



**Illegal employment of
Third-Country
Nationals in the EU**

Luxembourg

Fourth Study 2016

European Migration Network
Luxembourg National Contact Point

University of Luxembourg

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The European Migration Network, created by Council Decision no. 2008/381/EC of 14 May 2008, has the objective of supplying up-to-date, objective, reliable and comparable information on migration and asylum in the Community institutions, to the authorities and institutions of the Member States and to the general public with a view to support policy- and decision-making with the European Union.

PREFACE

The opinions expressed in this report are those of the author. They do not necessarily reflect the positions of the Luxembourg Ministry of Family and Integration or the Ministry of Foreign Affairs.

The present report was drafted by Ralph Petry and Adolfo Sommarribas, staff members of the National Contact Point Luxembourg within the European Migration Network, under the overall responsibility of Prof. Dr. Birte Nienaber. Continuous support was provided by the members of the national network of the National Contact Point Luxembourg: Sylvain Besch (CEFIS), Christiane Martin (Directorate of Immigration, Ministry of Foreign and European Affairs), Germaine Thill (STATEC), and Marc Hayot (OLAI Reception and Integration Agency, Ministry of Family and Integration).

METHODOLOGY

National reports are produced by the respective National Contact Points (NCPs) on the legal and policy situation in their Member State according to common specifications. Subsequently, a comparative synthesis report is generated by the European Commission with its service provider giving the key findings from each national report, highlighting the most important aspects and placing them as much as possible within an EU perspective. The various national accounts and the summary report are made publicly available.

The EMN engages primarily in desk research, i.e. it collects and analyzes data and information already available or published at the Member State or international level. The present report was produced by drawing upon a number of different sources of information, all of which are listed in the bibliography by type of document. This includes sources of national and EU legal documents which are referred to in the report. Additionally semi- structured interviews were conducted with government officials, private companies, highly qualified third-country nationals, human resources department of two major auditing corporations, economic stakeholders and lawyers.

EMN FOCUSSED STUDY 2016

Illegal employment of Third-Country Nationals in the EU

Top-line "Factsheet" (National Contribution) [maximum 1 page]

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.

Illegal employment of Third-Country Nationals in the EU

Illegal employment by third country nationals is a reality in Luxembourg. However, as well as in the case of grey and informal economy, it is rather hard to grasp or quantify to which extent. Nevertheless, the problem is not as significant as the one of the posted workers which is more relevant and worrisome and needs to be situated in the context of a labour market of the Greater Region.

In the past, several labour related regularisation measures have been implemented in Luxembourg in order to provide both employers and employees the possibility to regularise situations of illegal employment. The last labour related regularisation measure was implemented in early 2013 in the context of the transposition of the Employers' Sanctions Directive 2009/52 by law of 21 December 2012. During this regularisation, the Directorate of Immigration received 664 applications. These regularisations give a partial indication of the extent of the phenomenon, even though these numbers do not provide a real picture of the problem because the conditions of this regularisation were very strict and in a very short time frame (less than two months) and a certain number of irregular migrants' workers were not willing to expose themselves by applying and preferred to remain undetected. This regularisation also provided information on the main sectors where the phenomenon is found in order of importance: HORECA, cleaning, crafts, industry and construction. The Ministry of Labour, Employment and Social and Solidary Economy at the end of the regularisation has insisted in the need to increase the number of controls to employers. The law of 21 December 2012 established administrative as well as criminal sanctions for employers who illegally employ irregularly staying third country nationals, particularly in relation to offenses to the Labour Code in aggravating circumstances. This law amended also article 89 of the Immigration Law abrogating the possibility of making labour related regularisations.

The Inspectorate of Labour ('Inspection de Travail et des Mines', hereafter called ITM), which is in charge of labour inspections and the control of illegal employment of TCNs in Luxembourg, is currently going through a restructuring phase following the latest audit of this administration from January 2015. Particularly the current insufficient number of staff of the ITM, which is in need of a significant short term increase of staff, represents a main challenge in the field of illegal employment in Luxembourg. It is also in the context of this restructuring phase of the responsible administration that the drafting of this study presented a number of challenges, especially in relation to the operational and statistical part of the template.

The information regarding the conditions to be fulfilled by both the employers and the employees in the context of an employment relationship are available on the website of the concerned authorities. Furthermore, they are disseminated by the NGOs working in the field, even though there are no specific campaigns targeted to prevent illegal employment of TCNs. The matter was raised in the context of the 'social identification badge', which was introduced in 2013 in order to fight against social dumping in particular in the construction sector. One national stakeholder suggested that the 'social identification badge' could be revised and adapted to other economic sectors in order to better monitor and prevent illegal employment.

In regards to access to justice and enforcement of rights of illegally employed TCNs, Luxembourg foresees the right for illegally employed TCNs to make a claim against their employer, including in cases in which they have, or have been, returned. This claim falls under the general provisions concerning the right to bring a case before civil courts. The Labour Code establishes that the employer who has employed an irregular staying third-country national must pay to the third-country national the following amounts: 1) salaries and any other emoluments, which a similar employee would have benefited for the same employment; 2) the total amount of outstanding remuneration as well as the cost of the transfer of these amounts to the third-country national to the country to which s/he is returned; 3) the total amount of unpaid social contributions and taxes, including administrative fines, as well as, court and legal fees. In addition, the Labour Code establishes that the third-country national who has been illegally employed before the execution of any return decision has to be systematically and objectively informed by the control agents of his/her rights to recover the outstanding remunerations and back payments, as well as the right to benefit from free of charge legal aid in order to attempt a recovery action against the employer, even if the third-country national has already been returned.

Labour unions can support and assist TCNs in legal proceedings related to social and labour law, provided that they have been given a mandate to do so. Eventual costs of administrative and civil proceedings can be taken in charge by the labour unions if the TCN is a member of the respective labour union.

The Law does not establish fines against TCN's who were illegally employed. The TCN may be issued a return decision and lose his/her residence rights; however, the Directorate of immigration processes these situations on a case-by-case basis and inform the persons concerned to terminate the illegal employment situation.

[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 particular 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.

Grey and informal economy are phenomena that are present in Luxembourg, but it is rather hard to grasp or quantify to which extent. One labour union claimed that the phenomena might be more prevalent than assumed by the publicⁱ, whereas the director of the Inspectorate of Labour and Mines stated that Luxembourg is not confronted with a major problem in this regard.ⁱⁱ To a certain extent, the applications for the regularization of illegally employed third country nationals can provide some indications in regards to the extent of the phenomenon as well as to the profiles of illegally working individuals (see also below).

