

International
Organization
for Migration

European
Migration
Network

Illegal Employment of Third- Country Nationals in Lithuania

2017/1

EMN STUDY



Co-funded by
the European Union



This publication was conducted under the European Migration Network (EMN) 2015 – 2016 Work Programme.

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VILNIUS, 2017

Content

SUMMARY	5
1. OVERVIEW OF THE NATIONAL SITUATION	7
2. PREVENTION MEASURES	10
3. IDENTIFICATION OF ILLEGAL EMPLOYMENT OF TCNs	15
4. SANCTIONS FOR EMPLOYERS	22
5. OUTCOMES FOR TCNs FOUND TO BE WORKING ILLEGALLY	26
ANNEX	36

Summary

Concept of illegal employment. Article 98 of the Labour Code of the Republic of Lithuania defines illegal (irregular)¹ work as work which is performed for the benefit of the employer without the conclusion with an employee of a written employment contract. The work performed by third-country nationals (TCNs) is considered to be illegal if they are employed failing to comply with the procedure of their employment, for example, an alien performs work without being in possession of a work permit, is engaged in other activities for which he has no authorisation, the employer fails to timely notify the relevant authorities of the commencement and termination of employment, etc. The Law on the Legal Status of Aliens (LLSA) uses the concept of illegal unemployment. Article 64 of the LLSA stipulates that an alien's employment is considered illegal if the alien 1) is employed without a work permit and/or an employment contract and a temporary residence permit or a visa, where its possession is required; 2) is engaged in other activities for which he has no authorisation, where such authorisation is required, and is not in possession of a temporary residence permit or a visa.

Context. The control and prevention of infringements of labour laws and secondary legislation in Lithuania are implemented by the State Labour Inspectorate of the Republic of Lithuania under the Ministry of Social Security and Labour (SLI). With regards to the prevention and control of illegal employment, during the period of 2015-2016 the SLI annually conducted approximately 7 000 inspections of illegal employment, as a result of which approximately 1 200 irregularly employed persons were detected every year. Compared with Lithuanian citizens, few aliens were detected as illegally employed in Lithuania: in 2015 – 170 aliens (13.6 per cent of all illegally employed persons detected in Lithuania), in 2016 – 58 aliens (5.14 per cent of all illegally employed persons detected in Lithuania). The TCNs most commonly detected as illegally employed are citizens of Ukraine, Russia, Belarus, and Moldova. As many as 127 citizens of Russia were detected as illegally employed on board vessels flying the flag of the State of Lithuania on international

¹ The concept of **irregular work** includes the persons who work without having obtained a business certificate or without having been issued an individual activity certificate. The concept of **illegal employment** is broader and covers also irregular work.

voyages. A change in the geopolitical situation in the region has led to an increase in the number of Ukrainian citizens illegally employed in Lithuania.

Institutional framework. In 2008, the Police Department (PD), the Migration Department (MD), the State Border Guard Service (SBGS), and the SLI signed the Agreement on Cooperation in the Area of Control and Prevention of the Illegal or Irregular Employment of Aliens and Their Irregular Stay or Residence². Under this Agreement, the institutions undertook to cooperate at central and local levels in implementing the control and prevention of illegal or irregular employment of aliens and their irregular stay or residence in the Republic of Lithuania. Special measures to detect illegally employed TCNs are not applied. Illegally employed aliens are often detected during routine preventive checks. At the territorial departments of the SLI in Vilnius, Kaunas, Klaipėda, Šiauliai, and Panevėžys, regular illegal employment control teams have been formed (26 inspectors) to conduct the checks of economic entities.

Measures for detection of illegal employment. The SLI has in place the Enterprises Risk Assessment System related to the control of illegal (irregular) employment and results of such control³. In assessing risks, account is taken of the proportion of aliens (employees) in an enterprise; the number of illegally employed persons detected in the enterprise; the irregularity level in respect of illegal employment in the sector of economic activity concerned. If at least one illegally employed person is detected in the enterprise, it is considered to be high-risk for a period of up to five years. Inspections are most often conducted in the sectors in which the majority of irregularly employed third-country nationals have been detected, for example, construction, catering and beverage service activities, transport and warehousing, agriculture, forestry, and fisheries activities.

Introduction of this system in the area of control of illegal employment has allowed to more efficiently and effectively supervise economic entities, to more efficiently utilise the financial and human resources of the SLI, and to continuously monitor, measure, and evaluate changes in the economic entities' degree of risk in the area of illegal (irregular) employment.

Sanctions for illegal employment. The study provides an overview of the employer's share of liability for illegal (irregular) employment, which incurs a fine for employers or other responsible persons, also implies other constraints on activities of economic entities or individuals (administrative liability). The employers who illegally employ a TCN are subject to a fine in the amount from EUR 868 up to EUR 2 896 (from EUR 2 896 up to EUR 5 792 euros for a repeated offence before the completion of enforcement of the previous fine) for each illegally employed third-country national. In complex situations (for example, in the cases of employment of five or more illegally staying TCNs; employment in particularly exploitative working conditions, employment of a minor TCN), the employer is punished by a fine or arrest, or by a custodial sentence for a term of up to two years (criminal liability). The employer must pay to the illegally employed third-country national for his work the remuneration which was agreed upon.

The study lists also outcomes for aliens, including the risk of withdrawal of a residence permit or annulment of a visa, return or expulsion. An alien may also be refused entry into the country for a period of up to five years. An illegally employed TCN cannot regularise his stay in the country if it is established that he has violated requirements for regular entry into and stay in the country.

Prevention and good practices. The study identifies the preventive measures applied in combating illegal employment and certain good practices: 1) the comprehensive sanction model "You have been warned – Make your choice" applied by the SLI; 2) institutional cooperation in the area of combating illegal employment; 3) the possibility of reporting illegal employment by confidential telephone lines and through social networks (approximately 50 per cent of inspections conducted on the basis of reports in the public interest have been justified); 4) provision of information to employees and employers regarding illegal employment.

² Agreement of 21 January 2008 on Cooperation in the Area of Control and Prevention of the Illegal or Irregular Employment of Aliens and Their Irregular Stay or Residence

³ For more information, see: <https://www.vdi.lt/PdfUploads/RizikingumoVertinimoMetodika.pdf>

1.

Overview of the National
Situation

Q1. Please provide an overview of the general situation with regard to illegal employment on the basis of available research and information in Lithuania, including, inter alia:

- Extent to which the grey and informal economy is present Lithuania;
- Extent to which fighting illegal employment is a political priority in Lithuania;
- Public and/or policy debates in the area of illegal employment;
- Extent to which illegal employment of TCNs is an issue in Lithuania (e.g. severity and intensity of the issue), in particularly concerning the TCNs;
- Available research on the main routes to an irregular employment situation in Lithuania;
- Any (planned) changes in law or practice in the field of illegal employment;
- 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?);
- Profiles of the illegally working individuals (EU, EEA or TCNs);
- Other related issues experienced in Lithuania which may directly affect the extent of illegal employment in Lithuania, such as corruption, trafficking in human beings, etc.

The concept of illegal employment is defined by the Labour Code (LC). Article 98 of the LC defines illegal employment as work which is performed for the benefit of the employer without the conclusion with an employee of a written employment contract. The work of third-country nationals is considered to be illegal if they are employed failing to comply with the procedure of their employment established by regulatory acts, for example, an alien performs work without being in possession of a work permit, is engaged in other activities for which he has no authorisation, the employer fails to timely notify the relevant authorities of the commencement and termination of employment, etc. Therefore, if, for example, the alien works longer hours than is permitted or is provided for in his employment contract, does not comply with the working time, etc., such employment is not considered to be illegal. In these cases, the norms of the labour law are violated, and for such violations liability rests exclusively with the employer.

The Law on the Legal Status of Aliens (hereinafter: the 'LLSA') uses the concept of illegal unemployment. Article 64 of the LLSA stipulates that an alien's employment is considered illegal if the alien 1) is employed without a work permit and/or an employment contract and a temporary residence permit or a visa, where its possession is required; 2) is engaged in other activities for which he has no authorisation, where such authorisation is required, and is not in possession of a temporary residence permit or a visa.

Illegal (irregular) employment is one of the factors of the shadow economy, which has a negative impact on sustainable production activities and the quality of the labour force and hinders the implementation of growth-oriented economic, social, and budgetary policies. Therefore, one of Lithuania's priority goals is to combat illegal employment and its manifestations and their consequences. Data of various sources show that in Lithuania, the shadow economy generates from 15 to 26 per cent⁴ of the country's total added value. Lithuania's shadow economy was growing during the period 2008-2010, but recently it has slightly declined, though remains relatively widespread. According to conducted studies, Lithuania's shadow economy has slowly decreased over 2010-2015. Over 2010-2015, its share has decreased from 30 to 26 per cent of GDP⁵.

Acting in accordance with Resolution No 1407 of the Government of the Republic of Lithuania of 26 November 2001 on Coordination of the Control of Illegal Employment Practices, the SLI coordinates actions of the control of illegal employment practices and, in cooperation with the State Tax Inspectorate under the Ministry of Finance (STI), the Financial Crime Investigation Service under the Ministry of the Interior (FCIS), the Police Department under the Ministry of the Interior (Police Department, or PD), and the State Social Insurance Fund Board (SSIFB), combats the factors of the shadow economy in relation to illegal employment.

⁴ For more information, see: <http://www.econ.iku.at/members/Schneider/files/publications/2015/ShadEcEurope31.pdf>

⁵ Ibid.

