

# ILLEGAL EMPLOYMENT OF THIRD-COUNTRY NATIONALS: 2017-2022 SITUATION ANALYSIS

## Common Template for an EMN Study

(Version 2023/06/01)

**Subject: EMN study "ILLEGAL EMPLOYMENT OF THIRD-COUNTRY NATIONALS: 2017-2022 SITUATION ANALYSIS"**

## 1. BACKGROUND AND RATIONALE FOR THE STUDY

The European Commission's 2007 Communication 'Stepping up the fight against undeclared work' states that any form of illegal employment of nationals or third-country nationals in the EU Member States decreases tax revenues, undermines the financing of social security systems, as well as distorts fair competition among firms.<sup>1</sup> In addition to this negative economic impact, employers who pursue illegal employment practices provide their employees with limited information on minimum standards in working conditions, employment regulations and their rights. Such illegal employment is often done in precarious conditions, which makes employees more susceptible to exploitation.

Preventing illegal employment is a policy objective and priority for the EU and its Member States. This is because the possibility of working in the EU without the required legal status is becoming one of the key drivers of irregular migration into the Union.<sup>2</sup> For the purposes of this template, in the EU context, illegal employment

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<sup>1</sup> European Commission, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Stepping up the fight against undeclared work, 2007, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0628&from=EN>, last accessed 8 March 2023.

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU action plan against migrant smuggling (2021-2025), 2021, [https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-591\\_en\\_0.pdf](https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-591_en_0.pdf), last accessed 14 April 2023, p. 20.

covers<sup>3</sup> both the illegal employment of third-country nationals who are irregularly staying on the territory of an EU Member State and of legally residing third-country nationals who are working outside the conditions of their residence permit and/or work permit.

Illegal employment is a complex phenomenon affecting several domains, including migration, employment, social policies, fiscal policy, and respect for individuals' rights. While the scale and occurrence of illegal employment differs between private households, small and medium businesses, and large companies, and across economic sectors, illegal employment provides grounds for those employers willing to cut labour costs and circumvent rules to take advantage of workers ready to undertake low-skilled, low-paid jobs in labour-intensive sectors and ready to work in difficult and often precarious conditions.<sup>4</sup> It is important to note that these workers often have no alternative or better options, making it a necessity rather than a choice. As a result, the successful prevention of illegal employment is at the intersection between employment, migration and human rights matters.

Nevertheless, the EU competencies in employment and migration policies defined in the Treaty on the Functioning of the European Union (TFEU)<sup>5</sup> differ. Member States are primarily responsible for employment policy, while migration policy initiatives, including prevention of irregular migration, is a competence that is shared between the EU and its Member States. In 2009, to tackle illegal employment and to increase Member States' coordination, the European Commission introduced the Employers' Sanctions Directive.<sup>6</sup> The Directive was designed to provide Member States with rules to step up action against the illegal employment of third-country nationals who are illegally staying. The measures cover prevention, detection, and sanctions, and seek to deter employers from engaging in illegal employment, as well as seeking to increase protection of irregularly staying third-country nationals against exploitative employers.

Since then, the need for joint action against illegal employment has been reiterated in the 2015 European Agenda on Migration<sup>7</sup> and the European Commission's 2020 Communication on a New Pact on Migration and Asylum.<sup>8</sup> Both policy documents, as

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<sup>3</sup> EMN Glossary, Version 8, [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/illegal-employment\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/illegal-employment_en), last accessed 8 March 2023.

<sup>4</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, 2021, [https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592\\_en\\_0.pdf](https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592_en_0.pdf), last accessed 14 April 2023, p. 20.

<sup>5</sup> Treaty on the Functioning of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>, last accessed 8 March 2023.

<sup>6</sup> Council of the EU, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2009, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0052>, last accessed 8 March 2023.

<sup>7</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, a European Agenda on Migration, A European Agenda on Migration, 2015, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0240&from=EN>, last accessed 8 March 2023.

<sup>8</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum, 2020,

well as the European Commission's 2021 Communication on the Employers' Sanctions Directive,<sup>9</sup> continue to emphasise the necessity to strengthen the effectiveness of the Employers' Sanctions Directive and evaluate the need for future action. Furthermore, the EMN study on the Illegal Employment of Third-Country Nationals in the EU (2017) concluded that action against the illegal employment of third-country nationals needs to increase by introducing and implementing protective measures and risk assessments to improve the identification of undeclared work.<sup>10</sup> Therefore, in terms of existing policy evaluations, a study providing systematic up-to-date analysis of measures, obstacles, and good practices to tackle illegal employment of third-country nationals in EMN Member States and Observer Countries is relevant.

Additionally, the identification of illegal employment has become ever more relevant in the context of the war in Ukraine. According to data provided by UNHCR<sup>11</sup>, since the war began in Ukraine, more than 8.2 million Ukrainian nationals have been recorded as arriving in Europe, while approximately 5 million have been registered under the Temporary Protection Directive in the EU. Many working-age adults are estimated to be working during their stay as beneficiaries of temporary protection, as they have the right to access the labour market of Member States. Nevertheless, the possibility for displaced Ukrainians to take part in illegal employment activities exists. The European Commission's 2022 Communication on Guidance for access to the labour market, vocational education and training and adult learning of people fleeing Russia's war of aggression against Ukraine emphasizes the need to ensure that beneficiaries of temporary protection are not exploited and do not partake in undeclared work activities.<sup>12</sup> Furthermore, research conducted in this field, claims that in the EU public employment services lack necessary data to account for the informal employment of Ukrainians fleeing the war.<sup>13</sup> Similar conclusions can be drawn from the survey conducted by the European Union Agency for Fundamental Rights (FRA) showing that many displaced Ukrainian persons may be recruited for informal employment. As a result, it is also relevant to gather information from EMN Member States and Observer Countries on whether the situation for Ukrainians who fled the war in Ukraine has led to a specific impact or consequences on the illegal employment of third-country nationals.

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[https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC\\_3&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF), last accessed 8 March 2023.

<sup>9</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, 2021, [https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592\\_en\\_0.pdf](https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592_en_0.pdf), last accessed 8 March 2023.

<sup>10</sup> EMN study on the Illegal Employment of Third-Country Nationals in the EU (2017), [https://home-affairs.ec.europa.eu/system/files/2020-09/00\\_eu\\_illegal\\_employment\\_synthesis\\_report\\_final\\_en\\_0.pdf](https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf), last accessed 8 March 2023, p. 45

<sup>11</sup> UNHCR, Operational Data Portal, <https://data.unhcr.org/en/situations/ukraine>, last accessed 8 March 2023.

<sup>12</sup> European Commission, Communication from the Commission on Guidance for access to the labour market, vocational education and training and adult learning of people fleeing Russia's war of aggression against Ukraine 2022/C 233/01, 2022, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0616\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0616(01)), last accessed 25 May 2023, p. 3.

<sup>13</sup> GLOBSEC, Between Vague Return Prospects and Limited Employment Opportunities: The Challenges of Ukrainian Refugees' Labour Market Integration, 28 February 2023, <https://www.globsec.org/sites/default/files/2023-02/Policy%20Brief%20-%20Between%20Vague%20Return%20Prospects.pdf>, last accessed 25 May 2025, p. 3.

## 2. STUDY AIMS AND OBJECTIVES

The study provides a descriptive overview of the illegal employment situation in the EU, as well as in some EMN Observer Countries. It will equip national and EU policymakers with a better understanding of the approaches adopted by EMN Member and Observer Countries concerning different aspects of the illegal employment of third-country nationals.<sup>14</sup> In addition, the research will provide insights on the magnitude of illegal employment of third-country nationals in the EU and the sectors affected by it. Finally, the latest examples of good practices in illegal employment prevention will be provided to policymakers. As such, the study has the following aims:

1. Provide an overview of the situation of illegal employment of third-country nationals in EMN Member and Observer Countries since 2017 and an update on the 2017 EMN study on the Illegal Employment of Third-Country Nationals in the EU.
2. Gather insights about new developments regarding the institutional and legislative framework to fight the illegal employment of third-country nationals in EMN Member and Observer Countries and possible areas of concern in this field since 2017.
3. Identify new measures used in EMN Member and Observer Countries to detect cases of illegal employment of third-country nationals and protect the rights of illegally employed third-country nationals since 2017.
4. Share the latest good practices on the prevention of illegal employment of third-country nationals since 2017.

## 3. SCOPE OF THE STUDY

The scope of this EMN Study is the illegal employment of third-country nationals<sup>15</sup> who are either legally staying or irregularly staying in the territory of an EU Member State.

### TARGET GROUP

The study gives an overview of the diverse responses of EMN Member Countries and Observer Countries to counter the illegal employment of third-country nationals. With this in mind, the focus in this study is on illegal employment practices undertaken by employers and third-country nationals and the target group to be analysed is third-country nationals who engage in illegal employment.

The analysis considers illegal employment of third-country nationals through three key categories. First, a third-country national legally residing in the country but illegally employed in undeclared work. Second, a third-country national legally residing in the country working outside the conditions of their residence/immigration permit. Third, a third-country national irregularly staying in the country and working.

The possibility for employers to take advantage of workers or to exploit them applies to all these three categories. Nevertheless, the level of vulnerability for third-country nationals increases the more an employee is in an irregular situation, i.e., in terms of staying and working in the country. The study also accounts for cases of illegal 'self-

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<sup>14</sup> EMN Observer Countries to explain and address the situation concerning the illegal employment of relevant groups at the national level.

<sup>15</sup> Where it is difficult in EU Member States to differentiate between third-country and EU nationals, please provide an explanation and focus on third-country nationals where possible.

employment', specifically platform work, undertaken by third-country nationals and this can fall under all three categories. Beneficiaries of temporary protection are included in the study, and this category is one example of a group falling under the first category. International protection applicants are excluded from the scope of this study, due to the diverging regulatory framework under which they access Member States' labour markets.

## **4. EU LEGAL AND POLICY CONTEXT**

Although the implementation of employment policy is in the purview of the Member States, EU institutions formulate strategic policy documents to guide the actions of Member States. One of the first documents providing strategic guidelines in such a manner was the Council resolution on transforming undeclared work into regular employment adopted in 2003. This resolution stressed the need to strengthen the prevention of illegal employment, improve the capacity of national authorities responsible for preventing illegal employment practices and increase cooperation between social partners.<sup>16</sup> The illegal employment theme reoccurred in 2006 when the European Commission published a Green Paper on modernising labour law to meet the challenges Member States face. One of the challenges identified was undeclared work, understood as an infringement of well-functioning and adaptable labour markets and, as such, led to the distortion of economic competition.<sup>17</sup> A year later, the European Commission reiterated the same themes in its Communication on stepping up the fight against undeclared work by urging Member States to take a more systematic approach towards illegal employment and to adopt better evidence-based mechanisms.<sup>18</sup> Finally, in 2009, the EU adopted a legislative instrument to tackle illegal employment of third-country nationals – the Employers' Sanctions Directive. Article 1 of the Directive prohibits the employment of illegally staying third-country nationals and sanctions employers. To this end, the Directive is meant to lay down the minimum common standards on sanctions and measures to be applied in the Member States against employers who infringe that prohibition.<sup>19</sup>

The need to step up action against illegal employment of third-country nationals has continued to be emphasised in different EU policy documents. In 2014, the Communication on the application of the Employers' Sanctions Directive found that EU Member States adopt different approaches in sanctioning the illegal employment of

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<sup>16</sup> Council of the EU, Council resolution on transforming undeclared work into regular Employment, 2003, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003G1029\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003G1029(01)&from=EN), last accessed 13 April 2023.

