



ILLEGAL EMPLOYMENT OF THIRD COUNTRY NATIONALS

HUNGARY

2016



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EMN FOCUSED STUDY 2016

Illegal employment of Third-Country Nationals in the EU

Top-line “Factsheet” (National Contribution)

Overview of the National Contribution – introducing the Study and drawing out key facts and figures from across all sections of the National Contribution, with a particular emphasis on elements that will be of relevance to (national) policymakers.

Please also provide a concise summary of the main findings of Sections 1-5 below, for example:

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

The struggle against illegal employment, that is, work performed in violation of applicable laws (and in particular measures against undeclared, black labour that has been defined as acquisition of income from otherwise lawful activities, that is wholly or partly undeclared to the tax and social security authorities) forms an important element of Hungary’s Governmental policies.

In 2010, the Government of Hungary worked out an overall plan of action to solve one of the most serious problems of the Hungarian economy, the extremely low employment rate compared to international standards. The main goals of the employment policy programme adopted in 2011¹ was to increase the flexibility of the labour force market and encourage legal employment which it intended to achieve by the structural transformation of the labour force market as well as positively supporting the processes of workplace-creation and curtailing the hidden economy, illegal employment and especially undeclared work.

Handling of the European migration processes and the wave of refugees that has hit Hungary in recent years is also among the Government’s priorities. The primarily immigration law enforcement measures used for mitigating the crisis also affect employment, including illegal employment.

The primary attraction of illegal employment is direct, short-term financial gain. Participants are frequently unaware of the extent to which their actions violates the statutory regulations and they are often also unfamiliar with the long-term negative effects of their conduct. Information is therefore a key factor in treating the problem; an emphatic point of the Government’s measures to eliminate the phenomenon is to draw the public’s attention to the question and disseminating information. In light of the hidden, deliberately law-avoiding, secret nature of the black economy, it is hard to access the

¹ Széll Kálmán Plan National Plan for Work 2011
(<http://2010-2014.kormany.hu/hu/nemzetgazdasagi-miniszterium/foglalkoztataspolitikaert-elelos-allamtitkarsag/hirek/a-kormany-megtargyalta-es-elfogadta-a-magyar-munka-tervet>)

persons involved, so performance of the task is not simple and straightforward.

National authorities first emphasise identifying the problem, then duly sanctioning identified, unlawful conduct during the inspection of employment of third-country nationals. Other unlawful conduct besides illegal employment is realised through the shadow economy. For this reason, and due to the complex nature of employment, migration and economic processes, in Hungary, the labour inspection authority cooperates with the immigration and tax authorities, as well as the police. Accordingly, the system of sanctions developed for tackling the problem therefore uses both a labour law and an immigration approach and the violation – depending on the nature of its gravity – could have criminal law consequences.

In cases of illegal employment, generally speaking both the employer and the employee violate the law. During its proceedings, the labour inspection authority sanctions almost entirely employers, however, immigration authority proceedings have consequences for both sides. The protection of rights and availability of remedies are afforded to all parties involved in the proceedings based on Hungarian law, in accordance with the principle of equal treatment, regardless of nationality.

Since 2010, thanks to Government measures taken for ending the shadow economy and undeclared work, as well as for mitigating the negative effects of illegal migration, in Hungary, the number of third-country nationals employed illegally is low. The refugee crisis, however, continues to pose a challenge for Europe, and within it, Hungary, which is at the crossroads of migration routes.

Executive Summary (Synthesis Report) [maximum 3 pages]

Executive Summary of the Synthesis Report: this will form the basis of an EMN Inform, which will have EU and national policymakers as its main target audience.

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

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

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

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

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

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

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

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

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

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

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

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

Please specify the reference/source of the information.

The informal shadow economy includes those unregistered economic activities that, although contributing to the gross domestic product of a country, but remain hidden from the state for various reasons. The primary reason is tax avoidance, but another reason could be the complexity of the rules associated with regular employment or wanting to avoid administrative burdens. The size of the hidden economy of any given country can be measured through direct and indirect means, and although these assessments do not provide exact data, by comparing the data going back over the years, a relatively accurate estimate can be given on the extent of the shadow economy and irregular employment.²

Studies on the size of the shadow economy in Hungary portrayed a widespread phenomenon for the first decade of the 21st century. Measures introduced since 2010 aimed at curtailing tax-evasion and formalising the economy have resulted in a decrease of the phenomenon. One measure was the introduction of online cash registers, which primarily helps to prevent concealing corporate revenues, but can also contribute to curtailing grey and black employment as well.³

Other Government measures introduced in this period have specifically contributed to a reduction of irregular employment as well: these include the single personal income tax rate, simplification of taxation and compliance regulations (e.g. introduction of small entrepreneur tax (known as KATA)) or the creation of simplified employment in the regulatory domain.

The correlation between the shadow economy and migration has not been a typical topic for either scientific research or the professional and political debate on the two subjects. In relation to the refugee crisis in recent years, the thematic

² Balog, Ádám: Adóelkerülés és rejtett gazdaság Magyarországon. Köz-Gazdaság 2014, IX. évfolyam 4. szám (<http://www.lib.pte.hu/akk/tartalomjegyzek/aktualis/K%C3%B6z-gazdas%C3%A1g%202014-4%20KSZ..PDF>)

³ Csomós Balázs-Kreiszné Hudák Emese: Zsugorodik a magyar rejtett gazdaság: Potfolio 2015. Október 29. 15:36 (http://www.portfolio.hu/gazdasag/zsugorodik_a_magyar_rejtett_gazdasag.221595.html)

working group tackling migration of the Human Rights Working Group formed between political decision makers and NGO's held several conciliatory discussions. At these thematic meetings, which were held with the participation of interest-representation organisations, international organisations involved with the matter, the office of the Parliamentary Commissioner, Government branches involved in the area and the immigration authority, the issue of illegal employment was not discussed even once. Although the government sector responsible for the labour market made a part of the labour market services available in order to facilitate employment of refugees, third country nationals arriving to Hungary typically do not make use of this; they arrive most often with the intention of travelling onwards.

Data on the labour market status, education, social integration of third-country nationals living in Hungary has been collected and processed by the Central Statistical Office since the second quarter of 2014, supplementing the usual regular labour force surveys. Studies on the integration of migrants and their offspring only provide information on this group within a narrow timeframe.

The number of inspected foreign employees has been as follows between 1 January 2014 and 31 October 2016:

TCNs	2014	2015	31.10.2016
Number of inspected employees	101628	89087	80680
Number of inspected TCN employees	1236	883	728
Number of inspected TCN employees without permission	67	46	79

The above data shows that the number of inspected TCN employees has recently decreased, however, the proportion of TCN employees working without a permit has increased compared with the number of inspected TCN employees in 2016 against the previous two years. These numbers fell dramatically when neighbouring countries joined the European Union.

Employment of TCNs is most typical in the SME sector and it is rare in the case of larger companies and corporations, however, we are unable to provide relevant statistical data.

The most affected sectors by illegal employment of third-country nationals are agriculture, processing industry, construction industry, commerce, accommodation services and catering services. The table below contains data relating to these sectors.

Sector / TCNs	2014	2015	31.10.2016
Agriculture	3	5	
Manufacturing industries (except. Machinery)	22	22	36
Machinery	0	2	
Construction	11	3	7
Trading	10	7	2
Mining			
Accommodation and food service activities	7	4	15
Transportation and storage			

Health and social work activities			
Financial activities			
administrative and support service and education activities			
Insurance activities			
House keeping			
Other	7	4	6
Total	67	46	79

Section 2: Prevention measures

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

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

Prevention and Information Activities of the Labour Inspection Authority

According to the 2017 inspection guidelines of the labour inspection authority as published on their website⁴ the aim of the authority carrying out labour inspections is to enforce the provisions of Government Decision 1416/2012. (X. 1.) on the amendment of the various tasks of the medium-term Government Programme entitled Simple State and aimed at reducing entrepreneurial administrative costs, including especially further strengthening the information activity serving the enforcement of labour regulations as required, such that it consistently promotes the information of those active on the labour market.

The guidelines stipulate for each government office, as the first-degree labour inspection authority to provide direct information on basic employment regulations and any changes thereof, by holding at least two open days at least every six months. The main goal is for employees, including all TCNs working here to become familiar with their most important rights and obligations arising from employment and to clearly delineate for employees the range of labour law regulations to be inspected during a labour inspection.

A prevalent project of the now closed Social Renewal Operational Programme TÁMOP-2.4.8-12/1-2012-0001, was entitled "Development of workplace health and safety, development of labour inspections" which had as its overall aim the

⁴ A Nemzetgazdasági Minisztérium közleménye a 2017. évi munkavédelmi és munkaügyi ellenőrzési irányelvekről és az országos hatósági ellenőrzési tervről. 2016.11.02. (Communication of the Ministry for National Economy on the guidelines of labour and health and safety at work and on the national plan of inspection for 2017.) (http://ommf.gov.hu/index.html?akt_menu=172&hir_reszlet=504)

development of workplace health and safety and the development of labour protection and labour inspections. One of the direct aims of the project was to develop the system and processes of authority inspections, and to raise awareness among employees and employers.