Illegal employment trends depend on the economic situation in a country. It is noted that in 2009, during the period of an economic downturn, when GDP fell by 15 per cent, unemployment began to grow rapidly and was growing up to 2010. In 2009 and 2010, disposable income of the population also decreased. Under poor economic conditions, where the increasing number of enterprises is becoming loss-making and employers are faced with a difficult financial situation, illegal employment or payment of a part of wages illegally may become a means of reducing the growing losses of the enterprises. The proportion of loss-making enterprises in Lithuania began to increase rapidly in 2008-2009, until finally reaching as high as 53 per cent⁶. The financial situation of the enterprises and the income level of the population affected people's motivation to become involved in the shadow labour market. Faced with falling incomes and rising unemployment rates during the economic downturn, the population was looking for ways to compensate for the fall in incomes. One such way was to work illegally or to receive a part of wages in an 'envelope'.

With the recovery of the country's economy, the rate of illegal (irregular) employment decreased. This was influenced by the growth of the number of vacancies, decrease in the number of the unemployed, shortage of qualified workers, and coordinated actions of control authorities, preventive measures, and tightened procedures for the allocation of social benefits.

During 2016, the SLI conducted for the purpose of illegal employment prevention and control 7 012 inspections of illegal employment, which allowed to detect 1 129 irregularly employed persons, during 2015 the institution conducted 7 091 inspections and detected 1 254 irregularly employed persons, and during 2014 it conducted 5 597 inspections and detected 1 429 irregularly employed persons. Compared with Lithuanian citizens, few aliens were detected as illegally employed in Lithuania: in 2014, 66 illegally (irregularly) employed aliens were detected (4.6 per cent of all illegally employed persons detected in Lithuania), in 2015 – 170 aliens (13.6 per cent of all illegally employed persons detected in Lithuania), and in 2016 – 58 aliens (5.14 per cent of all illegally employed persons detected in Lithuania).

The majority of illegally employed aliens are detected in such sectors of economic activities as fisheries, construction, and accommodation and catering services. The detected illegally (irregularly) employed aliens are usually third-country nationals (from Ukraine, Russia, Belarus, Moldova). Out of 170 illegally employed aliens detected in 2015, employers had failed to conclude employment contracts with and notify the SSIFB of 138 aliens, among whom as many as 127 citizens of the Russian Federation were employed illegally (without employment contracts and without notification of the SSIFB) on board two vessels flying the flag of the State of Lithuania on international voyages (in 2014 – 51). The mentioned cases were detected upon receiving complaints from a trade union operating in Klaipėda Region and representing seafarers. Most other illegally employed aliens were detected during routine inspections. In 2015, 32 foreign nationals were employed without being in possession of residence permits and work permits, or only work permits in the Republic of Lithuania. In 2014-2015, employers paid wages to all illegally employed aliens. The fact that employers failed to conclude employment contracts with the foreign nationals and to notify the SSIFB, but paid wages to their employees shows that these enterprises possibly paid wages with the funds not been entered in accounts and that the taxes related to employment relationships were not paid.

In recent years, following changes in the geopolitical situation in the region, there has been an increase in the number of cases when citizens of Ukraine who have received visas with the help of Polish travel agencies enter the territory of the Republic of Lithuania for the purpose of taking up employment. Such a trend is observed based on the growth in the number of conducted inspections and detected irregularly employed persons. By conducting inspections of illegal employment, in 2015 the SLI detected 26 aliens employed in the construction sector, most of them being citizens of Ukraine (approximately 81 per cent), while in 2016 the institution detected 44 such persons, of whom 38 (86 per cent) were citizens of Ukraine. Without the knowledge of their rights and of the language, they live and work in difficult conditions, and in some cases are not adequately remunerated for their work. As their employment is not legal (they are not in possession of required documents to work in Lithuania), there arises a threat of their exploitation.

⁶ For more information, see: http://files.lrinka.lt/LSE2013_2/LSE.pdf

2.

Prevention Measures

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 Lithuania:

Q2a. Preventive measures and incentives for employers: Please indicate which measures and incentives for employers exist in Lithuania and describe the measures.

<p>Measure/incentives for employers</p>	<p><u>Irregularly staying and illegally working TCNs</u></p> <p>*Please indicate if the measures/incentives below exist in Lithuania (Yes/No) and if Yes, please describe them.</p> <p>**Please specify if these measures are established to tackle illegal employment or are general incentives.</p>	<p><u>Regularly staying and illegally working TCNs</u></p> <p>*Please indicate if the measures/incentives below exist in Lithuania (Yes/No) and if Yes, please describe them.</p> <p>**Please specify if these measures are established to tackle illegal employment or are general incentives.</p>
<p>a.1. Information campaigns targeted at employers</p> <p>Outreach/awareness-raising activities to inform employers on the criteria by which they can hire TCNs</p> <p>For each campaign that has been run in Lithuania indicate:</p> <ul style="list-style-type: none"> - Which sectors were targeted? - How the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.) 	<p>General information is provided on the websites of the Migration Department and the Lithuanian Labour Exchange⁷.</p>	
<p>a.2. Information support for employers</p> <p>Simplification of administrative procedures and information support for employers recruiting TCNs (e.g. helpline, information on government website etc.)</p>	<p>General information is provided on the websites of the MD and the LLE.⁸</p>	
<p>a.3. Partnership agreements and initiatives by Social Partners</p> <p>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.</p>	<p>On 21 January 2008, the SLI, the PD, the MD, and the SBGS signed the Agreement on Cooperation in the Area of Control and Prevention of the Illegal or Irregular Employment of Aliens and Their Irregular Stay or Residence. Under this Agreement, the institutions undertook to cooperate at central and local levels in implementing the control and prevention of illegal or irregular employment of aliens and their irregular stay or residence in the Republic of Lithuania.</p>	
<p>a.4. Obligation of the employer to notify the authorities about employing a TCN</p>	<p>The employer is under the obligation to notify the relevant authorities only about a regularly staying and legally employed or dismissed alien.</p> <p>In order to employ an alien, the employer must apply to a local labour exchange and obtain a work permit or a decision on the alien's conformity to needs of the Lithuanian labour market, except for the cases prescribed by law, when the requirement to obtain a work permit or to undergo the labour market test does not apply (workers in shortage occupations in the market, meeting of certain conditions due to higher wages, etc.).</p>	

⁷ <http://www.migracija.lt> and <http://www.ldb.lt>

⁸ Ibid.

	<p>The employer must, not later than one day before the conclusion of an employment contract, require that a third-country national present a valid residence permit in the Republic of Lithuania or any other document granting the right to stay or to reside in the Republic of Lithuania.</p> <p>The employer must submit to a local labour exchange for registration a copy of an employment contract concluded with a TCN⁹, as well as notify, within three working days, the Lithuanian Labour Exchange of termination of the employment contract with the alien and, within seven working days, the Migration Department – of termination of the employment contract with the alien or reduction in his remuneration (applicable to highly qualified workers, who must be remunerated not less than at the specified rate).</p> <p>The draft laws prepared and submitted to the Government for consideration propose to stipulate an obligation for the host enterprise established in the Republic of Lithuania to notify a territorial department of the State Labour Inspectorate of the commencement of employment of an alien transferred for temporary work (posted) by an enterprise established in a third country. A failure to comply with this duty would incur administrative liability (a fine).</p>
<p>a.5. Other measures/incentives for employers</p>	<p>Not applicable.</p>

Q2b. Measures and incentives for employees from third countries: please indicate which measures and incentives for employees from third countries exist in Lithuania and describe the measures.

<p>Measure/incentive for employees</p>	<p><u>Irregularly staying and illegally working TCNs</u></p> <p>Please indicate if the measures/incentives exist in Lithuania (Yes/No) and if Yes, please describe them.</p>	<p><u>Regularly staying and illegally working TCNs</u></p> <p>Please indicate if the measures/incentives exist in Lithuania (Yes/No) and if Yes, please describe them.</p>
<p>b.1. Financial incentives for employees</p> <p>Financial and fiscal incentives, including social security incentives – i.e. any social security incentives aimed at encouraging employers to legally register their employees</p>	<p>Measures which are common for all employees apply: legally employed persons are provided with social and health guarantees, their length of employment is continued, etc. Specific measures in respect of third-country nationals have not been envisaged.</p>	
<p>b.2. Information campaigns targeted at employees (potential or current)</p> <p>(including pre-departure campaigns and post-departure campaigns in third countries)</p> <p>For each campaign that has been run please:</p>	<p>The website of the Migration Department¹⁰ provides information on opportunities of regular migration (e.g., where to apply and what documents should be submitted for an alien who intends to take up employment in the Republic of Lithuania to receive a document granting the right to stay or to reside in the Republic of Lithuania, etc.). It also contains information on irregular migration.</p> <p>The website of the SLI¹¹ provides a helpline number for reporting cases of illegal employment. Information about this helpline is included in the information</p>	

⁹ Article 62(2¹) of the LLSA. In the cases where an alien must obtain a work permit, as well as in the cases indicated in points 2 and 11 of Article 58 of this Law, when the alien is exempted from the duty to obtain a work permit, the employer must submit to a local labour exchange for registration a copy of an employment contract concluded with the alien which has been certified in accordance with the procedure laid down by legal acts. The employer must fulfil this duty within two months from the issue of the work permit, in the case indicated in point 2 of Article 58 of this Law – within one month from the conclusion of the employment contract, and in the case indicated in point 11 of Article 58 of this Law – within one month from the issue of a national visa.