<sup>17</sup> European Commission, Green Paper, Modernising labour law to meet the challenges of the 21st century, 2003, [https://www.europarl.europa.eu/meetdocs/2004\\_2009/documents/com/com\\_com\(2006\)0708\\_/com\\_com\(2006\)0708\\_en.pdf](https://www.europarl.europa.eu/meetdocs/2004_2009/documents/com/com_com(2006)0708_/com_com(2006)0708_en.pdf), last accessed 13 April 2023, p. 14-15.

<sup>18</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Stepping up the fight against undeclared work, 2007, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52007DC0628&from=EN>, last accessed 13 April 2023, p. 10.

<sup>19</sup> Council of the EU, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, 2009, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0052&from=EN>, last accessed 14 April 2023, p. 4.



illegally staying third-country nationals,<sup>20</sup> and in 2015, the European Agenda on Migration reiterated the need to increase action against the illegal employment of third-country nationals.<sup>21</sup>

Directive 2014/36/EU of 26 February 2014 sets the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers. The Directive aims at ensuring fair and transparent rules for the admission of third-country seasonal workers to the EU and at granting decent working and living conditions, equal rights and sufficient protection from exploitation. It also aims at reducing irregular migration.

Similarly, the EU Action Plan against migrant smuggling for the period 2015-2020 stated that together with Member States, the European Commission should identify targets regarding the number of inspections to be carried out every year in the economic sectors most exposed to the illegal employment of irregular migrants such as the construction, agriculture and horticulture, housework/cleaning and catering and hospitality service sectors.<sup>22</sup> Additionally, in 2016, the EU introduced the European Platform tackling undeclared work to improve cooperation, sharing of best practices, and identification of common principles for inspections between labour inspectorates and other enforcement authorities at the Union level.<sup>23</sup> The Council Decision establishing the Platform does not differentiate between the nationalities of illegally employed workers. However, it recognizes that undeclared work has different effects on different social groups, and some groups such as migrants, given the precariousness of their status, are in a particularly vulnerable position.<sup>24</sup>

The prevention of exploitation and ensuring the protection of migrants was reiterated in the renewed EU action plan against migrant smuggling for the period of 2021-2025<sup>25</sup>, which highlighted that the effective implementation of the Employers' Sanctions Directive is needed to deter irregular migration and to protect the rights of irregular migrant workers. The Communication on the application of the Employers' Sanctions Directive, which was presented together with the renewed EU action plan against migrant smuggling, contains the sanctioning of employers who hire irregular migrants with no right to stay, ensuring effective mechanisms for recovering unpaid

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<sup>20</sup> European Commission, Communication from the Commission to the European Parliament and the Council on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, 2014, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0286>, last accessed 14 April 2023, p. 9.

<sup>21</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration, 2015, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0240&from=EN>, last accessed 14 April 2023, p. 9.

<sup>22</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Action Plan against migrant smuggling (2015 - 2020), 2015, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0285&from=en>, last accessed 14 April 2023, p. 8.

<sup>23</sup> Council of the EU, Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work, 2016, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0344&from=EN>, last accessed 14 April 2023, p. 1.

<sup>24</sup> Ibid., p. 2.

<sup>25</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU action plan against migrant smuggling (2021-2025), 2021, [https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-591\\_en\\_0.pdf](https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-591_en_0.pdf), last accessed 14 April 2023.

wages, lodging complaints and reporting labour exploitation, as well as carrying out effective inspections in the economic sectors most at risk of illegal employment, as possible measures to achieve the goals set out by the European Commission.<sup>26</sup>

## 5. PRIMARY QUESTIONS TO BE ADDRESSED BY THE STUDY

The study asks the following primary research questions, with reference to the reporting period 2017-2022:

1. What new national legal and policy changes on illegal employment of third-country nationals have been introduced in EMN Member and Observer Countries since 2017?
2. What new preventive measures and incentives are in place in the EMN Member or Observer Countries designed to mitigate the illegal employment of third-country nationals since 2017?
3. Have EMN Member or Observer Countries introduced any new initiatives to identify the illegal employment of third-country nationals since 2017?
4. What new sanctions for employers are in place in the EMN Member or Observer Countries, and what are the factors affecting their implementation since 2017?
5. What are the possible outcomes and/or sanctions introduced by EMN Member or Observer Countries for identified illegally employed third-country nationals since 2017?

If an EMN Member Country or Observer Country has implemented changes designed to account for the Ukrainian refugee situation, it should briefly provide information on these developments in the appropriate sections of the common template.

## 6. RELEVANT SOURCES AND LITERATURE

### EMN STUDIES

- EMN, "Illegal employment of third-country nationals in the European Union", Synthesis Report, 2017, [https://home-affairs.ec.europa.eu/system/files/2020-09/00\\_eu\\_illegal\\_employment\\_synthesis\\_report\\_final\\_en\\_0.pdf](https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf).

### EU POLICY DOCUMENTS

- Council of the EU, [Council resolution on transforming undeclared work into regular employment \(2003/C 260/01\)](#), 2003.
- Council of the EU, [Decision \(EU\) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work](#), 2016.
- Council of the EU, [Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#), 2009.
- European Commission, [Communication from the Commission on Guidance for access to the labour market, vocational education and training and adult](#)

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<sup>26</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, 2021, [https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592\\_en\\_0.pdf](https://home-affairs.ec.europa.eu/system/files/2021-09/COM-2021-592_en_0.pdf), last accessed 8 March 2023.

[learning of people fleeing Russia's war of aggression against Ukraine 2022/C 233/01](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0616(01)), 2022.[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0616\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0616(01))

- European Commission, [Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Stepping up the fight against undeclared work](#), 2007.
- European Commission, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals](#), 2021.
- European Commission, [Communication from the Commission to the European Parliament and the Council on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals](#), 2014.
- European Commission, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee on the Regions on a New Pact on Migration and Asylum](#), 2020.
- European Commission, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A European Agenda on Migration](#), 2015.
- European Commission, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A renewed EU action plan against migrant smuggling \(2021-2025\)](#), 2021.
- European Commission, [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Action Plan against migrant smuggling \(2015-2020\)](#), 2015.
- European Commission, [Green Paper on Modernising labour law to meet the challenges of the 21st century](#), 2006.
- European Commission, [Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of Decision \(EU\) 2016/344 establishing a European Platform for enhancing cooperation in tackling undeclared work](#), 2020.

## 7. AVAILABLE STATISTICS

National statistics based on the reporting requirements of the Employers' Sanctions Directive (2009/52/EC) on:

- Inspections and sanctions for employers;
- Scale and profile of illegal employment of third-country nationals;
- Outcomes or consequences for third-country nationals.

For EMN Member and Observer countries that do not participate in the Employers' Sanctions Directive, equivalent national statistics will be provided where available.



## 8. DEFINITIONS

The following key terms are used in the common template. The definitions are taken from the EMN Asylum and Migration Glossary, unless specified otherwise in footnotes:

- **Illegal employment:** Economic activity carried out in violation of provisions set by legislation.
- **Illegal employment of a legally staying third-country national:** Employment of a legally staying third-country national working outside the conditions of their residence permit and / or without a permission to work which is subject to each EU Member State's national law.
- **Illegal employment of an illegally staying third-country national:** Employment of an illegally staying third-country national.
- **Irregular stay:** The presence on the territory of an EU Member State of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Regulation (EU) 2016/399 (Schengen Borders Code) or other conditions for entry, stay or residence in that EU Member State.
- **Informal economy:** All economic activities by workers and economic units that are -in law or in practice -not covered or insufficiently covered by formal arrangements.
- **Platform work:** any work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service.<sup>27</sup>

## 9. ADVISORY GROUP

A core AG, consisting of seven NCPs, COM and the Service Provider has been established to follow the development of the common template very closely and provide dedicated input and support.

- BE NCP
- CY NCP
- EE NCP
- FR NCP
- IE NCP
- LT NCP (Lead)
- LU NCP
- ICF/ EMN Service Provider
- COM

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<sup>27</sup> European Commission, Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work, COM (2021) 762, Article 2(2), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52021PC0762>, last accessed 6 July 2023.

The following third parties will be invited to contribute to this study:

- Organisation for Economic Co-operation and Development (OECD)
- European Union Agency for Fundamental Rights (FRA)
- European Labour Authority (ELA)

## 10. TIMETABLE

The following tentative timetable has been proposed for the Study going forward:

Date	Action	
<b>Study specifications</b>		
Week 1	Circulation of the <b>first draft</b> to the AG for written feedback (one-week deadline for review)	AG Lead (NCP/ COM)
Week 2	First AG meeting and discussions on the written feedback	23 March 2023
Week 3	Circulation of the <b>second draft</b> to the AG (one-week deadline for review)	AG Lead and Service Provider
Week 7	Second AG meeting and discussions on the written feedback	24 April 2023
Week 8	Circulation of the <b>third draft</b> to the study lead (three days for review)	AG Lead and Service Provider
Week 9	Third AG meeting and discussions on written feedback	23 May 2023
Week 10	Circulation of the <b>final draft</b> to NCPs (two weeks deadline for review)	AG Lead and Service Provider
Week 12	Launch of the study	10 July 2023 or as soon as approved.
<b>National reports (12 weeks)</b>		
	<b>Submission of National Reports</b> by EMN NCPs	<b>To add (TPD deadline plus 4 weeks)</b>
<b>Drafting of study</b>		
Week 1-4	<b>Draft</b> of the study to COM and AG members (one-week deadline for review)	
Week 5	Deadline for comments	
Week 6	Circulation of the <b>first draft</b> to all NCPs (two-weeks deadline for review)	
Week 7-8	Deadline for comments	
Week 9-10	Circulation of the <b>second draft</b> to COM and all NCPs (two-weeks deadline for review)	
Week 11-12	Deadline for comments	

Date	Action	
Week 13-14	Circulation of the <b>third (final) draft</b> SR to COM and all NCPs (two-weeks deadline for review)	
Week 15-16	Deadline for comments	
Week 17	<b>Publication</b>	

## 11. TEMPLATE FOR NATIONAL CONTRIBUTIONS

# Common Template of EMN Study 2022

## Illegal Employment of Third-Country Nationals: 2017-2022 Situation Analysis

### NATIONAL CONTRIBUTION FROM LATVIA\*<sup>28</sup>

*Disclaimer: The following information has been provided primarily for the purpose of contributing to this EMN study. The EMN NCP has provided information that is, to the best of its knowledge, up-to-date, objective and reliable within the context and confines of this study. The information may thus not provide a complete description and may not represent the entirety of the official policy of the EMN NCPs' Member or Observer Country.*

#### Top-line factsheet [max. 1 page]

*The top-line factsheet will serve as an overview of the **National Contribution** introducing the study and drawing out key facts and figures from across all sections, with a particular emphasis on elements that will be of relevance to (national) policymakers. Please add any innovative or visual presentations that can carry through into the synthesis report as possible infographics and visual elements.*

#### **Please provide a concise summary of the main findings of Sections 1-5:**

In the study "Illegal Employment of Third-Country Nationals: 2017-2022 Situation Analysis" it is possible to learn about the most important changes in the regulatory enactments and national policy, measures introduced for the prevention and detection of illegal employment and the sanctions for third-country nationals.