Focal points of the implementation of the project were to reach a wide range of the population, to draw attention to the issues, to encourage action, to change citizens' attitudes toward safe and healthy working conditions and legal employment, which were realised through a nationwide communication and PR campaign. Target groups of the campaign included employees, employers, family members of employees and players of national media, but the campaign also targeted decision makers, unions, professional organisations and the self-employed.

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

Measure/incentives for employers	<u><i>Irregularly staying and illegally working TCNs</i></u> <i>*Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. **Please specify if these measures are established to tackle illegal employment or are general incentives.</i>	<u><i>Regularly staying and illegally working TCNs</i></u> <i>*Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. **Please specify if these measures are established to tackle illegal employment or are general incentives.</i>
<p>a.1. Information campaigns targeted at employers</p> <p><i>Outreach/awareness-raising activities to inform employers on the criteria by which they can hire TCNs</i></p> <p>For each campaign that has been run in your MS indicate: Which sectors were targeted? How the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.)</p>	<p>Yes.</p> <p>A prevalent project entitled “Development of workplace health and safety, development of labour inspections”.</p> <p>The measures were general incentives.</p>	<p>Yes.</p> <p>A prevalent project entitled “Development of workplace health and safety, development of labour inspections”.</p> <p>The measures were general incentives.</p>
<p>a.2. Information support for employers</p> <p><i>Simplification of administrative procedures and information support for employers recruiting TCNs (e.g. helpline, information on government website etc.)</i></p>	<p>Yes.</p> <p>The inspection guidelines of the labour inspection authority is published on the authority’s website.</p> <p>The measures are general incentives.</p>	<p>Yes.</p> <p>The inspection guidelines of the labour inspection authority is published on the authority’s website.</p> <p>The measures are general incentives.</p>
<p>a.3. Partnership agreements and initiatives by Social Partners</p> <p><i>Conclusion of agreements between trade unions and employer organisations in the same sector (e.g. construction industry) establishing bilateral agreements of actions to curb illicit activities.</i></p>	<p>No.</p>	<p>No.</p>

a.4. Obligation of the employer to notify the authorities about employing a TCN	<p>Yes.</p> <p>According to the provisions on the employment of foreigners⁵, employers are required to report to the county and Budapest government offices (acting as the labour authority) the employment of the person having the right of free movement and residence as well as the third country national who's employment is subject to an authorisation.</p> <p>The measures are general incentives.</p>	<p>Yes.</p> <p>According to the provisions on the employment of foreigners, employers are required to report to the county and Budapest government offices (acting as the labour authority) the employment of the person having the right of free movement and residence as well as the third country national who's employment is subject to an authorisation.</p> <p>The measures are general incentives.</p>
a.5. Other measures/incentives for employers	<p>No.</p>	<p>No.</p>

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

Measure/incentive for employees	<p><u>Irregularly staying and illegally working TCNs</u></p> <p><i>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</i></p>	<p><u>Regularly staying and illegally working TCNs</u></p> <p><i>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</i></p>
b.1. Financial incentives for employees <i>Financial and fiscal incentives, including social security incentives – i.e. any social security incentives aimed at encouraging employers to legally register their employees</i>	<p>No.</p>	<p>No.</p>

⁵ – Törvény Act IV of 1991 on Job Assistance and Unemployment Benefits

- Government Decree 355/2007 (XII.23) on the Transitional Arrangements of Persons with the Right of Free Movement and Residence
- Government Decree 445/2013 (XI. 28.) on the Authorization of the Employment of Third-country Nationals in Hungary by a Procedure Other Than a Single Application Procedure, on Cases of Exemptions from the Authorization Requirement, on the Involvement of the Employment Centers of County (Budapest) Government Agencies in Single Application Procedures in the Capacity of Specialist Authority, on the Notification of the Employment of Third-country Nationals Who can be Employed Without a Work Permit, and on Wage Compensation

<p>b.2. Information campaigns targeted at employees (potential or current)</p> <p><i>(including pre-departure campaigns and post-departure campaigns in third countries)</i></p> <p>For each campaign that has been run please: - Provide detail of the campaigns, including who are the target groups; what country, type of workers, etc. - Explain how the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.)</p>	<p>Yes.</p> <p>A prevalent project entitled “Development of workplace health and safety, development of labour inspections”.</p> <p>The measures were general incentives.</p>	<p>Yes.</p> <p>A prevalent project entitled “Development of workplace health and safety, development of labour inspections”.</p> <p>The measures were general incentives.</p>
<p>b.3. Information support for employees from third countries</p> <p><i>(e.g. One-stop shop information points)</i></p>	<p>Yes.</p> <p>The inspection guidelines of the labour inspection authority is published on the authority’s website.</p> <p>The measures are general incentives.</p>	<p>Yes.</p> <p>The inspection guidelines of the labour inspection authority is published on the authority’s website.</p> <p>The measures are general incentives.</p>
<p>b.4. Other measures/incentives for employees (incl. obligation of TCN to notify the authorities about any changes in employment conditions)</p>	<p>No.</p>	<p>No.</p>

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

Yes. A comprehensive, detailed report of the results and experiences of labour inspections is prepared each year, which is available retroactively on the authority's website.

Please indicate if there are differences between the two main categories of TCNs:

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

The Risk assessment does not differentiate between regularly and irregularly staying TCNs in connection with undeclared work.

If **Yes**, please describe:

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

The risk assessment prepared in respect of inspections takes the frequency and nature (type of offence, quantity and gravity) of labour law offences experienced earlier as the basis. The employers and sectors involved in the inspections are also selected based on previous years' experiences. The data of labour inspection authority inspections and processes are recorded and processed in a separate IT system (FEIR), which allows the collection of statistical data in various forms. There are several reporting channels through which labour market participants can indicate abuses, such as the website of the authority, where questions can be posed in Hungarian or English, e-mail or mail, as well as through personal contact.

The following laws and practices guarantee the appropriate professional standards of inspections:

Under Section 2/A of Act LXXV of 1996 on Labour Inspections the labour inspection authority performs its inspection activities based on the factors listed in the Act, as published in the inspection guidelines determined by the minister responsible for employment policy (the "Minister") 45 days prior to the start of the inspection period. The inspection guidelines regulate the use of the inspection resources of the labour inspection authority in light of current employment processes, employment goals, statutory amendments, forms of conduct that most violate legal employment and the employer and employee groups posing the greatest risk.

The inspection guidelines include the underlined inspection and investigation goals of that year, as well as the main range of activities, professions or sectors to be inspected.

The inspection guidelines must be determined and the inspections must be carried out such as to ensure that they are not discriminative and disproportionate and that the principle of equal treatment is respected.

Sections 91(1)-(3) of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services ("Administrative Proceedings Act") provide that the authority must prepare an inspection plan, which includes at least the subject of scheduled inspections, the inspection period, the timing and means of inspections, the factors considered and any other

data determined by the head of the authority. Continuous inspection tasks need not be included in the inspection plan.

The authority prepares an inspection report on the inspections performed based on the inspection plan, as well as those not included in the inspection plan but carried out in the inspection period, the conclusions prior to the end of the inspection period. The report contains at least the number of inspections carried out, their results, the types of violations found and any other statistical data determined by the head of the authority.

The authority publishes the inspection plan and report on its website and at customer service desks. The inspection plan or those parts thereof must be published that do not jeopardise the goals of the inspections.

Generally, the inspection plan binds the authority as well in terms of carrying out the inspection, its process and subject matter. Notwithstanding the inspection plan, however, the authority – depending on the legal regulation – may conduct an authority inspection at any time *ex officio*, without prior notice. When planning inspections, not all cases or types of case are foreseeable that require inspection, therefore, the inspection plan only includes schedulable inspections. The contents and numbers of public interest reports and complaints also play a determinate role in the selection of inspection targets.

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

The Budapest/county government offices, as first degree labour inspection authorities, prepare such inspection plans for carrying out their planned inspections. The regulations of Section 91 of the Administrative Proceedings Act provide the rules on the form and content requirements of inspection plans, i.e. that inspection plans must include: the subject matter of the inspection, the inspection period, timing of inspections (in particular deadline, duration, deadline for summary report), other data determined by the head of the authority.

Section 5e) of Government Decree 320/2014. (XII. 13.) on the Designation of the Public Employment Body and the Labour and Labour Safety Authority provides that in his capacity and competence in relation to work safety and labour issues, the Minister issues guidelines on work safety inspections and labour inspections.

Additionally, at the start of each year the Minister acts in his capacity as professional supervisor, determines professional targets for the Budapest and county government offices, as first degree labour inspection authorities, for the purposes of enforcement of the professional guidelines of that particular year. These performance targets are mandatory and determine the principles to be applied during all inspections that year, the sectors and employers under inspection, and also set quality and quantity standards for all inspections.

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

The areas to be inspected are determined by the Minister – as professional supervisor – in accordance with the above, but taking into consideration local specialties the individual government offices may also decide on inspection priorities.