¹⁰ www.migracija.lt
¹¹ <http://www.vdi.lt/>

<p>- Provide detail of the campaigns, including who are the target groups; what country, type of workers, etc.</p> <p>- Explain how the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.)</p>	<p>visiting cards of the SLI which are distributed at meetings with the public. The website provides information in English with regards to the basic requirements to be met before commencing employment in the Republic of Lithuania.</p>
<p>b.3. Information support for employees from third countries</p> <p>(e.g. One-stop shop information points)</p>	<p>The website of the SLI provides a helpline number for reporting cases of illegal employment. Information about this helpline is included in the information visiting cards of the SLI which are distributed at meetings with the public. The website provides information in English with regards to the basic requirements to be met before commencing employment in the Republic of Lithuania, while the website of the Migration Department provides information in English about opportunities of regular migration and about irregular information (e.g., in what cases an alien’s entry into the Republic of Lithuania or his stay or residence in the country is considered to be irregular, in what cases the alien may be returned to a foreign state or expelled from the Republic of Lithuania, in what cases he may be subject to an entry ban prohibiting him from entering the Republic of Lithuania, etc.).</p>
<p>b.4. Other measures/incentives for employees (incl. obligation of TCN to notify the authorities about any changes in employment conditions)</p>	<p>There are currently no requirements and incentives applicable to workers from third countries. However, upon the entry into force of the Law on Employment, the employer will be subject to the duty to give a written notice of the commencement and termination of employment to the State Labour Inspectorate within three working days from the conclusion or termination of an employment contract with a third-country national.</p>

Q3. Does Lithuania carry out risk assessments to identify the sectors of activity (‘sensitive sectors’) in which the illegal employment of TCNs is most concentrated?

The employer or a person authorised by the employer incurs criminal liability in respect of irregularly staying and illegally working third-country nationals. Such cases are examined by pre-trial investigation institutions. The employers or responsible persons incur only administrative liability for regularly staying and illegally working third-country nationals.

Q3a. If Yes, what are the methods and tools used for carrying out the risk assessments?

Since 2013, the SLI has used the Enterprises Risk Assessment System and has supplemented the system with an enterprise’s risk estimation criteria related to the control of illegal (irregular) employment and results of such control. These criteria are publicly available¹². Introduction of the Enterprises Risk Assessment System in the area of control of illegal employment has allowed, since 1 January 2014, to more efficiently and effectively supervise economic entities, to more efficiently utilise financial and human resources of the SLI, to continuously monitor, measure, and evaluate changes in the economic entities’ degree of risk in the area of illegal (irregular) employment.

Inspections are most often carried out in the sectors in which the majority of irregularly employed third-country nationals are detected, such as construction, catering and beverage services, transport and warehousing, agriculture, forestry, and fisheries activities. The inspections are also conducted upon receipt of reports regarding the possible irregular employment of third-country nationals from other controlling authorities and the public. For example, in 2016 the SLI received 1 991 reports in the public interest (in 2015 – 2 247), of them 825 (in 2015 – 1 123) reports regarding illegal employment and 22 (in 2015 – 12) reports regarding the illegal employment of aliens. Heads of territorial departments of the SLI assess all of these reports according to risk estimation criteria and forward selected reports to inspectors for taking further action. It should be noted that approximately 50 per cent of the inspections conducted on the basis of reports in the public interest are justified.

¹² For more information, see: <http://www.vdi.lt>

Q3b. Which authorities are involved in drawing up the risk assessment?

The risk assessment process is coordinated by the SLI. The selection of risk-exposed taxpayers is carried out by an inter-institutional working group, which, in addition to representatives of the SLI, includes also representatives of the State Tax Inspectorate and the State Social Insurance Fund Board. In 2016, the inter-institutional working group adopted a resolution identifying risk-exposed taxpayers. They were sent over 39 000 letters of warning. Inspectors of the SLI conducted inspections in the risk-exposed enterprises selected from the list.

Q3c. How are the results of the risk assessments used in practice (e.g. used to target inspections)?

Risk assessment criteria serve as a basis for the inspections conducted by inspectors of the SLI in selected enterprises.

Q4a. What are the strengths and weaknesses of prevention measures of illegally employed TCNs in Lithuania? Please reference the sources of the information provided.

The selection and warning of risk-exposed enterprises have yielded positive results. For example, data of the State Tax Inspectorate show that in the enterprises subject to control average wage levels increased by almost 12 per cent in 2015 as compared to 2014¹³.

Q4b. What good practices can be identified in Lithuania 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.

With a view to reducing the risks associated with failure to keep records of the actual working time of employees (part-time work) and partial payment of wages in 'envelopes', the State Tax Inspectorate has, for several years now, used the comprehensive sanction model "You have been warned – Make your choice", which also involves the SLI. Last year, this model continued to be applied within the framework of activities of an inter-institutional working group, which consists of representatives of the State Tax Inspectorate, the SLI, and the State Social Insurance Fund Board.

Under a resolution, the inter-institutional working group selected risk-exposed taxpayers. Representatives of the State Tax Inspectorate and the State Social Insurance Fund Board sent to such taxpayers over 39 000 letters of warning. In their own turn, inspectors of the SLI conducted inspections in the risk-exposed enterprises selected from the list.

¹³ For more information, see: <http://www.vdi.lt/PdfUploads/SeselinEkonomika2016.pdf>.

3.

Identification of Illegal
Employment of TCNs

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

The SLI implements the control and prevention of illegal (irregular) employment and of infringements of labour legislation, also control and prevention in the area of the employment of third-country nationals.

In coordinating the control of illegal employment practices and adjusting relevant actions, the SLI:

- prepares methodologies and recommendations regarding the control of illegal employment practices, organises seminars;
- analyses results of control and provides conclusions to all institutions and bodies controlling illegal employment;
- at least once every six months, organises meetings of representatives of all institutions and bodies controlling illegal employment to discuss the challenges of illegal employment, proposals for improvement of the legislative framework related to illegal employment, and the issues of mutual cooperation and other matters;
- organises educational activities intended to develop intolerance toward illegal employment practices and encourage public participation in detecting them.

The Government of the Republic of Lithuania has adopted a resolution setting up the Commission for Coordination of Cooperation among National Economic and Financial Control and Law Enforcement Authorities (the Commission). The Commission's work focuses primarily on the development of comprehensive control action plans and monitoring of their implementation, that is, offering of a systemic and comprehensive response to systemic phenomena of the shadow economy. On 21 January 2008, the SLI, the PD, the MD, and the SBGS signed the Agreement on Cooperation in the Area of Control and Prevention of the Illegal or Irregular Employment of Aliens and Their Irregular Stay or Residence¹⁴ in order to ensure effective control and prevention of the illegal or irregular employment of aliens in the Republic of Lithuania. If these authorities receive information about the possibly illegal or irregular employment of aliens, they inform the SLI. The SLI often carries out inspections after receiving information from the relevant authorities. In conducting the inspections on the basis of such information, a territorial department of the SLI decides whether or not to involve police officers in the inspections.

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

No. All authorities work in all sectors of economic activity, there is no specialisation by sector.

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

No. However, since 2011 the SLI has set up regular illegal employment control task teams in five major cities of the country and has intensified the control and prevention of illegal employment. These teams conduct inspections related exclusively to illegal (irregular) employment, including the illegal employment of TCNs.

Q5d. How do national authorities and other organisations involved cooperate? Are there any specific cooperation mechanisms/fora in place in Lithuania? 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?

In implementing the prevention and control of illegal employment of aliens, the SLI cooperates with other authorities. On 21 January 2008, the SLI, the PD, the MD, and the SBGS signed the Agreement on Cooperation in the Area of Control and Prevention of the Illegal or Irregular Employment of Aliens and Their Irregular Stay or Residence in order to ensure effective control and prevention of the illegal or irregular employment of aliens in the Republic of Lithuania. If these authorities receive information about the possibly illegal or irregular employment of aliens, they inform the SLI.

In conducting inspections on the basis of such information, a territorial department of the SLI decides whether or not to involve police officers in the inspections. Migration authorities can obtain information about the possibly illegal or irregular employment of aliens while carrying out the control of regular stay and residence of aliens in the country. Information on the possibly illegal employment of aliens is also provided by local labour exchange offices taking into account the highest-risk

¹⁴ Agreement of 21 January 2008 on Cooperation in the Area of Control and Prevention of the Illegal or Irregular Employment of Aliens and Their Irregular Stay or Residence

areas of economic activity. The inspections target the employers who possibly hire aliens for illegal work after the expiry of their employment contracts or possibly employ the aliens who have been refused a work permit. The police implement the control and prevention of trafficking in human beings and also investigate the cases where employers employ the third-country nationals illegally staying in the Republic of Lithuania. The SLI prepares annual inspection plans with regards to the illegal employment of aliens, though such inspections are often carried out under reports in the public interest or on the basis of information provided by other authorities.

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.

Regular illegal employment control teams (consisting of 26 inspectors) have been formed at the territorial departments of the SLI in Vilnius, Kaunas, Klaipėda, Šiauliai, and Panevėžys. The illegal employment of aliens is often detected by carrying out routine preventive checks. In 2013, the SLI organised a routine preventive action (with the focus on the illegal employment of aliens), during which 50 enterprises and one natural person were inspected. The authority detected seven illegally employed persons, two of whom were third-country nationals (one citizen of the Republic of Belarus and one citizen of China). In 2017, the SLI also plans to carry out a target campaign focusing on aliens.