In Luxembourg, the law forbids illegal employment of a third-country nationalⁱⁱⁱ as well as clandestine labour^{iv}. There is a clear difference between what is considered clandestine labour and the employment of third-country nationals staying irregularly in Luxembourg. Is considered clandestine labour^v: 1) the independent exercise of one of the professional activities established by article 1 of the law of 2 September 2011 regulating the access to profession of craftsman, merchant, manufacturer as well as certain liberal professions without having the required authorisation^{vi}; 2) to carry on salaried employment, when the worker: a) knows that the employer does not have the required authorisation of the law of 2 September 2011; or b) knows that his/her situation as salaried worker is not regular in regards to the law on the withheld on salaries or with the social security legislation.^{vii} Illegal employment of third country national is defined as employing a third-country national who is in the territory but does not fulfil the conditions of entry and stay established by the amended Law of 29 August 2008 on free movement of persons and immigration (Immigration Law).^{viii}

However, with regards to third-country nationals, illegal employment goes beyond the definition of the Labour Code. It also can comprehend the cases in which third-country nationals have the right to reside in the territory but they do not respect the conditions of their residence permit (i.e. salaried worker^x or a student^x who works outside the limitations imposed in his/her residence permit; family member during the first year of stay who works without being authorised) or an international protection applicant who does not have a temporary occupation authorisation.^{xi}

The sectors most affected by illegal employment are the construction sector, the food service and hotel industry^{xii}, while there are also incidents observed in sectors such as transportation and agriculture.^{xiii} (see also answer to Q3a). Luxembourg's fight against illegal employment strongly focuses on posted workers^{xiv}, a sector of employment that gains more and more in importance in Luxembourg^{xv}, as well as on social dumping^{xvi}. Within the

Illegal employment of Third-Country Nationals in the EU

ITM operates a 'Posted workers and illegal employment unit' ('Pôle Détachement et Travail Illégal' or PDTI) with the aim to detect irregularities related to posted workers.^{xxvii} In order to fight against social dumping related to posted workers and, in particular abuses in the construction sector, the Luxembourgish government introduced the so-called 'social identification badge' at the end of 2013.^{xxviii} The social identification badge is fitted with a bar code; the scanning of which allows the ITM to access all the relevant information of the posting procedure^{xxix}, to identify situations of illegal employment of irregularly staying third country nationals and, in consequence, notify the competent authorities.^{xx}

In the past, several labour related regularisation measures have been implemented in Luxembourg.^{xxi} Most of the public debate regarding the subject of illegal employment took place in the context of these regularisation measures.^{xxii} The transposition of the Employer Sanctions Directive by law of 21 December 2012 amended article 89 of the amended law of 29 August 2008 on free movement of persons and immigration abrogating the possibility of making labour related regularisations.^{xxiii}

Parallel to the transposition of the Employers Sanctions Directive into national law, the Minister in charge of Immigration announced a regularisation^{xxiv} measure that was implemented from 2 January to 28 February 2013. The intention was to allow third-country nationals residing without a legal authorisation in Luxembourg to apply for a residence permit under certain conditions, as salaried workers, thereby regularising their administrative status. Since the regularisation measure was intended for individual persons, no application for family reunification was accepted.^{xxv} In March 2013 however, the Directorate of Immigration published a Memorandum, which allowed family reunification in specific circumstances. Furthermore, this regularisation measure offered the opportunity, not only to individuals involved in illegal work, but also to employers who hired individuals illegally.^{xxvi}

A total of 664 applications were submitted in relation to the single regularisation process and 543 applications received a favourable reply.^{xxvii} By economic sector, 50% of applicants worked in the food service and the hotel industry. Chinese, Brazilians, Montenegrins and Cape Verdeans were the most numerous in their applications, with men taking the lead by 50% on women.^{xxviii} In order to verify if the applicant has been working for a determined employer, the Directorate of Immigration requested the collaboration of the inspectors of the Inspectorate of Labour and Mines (ITM).^{xxix}

In recent years, several audits have been conducted of the ITM^{xxx}, the latest of which dating from January 2015 and highlighting a necessary restructuring of the administration.^{xxxi} This restructuring was introduced shortly after by the ITM^{xxxii} with four main objectives: 1) implement and ensure internal training of the ITM staff; 2) reinforce the means of the service 'Help Center' (HCC); 3) expand the IT resources in order to increase the effectiveness and efficiency of the inspections and 4) recruitment of new staff for the labour inspectorate.^{xxxiii} Particularly the latter objective currently represents a challenge for the ITM, seeing that the director of the administration estimates that around 20 inspectors will retire during the period of 2016 – 2018^{xxxiv} and that the current age structure is the result of the mismanagement of the administration over the last 15 years.^{xxxv} As of drafting of this study, the restructuring of the administration is still ongoing.^{xxxvi}

One labour union has criticized the lack of responsiveness of the ITM when there are complaints against illegal employment^{xxxvii} adding that the ITM does not have sufficient capacity to control these issues and that they lack of resources to sanction the employers.^{xxxviii}

The lack of effective access of the international protection applicants to the labour market^{xxxix} is another fact that can have an incidence on illegal employment.^{xl}

Section 2: Prevention measures [maximum 5 pages]

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

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

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

Measure/incentives for employers	<u>Irregularly staying and illegally working TCNs</u> <i>*Please indicate if the measures/incentives below exist in your (Member) State (Yes/No) and if Yes, please describe them. **Please specify if these measures are established to tackle illegal employment or are general incentives.</i>	<u>Regularly staying and illegally working TCNs</u> <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:</p> <ul style="list-style-type: none"> - Which sectors were targeted? - How the campaign was conducted? (e.g. through advertising, visits and talks by government officials visits, etc.) 	<p>1. Luxembourg's construction sector relies heavily on posted workers. Controls by the ITM have put in evidence several violations of the Labour Code such as non-compliance with paying the minimum wage, non-payment of overtime or accommodation of workers in sub-standard housing.^{xii} During 2014, the ITM conducted random inspections on construction sites to verify the compliance with the law in the evenings or during weekends and have regularly found violations concerning subcontractors or non-declared posted.^{xiii} In order to comply with the decision from the European Court, the ITM included information campaigns aimed at construction site managers. These campaigns target working conditions, health and security at the workplace and social dumping. The aim of these campaigns was to raise awareness amid real-estate project developers that non-compliance with the existing legislation can have far-reaching economic consequences, which will likely interfere with the progress of the construction site. This information campaign has been carried out in collaboration with the Ministry of the Interior and the municipalities.</p>	<p>See Irregularly staying and illegally working TCNs.</p>

	<p>Furthermore, health and security coordinators were put in place, acting as mediators between construction site managers and businesses. The coordinators were trained by the ITM. Several legal actions are also open to the ITM to strengthen the information campaign, amongst which the obligation to declare the opening of a construction site before the start of construction, the obligation to continuously update the list of businesses involved in the construction site and the possibility to send a posted worker away if s/he is working in a position entailing specific risks and does not possess a certificate of competence for that specific position.</p> <p>The campaign's action was twofold: on the one hand it aimed at raising awareness of the municipalities' central function of consistent information dissemination on the consequences of non-compliance with the Labour Code; on the other hand, it detailed the economic cost that ensues from non-compliance in an information leaflet. This campaign started in 2013 and was intensely applied all throughout 2014 and into 2015. In 2014, the campaign focussed on large scale sites in Luxembourg city. The campaign has been somewhat scaled back in 2015 (only 2-3 sites so far), due to lack of personnel but it is still on-going until further notice. The ITM also provides the information on demand.^{xliii}</p> <p>Subsequent controls by the ITM seem to indicate the relative success of the campaign for medium to large construction sites.</p> <p>2. During the regularisation campaigns of 2001 and 2013, the employers were informed by their respective professional chambers with regard to illegal employment.^{xliv}</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. In Luxembourg, the ITM^{xlv} as well as the Directorate of Immigration^{xlvi} provide information through their websites on the conditions that an employer as well as third-country national have to fulfil in order to conclude an employment contract.</p>	<p>Yes. See Irregularly staying and illegally working TCNs.</p>