Inspections are carried out by the authorised officials of the county and Budapest government offices as first degree

labour inspection authorities.

The labour inspection authority checks the aspects listed in Section 3(1) of the Labour Inspection Act, and additionally, in respect of work performed by TCNs, it checks compliance with, and existence of permits required under Act II of 2007 on the Admission and Residence of Third Country Nationals and other applicable laws.

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

The risk assessment prepared in respect of inspections and the inspection guidelines are an effective tools for identification of infringements.

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

A comprehensive, detailed report of the results and experiences of labour inspections is prepared each year, which is available retroactively on the authority's website.

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

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

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

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

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

In Hungary the labour inspection authority is responsible for the identification of illegally employed TCNs.

The designated authority does not distinguish between the two main categories of TCNs.

The authority performs a general role to identify illegal, unlawful employment.

Pursuant to Section 2(1) of Act LXXV of 1996 on Labour Inspection (the "Labour Inspection Act") with the exceptions listed in the Act, in Hungary labour inspections are generally carried out by the labour authority.

Pursuant to Government Decree No. 320/2014 the Minister, as labour safety and employment authority, and the Budapest and county government offices are designated to perform the public administration tasks relating to labour safety and the activities of the employment authority. Thus, the regional inspections are performed by the government offices of Budapest and county

government offices. Since 1 January 2015 the Minister responsible for employment policy has been in charge of labour inspections in Hungary.

In relation to the regional level, it should be noted that the operation of government offices is regulated in Government Decree No. 66/2015 (III.30.) on Budapest and County Government Offices as well as District (Budapest district) Offices. Pursuant to Section 2(1) of that regulation, the competence of the county government office extends to the county in which it has its registered seat. Pursuant to Section 4(1) the Government appoints the Minister responsible for the organisation of public administration for the management of the government and county government offices. The Budapest and county government offices are led by a government commissioner, who performs the tasks and competences of the office, as well as the tasks rendered into the competence of the heads of budgetary agencies and puts in place the conditions of the professional activities of the Budapest and county government offices and district offices.

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

No.

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

Pursuant to Section 3(1) of the Labour Inspection Act, labour inspections cover *inter alia*:

- i)* licensing the employment of TCNs in Hungary and the laws applicable to the employment of third country nationals and citizens who have the right to freedom of movement and residence,
- r)* the laws applicable to declaring the employment of TCNs and persons with the right of freedom of movement and residence,
- s)* compliance by the employer with the obligations listed in Sections 71(1), (2) and (8) of Act II of 2007 on the Admission and Residence of Third Country Nationals.

Section 4(1) of the Labour Inspection Act provides that the labour inspection authority may carry out an inspection at all the workplaces of the employer without a special permission or prior notice.

Under Section 3(4) of the Labour Inspection Act no employer may request that a labour inspection be carried out at its premises.

Based on the general authorisation included in Section 67(1) of Act II of 2007 on the Admission and Residence of Third Country Nationals the immigration authority has powers to control compliance with the provisions of that Act.

Based on its nature there are different inspections:

- specific inspections (aimed at a specific inspection target and does not cover all the inspection areas listed in Section 3(1) of the Labour Inspection Act)
- complex inspections (which include the aggregate of all inspection areas that can be inspected *ex officio*, as delineated in Section 3(1) of the Labour Inspection Act, or a majority thereof in accordance with the particularities of employment),
- inspection of public interest notices or complaints.

Among others, the rules included in Act CXL of 2004 on the General Rules of Administrative Proceedings and Services are

applicable to labour inspections (Labour Inspection Act Section 8(1)).

Under Section 8 (2) of the Labour Inspection Act if a TCN is employed without a valid residence permit or a permit allowing engagement in a gainful occupation and the inspection finds a likelihood that

a) in light of the gravity of the legal violation, the temporary or permanent closure of the facilities used during the unlawful act, or the temporary or permanent revocation of the licence issued for the performance of the business activity may be justified, or

b) employment or staying in Hungary of the TCN endangers public order, public safety, national security or poses a public health or infectious disease hazard,

the labour inspectorate contacts the competent authority to take the required measures.

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

Section 8(3) of the Labour Inspection Act provides that during its activities the labour inspection authority must cooperate with other authorities affected by its activities (e.g. police, immigration authority. Section 7/A (7) of the Labour Inspection Act requires the labour inspection authority to report to the immigration authorities its final decision issued regarding an unlawful act involving the employment of a TCN in Hungary pursuant to Section 3(1) i) of that Act.

If immigration and labour inspection authorities act in the same matter, the immigration authority checks whether immigration and stay in the country are lawful, whereas the labour inspection authority checks whether employment is lawful. If illegal employment is found, the labour inspection authority obligates the employer to make a payment into the central budget and sends the final decision to the immigration authority. Thereafter the immigration authority decides whether to impose a penalty after the graver violation (illegal employment) has been sanctioned, and if yes, as to the amount of the fine.

In addition to the labour inspectorates operating within the government offices, the regional directorates of the Office of Immigration and Nationality cooperate with the applicable organs of the National Tax and Customs Office. Cooperation between these authorities is efficient and smooth, cooperation takes place based on Joint Instruction No. 8/2010. (II. 19.) IRM-SZMM-PM-KHEM on the Cooperation and Collaboration to Increase the Efficiency of Official Measures Against Illegal Migration and Other Related Unlawful Acts.

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

The number of inspectors involved in on-site inspections is approximately 230. There are no employees dedicated specifically to the inspection of illegal employment of TCNs as all government officials involved in labour inspections perform inspections in all sectors; there is no specialisation per economic sector.

The Office of Immigration and Nationality does not have staff specifically dedicated to identifying and inspecting illegal employment.

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

Under Section 4(1) of the Labour Inspection Act the labour inspection authority may carry out an inspection at all the workplaces of the employer without a special permission or prior notice. Labour inspections typically consist of on-sight inspections and supplementary evidentiary proceedings. During on-sight inspections the government officials carrying out the labour inspection generally hear the employees found performing work as witnesses. Following the on-sight inspection, the proceeding is continued mostly with the hearing of the client (at the offices of the authority), taking into consideration the minutes taken at, and the findings of, the on-sight inspection and obtaining and analysing the required documents.

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

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

More specifically, please answer the following questions:

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

The labour inspection authority performs its inspection activities based on the factors listed in the Act, as published in the inspection guidelines 45 days prior to the start of the inspection period. The inspection guidelines regulate the use of the inspection resources of the labour inspection authority in light of current employment processes, employment goals, statutory amendments, forms of conduct that most violate legal employment and the employer and employee groups posing the greatest risk.

(See Section 2: Prevention measures, **Q3.**)

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

A comprehensive, detailed report of the results and experiences of labour inspections is prepared each year, which is available retroactively on the authority's website.

(See Section 2: Prevention measures, **Q3.**)

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

Based on Act CLXV of 2013 on Complaints and Public Interest Disclosures, any person may make a complaint or public interest disclosure to the body entitled to proceed in matters. A significant part of labour inspection authority inspections is lodged based on complaints or public interest disclosures.

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

In accordance with Section 2(1) of Act LXXV of 1996 on Labour Inspection, in Hungary labour inspections are performed by the labour inspection authority. This organisation inspects compliance with employment-related legislation pursuant to

Sections 3(1) a) and e) of the Labour Inspection Act.

The regional inspections of the employment authority have been performed by the Health and Safety and Labour Administration Agencies, operating as organisational units of the Budapest and county government offices (regional level). Pursuant to Government Decree 320/2014. (XII. 13.) on the Designation of the Public Employment Body and the Labour and Labour Safety Authority, and the Official and Further Tasks of These Authorities, the Minister, as labour safety and employment authority charged with public administration tasks related to labour safety and employment authority activities, furthermore the labour safety and employment administration agencies of the Budapest and county government offices, then as of 1 April, the government offices were designated to perform the central supervision of the regional level. Thus, regional supervision is now performed by the government officials of the government offices (and not by the labour inspectors of an administration agency established for specific tasks). Since 1 January 2015 the Minister responsible for employment policy has been in charge of labour inspections in Hungary.

The areas to be inspected are determined by the Minister – as professional supervisor – in accordance with the above, but taking into consideration local specialties the individual government offices may also decide on inspection priorities.

Inspections are carried out by the authorised officials of the county and Budapest government offices as first degree labour inspection authorities.

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

The labour inspection authority checks the aspects listed in Section 3(1) of the Labour Inspection Act, and additionally, in respect of work performed by TCNs, it checks compliance with, and existence of permits required under Act II of 2007 on the Admission and Residence of Third Country Nationals and other applicable laws.