During November-December 2016, the SLI conducted routine inspections of the economic entities included in the list of the enterprises which had applied to the Lithuanian Labour Exchange for the issue of permits to posted workers as provided by the Lithuanian Labour Exchange. The posted workers were selected at the request of the Lithuanian Labour Exchange and upon receipt of lists of such workers. Inspections were carried out in respect of 11 economic entities included in the list provided by the Lithuanian Labour Exchange. The SLI did not detect any cases of illegal employment, did not establish any infringements of labour legislation, and did not impose any administrative sanctions.

Out of the inspected economic entities which actually employed posted aliens, only in four cases the fact of posting of a worker to the Republic of Lithuania had been notified to territorial departments of the SLI in due compliance with the procedure laid down by the Minister of Social Security and Labour of the Republic of Lithuania. Five economic entities posting workers to Lithuania had failed to notify the SLI. With regards to the posted aliens actually working for Lithuanian enterprises, the requirement to keep the documents related to the posting of these workers (employment contracts, copies of timesheets, etc.) at their workplaces was not complied with in all cases. Recommendations to eliminate these irregularities were issued to three economic entities. Despite the fact that all the economic entities which were subject to inspection had applied to the Lithuanian Labour Exchange for the issue of work permits for posted workers, the SLI detected a number of cases of the posted workers actually not performing any work-related functions – the aliens did not appear at Lithuanian enterprises, had already left the country, or the Lithuanian economic entities actually did not pursue any economic activity.

Q6. What identification measures regarding illegal employment of TCNs exist in Lithuania? (e.g., inspections; border checks; checks of premises by migration officials; other types of checks)

Checks based on risk factors, specialised checks targeting TCNs, information from migration-related authorities, such as the Migration Department, the Police Department, local offices of the Lithuanian Labour Exchange, the State Border Guard Service.

The SLI receives from these authorities information about the possible illegal employment of aliens, as well as participates in joint inspections on the basis of the information received. The inspections are usually carried out at the request of one of the authorities based on the available information.

Q7. How are inspections carried out in Lithuania?

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

Acting in compliance with provisions of the Law of the Republic of Lithuania on Public Administration and its implementing legislation, the SLI has introduced for the purpose of carrying out routine inspections the Enterprises Risk Assessment System and uses it to estimate the degree of risk of specific economic entities.

Along with other criteria, the following criteria are used to estimate the degree of risk of economic entities in the area of illegal employment: the proportion of aliens (employees) in an enterprise; the number of illegally employed persons detected in the enterprise (it is assumed that if any illegally employed persons were previously detected in an economic entity, there is a higher risk of recurrence of such irregularities); the irregularity level in respect of illegal employment in the sector of economic activity concerned (it is assumed that an enterprise's degree of risk is higher if it operates in an economic sector characterised by the risk of illegal employment).

It should be noted that upon detecting in an enterprise at least one illegally employed person, the risk remains high for three years, and decreases slightly only after the period of three years. The indicator fully stops affecting the enterprise's degree of risk only after the lapse of five years.

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

In implementing the prevention of accidents at work, occupational diseases and infringements of legal acts, also in exercising the control of compliance with requirements of the legal acts, the SLI carries out routine and non-routine inspections of the activities of economic entities within its area of responsibility.

Routine inspections are carried out in compliance with the SLI annual action plan approved by the Minister of Social Security and Labour of the Republic of Lithuania, which sets out guidelines for these inspections, the sectors of economic activity to be targeted, specific features and scope of the inspections. The number of the routine inspections is determined in accordance with the financial and human resources allocated to the SLI.

Non-routine inspections are carried out when investigating accidents at work as a result of which damage is incurred to the health of workers and causes of occupational illnesses, verifying the information about infringements of legal acts received by the SLI or published in the media, and protecting the public interest on the issues of law enforcement, as well as with a view to reducing the rates of occurrence of accidents at work as a result of which damage is incurred to the health of workers (hereinafter: 'accidents at work') and occupational diseases, the likelihood of infringements of the legal acts.

Routine and non-routine inspections are carried out in accordance with the criteria determined in the Enterprises Risk Assessment methodology and upon assessing the risk of an economic entity infringing legal acts. In 2016, the SLI carried out approximately 9 700 (in 2015 – approximately 10 000) inspections of economic entities, of which about 6 600 (in 2015 – 6 700) inspections were routine and about 3 100 (in 2015 – 3 300) inspections were non-routine.

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.

The SLI has introduced a confidential helpline for providing information about illegal employment (both of aliens and the local population). Upon receiving information through the helpline, it is assessed and subsequently presented to heads of territorial departments of the SLI as a basis for conducting of inspections.

Information can also be provided by filling out a form on the website of the SLI which is intended for illegal employment. Such information is assessed in the same manner as the information obtained through the confidential helpline.

The SLI increasingly often receives information through social networks. Interested parties usually send the information via *Facebook*, but there happen cases when the information found in public space (web portals, social networks) also becomes a ground for initiation of an investigation into a possible case of illegal employment.

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

Upon receiving information regarding the illegal employment of third-country nationals, the SLI considers the issue of involving in inspections officers of other authorities. The inspections are usually carried out in cooperation with police officers.

In the cases where information is received from migration services or the SBGS, inspections involve participation of representatives of these authorities.

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

In all cases of inspections of foreign nationals, it is checked whether workers are in possession of the required documents, that is, it is checked whether the foreign nationals have been employed in accordance with the employment procedures stipulated for them in regulatory acts. In addition, it is verified whether the employer complies with provisions on working and rest time and with other legislation, such as timesheets, work schedules, employment contracts, etc. Upon receiving information about difficult living conditions of workers, the SLI refers to the Police Department for initiation of a pre-trial investigation into a possible case of trafficking for labour exploitation.

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?

All actions of the SLI are carried out in strict compliance with the Law on the State Labour Inspectorate and other regulatory acts.

Inspectors of the SLI have the following rights:

- upon presenting a service card and an authorisation, to enter any workstation freely and without advance warning at any time of the day and to inspect whether labour laws, legislation on safety and health at work or other regulatory acts are observed;
- to obtain from the employer the data and documents (their extracts, copies) and other evidence required for the performance of functions of the State Labour Inspectorate;
- to obtain from the persons representing employers, the persons authorised by the employer, employees, and other persons present at the workstation being inspected oral or written explanations regarding infringements of labour laws, legislation on safety and health at work, and other regulatory acts regulating safety and health at and employment relationships or regarding the failure to comply with instructions of the State Labour Inspectorate (if there is no possibility of obtaining this information on the spot, the employer's representative or a person authorised by the employer is invited to appear at a structural unit of the State Labour Inspectorate);
- to temporarily – for a period of up to seven working days – seize from the employer the documents required for the performance of functions the State Labour Inspectorate by drawing up and providing a statement of the seizure of these documents, or to make their copies or extracts. In the event of the seizure of the documents, an inspector of the State Labour Inspectorate must, at the request of the employer's representative, allow him to make copies of the documents seized. The employer's representative has the right to request the inspector of the State Labour Inspectorate to attest to validity of the mentioned copies by a special marking;
- in performing official duties and if necessary, to involve police officers;
- in implementing the prevention and control of infringements of the laws and other regulatory acts regulating safety and health at work and employment relationships and without prejudice to the inviolability of an individual's private life as guaranteed by laws, to take pictures and to make audio and video recordings.

In compliance with the Recommendations for Identification of Victims of Trafficking in Human Beings, Pre-trial Investigation and Inter-institutional Cooperation, as approved by the Prosecutor General of the Republic of Lithuania, the Minister of the Interior of the Republic of Lithuania, and the Minister of Social Security and Labour of the Republic of Lithuania¹⁵, when carrying out checks of the illegal employment of aliens and upon detecting a possible case of trafficking in human beings the

¹⁵ Order No I-327/1V-1015/A1-758 of 17 December 2015 on Approval of the Recommendations for Identification of Victims of Trafficking in Human Beings, Pre-trial Investigation and Inter-institutional Cooperation

SLI organises for the victim the necessary assistance (e.g., provision of medical aid), notifies the NGO that provides assistance to victims of trafficking in human beings, and communicates all the information to the police.

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.

Routine inspections of the economic entities which, according to the values of degree of occupational safety and health risk determined by the Enterprises Risk Assessment Methodology, fall within the risk range of “Inspect” are conducted not more frequently than once every three years.

Due to significant damage to the public or to specific individuals and the increased risk of accidents at work, the following inspections are conducted without determining periodicity and estimating the degree of risk of economic entities according to the Enterprises Risk Assessment Methodology:

- Routine inspections of illegal employment (irregular activity), including violations of working and rest time provisions;
- Routine inspections of the economic entities engaged in construction activities and of construction works and construction sites (hereinafter: ‘construction sites’).

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

Prior to an inspection of an economic entity, an inspector of the SLI in charge of a routine or non-routine inspection becomes familiar with all the information available about the economic entity, selects a questionnaire and/or thematic questionnaires according to which the entity’s inspection will be carried out, and ascertains the need for and possibility of verification and/or examination of other issues while conducting the inspection. Having set the date of the inspection, the inspector of the SLI sends a notice of the routine inspection to the head of the economic entity or takes a decision on the possibility of giving the head of the economic entity advance notice of a non-routine inspection and, upon taking the decision on advance notification, sends a notice of the non-routine inspection.

An inspector of the SLI in charge of an inspection of an economic entity first meets the head of the economic entity and the persons invited to participate in the inspection. It is also agreed that the labour inspectors will be accompanied by the head of the economic entity himself or a person authorised by him without disturbing the work process. The inspection is continued according to the relevant questionnaire/questionnaires by visiting specific workplaces, assessing the working environment, posing questions to workers, if necessary, obtaining their written explanations, taking photos or making video recordings of situations, also performing other actions necessary to carry out the inspection. It is possible not to use checklists in implementing the control of illegal employment.