Illegal employment of Third-Country Nationals in the EU

<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>	N/A	N/A
<p>a.4. Obligation of the employer to notify the authorities about employing a TCN</p>	<p>Yes. The employer of a third country national is obliged to notify the minister in charge of immigration the date when the employment contract starts in a deadline of three working days after the first day of work of the third-country national.^{xlvii} If the employer is a physical person and the employment is for private reasons the reporting deadline is of 7 working days from the first day of employment.^{xlviii}</p>	<p>Yes. See Irregularly staying and illegally working TCNs.</p>
<p>a.5. Other measures/incentives for employers</p>	<p>Yes. The employer is obliged to require from the TCN employee, before the employment contract starts, that s/he has a valid authorisation of stay/residence permit and the employee must show it to the employer.^{xlix} The employer also must keep during the entire duration of the labour contract a copy of the authorisation of stay/residence permit in case of a possible inspection.ⁱ The Labour College ('École Supérieure du Travail') intends to establish training courses specifically targeted at employee representatives to raise awareness in regards to human trafficking in the working environment.ⁱⁱ</p>	<p>Yes. See Irregularly staying and illegally working TCNs.</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 align="center"><i>Irregularly staying and illegally working TCNs</i></p> <p align="center"><i>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</i></p>	<p align="center"><i>Regularly staying and illegally working TCNs</i></p> <p align="center"><i>Please indicate if the measures/incentives exist in your (Member) State (Yes/No) and if Yes, please describe them.</i></p>
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Illegal employment of Third-Country Nationals in the EU

<p>b.1. Financial incentives for employees</p> <p><i>Financial and fiscal incentives, including social security incentives – i.e. any social security incentives aimed at encouraging employers to legally register their employees</i></p>	<p>No. In Luxembourg, the employer is required every time s/he hires a new employee to make a declaration of entry to the Joint Centre of the Social Security.^{liii} The employer must make this declaration of entry in a deadline of 8 days from the first day of employment.^{liii} If the employer fails to do the declaration of entry in the deadline, a fine of 50€ per month will be imposed to the employer until the declaration is done.^{liv}</p>	<p>No. See Irregularly staying and illegally working TCNs.</p>
<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:</p> <ul style="list-style-type: none"> - 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>N/A</p>	<p>N/A</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. In Luxembourg, the ITM^{lv} as well as the Directorate of Immigration^{lvi} provide information through their websites on the conditions that an employer as well as third-country national have to fulfil in order to conclude an employment contract. NGOs such as CLAE provide information^{lvii} and support (In situ JOBS^{lviii}) for TCN employees. Another NGO, ASTI has a site called www.bienvenue.lu where the TCN employee can find information.</p>	<p>Yes. See Irregularly staying and illegally working TCNs.</p>
<p>b.4. Other measures/incentives for employees (incl. obligation of TCN to notify the authorities about any changes in employment conditions)</p>	<p>There is no explicit obligation in this sense in any law. However, the Immigration law requires that any change of sector or profession during the first year has to be communicated to the Directorate of Immigration in order to verify if the conditions for granting the salaried worker residence permit are still being fulfilled.^{lix} The employee in order to renew his/her residence permit must prove that s/he has worked in possession of a employment contract at a position declared vacant at the Agency for the Development of Employment (ADEM) in the forms and conditions set out by law. Furthermore, when renewing</p>	<p>See Irregularly staying and illegally working TCNs.</p>

Illegal employment of Third-Country Nationals in the EU

	the residence permit, if the applicant cannot prove having worked during the validity of the salaried worker residence permit or that s/he is receiving unemployment benefits during the period s/he made the request ^x , the residence permit will only be renewed for a maximum period of one year.	
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Illegal employment of Third-Country Nationals in the EU

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)

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

If **Yes**, please describe:

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

The risk analysis carried out by the Inspectorate of Labour and Mines (ITM) is based on the experience gained over the years. It is known that the sectors with low-skilled, low-paid and labour-intensive jobs, like in the sectors of construction, agriculture, cleaning, accommodation and food services, are the most at risk as these sectors occupy the highest percentage of people coming from third countries.^{lxi}

This analysis is completed by the number of complaints registered by the service 'Help Center and Call Center' (HCC)^{lxii} of the ITM regarding the occupation of third-country nationals. These complaints can be originated by witnesses from such situations (e.g. private persons, co-workers, labour unions, employers' federations, ...), as well as by third-country nationals themselves complaining about bad working conditions (no or low wages, excessive working hours, resting periods, health and safety at work, ...).^{lxiii}

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

Article L. 612-1 (1) f) of the Labour Code as amended by the Law of 21 December 2012 establishes that the Inspectorate of Labour and Mines (ITM) is the authority in charge of carrying out inspections in order to control whether irregular third-country nationals are working in any economic activity. Furthermore, the aforementioned article establishes that the ITM is the authority in charge of drawing up risk analyses to identify, on a regular basis, those economic sectors in which the employment of irregularly staying TCNs are concentrated the most.

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

The evaluation of statistics, with the support of information provided by the 'Help Center and Call Center' (HCC) of the ITM, leads to the drawing up of risk assessments by the ITM.^{lxiv}

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 Directorate of Immigration stated that all the relevant information to prevent both employers and employees from situations of illegal employment are available to the general public.^{lxv} One labour union, on the other hand, stated that the current lack of specifically targeted prevention and information campaigns constitutes a weakness. Such prevention and information campaigns should take place more frequently.^{lxvi}

One of the weaknesses of prevention measures of illegally employed TCNs in Luxembourg is the insufficient number of staff of the ITM. This is especially the case in regards to the service 'Inspections, Contrôle et Enquêtes' (ICE), which is responsible for carrying out on-site labour inspections and is in need of a significant short term increase of staff.^{lxvii} One of the missions of the aforementioned service ICE is to pass from a current more reactive system of inspections to a modern system of proactive inspections.^{lxviii} See also the answer to Q5a.

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.