Pursuant to Section 3(1) of the Labour Inspection Act, labour inspections cover inter alia:

- the proper form and the existence of the obligatory content elements of legal declarations required for establishing employment relationship, furthermore provisions regarding the employer's obligation to provide written information,
- reporting obligations related to the establishment and the termination and rescission of employment,
- legal regulations related to the employment of women, young people and those with changed working abilities,
- provisions prescribed for working time, resting time and extra work performance,
- provisions regarding the amount of wages and the protection of wages,
- provisions of the legal regulations concerning the production and the issue of certificates related to the termination of the employment relationship as well as concerning accounts made for the termination and rescission of employment,
- provisions of the legal regulations concerning the permit for the Hungarian employment of foreigners and their employment,
- legal regulations concerning labour hiring and giving title to carrying out labour hiring activities,
- licensing the employment of TCNs in Hungary and the laws applicable to the employment of third country nationals and citizens who have the right to freedom of movement and residence,
- the laws applicable to declaring the employment of TCNs and persons with the right of freedom of movement and residence,
- compliance by the employer with the obligations listed in Sections 71(1), (2) and (8) of Act II of 2007 on the Admission and Residence of Third Country Nationals.

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

Section 8(3) of the Labour Inspection Act provides that during its activities the labour inspection authority must cooperate with other authorities affected by its activities (e.g. police, immigration authority. Section 7/A (7) of the Labour Inspection Act requires the labour inspection authority to report to the immigration authorities its final decision issued regarding an unlawful act involving the employment of a TCN in Hungary pursuant to Section 3(1) i) of that Act.

If immigration and labour inspection authorities act in the same matter, the immigration authority checks whether immigration and stay in the country are lawful, whereas the labour inspection authority checks whether employment is lawful. If illegal employment is found, the labour inspection authority obligates the employer to make a payment into the central budget and sends the final decision to the immigration authority. Thereafter the immigration authority decides whether to impose a penalty after the graver violation (illegal employment) has been sanctioned, and if yes, as to the amount of the fine.

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

Inspections based on guidelines are conducted at random intervals.

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

Under Section 4(1) of the Labour Inspection Act the labour inspection authority may carry out an inspection at all the workplaces of the employer without a special permission or prior notice. Labour inspections typically consist of on-sight inspections and supplementary evidentiary proceedings. During on-sight inspections the government officials carrying out the labour inspection generally hear the employees found performing work as witnesses. Following the on-sight inspection, the proceeding is continued mostly with the hearing of the client (at the offices of the authority), taking into consideration the minutes taken at, and the findings of, the on-sight inspection and obtaining and analysing the required documents.

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

The inspection guidelines include the underlined inspection and investigation goals of that year, as well as the main range of activities, professions or sectors to be inspected.

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

The risk assessment prepared in respect of inspections and the inspection guidelines are an effective tools for identification of infringements.

Section 4: Sanctions for employers

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

Administrative Sanctions

Under Section 6(1) of the Labour Inspection Act the labour inspection authority may apply the following measures to sanction irregularities found during an inspection:

- a)* prohibition of continued employment, if work or employment cannot be maintained due to the gravity of the infringement as defined in the first and second points of Section 3(1) *a)* and Sections 3(1) *b), e), f), i), k)* and *s)* and the offense cannot be remedied within a short time; if continued employment was prohibited because the employer infringed the rules applicable to the forms of legal declarations required for establishing an employment relationship or the provisions on declaring the legal relationship, for the period of the prohibition, the labour inspection authority obligates the employer to pay to the employee remuneration in accordance with Section 146(1) of the Labour Code,
- b)* obligate the employer to end the irregularity within a certain deadline,
- c)* obligate the employer to make a payment to the central budget for the violation of the rules on employing TCNs in Hungary as provided in Section 7/A,
- d)* impose a labour fine as provided in Sections 6/A and 7,
- e)* acting based on Section 1(5), the authority determines the existence of the legal relationship for purposes of employment as of the starting date of work and obligates the employer to comply with the rules applicable to legal relationships for purposes of employment,
- f)* prohibit the employer from continuing its activity, if it does not have the licenses or registration required in the law applicable to employment,
- g)* if a violation of age limits is found as defined in Section 3(1) *a)*, it notifies the child protection authorities for endangerment of the child,
- h)* in order to prevent further offences, if Clause *b)* cannot be applied, it determines the employer's offence, or
- i)* obligates the responsible main contractor (as defined in Section 1(8)) or the intermediate subcontractor to pay unpaid wages in place of the employer,
- j)* obligates the employer to provide data required for fulfilling the request described in Section 3(1a).

Pursuant to Section 8 (2) of the Labour Inspection Act if a TCN is employed without a valid residence permit or a permit allowing engagement in a gainful occupation and the inspection finds a likelihood that

a) in light of the gravity of the legal violation, the temporary or permanent closure of the facilities used during the unlawful act, or the temporary or permanent revocation of the licence issued for the performance of the business activity may be justified, or

b) employment or staying in Hungary of the TCN endangers public order, public safety, national security or poses a public health or infectious disease hazard,

the labour inspectorate contacts the competent authority to take the required measures.

Section 62 (1) of Act CXLI of 2015 on Public Procurement provides that economic operators are excluded from participating in the procedure as a tenderer, candidate, subcontractor or an organization participating in the certification of suitability where a third country national, whose employment is subject to an authorisation in Hungary, committed an infringement of the law established by the employment authority, on the basis of Article 7/A of the Act LXXV of 1996 on Labour Inspection, and was ordered to pay a given amount into the central budget or was ordered by the immigration authority to pay a fine for the protection of public policy pursuant to the Act on the Admission and Residence of Third Country Nationals.

Under Section 50 (1) of Act CXCIV of 2011 on Public Finances public funding can be granted to entities that have complied with the requirements of orderly employment relationships.

Section 82(2) of Government Decree 368/2011 (XII. 31.) on the Implementation of the Public Finances Act provides that an entity does not comply with the requirements of orderly employment if, in the two years prior to requesting public funding, a final and binding fine was imposed on it by the authority or a court for employing a TCN without a work permit.

Criminal Sanctions

Criminal sanctions apply for especially grave infringements (exploitative working conditions that classify as trafficking in human beings, child labour).

Exploitative working conditions as one form of the crime of trafficking in human beings: on the basis of Section 192(2) of Act C of 2012 on the Criminal Code (the "Criminal Code"), any person who for the purpose of exploitation sells, purchases, exchanges, supplies, receives, recruits, transports, harbours or shelters another person, including transfer of control over such person, is punishable by imprisonment between one to five years.

Under Section 193(1) of the Criminal Code (Forced Labour), any person who forces another person by taking advantage of his vulnerable situation, or by force or by threat of force, to perform work against his will, is guilty of a felony punishable by imprisonment between one to five years

Section 209 of the Criminal Code provides the following on child labour:

Any person who:

- a) violates the statutory provisions on the employment of persons under the age of eighteen years; or
- b) employs a third country national under the age of eighteen years without authorization to engage in a gainful occupation;

is guilty of a felony punishable by imprisonment not exceeding three years.

Section 356 (1) of the Criminal Code (Unlawful Employment of Third Country Nationals) provides that any person who employs:

- a) a third country national on a regular basis or frequently without authorization to undertake gainful employment;
- or
- b) a substantial number of third country nationals at one and the same time without authorization to engage in a gainful occupation;

is guilty of a misdemeanour punishable by imprisonment not exceeding two years.

(2) The penalty shall be imprisonment not exceeding three years for a felony:

- a) if the offender employs a third country national without authorization to undertake gainful employment under particularly exploitative working conditions;
- c) if the third country national employed without authorization to undertake gainful employment is the victim of trafficking in human beings.

(3) For the purposes of this Section:

a) 'particularly exploitative working conditions' shall mean particularly exploitative working conditions as defined by the Act on the Admission and Residence of Third Country Nationals;

b) 'substantial number' shall mean at least five persons

In such cases though it is obviously the police and not the labour inspection authority that takes action.

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

Sanctions for employers	<u>Irregularly staying and illegally working TCNs</u> <i>*Please indicate if this sanction is imposed in your (Member) State (Yes/No), and if yes in which cases</i> <i>** Please provide reference to the specific legal provisions</i>	<u>Regularly staying and illegally working TCNs</u> <i>*Please indicate if this sanction is imposed in your (Member) State(Yes/No), and if yes in which cases</i> <i>** Please provide reference to the specific legal provisions</i>
Fines (e.g. fines imposed per illegally hired employee)	Yes – labour inspection Act LXXV of 1996 on Labour Inspections 7/A (1) If the review of compliance with the provisions of Article 3(1)j by the labour authority establishes that the employer employed a third-country national without a residence permit issued in the single application procedure specified in Article 7(1)a of Act IV of 1991 on the Promotion of Employment and Unemployment Benefits, or a work permit specified in Article 7(1)b of the same Act, the labour authority imposes a fine payable to the central budget according to the provisions of Subsections (2)-(5). A fine is payable for each employee employed irregularly. The amount of the fine is progressive: it depends on the previous record and status of the offender. Frequent offenders pay more, private individuals hiring third-country nationals for their own purposes are subject to more moderate fines.	Yes – labour inspection Act LXXV of 1996 on Labour Inspections 7/A (1) If the review of compliance with the provisions of Article 3(1)j by the labour authority establishes that the employer employed a third-country national without a residence permit issued in the single application procedure specified in Article 7(1)a of Act IV of 1991 on the Promotion of Employment and Unemployment Benefits, or a work permit specified in Article 7(1)b of the same Act, the labour authority imposes a fine payable to the central budget according to the provisions of Subsections (2)-(5). A fine is payable for each employee employed irregularly. The amount of the fine is progressive: it depends on the previous record and status of the offender. Frequent offenders pay more, private individuals hiring third-country nationals for their own purposes are subject to more moderate fines.