It should be noted that when implementing the control of illegal employment according to the information received, regardless of its type, and in response to the information published in the media or otherwise publicly disclosed regarding an infringement of the public interest in law enforcement matters, an economic entity is not given advance notice of a non-routine inspection of the SLI.

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

In carrying out inspections of the illegal employment of third-country nationals, the SLI makes use of standard tools and methods, no specific procedures and methods have been provided for. However, it should be noted that prior to each inspection, inspectors of the SLI must consider all the circumstances and decide on the tools to be used and the authorities to be involved in the inspection. As mentioned above, during the inspection the inspectors of the SLI have the right to take photos and make audio and video recordings.

Q9. What are the strengths and weaknesses of identification measures of illegally employed TCNs in Lithuania? What good practices can be identified in Lithuania in the area of identification of illegal

employment? What were the particular success factors with measures that can be identified as good practices?

State institutions view the illegal employment of third-country nationals from their own perspective, thus there is a lack of joint action. There is need for enhanced coordination of actions in combating the illegal employment of third-country nationals and allocation of human resources and technical tools for this purpose.

4.

Sanctions for Employers

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

Sanctions for employers	<u>Irregularly staying and illegally working TCNs</u> *Please indicate if this sanction is imposed in Lithuania (Yes/No), and if yes in which cases ** Please provide reference to the specific legal provisions	<u>Regularly staying and illegally working TCNs</u> *Please indicate if this sanction is imposed in Lithuania (Yes/No), and if yes in which cases ** Please provide reference to the specific legal provisions
Fines (e.g. fines imposed per illegally hired employee)	Illegal employment shall be subject, in the case of employers or other responsible persons, to a fine in the amount from one thousand euros up to five thousand euros. The administrative offence, if committed repeatedly, shall be subject, in the case of the employers or other responsible persons, to a fine in the amount euros up to six thousand euros (Article 95 of the Code of Administrative Offences). The employers that are legal persons, if they permit the illegal employment of third-country nationals, shall be subject to a fine in the amount from EUR 868 up to EUR 2 896 for each illegally employed third-country national. The same actions, if committed by the legal person already punished for this offence within one year from the completion of enforcement of the imposed fine, shall be subject, in the case of that legal person, to a fine for each third-country national in the amount from EUR 2 896 up to EUR 5 792 (Article 12 ¹ of the Law on the State Labour Inspectorate)	
Imprisonment of employers (Please indicate the aggravating circumstances)	The employer or a person authorised by him who, for business purposes, employs third-country nationals illegally staying in the Republic of Lithuania or who employs five or more third-country nationals illegally staying in the Republic of Lithuania or who employs a third-country national illegally staying in the Republic of Lithuania in the cases of particularly exploitative employment conditions or who employs a third-country minor illegally staying in the Republic of Lithuania shall be punished by a fine or by arrest or by a custodial sentence for a term of up to two years (Article 292 ¹ of the Criminal Code).	No
Confiscation of financial gains (e.g. share of profit or revenue of the employer)	No	No
Ineligibility for public contracts	The employers that permit the illegal employment of third-country nationals shall respectively be subject to a restriction on participation in public procurement in accordance with the procedure laid down by the Law of the Republic of Lithuania on Public Procurement (Article 12 ¹ of the Law on the State Labour Inspectorate)	
Temporary or definitive closure of company or worksite	No	No
Confiscation of equipment/property	No	No
Suspension of activity	No	No
Withdrawal of trading license/disbarment of activity	No	No

Withdrawal of residence permit if the employer is a TCN	No	No
Other sanctions	<p>The employers that permit the illegally employment of third-country nationals shall respectively be subject to the following restrictions: 1) deprivation of the right to receive subsidies, benefits or other state aid, including support from the European Union's Structural Funds and other support, other than the European Union's direct support, for a period of up to five years in accordance with the procedure laid down by the Government of the Republic of Lithuania; 2) the obligation to repay, in accordance with the procedure laid down by the Government of the Republic of Lithuania, a part or all of the funds of the subsidies, benefits or other state aid, including support from the European Union's Structural Funds and other support, other than the European Union's direct support, granted over the period of 12 months preceding the detection of illegal employment.</p> <p>(Article 12¹ of the Law on the State Labour Inspectorate)</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?

In detecting illegal employment (Article 95 of the Code of Administrative Offences), the officers who are entitled to draw up records of administrative offences must collect evidence whose investigation and evaluation would allow the authority examining the case of the administrative offence (district court) to state the fact of commission of the administrative offence and to establish related circumstances. A person may incur administrative liability for illegal employment only if he is guilty. The offence of illegal employment may be committed both through intent and negligence. In the absence of either intent or negligence in the person's act, the person does not incur administrative liability for illegal employment.

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

If a work permit in the Republic of Lithuania issued by the Lithuanian Labour Exchange under the Ministry of Social Security and Labour of the Republic of Lithuania was the ground for the issue to an alien of a multiple-entry visa or a temporary residence permit in the Republic of Lithuania, the withdrawal of the work permit will lead to annulment of the multiple-entry visa or withdrawal of the temporary residence permit in the Republic of Lithuania, and, if the alien is staying in the Republic of Lithuania, a decision on his return to a foreign state will be taken.

However, an alien is not expelled from the Republic of Lithuania nor returned to a foreign state if he is granted the cooling-off period in accordance with the procedure laid down by the Government of the Republic of Lithuania during which he, as a present or former victim of crimes related to trafficking in human beings, must take a decision on cooperation with a pre-trial investigation body or the court.

Q12a. Does legislation in Lithuania 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?

Criminal sanctions for employers	Description
	*Please indicate if this sanction is imposed in Lithuania, and if yes in which cases ** Please provide reference to the specific legal provisions
(a) the infringement continues or is persistently repeated	<p>Yes. The employer or a person authorised by him who, <u>for business purposes</u>, employs third-country nationals illegally staying in the Republic of Lithuania (Article 292¹ of the Criminal Code)</p> <p>The employer or the person authorised by him shall be punished by a fine or by arrest or by a custodial sentence for a term of up to two years. A legal entity shall also be held liable for the acts provided for in this Article.</p>

<p>(b) the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals</p>	<p>Yes. The employer or a person authorised by him who <u>employs five or more</u> third-country nationals illegally staying in the Republic of Lithuania (Article 292¹ of the Criminal Code). The employer or the person authorised by him shall be punished by a fine or by arrest or by a custodial sentence for a term of up to two years. A legal entity shall also be held liable for the acts provided for in this Article.</p>
<p>(c) the infringement is accompanied by particularly exploitative working conditions</p>	<p>The employer or a person authorised by him who employs a third-country national illegally staying in the Republic of Lithuania <u>in the cases of particularly exploitative employment conditions</u> (Article 292¹ of the Criminal Code). The employer or the person authorised by him shall be punished by a fine or by arrest or by a custodial sentence for a term of up to two years. A legal entity shall also be held liable for the acts provided for in this Article.</p>
<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>A person who uses another person’s work or services, including prostitution, while being aware or having to be and likely to be aware that the person performs this work or provides these services as a result of using against him, for exploitation purposes, physical violence, threats, deception or other means listed in Article 147 of the Code, shall be punished by a fine or by restriction of liberty or by arrest or by a custodial sentence for a term of up to two years (Article 147² of the Criminal Code).</p>
<p>(e) the infringement relates to the illegal employment of a minor</p>	<p>The employer or a person authorised by him who employs a third-country <u>minor</u> illegally staying in the Republic of Lithuania (Article 292¹ of the Criminal Code). The employer or the person authorised by him shall be punished by a fine or by arrest or by a custodial sentence for a term of up to two years. A legal entity shall also be held liable for the acts provided for in this Article.</p>

Q12b. Has Lithuania amended legislation on sanctions for illegally employed TCN since July 2014¹⁶? If so, please provide details.

Nothing to report.

Q13. What are the strengths and weaknesses in sanctioning employers who illegally employed TCNs in Lithuania? What good practices can be identified in Lithuania 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.

Liability for the illegal employment of third-country nationals is currently provided for in three legal acts: the Criminal Code, the Code of Administrative Offences, and the Law on the State Labour Inspectorate. The Law on Employment, which is to enter into force on 01-07-2017, aims at stipulating, in a single law, all violations incurring administrative liability to employers not only for the illegal employment of third-country nationals, but also the illegal employment of all persons employed in this manner.

¹⁶ 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.

5.

Outcomes for TCNs Found to
be Working Illegally

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

- 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 an alien illegally staying in the Republic of Lithuania meets at least one of the grounds for return of an alien to a foreign state as stipulated in Article 125(1) of the Law of the Republic of Lithuania on the Legal Status of Aliens¹⁷, the police (county police headquarters) or a structural unit of the State Border Guard Service under the Ministry of the Interior (according to the place of the alien's stay or detention) takes a decision to return the alien to the foreign state (the decision to return the alien to the foreign state, having regard to the alien's possibilities to leave as soon as possible, determines a period of between 7 to 30 days from the service of the decision to the alien within which the alien is obliged to voluntarily leave from the Republic of Lithuania). However, it is possible not to take the decision on the alien's return to the foreign state where under an international treaty on the return/readmission of illegally staying persons to which the Republic of Lithuania is a party the alien illegally staying in the Republic of Lithuania is received by an EU Member State, where this treaty entered into force before 13 January 2009, or a state other than an EU Member State.