One labour union stated that the introduction of the 'social identification badge' (see answer to Q1) can be considered as a good practice. However, it is regrettable that, so far, it is only used in the construction sector so far. It should be revised and adapted to other economic sectors as well in order to better monitor and prevent illegal employment in general.^{lxix}

Illegal employment of Third-Country Nationals in the EU

The Directorate of Immigration highlighted the good cooperation with the NGOs that are closely working with migrants, such as ASTI and CLAE, as a good practice. Furthermore, and as noted in the answer to Q4a, the Directorate of Immigration considers the availability of all the relevant information to prevent situations of illegal employment as a good practice.^{lxx}

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.*

The law establishes that the agents^{lxxi} of Inspectorate of Labour and Mines (Inspection du travail et des mines - ITM)^{lxxii} is the authority in charge of carrying out inspections in order to control whether irregular third-country nationals are working in any economic activity.^{lxxiii} Nevertheless, the Labour Code establishes that these type of infractions can be investigated verified and established by the officers and agents of the Grand-ducal police, the agents of the Customs and Excise Administration (*Administration des douanes et accises*) and the public servants of the department which delivers the authorisation of establishment. Each one of them has to act inside the legal framework that they are authorised by national legislation.^{lxxiv}

Since the beginning of 2015, the ITM is in a restructuring phase.^{lxxv} The service 'Inspections, Contrôle et Enquêtes' (ICE) is responsible for carrying out on-site labour inspections as a result of a continuation of complaints by employees or employers via its service 'Help Center et Call Center' (HCC). This responsibility is considered as a 'short-term action' of the ITM.^{lxxvi} Carrying out more proactive on-site controls, fed by information of the HCC as well as by the evaluation of statistics, is considered as a 'medium-term action' of the ITM.^{lxxvii} Regular controls as well as the development of different strategies per economic sector are considered as 'long-term actions' that need to be further developed.^{lxxviii}

Altogether, these authorities are not specifically tasked to identify illegally employed TCNs, but are involved in general labour inspections.

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

No, the competences of the authorities in charge of labour inspections are not restricted to specific sectors, but are carried out on a national level.

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

No. Illegal employment of third-country nationals is automatically included in the daily control routine of the labour inspectors. This means that if the inspector stumbles upon such a situation during his normal controls of a working place or company, he automatically registers the details for further investigations and sanctions regarding the employment of illegally staying third-country nationals (ISTCN).^{lxxix}

Illegal employment of Third-Country Nationals in the EU

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?

In accordance with Article L. 613-2 of the Labour Code, a coordination committee of the national system of labour inspections ('Comité de coordination du système national d'inspection du monde du travail')^{lxxx} was established which is composed of the ITM, the Occupational Health Department ('division de la santé au travail'), the Customs and Excise Administration ('Administration des douanes et accises'), the National Service of Security in the Public Sector ('Service national de la sécurité dans la fonction publique') and the Accident Insurance Association ('Association d'assurance contre les accidents'). Its functioning is determined via Grand-ducal regulation^{lxxxi} with the aim of a common control, prevention and organization policy.^{lxxxii}

Before the new restructuring since 2015, an inter-administrative unit, the so-called '*Cellule Inter Administrative de Lutte contre le Travail Illégal*' or CIALTI, conducted multiple targeted controls on illegal employment per year (so-called '*actions focus coup de poing*'). These controls were mainly organised in the evenings or on weekends and focused on large scale construction sites.^{lxxxiii} The CIALTI was able to mobilise agents of six to eight different administrations and consisted of the ITM, the National Employment Agency (ADEM), the Health Division of the Ministry of Health, the Joint Social Security Centre (CCSS), the '*anti-fraud service*' of the Luxembourg Registry ('*Administration de l'enregistrement et des domaines*'), the Grand-Ducal Police, among others.^{lxxxiv} Before 2015, there were coordinated actions between the ITM with the agents of the Customs and Excise Administration (Administration des douanes et accises), on clandestine labour.^{lxxxv}

Since the beginning of 2016, the ITM and the Customs and Excise Administration agreed to reinforce their cooperation in order to elaborate a system of more efficient, effective and durable controls and inspections with regard to posted workers. Furthermore, both administrations plan to develop and intensify this cooperation also in other areas, such as the employment of irregularly staying TCNs, among others.^{lxxxvi} See also answer to Q5a.

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.

In 2015, there were 63 labour inspectors but only 10 of those carried out on-sight inspections.^{lxxxvii} In the current status, the ITM would need the recruitment of a considerable number of additional agents to carry out inspections and face current and future challenges.^{lxxxviii} According to the recommendation for highly industrialised countries by the International Labour Organisation, one labour inspector per 8.000 employees that is, the service '*Inspections, Contrôle et Enquêtes*' (ICE) of the ITM would need 57 labour inspectors.^{lxxxix} On 31 January 2017, the minister in charge of Labour, Employment and Social and Solidarity Economy communicated the swearing-in of three additional labour inspectors to the service ICE of the ITM^{xc}, increasing the number of labour inspectors of this service to 13. The inspectors of the ITM are not specifically dedicated to identifying illegally employed TCNs, but are involved in general labour inspections.

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.

In Luxembourg, the identification measures are done through random control routine of the labour inspectors. This means that if the inspector stumbles upon such a situation during his normal controls of a working place or company, he automatically registers the details for further investigations and sanctions regarding the employment of illegally staying third-country nationals.^{xci} To this end, the labour inspectors can check all the necessary documentation (i.e. identity card, serial number of the Social Security, as well as the aforementioned '*social identification badge*',...) in order to verify the working relationship and the legal status of the persons present at the inspected work place. See also answer to Q7f.

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

Illegal employment of Third-Country Nationals in the EU

**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)?

According to the Labour Code, if the ITM considers that there are sufficient grounds or reasonable motives to consider that a control has to take place on a building site, establishment, building because there can be violations of the norms of the Labour Code, the inspectors must have free access to the installations, without any warning and without constraints or time (day and night). The only limitation is that these actions respect the proportionality principle.^{xcii} This rule does not apply to housing premises. However, in cases there are serious evidences and grounds to presume a violation to labour laws, which fall under the competence of the ITM, the law authorizes the inspectors to carry out an inspection between 6h30 and 20h00 acting with a warrant of the Instruction judge.^{xciii} See also answers to Q5c Q6 and Q7c.

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

No information available. Seen that the Inspectorate of Labour and Mines is being restructured they were not able to provide us with this information.

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.

Yes. Inspections can be triggered by complaints registered by the service 'Help Center and Call Center' (HCC) of the ITM, either in person or via the hotline, regarding the occupation of third-country nationals. These complaints can be originated by witnesses from such situations (e.g. private persons, co-workers, labour unions, employers' federations, ...), as well as by third-country nationals themselves complaining about bad working conditions (no or low wages, excessive working hours, resting periods, health and safety at work, ...).^{xciv}

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

The ITM is the competent authority on deciding to carry out the inspections and to carry out the inspections.^{xcv} Before 2015, the ITM used to carry out lightning raids (actions "coup de poing") with collaboration of Customs agents, police agents and inspectors but the ITM decided to suspend them because they have little impact.^{xcvi} The ITM also can also carry out inspections at the request of the Ministry in charge of Immigration.^{xcvii}

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

In accordance with the Immigration Law^{xcviii} and the Labour Code^{xcix}, the inspectors will verify the employee's file (checking the employment contract, the copy of the valid residence permit and authorization of work) as well as the employer records (payslips, declarations to the Joint Centre of the Social Security, etc.)

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?

