of irregularly staying TCNs   | Not collected | Not collected | Not collected |
| (c) the infringement is accompanied by particularly exploitative working conditions   | Not collected | Not collected | Not collected |
| (d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an irregularly staying TCN with the knowledge that he or she is a victim of trafficking in human beings | Not collected | Not collected | Not collected |
| (e) the infringement relates to the illegal employment of a minor   | Not collected | Not collected | Not collected |

Source: Ministry of Justice of the SR

\* Data pertaining to 2016 cover the period from 1 January to 30 September 2016, i. e. the first, the first and third quarter.

### A.2: Please provide statistics on type and number of sanctions for employers in your (Member) State

| Type of sanction for employers (please fill in)   | 2014  | 2015   | 2016   |
|---|---|--|--|
| Fines imposed on employers for illegal employment of TCNs (Source: NLI and COLSAF)  | NLI: 13 fines totally amounting to €69,000<br>COLSAF: 13 fines totally amounting to €41,300<br><b>Total: 26 fines</b> | NLI: 11 fines totally amounting to €37,500<br>COLSAF: 8 fines totally amounting to €22,000<br><b>Total: 19 fines</b> | NLI: 3 fines totally amounting to €19,000<br>COLSAF: 20 fines totally amounting to €59,200<br><b>Total: 23 fines</b> |
| Imprisonment/conviction for illegal employment pursuant to Art. 251a of the Criminal Code (Source: Ministry of Justice of the SR)                           | 0   | 0  | 0  |
| Sanctions and fines according to the regulations on labour inspection regarding illegal employment and illegal work (Source: Ministry of Justice of the SR) | 3 (administrative proceeding)   | 3 (administrative proceeding)  | 1 (administrative proceedings)<br>9 (sanction, fine, late payment interest, penalty)                                 |

## Illegal Employment of the TCNs in EU

|   |               |  |   |
|---|---------------|--|---|
|   |               | 2 (sanction, fine, late payment interest, penalty) | 2 (other administrative offence)<br>1 (pecuniary claims – granting, withdrawing, change, amount, calculation, etc.) |
| Rejection to issue a confirmation that no breach of the ban on illegal employment was identified pursuant to Act No. 125/2006 Coll. | Not collected | Not collected                                      | Not collected   |
| The loss of ability to receive public subsidy   | N/A           | N/A  | N/A   |
| Temporary or permanent closure of a business or workplace   | N/A           | N/A  | N/A   |
| Withdrawal of trade license/concession/permit   | N/A           | N/A  | N/A   |
| Confiscation of financial profits (share of profits and employer's yield)   | N/A           | N/A  | N/A   |
| Confiscation of equipment/property  | N/A           | N/A  | N/A   |
| Suspension of activities  | N/A           | N/A  | N/A   |
| Withdrawal of residence permit (in case the employer is a TCN)  | N/A           | N/A  | N/A   |

Source: Questionnaire by NLI, COLSAF and Ministry of Justice of the SR

## 2. Scale and profiles of illegal employment of TCNs

**A.3:** Please provide statistics on a number of identified illegally employed TCNs. Please explain if any differences in the data provided here and the data under the reporting requirements on Directive 2009/52 available on the EMN IES in [this folder](#).

| Illegally employed TCNs  | 2014                            | 2015                            | 2016                               | Methodological notes |
|--|---------------------------------|---------------------------------|------------------------------------|----------------------|
| Number of cases of identified <u>irregularly staying</u> and illegally employed TCNs | Total: 0<br>NLI: 0<br>COLSAF: 0 | Total: 6<br>NLI: 1<br>COLSAF: 5 | Total: 42<br>NLI: 27<br>COLSAF: 15 |                      |

## Illegal Employment of the TCNs in EU

|  |                                    |                                    |                                      |  |
|--|------------------------------------|------------------------------------|--------------------------------------|--|
| Number of cases of identified <u>legally staying</u> and illegally employed TCNs | Total: 49<br>NLI: 30<br>COLSAF: 19 | Total: 40<br>NLI: 26<br>COLSAF: 14 | Total: 178<br>NLI: 168<br>COLSAF: 10 |  |
|--|------------------------------------|------------------------------------|--------------------------------------|--|