If an alien illegally staying in the Republic of Lithuania meets at least one of the grounds for expulsion of an alien from the Republic of Lithuania as stipulated in Article 126(1) of the Law of the Republic of Lithuania on the Legal Status of Aliens, a county police headquarters or a structural unit of the State Border Guard Service under the Ministry of the Interior submits a recommendation to the Migration Department for taking a decision to expel the alien from the Republic of Lithuania and other documents necessary for the taking of the decision. The decision to expel the alien from the Republic of Lithuania is enforced (that is, the alien's journey to the foreign state to which the alien is expelled is organised, and the alien is escorted to the state border of the Republic of Lithuania) by the police (county police headquarters) or the structural unit of the State Border Guard Service (according to the place of the alien's stay or detention).

However, an alien is not expelled from the Republic of Lithuania or returned to a foreign state if he has been granted the cooling-off period in accordance with the procedure established by the Government of the Republic of Lithuania, during which he, as a present or former victim of crimes related to trafficking in human beings, must take a decision on cooperation with a pre-trial investigation body or the court.

- is granted a period for voluntary departure

See Q14a.

- has received an entry ban

Article 133(1) of the Law of the Republic of Lithuania on the Legal Status of Aliens provides that an alien who has been refused a visa or it has been annulled or who has been refused a residence permit or it has been withdrawn, an alien who has been refused admission to the Republic of Lithuania, has been imposed an obligation to leave the Republic of Lithuania, has been returned to a foreign state or attempted to leave the Republic of Lithuania, or left it, unlawfully or an alien who does not have the right to reside in the Republic of Lithuania and fails to comply with obligations to the customs or has failed to pay a fine/fines imposed in accordance with the procedure laid down by laws of the Republic of Lithuania may be subject to an entry ban prohibiting entry into the Republic of Lithuania for a period not exceeding five years. According to paragraph 2 of the same article, an alien who has been expelled from the Republic of Lithuania is the subject of an entry ban prohibiting entry into the Republic of Lithuania for a period not exceeding five years.

The national no-entry list is drawn up and managed by the Migration Department, which also publishes and forwards the data from this list to the second generation Central Schengen Information System in accordance with the procedure established by the Government of the Republic of Lithuania.

An entry ban does not apply to an alien who has been expelled from the Republic of Lithuania on grounds of his failure to comply with the obligation to leave from the Republic of Lithuania within the specified time limit or his failure to voluntarily

¹⁷ Law of the Republic of Lithuania on the Legal Status of Aliens:
<https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/57df8b40839211e5bca4ce385a9b7048?jfwid=-wd7z84f0n>

leave from the Republic of Lithuania within a time limit specified in a decision to return him to a foreign state, where he was issued a temporary residence permit on the ground specified in Article 40(1)(12) of the Law of the Republic of Lithuania on the Legal Status of Aliens as a victim of trafficking in human beings and where he does not represent a threat to national security or the community.

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

Fines for illegal or irregular employment are imposed on employers, rather than the aliens employed by them.

- **detained (please also describe which authorities have the right to detain illegally employed TCNs)**

A person would be subject to the general grounds for detaining TCNs stipulated in Article 113 of the LLSA.

- **receives work permit**

If an alien is staying irregularly in the Republic of Lithuania, he cannot apply for the issue of a work permit without leaving the country, unless the person is a victim of trafficking in human beings (see Q14 h).

- **receives residence permit**

An application for the issue of a multiple-entry visa or a temporary residence permit in the Republic of Lithuania may be lodged only by an alien regularly staying in the Republic of Lithuania, unless the person is a victim of trafficking in human beings (see Q14 h).

- **please indicate outcomes if identified as a victim of trafficking of human beings**

A temporary residence permit may be issued to an alien who is or was a victim of trafficking in human beings or illegal employment and cooperates with a pre-trial investigation body or the court in combating trafficking in human beings or crimes related to trafficking in human beings or illegal employment, in the cases of particularly exploitative employment conditions or the employment of a minor, provided that the pre-trial investigation body or the court mediates in issuing the temporary residence permit to such an alien. (Article 491(1) of the Law of the Republic of Lithuania on the Legal Status of Aliens)

An alien illegally staying in the Republic of Lithuania is not expelled from the Republic of Lithuania or returned to a foreign state if he has been granted the cooling-off period in accordance with the procedure established by the Government of the Republic of Lithuania, during which he, as a present or former victim of crimes related to trafficking in human beings, must take a decision on cooperation with a pre-trial investigation body or the court.

If an alien is allowed to stay in the Republic of Lithuania for residence because he is or was a victim of trafficking in human beings or illegal employment and cooperates with a pre-trial investigation body or the court in combating trafficking in human beings or crimes related to trafficking in human beings or illegal employment, in the cases of particularly exploitative employment conditions or the employment of a minor, the alien is, in compliance with Article 40(1)(12) of the Law of the Republic of Lithuania on the Legal Status of Aliens, issued or renewed a temporary residence permit in the Republic of Lithuania (provided that the pre-trial investigation body or the court mediates in issuing the temporary residence permit to such an alien).

An alien for whom a pre-trial investigation body or the court mediates in issuing a temporary residence permit shall be issued the temporary residence permit for a period of six months. After the alien has been issued the temporary residence permit, the alien is, by a decision of the mediating pre-trial investigation body or the court, permitted to reside at the place of his choice or the place specified by the said body. An alien who has been issued a temporary residence permit on the grounds laid down in Article 40(1)(12) of this Law and who is not in possession of sufficient means of subsistence is entitled to receive basic medical aid and social services in accordance with the procedure laid down in legal acts of Republic of Lithuania. An alien who has been issued a temporary residence permit on the grounds laid down in Article 40(1)(12) of this Law, having obtained a work permit, is entitled to take up employment during a period of validity of the temporary residence permit.

An entry ban does not apply to an alien who has been expelled from the Republic of Lithuania on grounds of his failure to comply with the obligation to leave from the Republic of Lithuania within the specified time limit or his failure to voluntarily

leave from the Republic of Lithuania within a time limit specified in a decision to return him to a foreign state, where he was issued a temporary residence permit on the ground specified in Article 40(1)(12) of the Law of the Republic of Lithuania on the Legal Status of Aliens as a victim of trafficking in human beings and where he does not represent a threat to national security or the community.

- Other sanctions/outcomes

Nothing to report.

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

- s/he can lose their residence rights

Among the grounds stipulated in Article 50 of the Law of the Republic of Lithuania on the Legal Status of Aliens for the issue of a temporary residence permit in the Republic of Lithuania and in Article 56 for the withdrawal of a permit of a long-term resident of the Republic of Lithuania to reside in the European Union, there is no such ground as illegal or irregular employment.

- the illegal work is tolerated or regularised

No. The employer incurs administrative liability in all cases.

- fined

Irregularly employed third-country nationals do not incur administrative liability, however if they were not in possession of a residence permit in Lithuania, the Migration Department is notified of this fact. If they were in possession of a residence permit, but worked illegally, the Migration Department is not notified.

- detained

No.

- issued a return decision

Grounds for an alien's return to a foreign state or expulsion from the Republic of Lithuania are stipulated in Article 125(1) and Article 126(1) of the Law of the Republic of Lithuania on the Legal Status of Aliens, and such grounds do not include a ground such as illegal or irregular employment of an alien. Thus, an illegally or irregularly employed alien may be returned to a foreign state or expelled from the Republic of Lithuania only if he meets at least one of the grounds stipulated in Article 125(1) and Article 126(1) of the Law of the Republic of Lithuania on the Legal Status of Aliens, for example, when his visa is annulled or a residence permit is withdrawn.

- other sanctions/outcomes

Nothing to report

Q16. What are the consequences for TCNs who have temporary or permanent residence permit in one EU country and is illegally employed in Lithuania?

Irregularly employed third-country nationals do not incur administrative liability. According to the procedure currently in force, inspectors of the SLI communicate information to the Migration Department only in the cases when a person was employed without being in possession of a residence permit, or when a residence permit was issued for the purpose of employment in a particular enterprise, but the person in question was not employed with that employer. In other cases, when an alien is regularly staying in Lithuania, but is employed illegally, the Migration Department is not informed. It should also be pointed out that the Migration Department is informed in all cases when the information to be verified is received from the said authority.

If an alien is in possession of a valid document issued by another EU Member State or a Member State of the European Free Trade Association granting the right to stay or reside in it, but is staying or resides in the Republic of Lithuania irregularly (that

is, if his stay in the Republic of Lithuania and another Schengen State, namely, stay outside the Schengen State which has issued a residence permit, exceeds a maximum of 90 days in a 180-day period and he is not in possession of a document issued in the Republic of Lithuania and granting him the right to stay or reside in the Republic of Lithuania, e.g., a national visa or a residence permit in the Republic of Lithuania), the police (county police headquarters) or a structural unit of the State Border Guard Service under the Ministry of the Interior (according to the place of the alien's stay or detention) takes a decision on imposing on the alien an obligation to leave the Republic of Lithuania. The obligation to leave the Republic of Lithuania specifies a time limit of not more than 30 days within which the alien is obliged to leave from the Republic of Lithuania. However, it is possible not to take the decision imposing on the alien the obligation to leave the Republic of Lithuania where under an international treaty on the return/readmission of irregularly staying persons to which the Republic of Lithuania is a party the alien irregularly staying in the Republic of Lithuania is received by an EU Member State, where this treaty entered into force before 13 January 2009, or a state other than an EU Member State.