It is important to remember that in Latvia the employment of third-country nationals is controlled by three competent authorities - the State Labour Inspectorate (hereinafter - the SLI), the State Revenue Service (hereinafter - the SRS) and the State Border Guard (hereinafter - the SBG):

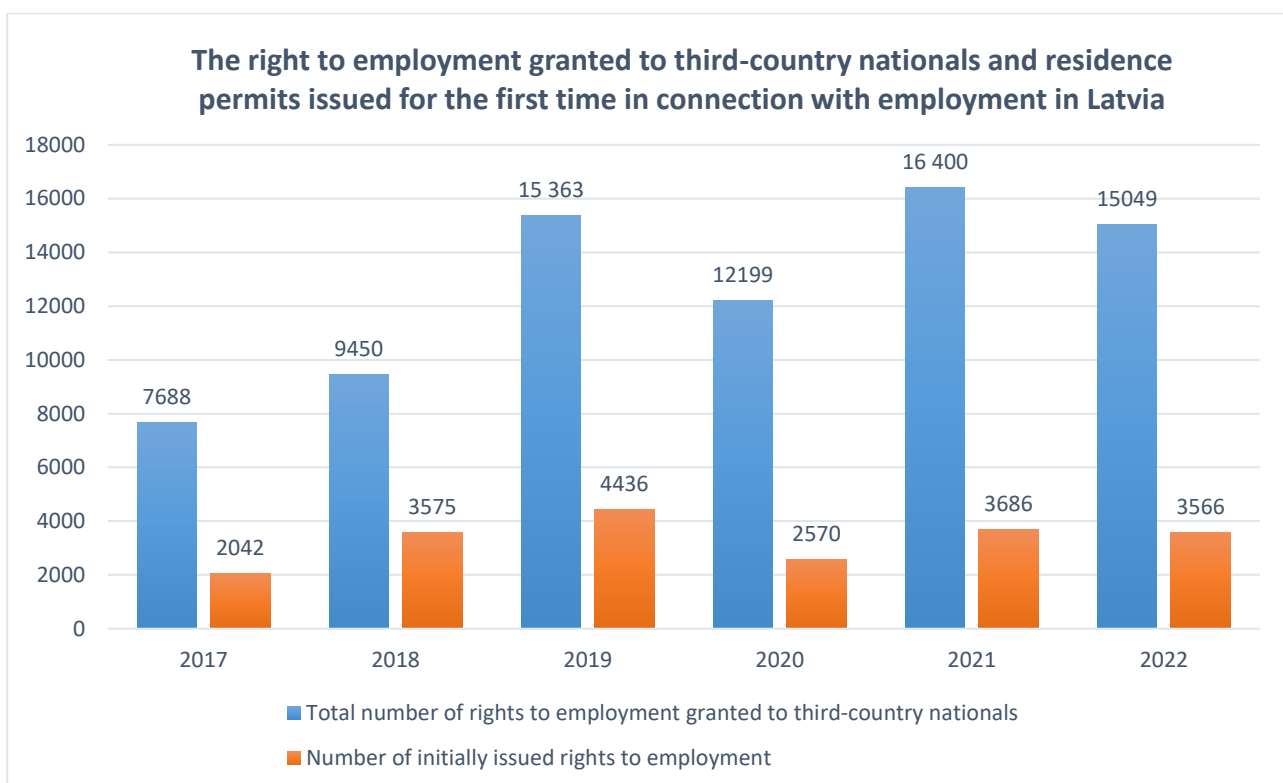
- SLI performs state supervision and control in the field of employment relationship and labour protection

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<sup>28</sup> Replace highlighted text with your **Member or Observer Country** name here.

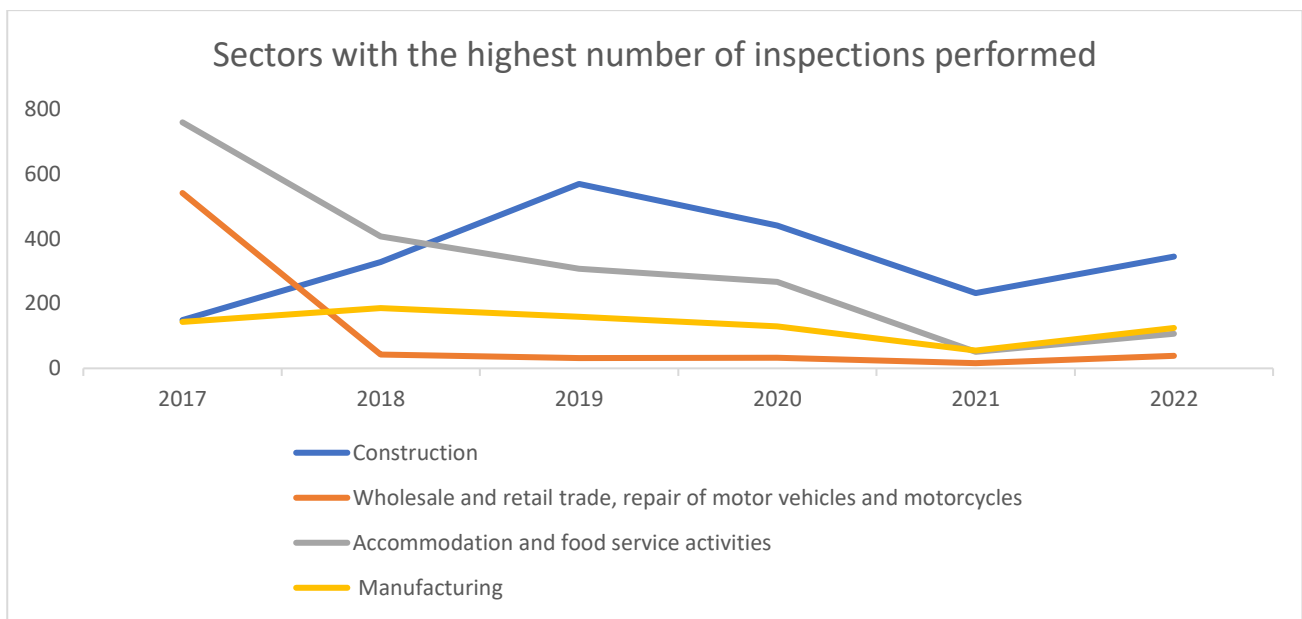
- SRS verifies the accuracy of the calculation of the personal income tax and mandatory state social insurance contributions and payment to the budget, performing thematic inspections of employers
- SBG is tasked with controlling how the regulations on entry, stay, employment, exit, and transit of foreigners in the territory of the Republic of Latvia are complied with. The SBG is entitled to apply administrative sanctions for offences provided for in the Immigration Law.

Prevention of illegal employment of third-country nationals is not a national policy priority, although it is indirectly related to the prevention of illegal migration and fight against unrecorded economy, both of which are significant national policy priorities. The changes made in the regulatory enactments are focused on attracting foreign employees and promoting the related legal migration and facilitation of procedure in order to minimize the labour force shortage. The employment conditions were eased for the third country nationals working in professions where a significant labour force shortage is predicted, reducing the time period for which the vacancy should be free before the Office of Citizenship and Migration Affairs (hereinafter - the OCMA) approves the invitation for a third-country national.



Data source: OCMA

SLI and SBG perform joint inspections at the companies of different sectors, and the sectors where the highest number of violations are detected are under increased control, for example, construction, where for a long time unregistered employment has been detected most often. SLI and SBG cooperate in order to uncover cases of illegal employment of third-country nationals, however, obstacles arise due to the difficulty of acquiring information and evidence promptly, the different and varying forms of illegal employment, the employees' unwillingness to cooperate and the identification of the guilty parties.



Data source: SBG

The information necessary for the study was obtained from the regulatory enactments of the Republic of Latvia and provided by the officials of the Ministry of the Interior, the Ministry of Welfare, the State Border Guard and the State Labour Inspectorate.

## **SECTION 1: NATIONAL LEGAL AND POLICY FRAMEWORK CHANGES ON ILLEGAL EMPLOYMENT IN THE EMN MEMBER OR OBSERVER COUNTRY<sup>29</sup>**

*For this and all sections, please include information on illegal self-employment, particularly platform work, where relevant.*

**Q1.** Is the prevention of illegal employment of third-country nationals a national priority in your EMN Member or Observer Country?<sup>30</sup>

☐ Yes, it is a national policy priority.

☒ No, it is not a national policy priority.

☐ Other.

*Please explain your answer.*

No, it is not a national policy priority.

One of the national priorities is the prevention of illegal migration of third-country nationals as such, in particular, with regard to the flow of migrants from Belarus, rather than the prevention of illegal employment of third-country nationals. The Declaration of the Intended Activities of the Cabinet of Ministers of 2022<sup>31</sup> included a paragraph on

<sup>29</sup> Since the EMN study on the Illegal Employment of Third-Country Nationals in the EU (2017), [https://home-affairs.ec.europa.eu/system/files/2020-09/00\\_eu\\_illegal\\_employment\\_synthesis\\_report\\_final\\_en\\_0.pdf](https://home-affairs.ec.europa.eu/system/files/2020-09/00_eu_illegal_employment_synthesis_report_final_en_0.pdf), last accessed 8 March 2023.

<sup>30</sup> Hereinafter, 'your country.'

<sup>31</sup> Declaration of the Intended Activities of the Cabinet of Ministers headed by Arturs Krišjānis Kariņš, 14 December 2022 – Available: <https://www.mk.gov.lv/lv/media/14490/download?attachment>



the commitment to ensure the construction of the state external border and implement efficient strategy in order to eliminate the risks of illegal immigration on the external border. Besides, it is stated in the Government Action Plan for the Implementation of the Declaration<sup>32</sup> that a well-maintained and developed external border control and protection has to be ensured in accordance with the requirements set for the external borders of the EU, as well as timely response measures to identified threats (including the illegal movement or illegal immigration of third-country nationals) have to be performed.

Another national policy priority for a long period of time has been the fight against unrecorded economy, which is reflected in public media as well as the political documents of the government and ministries. As it was stated in the Declaration of 2019<sup>33</sup>, the government committed to continue to implement measures for limiting the unrecorded economy by taking primary action to improve tax pay and promote fair competition in the sectors of the economy with the highest risk of unrecorded economy, in order to advance overall economic growth. Similar paragraphs were also included in the Declaration of 2022, however, considering that the number of cases of illegal employment of third-country nationals in Latvia is comparatively small, this aspect in the strategy to fight against unrecorded economy is not emphasized and therefore is not to be considered a national policy priority.

**Q2.** Is there a current or has there been any recent public and/or policy debate (since 2017) regarding illegal employment of third-country nationals in your country (i.e., in Parliament, the media, etc.)?

☒ Yes.

☐ No.

*Please elaborate on the main issues of the debate and indicate the reasons of its emergence.*

In 2018, in relation to the increasing number of foreign students, the majority of which were third-country nationals, issues regarding the illegal employment of students were discussed in public media. In 2018, the students who are third-country nationals were usually allowed to work only 20 hours a week, therefore, an opinion was expressed that such employment regulations for students who are third-country nationals do not encourage legal employment and the payment of taxes.<sup>34</sup> Simultaneously, the public media also reflected a view that third-country nationals use their student status to

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<sup>32</sup> Cabinet Order No. 210 "Regarding the Government Action Plan for the Implementation of the Declaration on the Intended Activities of the Cabinet of Ministers headed by Arturs Krišjānis Kariņš" – *Latvijas Vēstnesis*, No. 91, 09.05.2019 – [entered into force 07.05.2019 / end of validity: 20.04.2023] – Available: <https://likumi.lv/ta/id/306691-par-valdibas-ricibas-planu-deklaracijas-par-artura-krisjana-karina-vadita-ministru-kabineta-iecere-to-darbibu-istenosana-i>

<sup>33</sup> Declaration of the Intended Activities of the Cabinet of Ministers headed by Arturs Krišjānis Kariņš, 23 January 2019 – Available: [https://www.mk.gov.lv/sites/mk/files/media\\_file/kk-valdibas-deklaracija\\_red-gala-1.pdf](https://www.mk.gov.lv/sites/mk/files/media_file/kk-valdibas-deklaracija_red-gala-1.pdf)

<sup>34</sup> Foreign student employment procedure discourages taxpayers. – Available: <https://ir.lv/2018/04/09/arvalstu-studentu-nodarbinatibas-kartiba-atgruz-nodoklu-maksatajus/>

primarily work rather than study, therefore, it is necessary to limit the number of students who are third-country nationals or the right to employment.<sup>35</sup>

Alongside the discussions in public media about the employment of students who are third-country nationals, there were political discussions occurring as well, and in 2018 the Immigration Law, which provided for the right to employment for students who are third-country nationals for up to 20 hours per week with any employer, was supplemented with including the right to employment for up to 40 hours per week during the study breaks.<sup>36</sup>

In 2019, topics related to the increase in the number of cases of illegal employment of third-country nationals were discussed in the public media. The issues raised included the shortage of employees in different sectors, such as agriculture, construction etc., and the employers' difficulties to attract guest workers, as well as the violations committed against the guest workers, for example, unpaid salary or a much lower paid salary than the amount that was promised.<sup>37 38</sup>

In 2019, the labour force shortage and the need to facilitate the employment procedure for third-country nationals were also discussed in politics, as a result of which amendments to the Cabinet Regulation No. 55 "Regulations Regarding Employment of Foreigners" were adopted on 10 December 2019, shortening the mandatory period of announcement of the vacant position from at least one month to 10 working days<sup>39</sup>, thus accelerating the employment process of third-country nationals.