Source: Informational report on detecting and combating illegal work and illegal employment in 2014 and 2015, Questionnaire by NLI

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

| Illegally employed TCNs  | Top 10 nationalities  | Age disaggregation  | Sex disaggregation              | Methodological notes |
|--|---|---|---------------------------------|----------------------|
| Number of cases of identified <u>irregularly staying</u> and illegally employed TCNs | NLI: lack of data in the "without residence permit" category<br><br>COLSAF:<br>Ukraine 5  | NLI: lack of data in the "without residence permit" category<br><br>COLSAF: not assessed  | Total:<br>Females 0<br>Males 6  |                      |
| Number of cases of identified <u>legally staying</u> and illegally employed TCNs     | NLI:<br>China 6<br>South Korea 3<br>Vietnam 3<br>Ukraine 2<br>Thailand 2<br><br>COLSAF:<br>Ukraine 6<br>Vietnam 3<br>China 1<br>Serbia 1<br>Albania 1<br>Thailand 1<br>Turkey 1 | NLI:<br>15–19 years: 1<br>20–24 years: 1<br>25–29 years: 3<br>30–34 years: 11<br>35–39 years: 4<br>40–44 years: 3<br>45–50 years: 3<br>50–54 years: 1<br><br>COLSAF: not assessed | Total:<br>Females 5<br>Males 35 |                      |

Source: Informational report on detecting and combating illegal work and illegal employment in 2014 and 2015, Questionnaire by NLI and COLSAF

### 3. Outcomes for TCNs

## Illegal Employment of the TCNs in EU

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

| Illegally employed TCNs  | 2014 | 2015   | 2016 | Methodological notes   |
|--|------|--|------|--|
| Number of residence and/or work permits issued to detected <u>irregularly staying</u> and illegally working TCNs     | NA   | NA   | NA   | The listed data are not directly collected, they are a part of the material evidence during the offence procedure. |
| Number of residence and/or work permits issued to detected <u>legally staying</u> and illegally working TCNs         | NA   | NA   | NA   | NA   |
| Number of illegally employed TCNs who were granted a period for voluntary return                                     | NA   | NA   | NA   | NA*  |
| Number of illegally employed TCNs who were given an order to leave the country following a labour inspection         | NA   | NA   | NA   | NA   |
| Number of illegally employed TCNs who were deported following an inspection  | NA   | NA   | NA   | NA   |
| Number of illegally employed TCNs who were identified as victims of human trafficking                                | 0    | 0  | 0    | No cases identified  |
| Number of decisions obliging employers to pay back payments/ amount equal to taxes and social security contributions | 0    | 1<br>Labour Office in Košice, in the amount of €1,276.80 | 0    |  |

Source: Questionnaire by COLSAF and BBAP PFP.

\*The above data is not monitored. BBAP PFP within the IS MIGRA collect data concerning illegal work only with the attribute of 'suspicion of illegal work', which is used for internal analytical purposes by the departments of BBAP PFP, but only as an "estimate" (not official statistics of illegally working employees). Third-country nationals who have been found to be illegally staying and who have fulfilled one of the following conditions are classified as 'suspected of illegal work': a third-country national has been working without the permission of the competent authorities and their illegal work has been confirmed by the COLSAF; the third country national was suspected of working illegally and was identified by the departments of the BBAP PFP

## Illegal Employment of the TCNs in EU

(investigation of illegal work in these cases did not even start because of a compulsory return on the basis of the administrative/judicial act for other legal reasons). These data are not collected on purpose, they are part of the proofs in the hearing of an administrative infraction.