Regarding the entry/search powers of the inspectorates, the Labour Code establishes that if the ITM considers that there are sufficient grounds or reasonable motives to consider that a control has to take place on a building site, establishment, building because there can be violations of the norms of the Labour Code, the inspectors must have free access to the installations, without any warning and without constraints or time (day and night).^c The only limitation is that these actions respect the proportionality principle.^{ci} This rule does not apply to housing premises. However, in cases there are serious evidences and grounds to presume a violation to labour laws, which fall under the competence of the ITM, the law authorizes the inspectors to carry out an inspection between 6h30 and 20h00 acting with a warrant of the Instruction judge.^{cii} During their interventions and after having

Illegal employment of Third-Country Nationals in the EU

informed as soon as possible the employer, its representative and the president or a representative of the staff delegation, the labour inspector can verify the identity of all the persons that are in the premises^{cxiii}. The inspector can request the identification documents and in case its relevant the authorization of work or the residence permit if it is a third-country national.^{cxiv} If there is any kind of obstruction or problem during the inspection the Labour inspector can required the intervention of the Police which will provide technical support and public force in case it is necessary.^{cxv}

The labour inspectors are allowed to conduct all kind of controls, examinations or investigations that they consider necessary in order to corroborate that the employer is fulfilling all his/her legal (laws, regulations and administrative or conventional dispositions) obligations.^{cxvi} They are also entitled to request all the documentation that they consider necessary for verify the labour conditions in the work place (i.e. books, registers, files, etc.)^{cxvii} as well as to take all the technical and scientific measurements^{cxviii} and to oblige the employer to inform the employees of all the dispositions taken by the ITM.^{cxix}

The labour inspectorate cooperates with the police as well as with the agents of the Customs and Excise Administration ('Administration des douanes et accises') while carrying out inspections. The ITM also reports such infringements for further prosecution to other potentially competent authorities like Customs and the Judicial Police.^{cx} Furthermore, the reports are being communicated to the tax administrations, the organs of social security^{cxxi} as well as the public persecutor^{cxii}, who in turn will inform the minister and the director of the ITM of the results.^{cxiii}

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.

There is no specific time table to carry out inspection in different sectors. Inspections are conducted at random intervals and there is no national target on the number of inspections to be carried out each year.^{cxiv}

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

Normally, inspections are carried out on sight in accordance with Article L 614-3, but labour inspectors can also carry out inspections at the request of the Minister in charge of Immigration.^{cxv} During the inspections, the inspectors can review the personal files of the employees^{cxvi} and carry out interviews.^{cxvii} Before the restructuring phase since 2015, the ITM used to carry out lightning raids (actions "coup de poing") with collaboration of Customs agents, police agents and inspectors but decided to suspend them because they have little impact.^{cxviii}

Once the inspectors of the ITM have verified that the employer has employed irregular third-country nationals, s/he can order, without referring to his/her hierarchy the immediate cessation of the work of the concerned employee^{cxix} as well as take any urgent measure to guarantee this cessation. Then a report is issued to the Ministry in charge of Labour, Employment and Social and Solidarity Economy, to the Ministry in charge of Economy, which is in charge of the authorisation of establishment and the Public prosecutor office is informed.

Based on the report of the ITM, the Ministry in charge of Employment can establish an administrative fine against the employer of 2500 euros per irregular third-country national employed.^{cxx}

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)?

No information was provided.

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?

Similar to the situation of prevention measures, one of the weaknesses of prevention measures of illegally employed TCNs in Luxembourg is the insufficient number of staff of the ITM. This is especially the case in regards to the service 'Inspections, Contrôle et Enquêtes' (ICE), which is responsible for carrying out on-site labour inspections and is in need of a significant short term increase of staff.^{cxxi} One of the missions of the aforementioned service ICE is to pass from a current more reactive system of inspections to a modern system of proactive inspections.^{cxxii} See also the answer to Q5a.

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

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

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

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 ** 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 ** Please provide reference to the specific legal provisions</i>
Fines (e.g. fines imposed per illegally hired employee)	Yes. Based on the report of the ITM, the Ministry in charge of Labour, Employment and Social and Solidarity Economy can establish an administrative fine against the employer of 2.500 € per irregular TCN worker in accordance with article L-572-4 of the Labour Code.	No. ^{cxxiii} In case there is an infraction detected by the labour inspector, the Labour Code foresees that the inspector will give a delay to the employer to correct the violation to the labour legal framework ^{cxxiv} which are ascertained in the report. ^{cxxv} This report is transferred to the Public Prosecutor and the Director of the ITM. ^{cxxvi} In case that the employer does not comply in the delay established in the report, then the Director of the ITM can impose an administrative fine to the employer. ^{cxxvii} This fine is from 25 up to 25.000€. ^{cxxviii} However, there is no fine foreseen for the employees. ^{cxxix}
Imprisonment of employers <i>(Please indicate the aggravating circumstances)</i>	An employer may also be liable to imprisonment from 8 days of up to 1 year and to a fine of 2.501 up to 20.000 € per irregular TCN or to one of these sanctions if the employer fulfils one of the following conditions: 1. the infringement is persistently repeated; 2. the infringement concerns the	No.

Illegal employment of Third-Country Nationals in the EU

	<p>simultaneous employment of a significant number of illegally staying third-country nationals;</p> <p>3. the infringement is accompanied by particularly exploitative working conditions;</p> <p>4. the infringement is committed by an employer who uses work or services from an illegally staying third-country national with the knowledge that (s)he is a victim of trafficking in human beings;</p> <p>5. the infringement relates to the illegal employment of a minor.^{cxxx}</p>	
Confiscation of financial gains (e.g. share of profit or revenue of the employer)	No.	No.
Ineligibility for public contracts	No.	No.
Temporary or definitive closure of company or worksite	The Labour Code foresees the temporary foreclosure up to 5 years or the definitive foreclosure of the company or establishment that was used for the primary infraction. ^{cxxxi}	No.
Confiscation of equipment/property	No.	No.
Suspension of activity	<p>The Court of Appeal at the request of the public prosecutor can provisional suspend the activity of the employer in these cases.^{cxxxii}</p> <p>The prohibition up to a maximum duration of three years to exercise the professional or social activity which has permitted to commit directly or indirectly the infraction^{cxxxiii};</p>	No.
Withdrawal of trading license/disbarment of activity	The Public Prosecutor informs the Ministry in charge of the Economy, Small and Medium Sized Enterprises, Research and Finances of the condemnation against the employer who has employed irregular migrants when there are aggravated circumstances. ^{cxxxiv} In case the employer is condemned for illegal employment of TCNs, the Ministry in charge of the authorisation of establishment can withdraw the authorisation of establishment. ^{cxxxv}	No.

Illegal employment of Third-Country Nationals in the EU

Withdrawal of residence permit if the employer is a TCN	Yes. ^{cxxxvi}	Yes. ^{cxxxvii}
Other sanctions	<p>If the employer has been condemned at least twice for violations to the dispositions forbidding illegal employment of third-country nationals during the last four years before the judgment of the competent jurisdiction, the employer is excluded for a duration of three years to State aid regarding the:</p> <ol style="list-style-type: none"> 1. Law of 27 July 1993 regarding 1. Economic development and diversification^{cxxxviii}; 2. Law of 30 June 2004 on the creation of a general framework of aid regime for the Small and Medium Sized Enterprises sector^{cxxxix}; 3. Law of 15 July 2008 on regional economic development^{cxli}; 4. Law of 5 June 2009 on the promotion of research, development and innovation^{cxli}; 5. Law of 18 February 2010 on aid regime to the protection of the environment and the rational use of natural resources.^{cxlii} <p>The employer has to pay the remuneration to the TCN as established by Art. L. 572-29 of the Labour Code.^{cxliii} S/he also has to take charge of the costs resulting from the back payment of unpaid wages to the country in which the TCN has been returned.^{cxliv}</p> <p>The employer has to assume the costs of unpaid social contributions and taxes and, where required, administrative fines, as well as legal and attorney fees.^{cxlv}</p> <p>Furthermore, the employer has to pay the costs in case a return procedure occurred.^{cxlvi}</p> <p>Also, the control agents^{cxlvii} will inform the tax and social security authorities of the infractions that have been determined by them.^{cxlviii}</p>	N/A.