In 2020, news appeared in public media about the decrease of the number of employees who are third-country nationals in Latvia.<sup>40</sup> The pandemic and the related travel restrictions, as well as the changes in demand in different sectors were listed as the reasons for that. However, in general, the issue of labour force shortage in sectors such as IT, construction and transportation remains.

**Q3.** What are the major changes to: a) law, b) policy and c) practice since 2017 regarding illegal employment of third-country nationals in your country?  
CHANGES IN LAW

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<sup>35</sup> Jānis Dombrava: foreign students - kebab makers. – Available: <https://www.delfi.lv/news/versijas/janis-dombrava-arvalstu-studenti-kebabu-cepeji.d?id=50034553>

<sup>36</sup> Law "Amendments to the Immigration Law" - *Latvijas Vēstnesis*, No.132, 04.07.2018 – [entered into force 18.07.2018] – Available: <https://likumi.lv/ta/id/300109-grozijumi-imigracijas-likuma>

<sup>37</sup> Illegal employment of immigrants has rapidly increased in Latvia. – Available: <https://www.diena.lv/raksts/latvija/zinas/latvija-strauji-augusi-imigrantu-nelegala-nodarbinasana-14218233>

<sup>38</sup> Promises of up to 2,000 euros per month: how foreigners fall for job announcements in Latvia. – Available: <https://jauns.lv/raksts/zinas/348231-sola-pat-2000-eiro-menesi-ka-arzemnieki-iekrit-uz-sludinajumiem-par-darbu-latvija>

<sup>39</sup> Cabinet Regulation No. 637 "Amendments to the Cabinet Regulation No. 55 "Regulations Regarding Employment of Foreigners", adopted on 28 January 2014", *Latvijas Vēstnesis*, No. 258, 27.12.2019 – [entered into force 28.12.2019] – Available: <https://likumi.lv/ta/id/311662-grozijumi-ministru-kabineta-2014-gada-28-janvara-noteikumos-nr-55-noteikumi-par-arzemnieku-nodarbinasanu>

<sup>40</sup> Number of guest workers has significantly decreased; more frequent complaints about failure to pay salary and overwork. – Available: <https://www.lsm.lv/raksts/zinas/ekonomika/viesstradnieku-skaitis-butiski-sarucis-biezakas-sudzibas-par-algu-nemaksasanu-un-parstradasanos.a382689/>

In 2017, 2018 and 2019 several amendments to laws and Cabinet Regulations were adopted in order to facilitate the attraction and employment of third-country nationals and to promote lawful employment.

On 2 March 2017, amendments to the Immigration Law<sup>41</sup> entered into force, supplementing the list included in it with additional cases in which a third-country national can be granted the right to employment. The Cabinet of Ministers determines the list of specialities (professions) in which a significant lack of labour force is forecast and in which third-country nationals may be invited for work in the Republic of Latvia. Preferential admission conditions may be applied to third-country nationals invited for the above-mentioned specialities. Lower minimum salary criterion is applied to persons of these professions who request EU Blue card, applying a coefficient of 1.2 rather than 1.5 to the average monthly work salary of the previous year, and if, in accordance with the regulatory enactments, it is necessary to register the vacancy with the State Employment Agency before inviting a third-country national, then this position has to be vacant for at least 10 working days. On 7 March 2018, the Cabinet Regulation No. 108 "Specialities (professions) in which a significant lack of labour force is forecast and in which foreigners may be invited to the Republic of Latvia for employment purposes" entered into force.<sup>42</sup>

On 7 July 2018, amendments to the Immigration Law entered into force providing that a third-country national who has received a long-stay visa or a temporary residence permit in relation to full-time studies in an educational institution accredited in the Republic of Latvia or in relation to student exchange has the right to employment of up to 20 hours per week or 40 hours per week during the break with any employer (except the third-country national who has the right to employment without restrictions due to the received temporary residence permit as a student in an educational institution accredited in the Republic of Latvia in a full-time master's and doctoral study programme, if there is no study discontinuation during this period of time).<sup>43</sup> Until then such student who is a third-country national had the right to employment for up to 20 hours per week without special conditions with regard to the period of breaks.

On 28 December 2019, amendments to the Cabinet Regulation No. 55 "Regulations Regarding Employment of Foreigners" entered into force, which stipulate that if the position is vacant for at least 10 working days after its registration with the State Employment Agency, the employer may turn to OCMA in order to confirm an invitation for requesting a visa or a sponsorship for requesting a residence permit for a third-country national.<sup>44</sup> Until then, before turning to OCMA, the position had to be vacant for at least a month. The amendments of 2019 also supplemented a list of categories of

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<sup>41</sup> Law "Amendments to the Immigration Law" - *Latvijas Vēstnesis*, No. 36, 16.02.2017 – [entered into force 02.03.2017] – Available: <https://likumi.lv/ta/id/288742-grozijumi-imigrācijas-likuma>

<sup>42</sup> Cabinet Regulation No. 108 "Specialities (professions) in which a significant lack of labour force is forecast and in which foreigners may be invited to the Republic of Latvia for employment purposes", *Latvijas Vēstnesis*, No. 47, 06.03.2018 – [entered into force 07.03.2018] – Available: <https://likumi.lv/ta/id/297537-specialitates-profesijas-kuras-prognoze-butisku-darbaspeka-trukumun-kuras-darba-latvijas-republika-var-uzaicinat-arzemniekus>

<sup>43</sup> Law "Amendments to the Immigration Law" - *Latvijas Vēstnesis*, No.132, 04.07.2018 – [entered into force 18.07.2018] – Available: <https://likumi.lv/ta/id/300109-grozijumi-imigrācijas-likuma>

<sup>44</sup> Cabinet Regulation No. 637 "Amendments to the Cabinet Regulation No. 55 "Regulations Regarding Employment of Foreigners", adopted on 28 January 2014", *Latvijas Vēstnesis*, No. 258, 27.12.2019 – [entered into force 28.12.2019] – Available: <https://likumi.lv/ta/id/311662-grozijumi-ministru-kabineta-2014-gada-28-janvara-noteikumos-nr-55-noteikumi-par-arzemnieku-nodarbināšanu->

third-country nationals, to whom OCMA grants the right to employment (without registration of a vacant position to a branch of the agency), in accordance with the period of validity of the temporary residence permit.

On 9 December 2022, amendments to the Cabinet Regulation No. 552 "Procedures for Approval of Invitations and Drawing up of Written Requests"<sup>45</sup> entered into force, providing for a significantly more convenient procedure for a person to draw up an invitation or sponsorship for the reception of visa or residence permit. According to these amendments, the invitation request can be submitted to OCMA electronically and the person must come to the institution only once in person to receive the visa or residence permit, instead of the previous several in-person visits.

Until 1 July 2020, the Latvian Administrative Violations Code<sup>46</sup> was in force with regard to the violation of the employment prohibition of a third-country national, however, on 6 June 2019, a chapter was included in the Immigration Law<sup>47</sup> dedicated to administrative offences in the field of immigration and competence within the administrative offence proceeding. Sections of law included in the Immigration Law are very similar to those, which were part of the Administrative Violations Code that is no longer in force, and the amounts of fines have also remained the same, only they are formulated in the units of fine (one unit of fine is five euros<sup>48</sup>). Section 68.<sup>4</sup> of the Immigration Law:

- For employing one or up to five persons if the relevant person is entitled to stay in the Republic of Latvia, but the right to employment has not been granted thereto, a fine from twenty-eight up to eighty-six units of fine (from 140 to 430 euros) shall be imposed on natural persons or a member of executive board by or without depriving the member of executive board from the right to hold specific offices in commercial companies.
- For employing more than five persons if they are entitled to stay in the Republic of Latvia, but the right to employment has not been granted thereto, a fine from eighty-six up to one hundred and forty units of fine (from 430 to 700 euros) shall be imposed on natural persons or a member of executive board by or without depriving the member of executive board from the right to hold specific offices in commercial companies.
- For employing one or up to five persons who are not entitled to stay in the Republic of Latvia, a fine from forty-two up to one hundred units of fine (from 210 to 500 euros) shall be imposed on natural persons or a member of executive board by or without depriving the member of executive board from the right to hold specific offices in commercial companies.

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<sup>45</sup> Cabinet Regulation No. 756 "Amendments to the Cabinet Regulation No. 552 "Procedures for Approval of Invitations and Drawing up of Written Requests", adopted on 10 June 2010", *Latvijas Vēstnesis*, No. 47, 08.12.2022 – [entered into force 09.12.2022] – Available: <https://likumi.lv/ta/id/337750-grozijumi-ministru-kabineta-2010-gada-21-junija-noteikumos-nr-552-ielugumu-apstiprinanas-un-uzaicinajumu-noformesanas-kartiba>

<sup>46</sup> Latvian Administrative Violations Code, Bulletin of the Supreme Council and Government of the Latvian Soviet Socialist Republic, No. 51, 20.12.1984 – [entered into force 01.07.1985 / end of validity 01.07.2020] – Available: <https://likumi.lv/ta/id/89648-latvijas-administrativo-parkapumu-odekss>

<sup>47</sup> Law "Amendments to the Immigration Law" - *Latvijas Vēstnesis*, No. 123, 19.06.2019 – [entered into force 01.07.2019] – Available: <https://likumi.lv/ta/id/307627-grozijumi-imigracijas-likuma>

<sup>48</sup> Law on Administrative Liability, *Latvijas Vēstnesis* No. 225, 14.11.2018 – [entered into force 01.07.2020] – Available: <https://likumi.lv/ta/id/303007-administrativas-atbildibas-likums>

From the Code of Administrative Violations was also adopted Section 68.<sup>49</sup> of the Immigration Law about the amount of fine if a person works without a work permit the need of which is determined by the regulatory enactments. The section included in the Immigration Law<sup>49</sup> clarifies that for violating the employment conditions provided for in the Immigration Law if it has been committed by the employed third-country national the applicable fine is from twenty-eight up to one hundred and forty units of fine (from 140 to 700 euros).