<p>Imprisonment of employers (<i>Please indicate the aggravating circumstances</i>)</p>	<p>Yes – Criminal procedure</p> <p>Section 356(1) of Act C of 2012 on the Criminal Code: Any person who employs: a) a third-country national on a regular basis or frequently without authorization to undertake gainful employment; or b) a substantial number of third-country nationals at one and the same time without authorization to undertake gainful employment shall be guilty of a misdemeanour punishable by imprisonment not exceeding two years.</p> <p>Section 356(2) a) If the offender employs a third-country national without authorization to undertake gainful employment under particularly exploitative working conditions;</p> <p>b) if the third-country national employed without authorization to undertake gainful employment is the victim of trafficking in human beings, the penalty shall be imprisonment not exceeding three years for a felony.</p>	<p>Yes – Criminal procedure</p> <p>Section 356(1) of Act C of 2012 on the Criminal Code: Any person who employs: a) a third-country national on a regular basis or frequently without authorization to undertake gainful employment; or b) a substantial number of third-country nationals at one and the same time without authorization to undertake gainful employment shall be guilty of a misdemeanour punishable by imprisonment not exceeding two years.</p> <p>Section 356(2) a) If the offender employs a third-country national without authorization to undertake gainful employment under particularly exploitative working conditions;</p> <p>b) if the third-country national employed without authorization to undertake gainful employment is the victim of trafficking in human beings, the penalty shall be imprisonment not exceeding three years for a felony.</p>
<p>Confiscation of financial gains (e.g. share of profit or revenue of the employer)</p>	<p>Yes – see above</p>	<p>Yes – see above</p>
<p>Ineligibility for public contracts</p>	<p>Yes</p> <p>Act CVIII of 2011 on Public Procurement</p> <p>Section 56 (1) g)[economic operators] where a third country national, whose employment is subject to an authorisation in Hungary, committed an infringement of the law established by the employment authority, on the basis of Article 7/A of the Act LXXV of 1996 on Labour Inspection, and was ordered to pay a given amount into the central budget or was ordered by the immigration authority to pay a fine for the protection of public policy pursuant to the Act on the Admission and Right of Residence of Third Country Nationals</p> <p>- are excluded from participating in the public procurement procedure as a tenderer, candidate, subcontractor or an organization participating in the certification of suitability</p>	<p>Yes</p> <p>Act CVIII of 2011 on Public Procurement</p> <p>Section 56 (1) g)[economic operators] where a third country national, whose employment is subject to an authorisation in Hungary, committed an infringement of the law established by the employment authority, on the basis of Article 7/A of the Act LXXV of 1996 on Labour Inspection, and was ordered to pay a given amount into the central budget or was ordered by the immigration authority to pay a fine for the protection of public policy pursuant to the Act on the Admission and Right of Residence of Third Country Nationals</p> <p>- are excluded from participating in the public procurement procedure as a tenderer, candidate, subcontractor or an organization participating in the certification of suitability</p>
<p>Temporary or definitive closure of company or</p>	<p>Yes – Labour inspection</p>	<p>Yes – Labour inspection</p>

worksite	<p>Section 8(2) of LXXV of 1996 on Labour Inspection: If a TCN is employed without a valid residence permit or a permit allowing engagement in a gainful occupation and the inspection finds a likelihood that</p> <p>a) in light of the gravity of the legal violation, the temporary or permanent closure of the facilities used during the unlawful act, or the temporary or permanent revocation of the licence issued for the performance of the business activity may be justified, or</p> <p>b) employment or staying in Hungary of the TCN endangers public order, public safety, national security or poses a public health or infectious disease hazard,</p> <p>the labour inspectorate contacts the competent authority to take the required measures.</p>	<p>Section 8(2) of LXXV of 1996 on Labour Inspection: If a TCN is employed without a valid residence permit or a permit allowing engagement in a gainful occupation and the inspection finds a likelihood that</p> <p>a) in light of the gravity of the legal violation, the temporary or permanent closure of the facilities used during the unlawful act, or the temporary or permanent revocation of the licence issued for the performance of the business activity may be justified, or</p> <p>b) employment or staying in Hungary of the TCN endangers public order, public safety, national security or poses a public health or infectious disease hazard,</p> <p>the labour inspectorate contacts the competent authority to take the required measures.</p>
Confiscation of equipment/property	Yes – see above	Yes – see above
Suspension of activity	Yes – see above	Yes – see above
Withdrawal of trading license/disbarment of activity	Yes – see above	Yes – see above
Withdrawal of residence permit if the employer is a TCN	Yes – see above	Yes – see above
Other sanctions	<p>Yes – public safety fine</p> <p>Based on Section 71 (6) of the Act on the Admission and Residence of TCNs, an employer who fails to satisfy the obligations defined in Subsections 71(1)-(4) shall be subject to a penalty for the protection of public policy. If the illegally employed TCN has a valid residence permit, the fact of illegal employment may draw with it a review of the residency entitlement of the TCN.</p>	<p>Yes – public safety fine</p> <p>Based on Section 71 (6) of the Act on the Admission and Residence of TCNs, an employer who fails to satisfy the obligations defined in Subsections 71(1)-(4) shall be subject to a penalty for the protection of public policy. If the illegally employed TCN has a valid residence permit, the fact of illegal employment may draw with it a review of the residency entitlement of the TCN.</p>

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

Proceedings involving the illegal employment of TCNs differ from general proceedings in that the regularity of the stay is also examined, i.e. whether the TCN has the permits required under Act II of 2007 on the Admission and Residence of Third Country Nationals. The measures that can be applied at the end of the proceeding differ, as in the case of illegal employment of TCNs the only sanctions that can be applied are prohibition of continued employment and payment of

an amount into the central budget (as provided in Sections 6(1) a) and c) of the Labour Inspection Act – see above).

According to the rules of Section 2 (1) of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services, during its proceedings the competent authorities shall contemplate in their proceedings the facts relevant to the case on hand, shall apply all evidence consistent with its weight, and shall base its decisions on the pragmatic facts of the case.

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

The employer who fails to discharge his duties for reasons within his control shall be subject to sanctions.

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

Criminal sanctions for employers	Description <i>*Please indicate if this sanction is imposed in your (Member) State, and if yes in which cases</i> <i>** Please provide reference to the specific legal provisions</i>
(a) the infringement continues or is persistently repeated	Yes Act C of 2012 on the Criminal Code - Unlawful Employment of Third-Country Nationals <i>Section 356 (1) a)</i> : Any person who employs a third-country national on a regular basis or frequently without authorization to undertake gainful employment is guilty of a misdemeanor punishable by imprisonment not exceeding two years.
(b) the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	Yes Act C of 2012 on the Criminal Code - Unlawful Employment of Third-Country Nationals <i>Section 356 (1) b)</i> : Any person who employs a substantial number of third-country nationals at one and the same time without authorization to undertake gainful employment is guilty of a misdemeanor punishable by imprisonment not exceeding two years. (3) For the purposes of this Section 'substantial number' shall mean at least five persons.
(c) the infringement is accompanied by particularly exploitative working conditions	Yes Act C of 2012 on the Criminal Code - Unlawful Employment of Third-Country Nationals <i>Section 356 (2) a)</i> The penalty shall be imprisonment not exceeding three years for a felony if the offender employs a third-country national without authorization to undertake gainful employment under particularly exploitative working conditions. (3) For the purposes of this Section 'particularly exploitative working conditions' shall mean particularly

	exploitative working conditions as defined by the Act on the Admission and Residence of Third-Country Nationals.
(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings	Yes Act C of 2012 on the Criminal Code - Unlawful Employment of Third-Country Nationals <i>Section 356 (2)</i> The penalty shall be imprisonment not exceeding three years for a felony if the third-country national employed without authorization to undertake gainful employment is the victim of trafficking in human beings.
(e) the infringement relates to the illegal employment of a minor	Yes Act C of 2012 on the Criminal Code - Child Labor <i>Section 209 b)</i> : Any person who employs a third-country national under the age of eighteen years without authorization to undertake gainful employment is guilty of a felony punishable by imprisonment not exceeding three years

Q12b. Has your Member States amended legislation on sanctions for illegally employed TCN since July 2014⁶? If so, please provide details.

No.

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

Relatively few cases have been detected by the labour inspection authority, therefore limited experience is available in this area.

Section 5: Outcomes for TCNs found to be working illegally

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

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

Sanctions for TCNs	Irregularly staying and illegally working TCNs	Regularly staying and illegally working TCNs
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⁶ The European Commission issued implementation report on the Employers' Sanctions Directive on 22 May 2014. This EMN study aims to examine whether/and if so – to what extent there has been new legislation/practices following that date.