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?

Illegal employment of Third-Country Nationals in the EU

If the employer has fulfilled the conditions established in article 572-3 (1) 1-3 of the Labour Code^{cxlix} the employer cannot be held responsible for illegal employment of a third-country national as established in article 572-1 of the Labour Code, except if s/he knew that the authorisation of stay/residence permit was a false document.^{cl} This determination is established by reviewing the records that the employer has to keep in case of a possible inspection.^{cli}

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

If the residence permit/authorisation of stay of the employee was revoked and the employer did not know it because the employee did not inform him, s/he cannot be held responsible because the employer has respected the obligations required by law. There is a loophole in the Immigration law in the sense that there is no active obligation of the Directorate of Immigration to inform the employer that the residence permit/authorisation of stay has been revoked. So as there is no obligation established in the law, in this sense, the employer cannot be held responsible because of the principle of legality which applies to administrative and criminal sanctions^{clii}. However, if the employer has in the employee's file a copy of the residence permit/authorisation of stay that is expired and the employer has not requested the employee to provide the renewed residence permit/authorisation of stay, in this case the employee will be held responsible.^{cliii}

The Labour Code does not foresee to hold an employment contract null because it has been concluded in violation to dispositions contained in the Immigration Law.^{cliv} In consequence, the employment contract that was concluded with a third-country national who is no more in possession of a valid residence permit continues to be valid.^{clv} However, a judgement of the Court of Appeal of 2012 considers that this illegal situation constitutes a serious motive making it immediately and definitely impossible to maintain the employment relationship and any one of the parties can ask the immediate termination of the contract.^{clvi}

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. Article L. 572 (5) 1 of the Labour Code establishes that the employer can be punished to a prison term of 8 days up to a year and to a fine of 2501 up to 20000 euros if the infraction is verified by the ITM.
(b) the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals	Yes. Article L. 572 (5) 2 of the Labour Code establishes that the employer can be punished to a prison term of 8 days up to a year and to a fine of 2501 up to 20000 euros if the infraction is verified by the ITM.
(c) the infringement is accompanied by particularly exploitative working conditions	Yes. Article L. 572 (5) 3 of the Labour Code establishes that the employer can be punished to a prison term of 8 days up to a year and to a fine of 2501 up to 20000 euros if the infraction is verified by the ITM.
(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	Yes. Article L. 572 (5) 4 of the Labour Code establishes that the employer can be punished to a prison term of 8 days up to a year and to a fine of 2501 up to 20000 euros if the infraction is verified by the ITM.

Illegal employment of Third-Country Nationals in the EU

an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings	
(e) the infringement relates to the illegal employment of a minor	Yes. Article L. 572 (5) 5 of the Labour Code establishes that the employer can be punished to a prison term of 8 days up to a year and to a fine of 2501 up to 20000 euros if the infraction is verified by the ITM.

Q12b. Has your Member States amended legislation on sanctions for illegally employed TCN since July 2014¹? If so, please provide details.

No. Luxembourg transposed the Employers' Sanctions Directive by law of 21 December 2012 and since then there has not been any amendment in regards to sanctions for illegally employed TCNs.

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.

Similar to the situation of prevention and identification measures of illegally employed TCNs in Luxembourg (see answer to Q4a and Q9), one of the weaknesses of sanctioning employers who illegally employed TCNs is the insufficient number of staff of the ITM. The service 'Inspections, Contrôle et Enquêtes' (ICE), which is responsible for carrying out on-site labour inspections, is in need of a significant short term increase of staff.^{clvii} One of the missions of the aforementioned service ICE is to pass from a current more reactive system of inspections to a modern system of proactive inspections.^{clviii} See also answer to Q5a.

Another weakness mentioned in regards to sanctioning employers is the challenge of providing proof of illegal employment. The Directorate of Immigration as well as labour unions stated that illegally employed TCNs often don't manifest themselves to the authorities or labour unions because of their vulnerable situation.^{clix} Even if they have been detected by the authorities, some TCNs are reluctant to cooperate with the authorities and thereby making it hard for the authorities to sanction the employers.^{clx}

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

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

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

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

A third-country national that is irregularly staying and illegally working if detected will be issued a return decision^{clxi}. Once that one of the competent authorities^{clxii} has detected a third-country national that is irregularly staying and illegally working in the territory, a report will be sent to the Minister in charge of Immigration. The Minister in charge of Immigration will issue a return decision duly motivated^{clxiii} against the third-country national.^{clxiv} This return decision will be notified to the third-country national. A copy of the return decision is

¹ The European Commission issued implementation report on the Employers' Sanctions Directive on 22 May 2014. This EMN study aims to examine whether/and if so – to what extent there has been new legislation/practices following that date.

Illegal employment of Third-Country Nationals in the EU

served to the TCN.^{clxv} At the request of the TCN, the principal elements of the notified decision will be communicated in a language that s/he understands or that is reasonable to suppose that s/he understands.^{clxvi} Nevertheless, before the execution of the return decision, the TCN must be systematically and objectively informed by the control agents of their rights regarding the salaries owed to him/her, including the possibility to have access to free of charge legal aid to recover these remunerations.^{clxvii} The costs of a return decision will be assumed by the employer and not by the returned third-country national.^{clxviii}

Q14b. *is granted a period for voluntary departure*

The Immigration law foresees that with the exception of duly substantiated urgent cases, the third country national shall have 30 days from the date of notification of the return decision to comply voluntarily with the obligation imposed on him/her to leave the territory. If necessary, having regard to the third-country national's personal circumstances, the Minister may exceptionally extend the deadline to return voluntarily exceeding 30 days.^{clxix}

Q14c. *has received an entry ban*

The Immigration law establishes that return decisions may carry with them an entry ban on the territory for a maximum period of five years, declared either simultaneously with the return decision or by a separate subsequent decision. The Minister shall take into consideration the specific circumstances of each case.^{clxx}

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

Neither the Immigration Law nor the Labour Code establish fines against the third-country nationals who were illegally employed.^{clxxi}

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

The Immigration Law foresees that in order to prepare the return decision, a third-country national can be placed in detention by the Minister in charge of Immigration. A decision to place a person in detention shall be taken, in particular, where there is a risk of absconding, or if the person concerned avoids or hampers the preparation of return or the removal procedure.^{clxxii}

Q14f. *receives work permit*

No, with the exception of a victim of human trafficking^{clxxiii} or based on humanitarian reasons.^{clxxiv} In these cases, the irregular migrant can receive a residence permit. The salaried worker residence permit will be issued if the individual fulfils the conditions of article 42 (1) points 3 and 4 of the Immigration Law (see answer to Q. 14h).