The administrative offence proceedings regarding the offences referred to in Section 68.<sup>4</sup> and Section 68.<sup>5</sup> of the Immigration Law are conducted by the SBG.<sup>50</sup>

## CHANGES IN POLICY

In the report on the economic development of Latvia in 2018 prepared by the Ministry of Economics<sup>51</sup> the shortage of highly qualified specialists is emphasized; it is observed in a number of companies, in particular in sectors such as manufacturing and ICT, and it limits Latvia's economic growth, productivity increase of companies and attraction of investments. As one of the priorities of the Ministry of Economics was put forward the reduction of the shortage of highly skilled labour force by implementing measures to promote smart immigration in cooperation with other institutions. The objective of the smart immigration policy is to promote the attraction of highly skilled professionals from third countries. It should be emphasized that these activities are not aimed at lifting or easing of immigration restrictions with regard to the labour force from third countries as a whole, but rather at improving the processes so that if necessary Latvian employers would be able to attract skilled employees in the shortest period of time possible. Similar paragraphs are also included in the report on the economic development of Latvia for 2019, 2020, 2021 and 2022, which shows that the issue of highly skilled labour force shortage is still current and the national policy is still focused on addressing it. Also, the Declaration on the Intended Activities of the Cabinet of Ministers of 2019 included a paragraph on the evaluation of the immigration policy with a view to address the labour force shortage in the country.<sup>52</sup>

## CHANGES IN PRACTICE

Since 2017 the employment of third-country nationals has increased, taking into account the fact that the entry of such persons in Latvia has also increased in numbers. SLI does not keep separate records/statistics on violations involving third-country nationals, however, the information obtained during SLI inspections, from the received complaints and provided consultations indicate some increasing trends in this matter.<sup>53</sup>

The main changes reported by SLI and SBG:

1. There are reasonable concerns that Latvia is being used as a transit country for the recruitment of third-country nationals in other EU Member States. Third-country

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<sup>49</sup> Law "Amendments to the Immigration Law" - *Latvijas Vēstnesis*, No. 123, 19.06.2019 – [entered into force 01.07.2019] – Available: <https://likumi.lv/ta/id/307627-grozijumi-imigracijas-likuma>

<sup>50</sup> Law "Amendments to the Immigration Law" - *Latvijas Vēstnesis*, No. 123, 06.06.2019 – [entered into force 01.07.2019] – Available: <https://likumi.lv/ta/id/307627-grozijumi-imigracijas-likuma>

<sup>51</sup> Economic Development of Latvia Report 2018, Ministry of Economics. – Available: <https://www.em.gov.lv/lv/media/1735/download?attachment>

<sup>52</sup> Declaration on the Intended Activities of the Cabinet of Ministers, 14.12.2022 – Available: [https://www.mk.gov.lv/sites/mk/files/media\\_file/kk-valdibas-deklaracija\\_red-gala-1.pdf](https://www.mk.gov.lv/sites/mk/files/media_file/kk-valdibas-deklaracija_red-gala-1.pdf)

<sup>53</sup> Source: State Labour Inspectorate

nationals receive a D-type visa or a residence permit with the right to employment and are then sent to work in another EU Member State.

2. Considering the situation in the region in relation to the Russian Federation's military aggression in Ukraine, in certain Central Asian countries (Uzbekistan, Tajikistan, Kazakhstan, Kyrgyzstan, etc.) the interest of potential employees of these countries in working in Europe is significantly increasing.

3. The recruitment of third-country nationals for work in Latvia is performed by intermediaries and there are trends observed that these intermediaries do not have any responsibility towards these people and the risk of them ending up in conditions of labour exploitation and human trafficking is very high.

4. The employee does not know neither Russian nor English, as a result the protection of his or her rights is limited or even impossible.

5. The employee does not understand the content of the concluded contract, he or she is not aware of his or her rights or obligations, for example, the employee thinks that all household expenses will be covered by the employer, but the contract states the opposite.

6. The competent authorities find out about the violation only when the employment relationship is already terminated because the employee seeks help only then.

Additionally, in a research work of 2020 about the connection between recruitment practices and trafficking in human beings for the purpose of labour force exploitation in Latvia,<sup>54</sup> it was discovered that quite often Latvia is only one of the links in the international chain of employment of third-country nationals. The problems are caused by the work placement service providers by creating situations where it is impossible to track by which employer the migrant is employed, as well as the third-country nationals' different understanding of processes such as employment, legislation, seeking assistance, as well as understanding of the situation in which they have found themselves.

**Q4.** Please briefly describe and indicate if any new changes are planned to: a) law, b) policy and c) practice in the future.

#### CHANGES IN LAW

Currently several draft legal acts have been referred for harmonisation:

Draft law "Amendments to the Immigration Law",<sup>55</sup> which is intended to limit the right of dishonest employers to invite third-country nationals for work. If it is established that the inviter has violated the requirements of the regulatory enactments related to entry and stay of third-country nationals, the OCMA shall be entitled to decide on a prohibition

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<sup>54</sup> Research paper "How people are recruited for work in Latvia: relation between recruitment practices and trafficking in human beings for the purpose of labour force exploitation", G.Miruškina, 2020. – Available: <https://www.iem.gov.lv/lv/jaunums/izpetes-darbs-par-saistibu-starp-darba-pienemsanas-praksem-un-cilveku-tirdzniecibu-darbaspeka-ekspluatacijas-noluka>

<sup>55</sup> Draft law "Amendments to the Immigration Law". – Available: <https://tapportals.mk.gov.lv/structuralizer/data/nodes/06245b09-34c1-4c52-8382-8c105df5ce82/preview>



for a time period of up to one year for a natural or legal person to invite third-country nationals for work.

Draft Cabinet Regulation "Amendments to the Cabinet Regulation No. 552 "Procedures for Approval of Invitations and Drawing up of Written Requests" adopted on 21 June 2010"<sup>56</sup> about the professional qualification of the invited third-country national, its recognition or training to be performed.

Draft Cabinet Regulation "Amendments to the Cabinet Regulation No. 225 "Regulations Regarding the Amount of Financial Means Necessary for a Foreigner and the Determination of the Existence of Financial Means" adopted on 25 April 2017"<sup>57</sup> which describes the amount of financial means for the employment of third-country nationals in certain sectors.

Draft Cabinet Regulation "Amendments to the Cabinet Regulation No. 676 "Visa Regulations", adopted on 30 August 2011"<sup>58</sup>, where it is provided that when issuing a visa to a seasonal employee, the visa issuing authority gives out written information about the rights and obligations of the seasonal employee and the procedure for submitting complaints.

## CHANGES IN POLICY

The Declaration of the Cabinet of Ministers led by Evika Siliņa of 15 September 2023 does not include issues related to the prevention of illegal employment of third-country nationals, it is only mentioned that in order to promote the development of the labour market, in addition to other measures, an immigration policy adapted to support economic growth will be implemented.<sup>59</sup>

On 13 June 2023, the Statute of the Human Capital Development Council (hereinafter - the Council) entered into force.<sup>60</sup> In it the Council is defined as an institution established to implement coordinated intersectoral cooperation and make decisions on the planning, development, implementation and monitoring of the necessary labour market restructuring. On 9 August 2023, the second meeting of the Council was held, where representatives from the Ministry of Economics, the Ministry of Welfare and the Ministry of Education and Science discussed proposals for amendments to specific laws to reduce administrative barriers for labour force attraction from third countries. Within the framework of the Council's work the involved ministries discussed and agreed on

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<sup>56</sup> Draft Regulation "Amendments to the Cabinet Regulation No. 552 "Procedures for Approval of Invitations and Drawing up of Written Requests", adopted on 21 June 2010". – Available: <https://tapportals.mk.gov.lv/structuralizer/data/nodes/c05a9d65-b4f6-420f-a293-25614f25b962/preview>

<sup>57</sup> Draft Regulation "Amendments to the Cabinet Regulation No. 225 "Regulations Regarding the Amount of Financial Means Necessary for a Foreigner and the Determination of the Existence of Financial Means, adopted on 25 April 2017". – Available: <https://tapportals.mk.gov.lv/structuralizer/data/nodes/05e6ff0a-2b93-4c95-95ab-1e5e2992fab2/preview>

<sup>58</sup> Draft Cabinet Regulation "Amendments to the Cabinet Regulation No. 676 "Visa Regulations", adopted on 30 August 2011". – Available: <https://tapportals.mk.gov.lv/structuralizer/data/nodes/047345ae-5f36-4b2d-bec8-94a4c68fcdcb/preview>

<sup>59</sup> Declaration on the planned actions of the Cabinet of Ministers chaired by Evika Siliņa, 15 September 2023 – Available: <https://www.mk.gov.lv/lv/media/16704/download?attachment>

<sup>60</sup> Statute of the Human Capital Development Council, *Latvijas Vēstnesis*, No. 112, 12.06.2023 – [entered into force 13.06.2023] – Available: <https://likumi.lv/ta/id/342561-cilvekkapitala-attistibas-padomes-nolikums>

solutions to simplify certain administrative procedures. These simplifications include scheduled proposals for the minimum salary required in specific sectors (manufacturing and construction) waiving the requirement to submit documents confirming a third-country national's education/professional experience in cases where the profession is not regulated in Latvia, and allowing the supervisory institution to decide on a ban for up to one year for a natural or legal person to invite a third-country national if violations of regulatory enactments related to third-country nationals' entry and stay are detected.<sup>61</sup>

#### CHANGES IN PRACTICE

Changes in SBG practice are not planned. SBG has established close cooperation with SLI. For more efficient cooperation, in 2022 SBG and SLI concluded an interdepartmental agreement on cooperation on employment control issues and developed joint guidelines for conducting employment inspections.<sup>62</sup>

Changes in SLI practice are not planned. However, the need to strengthen cooperation with SBG has been identified in order to perform inspections as well as exchange risk information in a more effective and comprehensive way. For this reason, the cooperation agreement has been revised and changes therein have been made. The employment of Ukrainian citizens have not caused any noticeable impact in the context of the issues under consideration by the SLI.<sup>63</sup>

## SECTION 2: PREVENTION MEASURES INTRODUCED

*When applicable, take into consideration the Ukrainian refugee situation in your country since the beginning of the war in Ukraine, if this has led to a specific impact / consequences on the illegal employment of third-country nationals in your country.*

**Q5.** Does your country monitor specific economic sectors regarding the prevention of illegal employment of third-country nationals?

☒ Yes.

☐ No.

*Please indicate specific sectors targeted (e.g., the construction, agriculture and horticulture, housework/cleaning, hospitality, etc.). If you have answered no, please elaborate.*

Yes, in relation to the prevention of illegal employment of third-country nationals the SBG from 2017 to 2022 performed increased control of the sectors of the economy, where the highest number of violations had been detected. These sectors are: construction, manufacturing, transportation and storage, arts, entertainment and recreation, mining and quarrying.<sup>64</sup>

SLI does not keep separate record of violations committed against third-country nationals or where third-country nationals have been involved. SLI plans its activities by analysing the overall data. Thus, for example, every year the SLI organizes targeted

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<sup>61</sup> Human Capital Development Council discusses workforce attraction and reducing administrative barriers. – Available: <https://www.em.gov.lv/lv/jaunums/cilvekkapitala-attistibas-padome-diskute-par-darbaspeka-piesaisti-un-administrativo-skerslu-mazinasanu>

<sup>62</sup> Source: State Border Guard

<sup>63</sup> Source: State Labour Inspectorate

<sup>64</sup> Source: State Border Guard

thematic inspections in the construction sector, which for a long period of time has been ranked at the top among sectors in which unregistered employment was most frequently detected. Besides, such thematic inspections (in certain time period) are organized in the agricultural sector and in the hotel and food service companies. The objective of thematic inspections is to check previously selected high-risk objects/companies and to uncover the actual situation. Specially prepared questionnaires are used during the thematic inspections. The results of the inspections enable to identify problems and issues to which increased attention should be paid in the future. These questionnaires have included questions about the employment of foreigners.<sup>65</sup>

**Q6.** Has your country carried out new risk assessments to identify sectors of activity in which the illegal employment of third-country nationals is most concentrated since 2017?