<p>Sanction for employee</p>	<p>Minor offence procedure</p> <p>Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals Section 43.(2) The immigration authority shall order the expulsion of a third-country national who</p> <p>a) has crossed the frontier of Hungary illegally, or has attempted to do so;</p> <p>c) was engaged in any gainful employment in the absence of the prescribed work permit or any permit prescribed under statutory provision;</p> <p>According to Section 47 (4) the immigration police may issue an order refusing entry and the right of residence based on the above reasons for expulsion.</p> <p>Based on Section 47 (9) The immigration authority may withdraw the exclusion order if continued enforcement is no longer justified due to major changes in the underlying circumstances.</p>	<p>Minor offence procedure</p> <p>Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals Section 43.(2) The immigration authority shall order the expulsion of a third-country national who</p> <p>a) has crossed the frontier of Hungary illegally, or has attempted to do so;</p> <p>c) was engaged in any gainful employment in the absence of the prescribed work permit or any permit prescribed under statutory provision;</p> <p>According to Section 47 (4) the immigration police may issue an order refusing entry and the right of residence based on the above reasons for expulsion.</p> <p>Based on Section 47 (9) The immigration authority may withdraw the exclusion order if continued enforcement is no longer justified due to major changes in the underlying circumstances.</p>
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Q14a. *issued with a return decision. Please also describe the procedure after an illegally employed TCN is detected and how is this communicated to immigration authorities.*

According to Section 8(2) of Act LXXV of 1996 on Labour Inspection, the labour inspection authority contacts the authority vested with powers in order for them to take the necessary measures.

According to Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals Section 43.(2) The immigration authority shall order the expulsion of a third-country national who

a) has crossed the frontier of Hungary illegally, or has attempted to do so;

c) was engaged in any gainful employment in the absence of the prescribed work permit or any permit prescribed under statutory provision;

According to Section 47 (4) the immigration police may issue an order refusing entry and the right of residence based on the above reasons for expulsion.

Based on Section 47 (9) The immigration authority may withdraw the exclusion order if continued enforcement is no longer justified due to major changes in the underlying circumstances.

Q14b. *is granted a period for voluntary departure*

No.

Q14c. *has received an entry ban*

Yes.

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

No.

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

Yes, in order to secure the expulsion of a third-country national the immigration authority shall have powers to detain the TCN.

Q14f. *receives work permit*

No.

Q14g. *receives residence permit*

No.

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

If the TCN is a *victim of trafficking in human beings* In the absence of the requirements for a residence permit specified in this Act the following persons shall be granted a residence permit on humanitarian grounds.

Q14i. *Other sanctions/outcomes*

No.

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

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

Yes.

Q15b. *the illegal work is tolerated or regularised*

No.

Q15c. *fined*

No.

Q15d. *detained*

Yes.

Q15e. *issued a return decision*

Yes.

Q15f. *Other sanctions/outcomes*

No.

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

The case is dealt in accordance with the national laws.

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

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

(i) outstanding remuneration

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

According to Government Decree 445/2013 (XI. 28.) on the Employment of Third-Country Nationals in Hungary, in the case of employment of third-country nationals not having a residence permit in Hungary, the employer is required to pay the unpaid wages and other dues of the third-country national, furthermore the reasonable costs associated with sending of these to the country of return of the third-country national.

Considering that often wages are not properly recorded during illegal employment, the law requires that the mandatory smallest wage be considered as the basis, and, until proven otherwise, assumes that the employment went on for at least three months.

The outstanding remuneration is due to the TCN, the amount equal to taxes and social security contributions is due to the State.

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

Under Section 19(1) of Act LXXXVI of 2012 on Transitional Regulations and Statutory Amendments Associated with the Enforcement of Act I of 2012 on the Labour Code in the case of employment of third-country nationals not having a residence permit in Hungary, the main contractor and all subcontractors shall be jointly and severally liable with the subcontractor employer for payment of remuneration and other dues and costs of the third-country national. Contractors that could not be aware that the employment was without a permit even if undertaking diligence obligations, shall be relieved from liability.

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

The lack of proceedings initiated for unpaid wages shows that illegally staying third-country nationals cannot effectively enforce their rights.

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

No

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

Yes

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

(It falls under general provisions) Article XV of the Hungarian Constitution regulates the requirement of equality before the law and sets forth the rule that every human being has legal capacity, that fundamental rights are guaranteed to everyone. Thereafter, it defines the conceptual elements of discrimination, it lists the areas and reasons where discrimination is realised and to which the general prohibition applies. The Constitution furthermore indicates the State's tasks associated with equal opportunities, emphasising the promotion of the achievement of equality of opportunity and social inclusion.

Section 12 of Act I of 2012 on the Labour Code stipulates the general prohibition of discrimination in the world of labour: In connection with employment relationships, the principle of equal treatment must be strictly observed and

neither the agreement of the parties or collective agreement may differ from the application of this principle.

The detailed rules of the principles included in the Labour Code are set out in Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities ("Equal Opportunities Act"). The Act defines the special areas of the violation of the requirement of equal treatment, including cases of discrimination within employment, regulating what is classified as direct or indirect discrimination in the area of employment.

According to the Equal Opportunities Act, in the case of discrimination for a protected characteristic, the offended party may choose whether s/he seeks a remedy before the Equal Treatment Authority or by judicial process before either a civil court or a labour court.

The rules of the Labour Code provide that employees may pursue their claims arising from the employment relationship or out of the Labour Code by judicial process: "Section 285 (1) Workers and employer may pursue their claims arising from the employment relationship or out of this Act, and trade unions and works councils may pursue their claims arising out of this Act or a collective agreement or a works agreement by judicial process."

In respect of compensation that can be awarded by a court, the Labour Code places remedies on an indemnification platform parallel with the legal consequences of unlawful termination of employment by the employer: If the employer wrongfully terminates the employment in violation of the requirement of equal treatment, the employee may request compensation of the damage caused. This includes enforcement of lost income as damage: unpaid earnings and other regular income derived from the employment relationship, as well as other unpaid regular income outside the employment relationship. Compensation for loss of income from employment payable to the employee may not exceed twelve months' absentee pay. In addition, the employee is entitled to severance pay if the employment relationship was wrongfully terminated or if the employee did not receive severance pay upon termination of the employment relationship. In addition to the above, the employee may demand compensation for other damage caused by the termination of the employment relationship.

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

The system of legal aid: Legal aid is stipulated by law in Hungary, and realised within an institutional framework, but without a specific organisational background.

Act LXXX of 2003 on Legal Aid contains provisions on aid provided under legal aid and the criteria for eligibility and on aid in civil proceedings. In extrajudicial proceedings, the State's tasks in respect of legal aid are performed by a legal aid provider, while in judicial proceedings a litigation friend is appointed.

As elements of the legal aid service, the Government has set up two institutions. The Office of Justice, operating under the auspices of the Ministry of Justice performs tasks related to litigation friends, legal aid, victim assistance and indemnification, including professional supervision of judicial services. The activities of the Public Administration and Justice Office extend to handling support and projects, including performance of research and analyses, issuing reports.

The Equal Treatment Authority is the institution charged with enforcement of equal treatment, which inspects (upon request or ex officio) whether the requirements of equal treatment were violated and based on the right to enforcement of claims for public interest, it may start a lawsuit for the protection of the rights of persons and groups whose rights have been violated. During the performance of its activities, it provides continuous information to those affected and assistance in taking steps against violation of equal treatment. The Authority performs its tasks in cooperation with non-governmental organisations and unions, as well as the government bodies affected. It constantly provides information on its work to these organisations and also regularly informs the public at large and the Parliament regarding the status of the implementation of equal treatment.

Hungary guarantees the right to associations, non-governmental organisations or other legal entities to perform the representation of the employee affected and his/her family members through a power of attorney in public administrative and/or judicial proceedings. The right of representation is an important issue also because one of the

main difficulties in the enforcement of rights of third-country nationals working in Hungary is the language barrier, and the lack of knowledge of national laws/proceedings, at the same time a power of attorney is exclusively required for the representation of the offended party, thereby respecting their right to self-determination.

The Equal Treatment Act guarantees the right to social and interest representation organisations in proceedings started for the violation of equal treatment. The above organisations can perform their representation of the offended party based on a power of attorney. Furthermore, social and interest representation organisations have the right to enforce claims in the public interest, which they can exercise in the event that "the requirement of equal treatment was violated or the direct danger thereof was based on a characteristic that is the essential feature of the personality of the individual persons, and the legal violation or the direct danger thereof jeopardises a larger, not exactly specified group of people.

The Labour Code also guarantees the right to unions to represent their members in matters concerning the protection of their economic and social interests before courts, authorities and other bodies, on the basis of a power of attorney.

Under the Act on Civil Procedures, the right of representation guaranteed to interest representation organisations in civil court proceedings is somewhat narrower, because they can only represent their own members, based on a power of attorney.