### *A.6: Please provide statistics on the types and number of sanctions for illegally employed TCNs*

| Type of sanctions available for illegally employed TCNs (e.g. fines, imprisonment, etc) | 2014                 | 2015  | 2016                 | Methodological notes  |
|---|----------------------|---|----------------------|---|
| Fine up to €331   | LI: N/A<br>COLSAF: 0 | LI: N/A<br>COLSAF: 1<br>(amounting to €200) | LI: N/A<br>COLSAF: 0 | NA = Listed data is not collected, LI does not use the instrument in question |

Source: Questionnaire by NLI

### *A.7: Number of complaints lodged against employers for employing illegally TCNs. Please provide any disaggregation/break down on the type of complaints if available – such as complaints lodged by third parties, complaints lodged by TCNs, etc.*

| Number of complaints | 2014 | 2015 | 2016 | Methodological notes |
|----------------------|------|------|------|----------------------|
|                      | 0    | 0    | 0    |                      |

Source: Questionnaire by COLSAF

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

#### **A.8a Overview of the number of illegally employed TCNs according to SK NACE in 2014 – 2016**

| SK NACE/year                   | 2014 | 2015 | 2016 |
|--------------------------------|------|------|------|
| Agriculture, forestry, fishing | 2    | 0    | 1    |
| Manufacturing industry         | 1    | 3    | 17   |
| Construction                   | 2    | 9    | 20   |

## Illegal Employment of the TCNs in EU

|  |           |           |            |
|--|-----------|-----------|------------|
| Wholesale and retail trade                       | 7         | 18        | 6          |
| Transportation and storage                       | 0         | 0         | 10         |
| Accommodation and catering services              | 20        | 7         | 19         |
| Information and communication                    | 0         | 1         | 0          |
| Real estate                                      | 2         | 0         | 8          |
| Professional scientific and technical activities | 0         | 4         | 4          |
| Administrative and support service activities    | 0         | 2         | 128        |
| Education  | 13        | 0         | 0          |
| Healthcare and social assistance                 | 0         | 1         | 0          |
| Other activities                                 | 3         | 1         | 7          |
| <b>TOTAL</b>                                     | <b>50</b> | <b>46</b> | <b>220</b> |

Source: Annexes to the Informational report on detecting and combating illegal work and illegal employment in 2014, 2015 and 2016, MoLSAF SR; Questionnaire by NLI

### A.8b Overview of the number of illegally employed TCNs by the size of the employer for 2014 – 2016

| The size of the employer, determined by the number of their employees/year | 2014      | 2015      | 2016       |
|--|-----------|-----------|------------|
| 0  | 1         | 1         | 15         |
| 1-9  | 28        | 26        | 41         |
| 10-49  | 16        | 12        | 26         |
| 50-249   | 4         | 5         | 0          |
| 250 and more   | 0         | 2         | 88         |
| <b>TOTAL</b>   | <b>49</b> | <b>46</b> | <b>170</b> |

## Illegal Employment of the TCNs in EU

Source: Questionnaire by NLI and COLSAF

### A.8c Overview of the number of illegally employed TCNs by the legal form for 2014 – 2016

| <b>Legal form of the inspected entity/year</b>              | <b>2014</b> | <b>2015</b> | <b>2016</b> |
|---|-------------|-------------|-------------|
| Natural persons/entrepreneurs                               | 8           | 6           | 23          |
| Publicly owned company (verejná obchodná spoločnosť)        | 0           | 0           | 0           |
| Limited liability company (spoločnosť s ručením obmedzeným) | 33          | 39          | 140         |
| Limited partnership (komanditná spoločnosť)                 | 0           | 0           | 0           |
| Non-profit organisation                                     | 8           | 0           | 0           |
| Joint-stock company (akciová spoločnosť)                    | 0           | 0           | 0           |
| Cooperative (družstvo)                                      | 0           | 0           | 0           |
| State enterprise  | 0           | 0           | 0           |
| Budget organisation   | 0           | 0           | 0           |
| Subsidized organisation                                     | 0           | 0           | 0           |
| Public institution  | 0           | 0           | 0           |
| Foreign legal entity  | 0           | 1           | 0           |
| Association (union, society)                                | 0           | 0           | 0           |
| Municipality (municipal office), town/city                  | 0           | 0           | 0           |