☒ Yes.

☐ No.

*If you have answered yes, please provide information on 1) methods and tools used; 2) authorities involved and 3) how the results of the risk assessments are used in practice (e.g. to target inspections). If you have answered no, please elaborate.*

Yes, when performing risk analysis, SBG also detects new risks in the field of employment. SBG inspections in the employment field are performed in accordance with risk analysis, information received from cooperation institutions, natural and legal persons. The received information is analysed and if necessary SBG alone or jointly with cooperation institutions (such as the SRS, SLI) performs inspections of natural persons, companies and construction sites.<sup>66</sup>

SLI has not performed new risk assessments to determine the sectors of activity, in which the illegal employment of third-country nationals is concentrated the most. There is no separate risk assessment, all inspections are planned and performed by analysing the received information, data from the inspections and information provided by other institutions.<sup>67</sup>

**Q7.** What are the profiles of employers (i.e., type of enterprise: small, medium, large; type of industry/sector) that have been found to have engaged in illegal employment schemes of third-country nationals in your country?

*Please provide an overview.*

The competent authorities do not keep accounting with a distribution according to the type of the company, which have been involved in the illegal employment schemes of third-country nationals. Violations are committed by both large and small companies, however, SBG indicates that the small and medium-sized enterprises face the most significant shortage of employees and the need to attract employees from third countries.<sup>68</sup>

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<sup>65</sup> Source: State Labour Inspectorate

<sup>66</sup> Source: State Border Guard

<sup>67</sup> Source: State Labour Inspectorate

<sup>68</sup> Source: State Border Guard

The sectors, in which the highest number of violations has been detected, are: construction, manufacturing, transportation and storage, arts, entertainment and recreation, mining and quarrying.

**Q8.** What measures and/or incentives are in place to

- a) prevent employers from engaging in the illegal employment of third-country nationals
- b) prevent third-country nationals from becoming illegally employed?

*For example, awareness raising campaigns, reviews of sectors excluded from employment permits/shortage occupation lists. Please identify developments introduced by national authorities since 2017 and indicate if they target the employer or the third-country national, or both.*

a) In 2018, SBG developed the informative material "Information for construction contractors"<sup>69</sup>, which is available on the SBG website<sup>70</sup>. The informative material contains information about the activities of the SBG officials at the inspection sites, and the obligations and responsibilities of the employer and employees. Control measures and information exchange with employers about the employment conditions of third-country nationals promote compliance with the employment conditions.<sup>71</sup>

With the free movement of labour force within the EU, it is important for SLI to be informed about the cases of employee posting. In order for employers to also be able to electronically fulfil the requirements of Section 14.<sup>1</sup>(2) of the Labour Law<sup>72</sup>, SLI has created a notification system for employees posted to Latvia<sup>73</sup> enabling SLI to promptly obtain detailed information about the actual locations of employment and employees (including third-country nationals).<sup>74</sup>

b) During SBG employment inspections when third-country nationals who are employed without complying with the employment conditions are detected, the provisions of the Immigration Law and the consequences which occur when the provisions are not complied with are explained.<sup>75</sup>

Information on employee rights, the opportunities to exercise them, the posting of employees and the options of receiving consultations about these issues is available on the SLI website.<sup>76</sup>

**Q9.** What 1) challenges and 2) good practices can be identified in your country in prevention of illegal employment of third-country nationals?

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<sup>69</sup> Information for construction contractors. Available: <https://www.rs.gov.lv/lv/ieksejie-normativie-akti> - <https://www.rs.gov.lv/lv/media/5276/download?attachment>

<sup>70</sup> Available: <https://www.rs.gov.lv/lv/>

<sup>71</sup> Source: State Border Guard

<sup>72</sup> Labour Law, *Latvijas Vēstnesis* No. 105, 06.07.2001 – [entered into force 01.06.2002] – Available: <https://likumi.lv/ta/id/26019-darba-likums>

<sup>73</sup> Available: <https://posting.vdi.gov.lv/lv/>

<sup>74</sup> Source: State Labour Inspectorate

<sup>75</sup> Source: State Border Guard

<sup>76</sup> Available: <https://www.vdi.gov.lv/lv/>

*Please briefly describe the situation since 2017 and please indicate the source or who has identified the challenges and good practices.*

1) SBG points out that the main challenge in the prevention of illegal employment of third-country nationals is prompt acquisition of information and evidence. The information movement speed through the Internal Market Information System IMI, for example, in cases, when employers of other EU Member States post their employees to perform work in Latvia, is very slow and long. The replies received are often general, for instance - no information, it is not possible to perform inspection at the address. The verification of residence documents as well as the right to employment issued by other EU Member States is also a challenge. The employment status is often not specified in the documents.<sup>77</sup>

Challenges detected by the SLI<sup>78</sup>:

- Changes in the employment forms and problems
- Employees often cannot name their employer
- Language problems
- During the inspections employees cannot present any documents
- Employees not infrequently do not receive the promised salary
- In applications the employees indicate that the employer has threatened to annul the work permit if the employee will state any objections
- Employees are not aware of violations committed against them, including not considering themselves as victims
- Chains of intermediaries, presence of labour force provision agencies.

2) Both SBG and SLI highlight the mutual cooperation of both authorities by performing joint inspections as examples of good practice, as a result of which several cases of illegal employment have been discovered.<sup>79</sup>

For example, SLI received information about possible violations - salary is not being paid to third-country nationals and the employer plans to annul their work permits and the employees will have to return to their country of origin without money. Upon receiving such information, SLI coordinated a joint inspection with the State Police and SBG. It was determined that the received information was true and that the employees who were citizens of Tajikistan had not received salary for several months. The employer was a labour force provision agency and therefore the State Employment Agency was also informed about the violations committed. Such examples prove that complex inspections allow to identify violations in different areas and to eliminate them all at once.<sup>80</sup>

SBG mentions cooperation between the institution's departments as a good practice. SBG has also established good cooperation with the Baltic states', such as Estonia's, competent authorities. There have been cases where third-country nationals have been detected, to whom Estonian D-type visas have been issued with the purpose of working

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<sup>77</sup> Source: State Border Guard

<sup>78</sup> Source: State Labour Inspectorate

<sup>79</sup> Source: State Labour Inspectorate, State Border Guard

<sup>80</sup> Source: State Labour Inspectorate

in an Estonian company, however, soon after entry in the EU, these persons already wish to exit for Sweden. By exchanging information with the competent authorities and determining that such exit has not been planned and coordinated with the employer, the competent authority cancels the visas and this information is immediately forwarded to the SBG for the performance of the necessary measures.<sup>81</sup>

### **SECTION 3: IDENTIFICATION OF ILLEGAL EMPLOYMENT MEASURES IMPLEMENTED**

*When applicable, take into consideration the Ukrainian refugee situation in your country since the beginning of the war in Ukraine, if this has led to specific impact / consequences on the illegal employment of third-country nationals in your country.*

**Q10.** Have there been developments to improve the identification of illegal employment of third-country nationals taken place in your country since 2017 (e.g., new offices/agencies being introduced, increased number of inspections or other)?

☒ Yes.

☐ No.

*Please briefly describe.*

Yes, the SLI performs thematic inspections, aimed at the employment inspections of third-country nationals. The inspections are carried out together with SBG. Since 2017, increased attention is paid to the employment issues of third-country nationals when training SLI employees. SLI employees are informed and educated on trends, tools and sanctions. Within the SLI there is a working group for combatting unregistered employment, the purpose of which is to identify/address the current issues and the employment of third-country nationals is one of the current issues of this working group.<sup>82</sup>

Yes, SBG officials use the Single Electronic Working Time Accounting Database of the Building Information System, in order to control compliance with the procedure for entry, stay, employment, exit and transit of third-country nationals. In order to detect illegal employment, increased attention is paid to certain economic sectors, such as construction, by performing inspections in the information systems as well as during physical inspections. In relation to the restrictions of the epidemiological situation introduced during the Covid-19 pandemic, the number of employment inspection decreased.<sup>83</sup>

**Q11.** How many inspections are carried out per year (in absolute numbers and as a percentage of employers for each sector)?

*See article 14 of Directive 2009/52/EC. Please briefly describe and provide more information on inspections if available (e.g., number of fines issued, investigations launched, etc.).*

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<sup>81</sup> Source: State Border Guard

<sup>82</sup> Source: State Labour Inspectorate

<sup>83</sup> Source: State Border Guard



SLI performs a total of 10,000 inspections per year, 2,000 of which are related to the detection of illegal employment.<sup>84</sup>

SBG inspections in the employment field are performed in accordance with the risk analysis and information received from cooperation institutions, natural and legal persons. Each year SBG submits inspection results to the Ministry of Welfare on the inspections performed during the previous year in each of the business sectors, specifying the number of inspections and the percentage of employers inspected (see Annex).<sup>85</sup>

**Q12.** Have there been measures put in place by your country to ensure that the inspections carried out to detect cases of illegal employment of third-country nationals are effective and adequate?

*Please describe.*

The SLI working group on the issues for combatting unregistered employment regularly analyses the accomplishments, problems, possible solutions. Representatives from the group are regularly sent on missions in order to acquire broader knowledge on these issues. SLI does not implement separate measures in order to make sure that inspections with regard to third-country nationals are effective and relevant.<sup>86</sup>

If a company is found to be illegally employing third-country nationals, or there are indications that third-country nationals may be illegally employed there, the SBG periodically conducts physical inspections at the company.<sup>87</sup>

**Q13.** Do the national authorities and other relevant organisations cooperate to identify situations of illegal employment of third-country nationals in your country? Has your country introduced any specific cooperation mechanisms since 2017 (i.e., partnerships with IGOs, NGOs or other)?

*Please briefly describe.*

Yes, on 2 February 2022, SBG and SLI concluded interdepartmental agreement No. 25/2022 "On cooperation in the matters of employment control" about mutual information exchange and performance of joint inspections, and together they developed guidelines for conducting joint SBG and SLI employment inspections.

**Q14.** Has your country pursued international/European cooperation initiatives to identify cases of the illegal employment of third-country nationals since 2017 (i.e., cooperation agreements or practises between two or more countries)?

☐ Yes.

☒ No.

*If you have answered yes, please provide information on initiatives.*

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<sup>84</sup> Source: State Labour Inspectorate

<sup>85</sup> Source: State Border Guard

<sup>86</sup> Source: State Labour Inspectorate

<sup>87</sup> Source: State Border Guard

No, since 2017, the SBG has not implemented international/European cooperation initiatives in order to identify cases of illegal employment of third-country nationals.<sup>88</sup>

SLI has not implemented cooperation initiatives directly focused on the employment of third-country nationals, but it has universal cooperation forms (which includes the above-mentioned). Thus, for example, the Latvian SLI has concluded cooperation agreements with the Lithuanian Labour Inspectorate and the Estonian Labour Inspectorate, which includes mutual cooperation, exchange of information etc. Several joint inspections have been carried out together with the Lithuanian Labour Inspectorate.<sup>89</sup>

A major contribution in to the reduction of undeclared employment is provided by the European Labour Authority (ELA). SLI actively cooperates with ELA, whose main purpose is to help improve cooperation between EU Member States, provide support to cross-border cooperation in the matters of unregistered employment and posting of workers, as well as to coordinate joint inspections in relation to cross-border labour mobility. SLI was actively engaged in ELA organized events for building the capacity of inspections, in different types of training workshops, experience exchange trips and cross-border trainings on practical inspection, as well as participated in the transportation campaign organized by ELA #Road2FairTransport.<sup>90</sup>

**Q15.** What 1) challenges and 2) good practices can be identified in your country in the area of the identification of illegal employment of third-country nationals since 2017?