Q14g. *receives residence permit*

No, with the exceptions mentioned in answer to Q14f.

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

In the case of a third-country national victim of trafficking of human beings having been illegally employed in the cases foreseen by article L. 572-5 (1) 3) and 5) of the Labour Code (see answer to Q12 a point d), s/he can be granted a residence permit valid for six months^{clxxv} and allowing the victim to practice a salaried activity if the person required the criteria established by articles 42 (1) points 3 and 4 of the Immigration Law.

Q14i. *Other sanctions/outcomes*

N/A.

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

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

In the event that the regularly staying and illegally working TCN has willingly violated the conditions under which the salaried working residence permit was granted or the individual is working without an authorisation of work if the latter is required, s/he can lose their residence rights^{clxxvi}. In accordance with article 100 (1) of the Immigration Law his/her stay can be considered irregular and the Directorate of Immigration can revoke the residence permit and issue a return decision. In the administrative practice, the Directorate of Immigration processes these situations on a case-by-case basis. In a first step, informs both the employer and the employee will be informed to immediately terminate the illegal employment situation. In case the situation persists, the aforementioned sanctions will be applied.^{clxxvii}

Q15b. *the illegal work is tolerated or regularised*

No. Illegal work is not tolerated. The Immigration Law does not foresee regularisation for irregular workers. The only possibility for the work to be regularised is if the employer changes the work relationship into a regular work relationship with a valid employment contract.^{clxxviii} See also answer to Q10.

Q15c. *fined*

No.^{clxxix}

Q15d. *detained*

The only possibility is that the residence permit of the third-country national is withdrawn and the third-country national is issued a return decision and s/he is considered to be a risk of absconding or s/he avoids or hampers the preparation of return or the removal procedure.^{clxxx} See also the answer to Q14e.

Q15e. *issued a return decision*

If the salaried worker's residence permit is withdrawn^{clxxxi}, then the Minister in charge of Immigration can issue a return decision because, in this event, the third-country national will be considered as an irregular migrant by the Immigration Law.^{clxxxii} In the administrative practice, the Directorate of Immigration processes these cases on a case-by-case basis and, in general, does not issue return decisions.^{clxxxiii}

Q15f. *Other sanctions/outcomes*

In principal, as long as the regularly staying TCN is affiliated at the Social Security, no criminal sanctions are applied as a consequence of illegal work.^{clxxxiv}

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?

In accordance with the Immigration Law, the irregular migrants that are detected on Luxembourgish territory and who are holders of a valid residence permit or an authorisation of stay in another Member State are requested to leave immediately to the Member State where they are authorised to reside. In case that the third-country national does not comply or that the immediate departure is required because of reasons of public policy or national security, a return decision will be issued.^{clxxxv}

Illegal employment of Third-Country Nationals in the EU

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)

The Labour Code establishes that the employer who has employed an irregular staying third-country national must pay to the third-country national:

1. salaries and any other emoluments as defined by Article L.-222-1 of the Labour Code (meaning at least the minimum social salary) which a similar employee would have benefited for the same employment;^{clxxxvi}
2. the total amount of outstanding remuneration as well as the cost of the transfer of these amounts to the third-country national to the country to which s/he is returned;^{clxxxvii}
3. the total amount of unpaid social contributions and taxes, including administrative fines, as well as, court and legal fees.^{clxxxviii}

In order to calculate the amounts mentioned above, the Labour Code presumes that the employment relation lasted at least 3 months except if there is any proof against this presumption provided by the employer or the employee.^{clxxxix}

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?

Yes. The Labour Code considers that in addition to the entrepreneur, direct subcontractors^{cxcc} as well as any intermediate subcontractor^{cxci} who are illegally employing irregularly staying TCNs are jointly and severally liable to pay any outstanding financial sanction and any outstanding debt (remuneration, taxes and social security contributions).

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.

One of the main difficulties encountered in relation to claims for back payments, according to labour unions, is the fact that many illegally employed third country nationals that are staying irregularly don't manifest themselves to the authorities or labour unions because of their vulnerable situation.^{cxcii}

Another difficulty encountered by illegally employed TCNs is the challenge to bring forward evidences of employment relationships in cases where no work contract has been established. As outlined in the answer to Q17a, the Labour Code presumes that the employment relation lasted at least 3 months except if there is any proof against this presumption provided by the employer or the employee^{cxciiii}, but if a TCN has been illegally employed for a longer period of time without any evidence of this employment relationship, s/he will be unable to claim back all the payments that s/he worked for.^{cxciiv}

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

The employer must cover the costs of the return of the irregular staying third-country national.^{cxcv} In this last case, the recovery action will be made by the Luxembourg Registry (*Administration de l'enregistrement et des domaines*) using the ordinary law procedure.^{cxcvi}

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?

Illegal employment of Third-Country Nationals in the EU

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

No. There is not a specific claim. It falls under general provisions concerning the right to bring a case before civil courts.

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

Yes, labour unions can support and assist TCNs in legal proceedings related to social and labour law, provided that they have been given a mandate to do so. Eventual costs of administrative and civil proceedings can be taken in charge by the labour unions if the TCN is a member of the respective labour union.^{cxvii}

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

No information was provided by the ITM.

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

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

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

Yes. The Labour Code foresees that the third-country national who has been illegally employed before the execution of any return decision has to be systematically and objectively informed by the control agents of his/her rights to recover the outstanding remunerations and back payments^{cxviii}, as well as the right to benefit from free of charge legal aid in order to attempt a recovery action against the employer^{cxix}, even if the third-country national has already been returned.

Q19b. Have any of measures referred to under questions 17-19 been introduced in your legislation after July 2014²? If yes, which ones?

No.

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.

No information was provided by the ITM.

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.*

² The European Commission issued implementation report on the Employers' Sanctions Directive on 22 May 2014. This EMN study aims to examine whether/and if so – to what extent there has been new legislation/practices following that date.

*Illegal employment of Third-Country Nationals in the EU***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?

Answer to point a: When the labour inspector detects that Mr Shire is an irregular migrant working illegally in Luxembourg, the inspector draws a report that is sent to the Minister in charge of Immigration^{cc} (Directorate of Immigration).