## Illegal Employment of the TCNs in EU

|                              |           |           |            |
|------------------------------|-----------|-----------|------------|
| Other/unspecified legal form | 0         | 0         | 7          |
| <b>Total</b>                 | <b>49</b> | <b>46</b> | <b>170</b> |

Source: Questionnaire by NLI and COLSAF

### A.8d Overview of the number of illegally employed TCNs by the regions for 2014 – 2016

| Region          | 2014      | 2015      | 2016       |
|-----------------|-----------|-----------|------------|
| Bratislava      | 20        | 34        | 20         |
| Trnava          | 6         | 3         | 4          |
| Trenčín         | 0         | 0         | 13         |
| Nitra           | 16        | 2         | 97         |
| Žilina          | 5         | 3         | 7          |
| Banská Bystrica | 0         | 1         | 2          |
| Prešov          | 1         | 1         | 17         |
| Košice          | 1         | 2         | 10         |
| <b>TOTAL</b>    | <b>49</b> | <b>46</b> | <b>170</b> |

Source: Questionnaire by NLI and COLSAF

## Illegal Employment of the TCNs in EU

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

### **A.9a Overview of statistics on illegal employment inspections in the SR for 2014 – 2016**

|  | <b>2014</b> | <b>2015</b> | <b>2016</b> |
|--|-------------|-------------|-------------|
| Illegally employed natural persons       | 2,335       | 2,686       | 2924        |
| Illegally employed TCNs                  | 50          | 46          | 170         |
| Illegally employed EU citizens           | 49          | 58          | 81          |
| Illegally employed EEA citizens          | 0           | 0           | 0           |
| Illegally employed citizens of the SR    | 2,236       | 2,582       | 2,623       |
| Number of illegal employment inspections | 23,596      | 23,698      | 25,931      |
| Number of inspected entities             | 20,704      | 20,687      | 23,416      |
| Number of inspected natural persons      | 56,883      | 55,616      | 60,349      |

Source: Annexes to the Informational report on detecting and combating illegal work and illegal employment in 2014, 2015 and 2016, MoLSAF SR

### **A.9b Overview of the number of illegally employed TCNs by the countries of origin for 2014–2016**

## Illegal Employment of the TCNs in EU

| <b>Country of origin/year</b> | <b>2014</b> | <b>2015</b> | <b>2016</b> | <b>Total</b> |
|-------------------------------|-------------|-------------|-------------|--------------|
| North Korea                   | 1           | 0           | 0           | <b>1</b>     |
| South Korea                   | 3           | 2           | 2           | <b>7</b>     |
| Pakistan                      | 1           | 0           | 0           | <b>1</b>     |
| Ukraine                       | 13          | 9           | 51          | <b>93</b>    |
| Serbia                        | 4           | 2           | 139         | <b>145</b>   |
| China                         | 7           | 14          | 1           | <b>22</b>    |
| Thailand                      | 3           | 1           | 0           | <b>4</b>     |
| Vietnam                       | 6           | 6           | 16          | <b>28</b>    |
| Albania                       | 1           | 0           | 1           | <b>2</b>     |
| Belarus                       | 1           | 0           | 0           | <b>1</b>     |
| Turkey                        | 2           | 0           | 0           | <b>2</b>     |
| Areas non-specified elsewhere | 2           | 0           | 0           | <b>2</b>     |
| Mexico                        | 1           | 2           | 0           | <b>3</b>     |
| Russia                        | 1           | 0           | 0           | <b>1</b>     |
| India                         | 0           | 4           | 0           | <b>4</b>     |
| Macedonia                     | 0           | 4           | 6           | <b>10</b>    |
| USA                           | 0           | 5           | 1           | <b>6</b>     |
| Kosovo                        | 0           | 1           | 1           | <b>2</b>     |

## Illegal Employment of the TCNs in EU

|                       |   |   |   |          |
|-----------------------|---|---|---|----------|
| Bosna and Hercegovina | 0 | 0 | 2 | <b>2</b> |
|-----------------------|---|---|---|----------|

Source: Annexes to the Informational report on detecting and combating illegal work and illegal employment in 2014, 2015 and 2016, MoLSAF SR