*Please briefly describe the situation since 2017 and please indicate the source or who has identified the challenges and good practices.*

From the SBG point of view, the biggest challenge in the identification of illegal employment of third-country nationals is prompt acquisition of information in cases, when an employer of another EU Member State posts its employee to work in Latvia. Sometimes in such cases fast acquisition of information about the legality of employment in another EU Member State is difficult. Students who are third-country nationals and work as food delivery couriers in their free time by using Bolt or Wolt franchise and employment contracts are not concluded with these persons also pose a challenge in some way. The delivery is made by using a smart device and an application installed on it. In such cases the acquisition of evidence in order to initiate administrative offence proceeding and apply administrative penalty is difficult.<sup>91</sup>

SLI has also detected identification problems related to the posting of workers from one country to another. In each situation it is necessary to identify which country's regulatory framework is attributable and what are the minimum guarantees (minimum salary, etc.). Besides, in the event of violations, the persons against whom the violations have been committed are not inclined towards cooperation with the controlling authorities. Persons may be intimidated or dependent on their employer and not be certain about their legal residence status etc. Taking into account the above-mentioned, these persons do not provide information about their work conditions, working hours,

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<sup>88</sup> Source: State Border Guard

<sup>89</sup> Source: State Labour Inspectorate

<sup>90</sup> Source: State Labour Inspectorate

<sup>91</sup> Source: State Border Guard

salary and living conditions. In such cases it is difficult to uncover the actual circumstances and identify violations.<sup>92</sup>

SBG points out that a good practice is the implementation of the Building Information System, in which it is possible to detect potential violations at the construction sites by selecting specific criteria.<sup>93</sup>

## **SECTION 4: SANCTIONS FOR EMPLOYERS INTRODUCED**

*When applicable, take into consideration the Ukrainian refugee situation in your country since the beginning of the war in Ukraine, if this has led to specific impact / consequences on the illegal employment of third-country nationals in your country.*

**Q16.** Has your country amended legislation on sanctions to employers for illegally employing third-country nationals since 2017?

☒ Yes.

☐ No.

*Please provide any other relevant information on sanctions.*

Until 1 July 2020, the Latvian Administrative Violations Code was in force with regard to the violation of the employment prohibition of a third-country national<sup>94</sup>, however, in June 2019, the Immigration Law was supplemented with a new section "Administrative Violations in the Field of Immigration and Competence in the Administrative Offence Proceeding"<sup>95</sup>, and the Latvian Administrative Violations Code became void. Section 68.<sup>4</sup> included in the new chapter of the Immigration Law regarding the type and amount of the administrative fine for the illegal employment of persons is very similar to the one that was a part of the void Administrative Violations Code and the amounts of fines have also remained the same, only they are formulated in the units of fine (one unit of fine is five euros<sup>96</sup>):

- For employing one or up to five persons if the relevant person is entitled to stay in the Republic of Latvia, but the right to employment has not been granted thereto, a fine from twenty-eight up to eighty-six units of fine (from 140 to 430 euros) shall be imposed on natural persons or a member of executive board by or without depriving the member of executive board from the right to hold specific offices in commercial companies.
- For employing more than five persons if they are entitled to stay in the Republic of Latvia, but the right to employment has not been granted thereto, a fine from eighty-six up to one hundred and forty units of fine (from 430 to 700 euros) shall be imposed on natural persons or a member of executive board by or without

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<sup>92</sup> Source: State Labour Inspectorate

<sup>93</sup> Source: State Border Guard

<sup>94</sup> Latvian Administrative Violations Code, Bulletin of the Supreme Council and Government of the Latvian Soviet Socialist Republic, No. 51, 20.12.1984 – [entered into force 01.07.1985 / end of validity 01.07.2020] – Available: <https://likumi.lv/ta/id/89648-latvijas-administrativo-parkapumu-kodekss>

<sup>95</sup> Law "Amendments to the Immigration Law" - *Latvijas Vēstnesis*, No. 123, 19.06.2019 – [entered into force 01.07.2019] – Available: <https://likumi.lv/ta/id/307627-grozijumi-imigracijas-likuma>

<sup>96</sup> Law on Administrative Liability, *Latvijas Vēstnesis* No. 225, 14.11.2018 – [entered into force 01.07.2020] – Available: <https://likumi.lv/ta/id/303007-administrativas-atbildibas-likums>

depriving the member of executive board from the right to hold specific offices in commercial companies.

- For employing one or up to five persons who are not entitled to stay in the Republic of Latvia, a fine from forty-two up to one hundred units of fine (from 210 to 500 euros) shall be imposed on natural persons or a member of executive board by or without depriving the member of executive board from the right to hold specific offices in commercial companies.

Section 68.<sup>5</sup> of the Immigration Law, which stipulates that for the violation of employment conditions provided for in the Law, if it has been committed by the employed third-country national, the applicable fine is from twenty-eight and up to one hundred and forty units of fine (from 140 to 700 euros), has also been adopted from the Code of Administrative Violations.<sup>97</sup>

The Immigration Law also states that the administrative proceedings for the above-mentioned violations are conducted by the SBG.<sup>98</sup>

The Criminal Law<sup>99</sup> stipulates that for a person who commits violation of restrictions or provisions regarding employment of persons provided for in law, if it has been committed by the employer and if substantial harm has been caused thereby, the applicable punishment is the temporary deprivation of liberty or probationary supervision, or community service, or fine. The same punishment is applicable for a person who commits employment of such person who is not entitled to remain in the Republic of Latvia, if it has been committed by the employer and if a minor is employed or if more than five persons are employed, or if a person is employed in particularly exploitative working conditions, or if a victim of human trafficking has knowingly been employed. With regard to the punishment, on 1 January 2022 amendments entered into force, in which the punishment "compulsory work" was replaced by "probationary supervision, or community service".<sup>100</sup>

The Immigration Law states that the inviter shall take responsibility for the conformity of the purpose of the entry and stay of the invited foreigner with the purpose laid down in the documents submitted for requesting a visa or residence permit and for his or her exit from the State on specified time, and shall immediately, but not later than within three working days, inform the OCMA or the SBG in writing if the aforementioned conditions are not met and also, where necessary, shall ensure coverage of the expenditures related to the health care, stay in the Republic of Latvia and return to the country of residence of the foreigner.<sup>101</sup> On 1 July 2019, the amendments to the Immigration Law entered into force, in which the time period was specified during which OCMA or SBG has to be informed on the failure to fulfil the conditions.<sup>102</sup>

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<sup>97</sup> Law "Amendments to the Immigration Law" - *Latvijas Vēstnesis*, No. 123, 19.06.2019 – [entered into force 01.07.2019] – Available: <https://likumi.lv/ta/id/307627-grozijumi-imigracijas-likuma>

<sup>98</sup> Law "Amendments to the Immigration Law" - *Latvijas Vēstnesis*, No. 123, 19.06.2019 – [entered into force 01.07.2019] – Available: <https://likumi.lv/ta/id/307627-grozijumi-imigracijas-likuma>

<sup>99</sup> Criminal Law, *Latvijas Vēstnesis* No. 199/200, 08.07.1998 – [entered into force 01.04.1999] – Available: <https://likumi.lv/ta/id/88966-kriminallikums>

<sup>100</sup> Law "Amendments to the Criminal Law", *Latvijas Vēstnesis*, No. 250, 29.12.2020 – [entered into force 01.01.2022] – Available: <https://likumi.lv/ta/id/319860-grozijumi-kriminallikuma>

<sup>101</sup> Immigration Law, *Latvijas Vēstnesis*, No. 169, 20.11.2002 – [entered into force 01.05.2003] – Available: <https://likumi.lv/ta/id/68522-imigracijas-likums>

<sup>102</sup> Law "Amendments to the Immigration Law", *Latvijas Vēstnesis*, No. 123, 19.06.2019 – [entered into force 01.07.2019] – Available: <https://likumi.lv/ta/id/307627-grozijumi-imigracijas-likuma>

**Q17.** What 1) challenges and 2) good practices can be identified in your country in the area of sanctioning employers for illegal employment of third-country nationals since 2017?

*Please briefly describe the situation since 2017 and please indicate the source or who has identified the challenges and good practices.*

Both SLI and SBG indicate that the challenges in the application of sanctions to employers for illegal employment of third-country nationals are related to the identification of companies and persons to be called to justice. In cases where intermediaries and/or labour force providers are involved, it is complicated to discover the actual employer, that is, for which person the employee performs the work. There exist schemes, in which a network of employers is involved, for example, there is a general contractor and several subcontractors, who have mutually hired employees to perform certain tasks at the construction site. The employee himself is not always able to provide information on for whom he works (due to lack of language skills or the complexity of the chain of employers). Quite often these employers, subcontractors and intermediaries are registered abroad, and in order to obtain information about the company's board, it has to be requested from the competent foreign authorities, which requires some time.<sup>103</sup>

## **SECTION 5: OUTCOMES FOR THIRD-COUNTRY NATIONALS**

*When applicable, take into consideration the Ukrainian refugee situation in your country since the beginning of the war in Ukraine, if this has led to specific impact / consequences on the illegal employment of third-country nationals in your country.*

**Q18:** If a situation of illegal employment is detected, please describe the outcome (regularisation, detention, return, other) that applies to the following categories of employees:

- a) third-country nationals with a residence permit and a work permit.
- b) third-country nationals with a residence permit but without a work permit.
- c) third-country nationals without a residence permit and a work permit.

*Please describe all situations in detail.*

If a case of illegal employment is discovered during the inspection and it is determined that

- a) the third-country nationals stay in the Republic of Latvia on the basis of a residence permit and they have been granted right to employment, an inspection is carried out about whether the third-country nationals are employed with the employer with whom the right to employment has been granted to them. In cases when third-country nationals are employed with another employer, with whom the right to employment has not been granted to them, an administrative offence proceeding is initiated and a decision is made under Section 68.<sup>5</sup> of the Immigration Law regarding a violation of

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<sup>103</sup> Source: State Labour Inspectorate, State Border Guard

employment conditions provided for in the Immigration Law, if it has been committed by the employed third-country national

b) the third-country nationals stay in the Republic of Latvia on the basis of a residence permit but without the right to employment granted to them, an inspection is carried out about whether the third-country nationals have the right to employment granted to them. An administrative offence proceeding is initiated and a decision is made under Section 68.<sup>5</sup> of the Immigration Law regarding a violation of employment conditions provided for in the Immigration Law, if it has been committed by the employed third-country national

c) the third-country nationals stay in the Republic of Latvia without a valid visa or residence permit, and work without the right to employment granted to them, an administrative offence proceeding is initiated for each identified violation and the decision is made under Section 68.<sup>2</sup> of the Immigration Law<sup>104</sup>, Section 68.<sup>5</sup> of the Immigration Law<sup>105</sup> and on the basis of Paragraph 1 and 3 of Section 41 of the Immigration Law a return decision is issued to the person.<sup>106</sup>

**Q19a.** What effective procedures are in place to allow third-country nationals in illegal employment to lodge complaints against their employer?