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)

Q17a. In the event that back payment of salaries, social security contributions and income taxes are due in favour of the illegally employed TCN, please describe mechanisms in place which provide for the liability of the employer to pay:

(i) outstanding remuneration

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

The employer must pay to an illegally employed third-country national for his work the remuneration which was agreed upon, but in any case not less than the amount of the minimum monthly wage determined by the Government of the Republic of Lithuania and for at least three months (unless the employer or the illegally employed third-country national can provide evidence that the illegal work was carried out over a shorter period of time) and from this amount pay statutory taxes, including the late payment interest accrued and penalties, as well as all costs of transfer of the amounts provided for in this paragraph to the country to which the third-country national has returned or has been returned (Article 12¹(3) of the Law on the State Labour Inspectorate).

Q17b. 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 contractor, where the employer is the subcontractor which has fulfilled the obligations indicated in Article 98¹(2) of the Labour Code of the Republic of Lithuania, or where the subcontractor which is the employer has failed to fulfil the obligation indicated in Article 98¹(1)(5) of the Labour Code of the Republic of Lithuania, the position, does not incur subsidiary liability for the fulfilment of the mentioned pecuniary obligations in respect of the third-country national illegally staying in the Republic of Lithuania, except for the cases where the contractor had knowledge that the document granting the right to stay or to reside in the Republic of Lithuania was false.

The contractor who fails to fulfil the obligations indicated in Article 98¹(2) of the Labour Code of the Republic of Lithuania, where the subcontractor which is the employer permits the third-country national illegally staying in the Republic of Lithuania to perform work, is subject to a fine in the amount from EUR 868 up to EUR 2 896 for each third-country national illegally staying in the Republic of Lithuania. The same actions, if committed by the contractor already punished for this offence within one year from the completion of enforcement of the imposed fine, are subject, in the case of that contractor, to a fine for each third-country national illegally staying in the Republic of Lithuania in the amount from EUR 2 896 up to EUR 5 792¹⁸.

Q17c. 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.

¹⁸ Points 11 and 12 of Article 12¹ of the Law on the State Labour Inspectorate

The biggest challenge in dealing with claims for back payments is the fact that, in the event of detection of an illegally employed third-country national, it is not possible to contact him after the completion of the investigation. Therefore, claims on money sometimes remain unsatisfied.

Q17d. In addition to back-payment, can employer be ordered to cover other expenses, such as payment of living expenses (please define how living expenses are defined/ calculated) and cost of return of illegally employed TCNs

Article 12¹(3) of the Law on the State Labour Inspectorate and Article 131 of the Law of the Republic of Lithuania on the Legal Status of Aliens (“Costs of expulsion or return”) stipulate that an alien is expelled from the Republic of Lithuania or returned to the country of origin or a foreign state to which he has the right to depart, *inter alia*, at the expense of the employer who illegally employed the alien to be expelled. If such an alien is expelled from the Republic of Lithuania or returned at the expense of the State, the costs incurred by the State are recovered in accordance with the procedure prescribed by legal acts, *inter alia*, from the employer who illegally employed the alien to be expelled.

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

In the event of detection of the illegal employment of a person (both local resident and alien), the employer must pay to him for work the remuneration which was agreed upon, but in any case not less than the amount of the minimum monthly wage and for at least three months (unless evidence can be provided that the illegal work was of a different duration). Disputes between the illegally employed person and the employer over the payment of remuneration are settled in accordance with the procedure for settling individual labour disputes.¹⁹

Q18b. 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

Filing of a claim for outstanding remuneration with labour dispute commissions is a general provision available for all individuals. Individuals must refer to the labour dispute commissions in the state language. However, NGOs or trade unions can help to fill out the relevant documents and to represent third-country nationals in labour disputes.

Q18c. 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. Non-governmental organisations may act on behalf or in support of a third-country national in any administrative or civil proceedings.

Q18d. Please provide comments on difficulties encountered or success factors with measures that can be identified as good practices.

The biggest difficulty is the language barrier and the lack of interpreters, especially in smaller regions where there are not many interpreters.

Q19a. Does Lithuania 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.

General information is provided to illegally employed third-country nationals about their rights.

¹⁹ Article 98(3) of the Labour Code of the Republic of Lithuania

Q19b. Have any of measures referred to under questions 17-19 been introduced in your legislation after July 2014²⁰? If yes, which ones?

Nothing to report.

Q20. What good practices can be identified in Lithuania 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.

Nothing to report.

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 Lithuania for the third-country national. In order to determine the procedure and the consequences in accordance with the rules of Lithuania, 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.

Q21a. A third-country national residing and working irregularly

Mr. Adawe Shire, a 38 years-old carpenter from Somalia entered Lithuania via irregular means with his wife and 2-year old daughter. They have been in Lithuania 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?

Following an inspection carried out by the SLI and detection of the illegal employment of Adawe Shire, that is, employment while being in possession of neither a residence permit (nor a work permit), the employer will incur administrative liability. It should be noted that the State Labour Inspectorate will not consider Adawe Shire administratively liable and will communicate all the information concerning him to the Migration Department.

According to Article 57 of the Law of the Republic of Lithuania on the Legal Status of Aliens, an alien who intends to take up employment in the Republic of Lithuania must obtain a work permit if he has not been exempted from the obligation to obtain a work permit pursuant to Article 58 of this Law. The work permit must be acquired by the alien prior to his entering the Republic of Lithuania, with the exception of the cases referred to in points 1 and 5 of paragraph 1 of this Article. The work permit may be issued to the alien if there is no professional in Lithuania fulfilling the employer's qualification requirements. Therefore, Mr. Shire will not be able to obtain a work permit and apply for the issue of a residence permit while staying irregularly in the Republic of Lithuania. The issue of returning Mr. Shire and his family to a foreign state would be considered.

However, if it is established that Mr. Shire together with his family cannot leave from the Republic of Lithuania for humanitarian reasons or that they cannot be expelled from the Republic of Lithuania in the cases indicated in Article 130(1), (2), and (4) of this Law (e.g., according to the principle of non-refoulement), or if the enforcement of decisions to expel them from the Republic of Lithuania is suspended in the presence of the circumstances indicated in points 2, 3 and 4 of Article 128(2) of this Law and these circumstances do not cease to exist within one year after the suspension of the enforcement of the decisions to expel them from the Republic of Lithuania, they would, in compliance with Article 40(1)(8) of the Law of the Republic of Lithuania on the Legal Status of Aliens, be issued for a temporary residence permit valid for a period not longer than one year, during the period of validity of which Mr. Shire would have the right to work.

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

²⁰ 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.

Ms. Svitlana Ivanenko, a student holding Ukrainian citizenship, aged 22, moved to Lithuania 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 café²¹. 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 Lithuania.

According to Article 46(4) of the Law of the Republic of Lithuania on the Legal Status of Aliens, an alien may work during the period of his studies or training for not more than 20 hours per week. According to Article 58(2) of the mentioned Law, the alien would be exempted from the obligation to obtain a work permit if he, when studying or undergoing training, intended to take up employment while observing the restriction stipulated in Article 46(4) of this Law. It should also be noted that, according to Article 50(1)(9) of this Law, the temporary residence permit would be withdrawn for the alien if the alien's training, studies, traineeship, up-skilling was terminated; also in the cases where the alien, while studying, did not adhere to the restrictions set out in Article 46(4) of this Law. Taking account of these provisions and if the State Labour Inspectorate established that Svitlana was working in the café 40 hours per week, the SLI would communicate this information to the Migration Department for the taking of a relevant decision.

As the student is in breach of the restriction prohibiting to work in excess of 20 hours per week by working longer hours, this constitutes a ground, according to Article 50(1)(9) of the LLSA, for the withdrawal of a temporary residence permit. However, if an alien has been issued a multiple-entry visa on the ground of studies, Article 46(4) of the LLSA does not apply to such an alien, because the alien does not have the right to work. Therefore, if such an alien pursues studies and is additionally employed on an irregular or illegal basis, a national visa could be annulled only in the presence of at least one of the grounds for annulment of a visa stipulated in Article 19 of the LLSA.

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 Lithuania 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?

The SLI would communicate information on such a worker to the Migration Department, while the employer, which employed Jiao Bao while not being in possession of a work permit, would incur administrative liability for illegal employment.

Article 44(9) of the Law of the Republic of Lithuania on the Legal Status of Aliens stipulates that, upon the end of employment in the Republic of Lithuania, an alien must leave the Republic of Lithuania, whereas, in accordance with Article 50(1)(6) of this Law, a temporary residence permit in the Republic of Lithuania is withdrawn for an alien if an employment contract with the alien is terminated (with the exception of the case referred to in point 18 of this paragraph where the alien to whom the temporary residence permit has been issued on the ground of intending to take up highly qualified employment in the Republic of Lithuania becomes unemployed).

If Jiao Bao is staying in the Republic of Lithuania irregularly (her temporary residence permit in the Republic of Lithuania has expired or this residence permit was withdrawn when she lost their job with the IT company), the police (county police headquarters) or a structural unit of the State Border Guard Service (according to the place of the alien's stay or detention) would take a decision on her return to a foreign state (this decision would, having regard to the possibilities of Jiao Bao to leave as soon as possible, determine a period of between 7 to 30 days from the service of the decision to her within which she would be obliged to voluntarily leave from the Republic of Lithuania).

It should be pointed out that Jiao Bao, while staying irregularly in Lithuania, would not be able to apply for the issue of a multiple-entry visa or a temporary residence permit in the Republic of Lithuania, that is, would not be able to regularise her

²¹ 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.

residence in the Republic of Lithuania, even if the new job offer was a ground for the issue a multiple-entry national visa or a temporary residence permit in the Republic of Lithuania.