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

Hungary supports the right of representation also because one of the main difficulties in the enforcement of rights of third-country nationals working in Hungary is the language barrier, and the lack of knowledge of national laws/proceedings, at the same time a power of attorney is exclusively required for the representation of the offended party, thereby respecting their right to self-determination.

At the same time, experience on the enforcement of the rights of third-country national employees shows that the possibilities guaranteed by the law are not put into practice.

Q19a. Does your (Member) State provide for information to illegally employed TCNs on their rights?

If Yes, is this foreseen in legislation, or else is it a part of general administrative guidelines or practices?

Please provide comments on difficulties encountered or success factors with measures that can be identified as good practices in relation to information obligations.

The methodological guide of the labour inspection authority contains guidance on the information of employees. At the same time, the language barriers and the lack of translation weaken the practical realisation of the statutory possibilities.

According to Section 54 (1) of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services, the witness's identity prior the interview shall have to be established. The witness shall declare his relationship with the clients, and whether or not he is biased. If there is any proof indicating that the witness is biased, it shall be recorded in a report. The witness shall be advised of his rights and obligations, and of the legal consequences of perjury.

Section 7 (3) of Government Decree 320/2014. (XII. 13.) on the Designation of the Public Employment Body and the Labour Safety Authority provides that in his capacity and competence in relation to work safety and labour issues, the Minister issues guidelines on the labour inspections' information and awareness-raising activity.

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

The Government Decree No. 320/2014. (XII. 13.) on the Designation of Public Employment Services and Labour Inspection Authorities and on the Exercise of Their Official Authority and the Performance of Their Other Duties entered into force on 15 December 2014. Before that, the National Labour Office had the same responsibilities and provided information promoting compliance with labour laws.

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

Relatively few cases have been detected by the labour inspection authority, therefore limited experience is available in this area.

Q21. Case studies

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

Q21a. A third-country national residing and working irregularly

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

If the third-country national stayed and performed work in Hungary illegally, without a permit and an employment contract, the immigration authority will order his expulsion from the country. A third-country national shall not be granted a residence permit for the purpose of gainful employment if the third-country national is under exclusion or exclusion has been ordered in conjunction with expulsion (Act II of 2007 Section 13 (1) h) and Sections 43 (1)-(2)). This is only true if the immigration authority learns of the irregular residence and employment (either if a labour inspection finds irregular work and notifies the immigration authority thereof, or otherwise).

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

Ms. Svitlana Ivanenko, a student holding Ukrainian citizenship, aged 22, moved to your (Member) State one year ago. Svitlana is enrolled in a two year master's programme at university. She holds a residence permit for students. For the past six months she was also employed for 10 hours per week at a local café⁷. During some months of the academic year as well as the summer break at university, Svitlana started to work longer hours at the café, leading to work of almost 45 hours per week during term time for 3 months without changes in her part-time student contract. What happens after the labour inspectorate detected that Svitlana was working 40 hours per week? Please specify the maximum hours per week that students are allowed to work in your (Member) State.

Third-country nationals with a residence permit issued on grounds of pursuit of studies may engage in gainful employment during their term-time for maximum 24 hours weekly, and outside their term-time for a maximum period of 90 days or 66 working days.

If a third-country national with a residence permit for students performs work lawfully, but later exceeds the hours allowed under the student residence permit, employment of the student becomes illegal. As thus the student resided and worked in Hungary illegally, the immigration authority expulses her from the country. A third-country national shall not be granted a residence permit for the purpose of gainful employment if the third-country national is under exclusion or exclusion has been ordered in conjunction with expulsion (Act II of 2007 Section 13 (1) h) and Sections 43 (1)-(2)). This is only true if the immigration authority learns of the irregular residence and employment (either if a labour inspection finds irregular work and notifies the immigration authority thereof, or otherwise).

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

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

If a third-country national with a residence permit for students performs work lawfully, but later exceeds the hours allowed under the student residence permit, employment of the student becomes illegal. As thus the student resided and worked in Hungary illegally, the immigration authority expulses her from the country. A third-country national shall not be granted a residence permit for the purpose of gainful employment if the third-country national is under exclusion or exclusion has been ordered in conjunction with expulsion (Act II of 2007 Section 13 (1) h) and Sections 43 (1)-(2)). This is only true if the immigration authority learns of the irregular residence and employment (either if a labour inspection finds irregular work and notifies the immigration authority thereof, or otherwise).

According to Section 8(2) of Act LXXV of 1996 on Labour Inspection, the labour inspection authority contacts the authority vested with powers in order for them to take the necessary measures. The labour inspection authority obligates the employer to make payment to the central budget for illegal employment of third-country nationals. The labour inspection authority might also prohibit further employment.

⁷ Based on Directive 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (recast) allowing students to take up employment of at least 15 hours per week. IE and the UK are not participating in this Directive.

Q21d. A third-country national present as a tourist

Marija Bogdanovic, a Serbian citizen, aged 45 has entered your (Member) State as a tourist one month ago. Due to visa liberalisation for the Western Balkans countries, Marija has the right to remain in your (Member) State for up to 90 days per six-month period as a tourist without requiring a visa⁸. During her stay in your (Member) State, Marija has been working for a family she met through friends as a housekeeper and babysitter. She has been living with the family and has been paid cash for her work. After two months the family asks Marija to stay and work for them full time. They offered to grant her a work contract and asked her to apply for a residence permit. Marija intends to apply for a residence in permit in your (Member) State during the 90 days period she enjoys visa liberalization. However, Marija is detected by the authorities in your (Member) State before applying for the permit. What would be the consequence for Marija?

If a third-country national with a residence permit for students performs work lawfully, but later exceeds the hours allowed under the student residence permit, employment of the student becomes illegal. As thus the student resided and worked in Hungary illegally, the immigration authority expulses her from the country. A third-country national shall not be granted a residence permit for the purpose of gainful employment if the third-country national is under exclusion or exclusion has been ordered in conjunction with expulsion (Act II of 2007 Section 13 (1) h) and Sections 43 (1)-(2)). This is only true if the immigration authority learns of the irregular residence and employment (either if a labour inspection finds irregular work and notifies the immigration authority thereof, or otherwise).

Labour inspectors do not have the right to enter private homes. Labour inspection only covers those in 'organized work'. Therefore the chances of a person working as a housekeeper to be found by labour inspectors is very low.

However, if the person is detected by the authorities, according to Subsection (2) of Section 8 of Act LXXV of 1996 on Labour Inspection, the labour inspection authority contacts the authority vested with powers in order for them to take the necessary measures. The labour inspection authority obliges the employer to make payment to the central budget for illegal employment of third-country nationals. The labour inspection authority might also prohibit further employment.

A21e. A third-country national seasonal worker

Mr. Karim Harrak, a 25 year old from Morocco entered your (Member) State as a seasonal worker for strawberry picking. He has been residing on a seasonal worker permit and is required to leave your (Member) State after the legally allowed duration for stay expired⁹. The contract with his current employer is valid for six months. However, after his contract expired he remained in your (Member) State and took on another job in a hotel. He thus remained in your (Member) State longer than the legally allowed duration. After a few months in the second job, he applied again as a seasonal worker for strawberry picking. However, he is detected that he has overstayed in the country. What would be the consequences for Karim?

If a third-country national with a residence permit for students performs work lawfully, but later exceeds the hours allowed under the student residence permit, employment of the student becomes illegal. As thus the student resided and worked in Hungary illegally, the immigration authority expulses her from the country. A third-country national shall not be granted a residence permit for the purpose of gainful employment if the third-country national is under exclusion or exclusion has been ordered in conjunction with expulsion (Act II of 2007 Section 13 (1) h) and Sections 43 (1)-(2)). This is only true if the immigration authority learns of the irregular residence and employment (either if a labour inspection finds irregular work and notifies the immigration authority thereof, or otherwise).

According to Subsection (2) of Section 8 of Act LXXV of 1996 on Labour Inspection, the labour inspection authority

⁸ Based on the visa free travel decision adopted by the EU Member States on 30 November 2009: http://europa.eu/rapid/press-release_IP-09-1852_en.htm?locale=fr

⁹ Based on Directive 2014/36/EU – Seasonal workers – allowing third-country nationals to reside in a Member State between five months and nine months in any 12-month period. The permit is renewable. IE and the UK are not participating in this Directive.

contacts the authority vested with powers in order for them to take the necessary measures. The labour inspection authority obliges the employer to make payment to the central budget for illegal employment of third-country nationals. The labour inspection authority might also prohibit further employment.

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

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

If the third-country national resides and works in Hungary illegally and her employer fails to pay her wages for a certain part of her work, for which the third-country national intends to sue the employer, agreeing to give up her illegal stay and work, the immigration authority will order her expulsion in accordance with the rules written at the beginning of Section 5 hereof.

According to Subsection (2) of Section 8 of Act LXXV of 1996 on Labour Inspection, the labour inspection authority contacts the authority vested with powers in order for them to take the necessary measures. The labour inspection authority obliges the employer to make payment to the central budget for illegal employment of third-country nationals. The labour inspection authority might also prohibit further employment.