*Please briefly describe. Effective procedures are understood as those used in practice and trusted by migrant workers.*

If the employer violates the rights of the employee, the employee is entitled turn to SLI for the protection of the rights, because the function of the State Labour Inspectorate is to implement state supervision and control in the field of employment relationship and labour protection. Within the framework of its competence, SLI has the right to issue orders and warnings, and apply administrative fines, if the regulatory enactments in the field of legal employment relationship and labour protection are violated.<sup>107</sup> SLI provides consultations via phone, electronically and in person, and as part of them the employee can provide information about the violation committed against him or her or receive information about the minimum standards in Latvia. SLI also provides the possibility to submit an application electronically, including anonymously, if the person is afraid to disclose his or her identity.<sup>108</sup>

Illegally employed third-country nationals can submit complaints about their employers to the SBG in writing (by sending it to SBG's legal address), electronically (by sending it to SBG's official e-mail address) or verbally (for example, by calling SBG's hotline). The complaint can be submitted by specifying personal data as well as anonymously. When receiving complaints submitted in such form, their compliance with the requirements of the Law on Submissions<sup>109</sup> is assessed. If the examination of the

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<sup>104</sup> for staying in the Republic of Latvia without a valid visa or residence permit

<sup>105</sup> for violation of employment conditions provided for in the Immigration Law, if it has been committed by the employed third-country national

<sup>106</sup> Source: State Border Guard

<sup>107</sup> Source: Ministry of Welfare

<sup>108</sup> Source: State Labour Inspectorate

<sup>109</sup> Law on Submissions, *Latvijas Vēstnesis*, No. 164, 11.10.2007 – [entered into force 01.01.2008] – Available: <https://likumi.lv/ta/id/164501-iesniegumu-likums>



complaint is not within SBG competence, this information is forwarded to the competent authority.<sup>110</sup>

In accordance with Section 1 of the Civil Procedure Law,<sup>111</sup> every natural or legal person has the right to protection of their infringed or disputed civil rights or interests protected by law in court.<sup>112</sup>

**Q19b.** Are there different procedures in place to lodge complaints against employers if the third-country nationals in illegal employment are irregularly staying?

*See article 13 of Directive 2009/52/EC. Please elaborate.*

Different procedure is not executed.<sup>113</sup>

**Q20.** In which cases can a third party (for instance a trade union or an association) engage on behalf or in support of third-country nationals in illegal employment in administrative or civil proceedings against an employer?

Are there differences between engaging on behalf of regularly and irregularly staying third-country nationals?

*Please elaborate.*

A third party (trade union, association, NGO) may engage in the protection of the rights of third-country nationals in any case, as long as the person has given the authorization to represent his or her interests. There are no differences between engaging on behalf of third-country nationals staying legally and those staying illegally. In practice there have been cases, when the rights of third-country nationals at the SLI were represented by a NGO. Employees had not received salary for a long period of time and some of the employees had already returned to the country of origin and some other employees had to leave Latvia within a short period of time due to the expiration of their residence permit. The NGO represented the employees, used all the rights of a representative delegated in the regulatory enactments and later on behalf of the employees turned to court.<sup>114</sup>

Associations and Foundations Law<sup>115</sup> stipulates that an association and a foundation the articles of association of which have specified goals towards the protection of human rights or individual rights, has the right with the consent of the injured natural person to turn to institutions or to a court and defend the rights or lawful interests of such persons in matters, which are related to the violations of the prohibition of unequal treatment, or with employment of such persons who are not entitled to stay in the Republic of Latvia. Applying to an institution or a court by an association or a foundation in defending the rights or lawful interests of persons who are not entitled to stay in the Republic of Latvia shall not be considered as support for ensuring with possibility to stay illegally in the Republic of Latvia.

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<sup>110</sup> Source: State Border Guard

<sup>111</sup> Civil Procedure Law, *Latvijas Vēstnesis*, No. 326/330, 03.11.1998 – [entered into force 01.03.1999] – Available: <https://likumi.lv/ta/id/50500-civilprocesa-likums>

<sup>112</sup> Source: Ministry of Welfare

<sup>113</sup> Source: State Labour Inspectorate

<sup>114</sup> Source: State Labour Inspectorate

<sup>115</sup> Associations and Foundations Law, *Latvijas Vēstnesis*, No. 161, 14.11.2003 – [entered into force 01.04.2004] – Available: <https://likumi.lv/ta/id/81050-biedribu-un-nodibinajumu-likums>

**Q21.** Are there mechanisms in place in your country for the remuneration of a third-country national following a period of illegal employment (for example mechanisms to recover payment for overtime work) and what are the conditions for remuneration? Are there different mechanisms in place for regularly and irregularly staying third-country nationals?

*Please describe.*

Third-country nationals can receive salary in the same way as any employed person in Latvia, and there are no separate mechanisms. Besides, there is no difference whether the person is staying legally or illegally, the duty to pay salary is caused by the work performed and status is a secondary aspect. If the employee has not received salary, he or she can turn to SLI and/or court with an application.<sup>116</sup>

Section 48 of the Immigration Law stipulates that an OCMA or SBG official shall inform a third-country national who has been illegally employed in the Republic of Latvia on the right to submit a claim against the employer and to achieve that a judgment on the work remuneration unpaid by the employer is executed, as well as of the procedure for submitting a claim and recovery of remuneration.<sup>117</sup>

**Q22.** How long does the presumed employment relation have to be for an employer to have to pay back outstanding remuneration and amounts equal to taxes or social security contributions?

*Please describe.*

With regard to the duration of the employment relationship, there are no restrictions or criteria, if the employee has performed the work (regardless of the time period) he or she is entitled to the salary.<sup>118</sup>

**Q23.** Are there mechanisms in place to ensure that irregularly staying third-country nationals can receive any back payment of remuneration in cases in which they have been returned?

*Please describe.*

Third-country nationals can receive their salary in the same way as any employed person in Latvia, and there are no separate mechanisms. Besides, there is no difference whether the person is staying legally or illegally or is removed, the duty to pay salary is caused by the work performed and status is a secondary aspect. If the employee has not received salary, he or she can turn to SLI and/or court with an application.<sup>119</sup> Being in a third country does not limit the transfer of the salary recovered from the employer to the third-country national who has been illegally employed.<sup>120</sup>

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<sup>116</sup> Source: State Labour Inspectorate

<sup>117</sup> Immigration Law, *Latvijas Vēstnesis*, No. 169, 20.11.2002 – [entered into force 01.05.2003] – Available: <https://likumi.lv/ta/id/68522-imigracijas-likums>

<sup>118</sup> Source: State Labour Inspectorate

<sup>119</sup> Source: State Labour Inspectorate

<sup>120</sup> Source: Ministry of Welfare

**Q24.** Does your country provide information to illegally employed third-country nationals on their rights? Is this information translated?

Does the information provided differentiate between regularly and irregularly staying third-country nationals?

*Please indicate when this information is provided to third-country nationals, in what form and by what authorities/organisations. Please also indicate any identifiable challenges or good practices found in this context.*

SBG informs that, when initiating the administrative offence proceeding against third-country nationals about working without the right to employment granted, regardless of the fact whether the person at the time of committing the offence has or has not been entitled to stay in the Republic of Latvia, the information is provided about their rights, in accordance with the regulation determined in the Law on Administrative Liabilities. Information is explained to the person in the language understandable to the person. If necessary, an interpreter is invited.<sup>121</sup>

There are explanations and information available on the SLI website on:

- Employment of the Ukrainian civilians (in Latvian, Russian and Ukrainian)<sup>122</sup>;
- Information on the posting of workers (in Latvian and English)<sup>123</sup>;
- Information on the employment requirements in Latvia<sup>124</sup>;
- Information on the communication and competent authorities of the EU<sup>125</sup>.

## **SECTION 6: CONCLUSIONS**

**Q25.** Please synthesise the main and most important findings of your national report by drawing conclusions from your responses.

In Latvia the prevention of illegal employment of third-country nationals is not a national policy priority, although this issue is related to such significant Latvian policy priorities as the prevention of illegal migration and combatting unrecorded economy. Since 2017, various discussions in public and politics have taken place regarding the employment of third-country nationals, for example, in the context of students who are third-country nationals and the lack of certain specialists in Latvia. Some of these discussions resulted in changes to regulatory enactments:

- Amendments to the Immigration Law, which provide that students who are third-country nationals have the right to employment for up to 40 hours per week during study breaks
- Cabinet Regulation that determines the list of specialities (professions) in which a significant lack of labour force is forecast and in which third-country nationals may be invited for work in the Republic of Latvia by applying facilitated admission conditions in accordance with the Immigration Law

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<sup>121</sup> Source: State Border Guard

<sup>122</sup> Available: <https://www.vdi.gov.lv/lv/par-ukrainas-civiliedzivotaju-nodarbinasanu-lv-ukr>

<sup>123</sup> Available: <https://www.vdi.gov.lv/lv/darbinieku-nosutisana>

<sup>124</sup> Available: <https://www.vdi.gov.lv/lv/skaidrojumi>

<sup>125</sup> Available: <https://www.vdi.gov.lv/lv/es-dalibvalstu-darba-inspekcijas>

- Amendments to the Cabinet Regulation on the employment of third-country nationals which reduce the time period from one month to 10 working days for which the position registered with the State Employment Agency has to remain vacant before an employee who is a third-country national can be invited for this position
- Cabinet Regulation on a more convenient and accessible procedure for drawing up invitations and sponsorships electronically, effectively implementing the one-stop agency principle, where a person must come to the institution only once in person for the reception of a visa or residence permit.
- In 2019, a chapter dedicated to administrative offences in the field of immigration was included in the Immigration Law; it was previously part of the Administrative Violations Code, which became void in 2020

Documents such as the Declaration of the Intended Activities of the Cabinet of Ministers and the Report on Economic Development of Latvia of the Ministry of Economics for several years have included paragraphs on the evaluation of the immigration policy with the aim of addressing the labour force shortage in the country.

The employment of third-country nationals in Latvia is controlled by three competent authorities: State Labour Inspectorate (SLI), State Revenue Service (SRS) and State Border Guard (SBG). In 2022, SBG and SLI concluded an interdepartmental cooperation agreement on employment control issues, within the framework of which a mutual exchange of information and joint inspections are performed and guidelines for conducting inspections were developed.

The sectors of the economy where the most violations have been previously detected are being monitored more closely. These sectors are construction, manufacturing, transportation and storage, arts, entertainment and recreation, mining and quarrying. The main challenges in preventing the illegal employment of third-country nationals are the quick acquisition of information and evidence, the varying forms of employment, the employees' inability or unwillingness to cooperate as well as the chains of intermediaries and the presence of labour force provision agencies. Cooperation between the competent authorities, for example, between SLI and SBG, as well as cooperation with the competent authorities of the Baltic States, is highlighted as good practices in the prevention of violations.

The key challenges in detecting illegal employment are also related to prompt acquisition of information, especially in cases when employees are posted from one country to another. Problems are also caused by platform work, for instance, in the field of food delivery, in which students who are third-country nationals are often employed, there are no employment contracts concluded and deliveries are made by using an application. In these cases, it is significantly more difficult to obtain evidence in order to start an administrative offence proceeding. Also, the employed third-country nationals are often not inclined to cooperate due to various reasons, such as lack of language skills, fear of the employer, insecurity about the residence status and other reasons.

No significant changes have been made in the regulatory enactments regarding sanctions for the illegal employment of third-country nationals. The relevant sections of the law have been transferred from the Administrative Violations Code to the Immigration Law. The identification of the person to be called to justice is a problem in the area of applying sanctions, especially when intermediaries or labour force provision agencies are involved.

If the employed third-country national works for an employer with whom he has not been granted the right to employment, or without the right to employment at all, then an administrative offence proceeding is initiated for the violation of the employment conditions specified in the Immigration Law committed by the third-country national. If the employed third-country national does not have a valid visa or residence permit, and if he or she also works without the right to employment, an administrative offence proceeding is initiated for each identified violation - for staying in the Republic of Latvia without a valid visa or residence permit, for the violation of employment conditions - and, on the basis of the Immigration Law, a return decision is issued for the person.

In order to submit a complaint about the employer, third-country nationals, the same as Latvian nationals, can turn to SLI and SBG. If the employee has not received salary, he or she can address an application to the SLI and/or court. The fact that a person is staying in the country legally, illegally or has been removed does not change the employer's obligation to pay salary for the work performed.