Q21d. A third-country national present as a tourist

Marija Bogdanovic, a Serbian citizen, aged 45 has entered Lithuania as a tourist one month ago. Due to visa liberalisation for the Western Balkans countries, Marija has the right to remain in Lithuania for up to 90 days per six-month period as a tourist without requiring a visa²². During her stay in Lithuania, Marija has been working for a family she met through friends as a housekeeper and babysitter. She has been living with the family and has been paid cash for her work. After two months the family asks Marija to stay and work for them full time. They offered to grant her a work contract and asked her to apply for a residence permit. Marija intends to apply for a residence in permit in Lithuania during the 90 days period she enjoys visa liberalization. However, Marija is detected by the authorities in Lithuania before applying for the permit. What would be the consequence for Marija?

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

Moreover, even while staying regularly in the country, Marija would not be able to apply for the issue of a work permit. She would have to obtain the work permit prior to entering Lithuania (unless she is in possession of a national visa (D) issued for employment or she is not subject to the labour market test and is paid a higher salary). A work permit is issued solely for the purposes of employment with a particular employer.

The SLI would impose administrative liability against the family as the employer who permitted to perform work without an employment contract and a work permit.

A21e. A third-country national seasonal worker

Mr. Karim Harrak, a 25 year old from Morocco entered Lithuania as a seasonal worker for strawberry picking. He has been residing on a seasonal worker permit and is required to leave Lithuania after the legally allowed duration for stay expired²³. The contract with his current employer is valid for six months. However, after his contract expired he remained in Lithuania and took on another job in a hotel. He thus remained in Lithuania 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?

If the alien is staying in the Republic of Lithuania irregularly (e.g., is not in possession of a valid residence permit or a valid visa), the police (county police headquarters) or a structural unit of the State Border Guard Service under the Ministry of the Interior (according to the place of the alien's stay or detention) would take a decision on his return to a foreign state (this decision would, having regard to the alien's possibilities to leave as soon as possible, determine a period of between 7 to 30 days from the service of the decision to him within which he would be obliged to voluntarily leave from the Republic of Lithuania).

It should be noted that the alien, while staying irregularly in Lithuania, would not be able to lodge an application for the issue of a multiple-entry national visa or a temporary residence permit in the Republic of Lithuania, that is, would not be able to regularise his residence in the Republic of Lithuania.

The SLI would impose administrative liability against the employer (the enterprise managing the hotel) which permitted to perform work without an employment contract and a work permit.

²² 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

²³ Based on Directive 2014/36/EU – Seasonal workers – allowing third-country nationals to reside in a Member State between five months and nine months in any 12-month period. The permit is renewable. IE and the UK are not participating in this Directive.

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 paid 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 issue of the legal status of Awa Diop in the Republic of Lithuania would be considered in the same manner as that of Shire (the case in Q21 a), unless he would be recognised as a victim of trafficking in human beings or illegal employment.

In such a case, he would be granted the cooling-off period in accordance with the procedure laid down by the Government of the Republic of Lithuania during which he, as a present or former victim of crimes related to trafficking in human beings, would have to take a decision on cooperation with a pre-trial investigation body or the court. During this period, he would not be expelled from the Republic of Lithuania.

If Awa Diop were allowed to stay in the Republic of Lithuania because he is or was a victim of trafficking in human beings or illegal employment and cooperates with a pre-trial investigation body or the court in combating trafficking in human beings or crimes related to trafficking in human beings or illegal employment, in the cases of particularly exploitative employment conditions or the employment of a minor, Awa Diop would, according to Article 40(12) of the Law of the Republic of Lithuania on the Legal Status of Aliens, be issued a temporary residence permit in the Republic of Lithuania valid for a period for six months (provided that the pre-trial investigation body or the court mediates in issuing the temporary residence permit to Awa Diop). Upon issuing Awa Diop the temporary residence permit, he would, by a decision of the mediating pre-trial investigation body or the court, be permitted to reside at the place of his choice or the place specified by the said body. If Awa Diop did not have sufficient means of subsistence, he would be entitled to receive basic medical aid and social services in accordance with the procedure laid down by legal acts of the Republic of Lithuania. Having been issued the temporary residence permit and a work permit, Awa Diop would have the right to take up employment during the period of validity of the temporary residence permit.

Annex

1. Inspections and sanctions for employers

Question 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 9.1. a-e of Directive 209/52, i.e.:

Convictions for employers	2014	2015	2016
Total number of convictions	0	0	0
(a) infringement continues or is persistently repeated	0	0	0
(b) infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	0	0	0
(c) the infringement is accompanied by particularly exploitative working conditions	0	0	0
(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	0	0	0
(e) the infringement relates to the illegal employment of a minor	0	0	0

Question A.2: Please provide statistics on type and number of sanctions for employers in Lithuania.

Type of sanction for employers (please fill in)	2014	2015	2016
Number of records of offences drawn up to employers under Article 41³ of the Code of Administrative Offences for the illegal employment of aliens	6	11	12
Number of records of offences drawn up to employers under Article 12¹ of the Law on the State Labour Inspectorate²⁴	9	13	8

2. Scale and profiles of illegal employment of TCNs

Question A.3: Please provide statistics on a number of identified illegally employed TCNs.

Illegally employed TCNs	2014	2015	2016	Methodological notes
Number of cases of identified <u>illegally staying</u> and illegally employed TCNs	0	32	0	n/a
Number of cases of identified <u>legally staying</u> and illegally employed TCNs	66	138	58	n/a

²⁴ The employers which are legal persons, if they permit the illegal employment of third-country nationals, shall be subject to a fine in the amount from EUR 868 up to EUR 2 896 for each illegally employed third-country national. The same actions, if committed by the legal person already punished for this offence within one year from the completion of enforcement of the imposed fine, shall be subject, in the case of that legal person, to a fine for each third-country national in the amount from EUR 2 896 up to EUR 5 792.

Question A.4: Please provide statistics on the profiles of illegally employed TCNs in Lithuania for 2015

Illegally employed TCNs	Top 10 nationalities	Age disaggregation	Sex disaggregation	Methodological notes
Number of cases of identified <u>illegally staying</u> and illegally employed TCNs	Citizens of Russia	n/a	All males	n/a
Number of cases of identified <u>legally staying</u> and illegally employed TCNs	Russia, Ukraine, Belarus, Moldova	n/a	The majority were males (approximately 95 per cent)	n/a

3. Outcomes for TCNs

Question 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>illegally staying</u> and illegally working TCNs	n/a	n/a	n/a	n/a
Number of residence and/or work permits issued to detected <u>legally staying</u> and illegally working TCNs	n/a	n/a	n/a	n/a
Number of illegally employed TCNs who were granted a period for voluntary return	n/a	n/a	n/a	n/a
Number of illegally employed TCNs who were given an order to leave the country following a labour inspection	n/a	n/a	n/a	n/a
Number of illegally employed TCNs who were deported following an inspection	n/a	n/a	n/a	n/a
Number of illegally employed TCNs who were identified as victims of trafficking in human beings	n/a	n/a	n/a	n/a
Number of decisions obliging employers to pay back payments/ amount equal to taxes and social security contributions	n/a	n/a	n/a	n/a

Question 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
Number of records of offences drawn up to persons (aliens) for work performed without having obtained a business certificate	1	7	4	

Question 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
Illegal employment without conclusion of an employment contract	1604	1447	1124	
Including illegal employment of foreign nationals and stateless persons	11	16	26	

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

As on 1 January 2016, 99 200 enterprises, agencies, and organisations (hereinafter: ‘enterprises’) operated in the Republic of Lithuania and employed 1 234 000 workers. At the beginning of 2016, there were registered in the country 122 301 active farmers and self-employed persons. The period of 2009-2015 saw annual growth in the number of operating enterprises and farmers’ farms. By the beginning of 2016, compared to 2009, the number of operating enterprises has increased by 19.2 per cent, while the number of staff working in such enterprises – by 7.3 per cent.

During 2009-2015, the national economy was dominated by small (up to 9 employees) enterprises. Compared with 2009, in 2015 their proportion increased from 74.4 per cent up to 80.1 per cent of the total number of enterprises operating in the country. The small enterprises employed approximately 18 per cent of all employees. In 2015, the enterprises employing 10 to 49 employees accounted for approximately 15.2 per cent, the enterprises with 50 to 249 employees – for approximately 4.1 per cent, and the enterprises with more than 250 employees accounted for 0.5 per cent of the enterprises operating in the country. Data of the Lithuanian Department of Statistics (Statistics Lithuania) show that in 2015, the prevailing economic activities pursued by enterprises in the country were wholesale and retail trade and motor vehicle repair services (24.4 per cent of all enterprises). The enterprises engaged in professional, scientific and technical activities accounted for 10.1 per cent, service activities – for 10.8 per cent, construction – for 7.3 per cent, and manufacturing – for 7.7 per cent of all operating enterprises.

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

Additional data may be accessed on the website of the State Labour Inspectorate www.vdi.lt.

European Migration Network (EMN) is a network composed of migration and asylum experts from EU Member States, Norway and the European Commission. Its main objective is to collect, analyse and provide up-to-date, objective, reliable and comparable information on migration and asylum to policy makers at EU and Member State level and the general public.

The EMN National Contact Point (NCP) in Lithuania is composed of representatives from the Ministry of the Interior, the Migration Department, the State border guard service as well as the International Organization for Migration (IOM) Vilnius office which acts the national co-ordinator for the EMN activities in Lithuania. EMN NCP in Lithuania also collaborates with other entities from governmental as well as non-governmental institutions working in the area of migration. .