Section 12 of Act I of 2012 on the Labour Code stipulates the general prohibition of discrimination in the world of labour: In connection with employment relationships. According to Section 285 (1) of the Labour Code employees and employers may pursue their claims arising from the employment relationship or out of the Labour Code.

Section 6: Conclusions (Synthesis Report)

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

Illegal employment is first a social phenomenon that violates employees' rights and interests, second an employment tendency that endangers safe work conditions and, finally an economic process that infringes the order of taxation and fair market competition. Measures against irregular labour are an important means of all government policies worldwide for decreasing the magnitude of the shadow economy.

The social incidence of migration is an often-examined phenomenon in the world of labour as well. Due to its cross-border nature, it is often on the agenda of international organisations. Enforcement of their employees' rights is frequently difficult for those far from their country of origin, which may result in negative discrimination.

The labour-related laws of international organisations aim to tackle both national and overall global issues to reduce the negative effects of the phenomenon.

In its Conclusions Concerning Decent Work and the Informal Economy¹⁰ adopted in 2002 by the International Labour Organisation, the ILO found that the informal economy causes high unemployment, under-employment, poverty, inequality and precarious work, therefore, over the past decade and a half they have adopted several labour-related international

¹⁰ ILO: Conclusions concerning decent work and the informal economy, International Labour Conference, 90th Session (Geneva, 2002), para. 6, as reproduced in Appendix I.

standards for formalizing informal employment, the last of which was Recommendation 204 Concerning the Transition from the Informal to the Formal Economy adopted in 2015¹¹.

Focussing on the problems of the Member States of the European Union, on 24 February 2016 the Council **officially passed the decision on establishing** a European Platform to enhance cooperation in tackling undeclared work.¹² Within the framework of the Platform cooperation can be achieved between the Commission, social partners and EU national authorities in charge of combating undeclared work, such as labour inspectorates and social security authorities.

The focal point of the employment policy of the Government of Hungary is to achieve full employment, which has been handled as a complex problem since 2011: in addition to adopting more flexible employment-related regulations, encouraging investments for workplace-creation and intensively applying active labour market instruments, the Government introduced a public work programme to replace unemployment benefits and promote re-entry into the primary labour market. The policy strategy entitled Groundwork for Employment Policy Developments in the 2014-2020 Period published in September 2013 by the Employment Policy Secretariat of the Ministry for National Economy also contains a separate chapter on outlining measures serving to encourage legal employment.¹³

Although it is difficult to verify the magnitude of the shadow economy and undeclared work with numerical data, the significant increase in regularly employed workers has resulted in a curtailing of the numbers of undeclared work in the recent period.

It is difficult to demonstrate the features of irregular employment of foreign nationals residing legally or illegally in a country, the related data, statistics and trends modelled on these (considering the deliberately hidden nature of unlawful acts). The extent of the phenomenon and the range of people affected by it cannot be demonstrated with exact data. Employing undeclared workers or irregular employment of foreigners draws with it severe sanctions.

The issue of migration, however, cannot be examined merely from the point of view of those entering the country, those emigrating from the country also have a crucial effect on the operation of the economy. In Hungary, the number of open positions has grown significantly over recent years, which has been exacerbated by the enterprise-generating effect of economic growth in addition to the emigration of trained workers.

The regulations applicable to the illegal entry of third-country nationals have, however, undergone radical change in Hungary as a result of the refugee crisis. Construction of the technical border barrier, fortification of border controls, amendments of the Criminal Code regarding expulsion, crossing and damaging the border barrier, as well as illegal employment of third-country nationals have curtailed illegal migration itself since 2015.

The refugee crisis and illegal border crossing were the most important topics of the public arena in Hungary for many months in 2015 and a referendum was held regarding the European Union's regulations aimed at finding a joint solution to the problem in October 2016. Often, extremely contradictory opinions are voiced on the issue, as a result of which distrust in third-country nationals has grown causing illegal employment in this area not to be a typical problem.

Although the national migration strategy adopted by the Government in 2013 ("Migration Strategy and the seven-year strategic document related to the Asylum and Migration Fund established by the European Union for the years 2014-2015")¹⁴ was overridden by the unplannable, large number of people arriving through the refugee crisis of 2015, immigrant workers and the regular employment of third-country nationals may be the solution to the increased demand for workers on the Hungarian labour market.

¹¹ ILO: Recommendation 204 concerning the transition from the informal to the formal economy, International Labour Conference, 104th Session (Geneva, 2015)

(http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204)

¹² 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 (Text with EEA relevance <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D0344&from=EN>)

¹³ Annex to the Government Motion No. NGM/21664 /2013, Groundwork for Employment Policy Developments in the 2014-2020 Period – Policy Strategy – September 2013 (http://2010-2014.kormany.hu/download/8/4c/01000/Fogl_Strat_14-20.pdf)

¹⁴ Government Decision 1698/2013. (X. 4.) Migration Strategy and the seven-year strategic document related to the Asylum and Migration Fund established by the European Union for the years 2014-2015 (http://nit.hu/cgi_bin/njt_doc.cgi?docid=163680.249102) (http://belugyalapok.hu/alapok/sites/default/files/MMIA_.pdf)

Annex 1 Statistics

1. Inspections and sanctions for employers

The European Commission has collected data under the reporting requirements of the Employers' Sanctions Directive impose on (Member) States¹⁵.

The following data are therefore available:

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

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

Question A.1: Please provide statistics on a number of convictions for employing illegally staying TCNs for years 2014, 2015 and 2016, if possible broken down by specific criminal offences enlisted in Article 9.1. a-e of Directive 209/52, i.e.:

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

¹⁵ IE and the UK do not participate in this Directive.

(d) the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings	N/A	N/A	N/A
(e) the infringement relates to the illegal employment of a minor	N/A	N/A	N/A

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

Type of sanction for employers (please fill in)	2014	2015	2016 (until 31/10)
Labour inspection fine	3509	1367	1349
Compulsory payment to the central budget for illegal employment of third-country nationals	46	35	38
Resolution obliging the employer to remedy the irregularity	2591	2385	2280
Resolution prohibiting further employment	55	46	39
Resolution forbidding the employer from pursuing its activity	15	14	8
Warning (in case of first infringement committed by small and medium-sized enterprises)	1103	2744	2603
Administrative penalty	1312	1133	1107
Ruling to order the client to cease certain unlawful actions	1852	1568	1225
Resolution imposing road traffic penalty	3	0	0
Resolution on the non-compliance with the wage compensation rules	2	0	0
Resolution establishing irregularity	4946	4488	4268

2. Scale and profiles of illegal employment of TCNs

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

Illegally employed TCNs	2014	2015	2016	Methodological notes
Number of cases of identified <u>illegally staying</u> and illegally employed TCNs	N/A	N/A	N/A	N/A
Number of cases of identified <u>legally staying</u> and illegally employed TCNs	N/A	N/A	N/A	N/A

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

Illegally employed TCNs	Top 10 nationalities	Age disaggregation	Sex disaggregation	Methodological notes
Number of cases of identified <u>illegally staying</u> and illegally employed TCNs	N/A	N/A	N/A	N/A
Number of cases of identified <u>legally staying</u> and illegally employed TCNs	N/A	N/A	N/A	N/A

3. Outcomes for TCNs

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

Illegally employed TCNs	2014	2015	2016	Methodological notes
Number of residence and/or work permits issued to detected <u>illegally staying</u> and illegally working TCNs	N/A	N/A	N/A	N/A
Number of residence and/or work permits issued to detected <u>legally staying</u> and illegally working TCNs	N/A	N/A	N/A	N/A
Number of illegally employed TCNs who were granted a period for voluntary return	N/A	N/A	N/A	N/A

Number of illegally employed TCNs who were given an order to leave the country following a labour inspection	N/A	N/A	N/A	N/A
Number of illegally employed TCNs who were deported following an inspection	N/A	N/A	N/A	N/A
Number of illegally employed TCNs who were identified as victims of trafficking in human beings	N/A	N/A	N/A	N/A
Number of decisions obliging employers to pay back payments/ amount equal to taxes and social security contributions	N/A	N/A	N/A	N/A

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

Type of sanctions available for illegally employed TCNs (e.g. fines, imprisonment, etc)	2014	2015	2016 (until 31/10)	Methodological notes
Compulsory payment to the central budget for illegal employment of third-country nationals	46	35	38	

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

Number of complaints	2014	2015	2016	Methodological notes
N/A	N/A	N/A	N/A	No statistics are available about the number of complaints lodged against employers for employing

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

The most affected sectors by *illegal employment of third-country nationals* are agriculture, processing industry, construction industry, commerce, accommodation services and catering services.

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

The labour authority plans and conducts labour inspections based on the available labour inspections statistics. At the inspection sites the labour inspectors may randomly find third-country nationals. If labour inspection is conducted following a complaint or a public interest disclosure, the complaint or public interest disclosure might indicate that some of the employees are third-country nationals.

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