Answer to point b: The Minister will examine the report and issue a duly motivated return decision against Mr Shire.^{cci} Mr Shire and his family will have to leave voluntarily the territory in the 30 days following the notification of the return decision.^{ccii} If Mr Shire and his family do not comply with the return decision voluntarily a forced return can be foreseen. However, Luxembourg has not carried out voluntary or forced returns to Somalia.^{cciii} Also, Mr Shire and his family cannot be placed in the Detention Centre because there is no realistic possibility of returning the individuals to his/her country of origin. In those cases, the Luxemburgish authorities issue a postponement of the removal decision^{cciv} allowing the third-country national to remain temporarily in the territory. During this temporary period, the third-country national receives humanitarian aid.^{ccv} This postponement to removal is not a residence permit.^{ccvi} However, the Minister in charge of immigration may grant Mr Shire an authorization to engage in temporary employment for the duration of the period of postponement of the removal at the request of Mr Shire.^{ccvii} The grant of such authorisation shall be subject to the conditions laid down by the Immigration Law for the authorization of stay for salaried worker.^{ccviii} The authorisation to engage in temporary work shall be valid in relation to a specific employer and for a single occupation.^{ccix}

Answer to point c: No. Mr Shire's situation cannot be regularized by having a job offer. The first problem in this case is that the third-country national has been working illegally in the territory, so he is an irregular staying third-country national against whom the Minister in charge of Immigration will issue a return decision (see answer to point b). The second problem is that the Immigration Law requires that any application for an authorization of stay for more than 3 months has to be made in the country of origin. Otherwise it will be declared inadmissible.^{ccx} Seen that we are not in any of the cases foreseen in articles 78 (3) and 89 (which was amended with the transposition of the Sanctions Directive) of the Immigration Law, an application filed in the territory will be inadmissible. Finally, in the remote case that the Minister in charge of Immigration authorizes that the application is filed in Luxembourg before signing the contract, Mr Shire has to pass the labour market test.^{ccxi}

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 café³. 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.

In Luxembourg, third-country national students are only entitled to work a maximum average of 10 hours per week during a one month period (average of 40 hours per month).^{ccxii} This limitation is only valid during the academic year, so during the summer break the student can work a normal shift of 40 hours per week.^{ccxiii} In this case, it is obvious that Svitlana working 45 hours per week is not only violating the dispositions of the Immigration Law (working more than 10 hours per week) but also of the Labour Code (working more than 40 hours per week).

³ 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.

If the Labour inspector determines that Svitlana is working more than 40 hours per week, s/he will draw a report to the Minister in charge of Immigration^{ccxiv} indicating that the student residence permit of Svitlana only allows her to work 10 hours per week and that she has been detected as working more than 40 hours per week instead. The Minister in charge of Immigration will examine the report and can withdraw (or refuse to renew) the student residence permit of Svitlana.^{ccv} In the administrative practice, the Directorate of Immigration processes these situations on a case-by-case basis. In a first step, both the employer and the employee will be informed to immediately terminate the illegal situation. In case the situation persists, the aforementioned sanctions will be applied.^{ccxvi}

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?

Case n° 1:

In Luxembourg, the Immigration Law establishes that if a third-country national applies for an authorisation of stay for salaried worker it will be granted the first time for a maximum of one year^{ccxvii}, for only one sector and only one profession.^{ccxviii} During the first year period any change of sector and profession has to be notified to the Minister in charge of Immigration to be approved after verifying that the employee continues to fulfil the conditions of article 42 (1) of the Immigration Law.^{ccxix} After one year, the third-country national will renew the salaried worker residence permit. The new residence permit establishes that the employee can work in any sector and in any profession.^{ccxx}

Taking into consideration all these elements, the case of Ms Bao can be treated as follows: As she arrived two years ago through a residence permit arranged by the IT company that employed her, we can conclude that her first salaried worker residence permit expired and the residence permit that she holds at the moment does not have any restriction for any sector or profession (once the first residence permit expires). As Ms Bao was working in a Bar during the last 4 months after having lost her job, if the employer has reported her to the social security authorities and the Directorate of Immigration when she was hired, there will be no report of this situation by the labour inspector.^{ccxxi} In consequence, Ms Bao can accept the new job without any problem.

Case n° 2:

In case that Ms Bao has obtained a highly qualified residence permit through the IT company that hired her under article 45 of the Immigration Law^{ccxxii} (taking into consideration that this is a profession included in group 2 of the ISCO (category 2513)^{ccxxiii}). In this case, the first highly qualified worker permit was issued for two years.^{ccxxiv} It can be renewed if the conditions for granting it continue to be fulfilled.^{ccxxv} During these two years the holder of the European Blue Card has a limited access to the labour market only in the activities s/he was admitted as a highly skilled worker independent of his/her employer.^{ccxxvi} A change in the conditions of admission must have to be previously authorised by the Minister in charge of Immigration.^{ccxxvii} After the two years, the holders of an European Blue Card benefit of equal treatment as Luxembourgish nationals (with certain exceptions to positions in the State).^{ccxxviii}

As it was mentioned above, if there is a change in the conditions of admission, the holder of the Blue Card should inform the Minister in charge of immigration of this situation. In this case, the fact that Ms Bao works in a bar constitutes a violation of the conditions of admission as a highly qualified worker and in consequence the residence permit will be withdrawn or will not be renewed.^{ccxxix} However, the Minister in charge of Immigration can examine the file while carefully taking into consideration that web designer is considered one of the professions which the government considers there are labour shortages and the fact that Ms Bao has received a job offer from an IT company. In this case, it can be considered that the residence permit can be renewed or not withdrawn.

*Illegal employment of Third-Country Nationals in the EU***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 visa⁴. 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?

The Immigration law considers that any third-country national who is not in possession of an authorisation to stay valid for a period exceeding three months or a work permit, if the latter is required, is considered an irregular migrant.^{ccxxx} As Marija has been detected by the authorities a report is sent to the Minister in charge of Immigration (Directorate of Immigration), who will issue a return decision against her.^{ccxxxi} The fact that the family has not fulfilled the conditions established on article L. 572-3 (1) 1 to 3 of the Labour Code will make them subject to the sanction established in article L. 572-1 in accordance with article L. 572-4 and they will have to pay a fine of 2.500 €. The fact that the family is willing to provide her with a contract would not make any difference because as it has been mentioned above, the application for an authorisation of stay as a salaried worker must be made before the individual enters the territory^{ccxxxii} and not after. She will receive the return decision and like she is not a threat to homeland security or national security, she will be granted 30 days to leave the country voluntarily.^{ccxxxiii} She can benefit of the assisted voluntary return provided by the Directorate of Immigration.^{ccxxxiv}

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 expired⁵. 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?

Mr. Harrak is considered as an irregular migrant because he has overstayed the authorisation of stay of six months as a salaried worker (Luxembourg has not yet transposed the Directive n° 2014/36/EU)^{ccxxxv}. Once he is detected by the labour inspectors the report is sent to the Minister in charge of Immigration and seen that he does not have a valid residence permit^{ccxxxvi} and he overstayed^{ccxxxvii}, after examining the report the Minister in charge of Immigration, will consider that he is an irregular migrant and a return decision will be issued against him. The second application for strawberry picking will have no influence on the outcome.

⁴ 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

⁵ 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.

*Illegal employment of Third-Country Nationals in the EU***A21f. A third-country national working from an international trading company**

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

Mrs Diop is an irregular migrant in Luxembourg who has been illegally working using a false identity. When Mrs Diop decided to sue her employer because she has not been paid her salary by her employer, the following situations arises:

1. If the complaint is filed before the ITM, the ITM will draw a report for the Public Prosecutor Office in order that the employee will be prosecuted on forgery and the use of forged documents^{ccxxxviii} as well as the employer who had knowledge of the false identity.^{ccxxxix}
2. Furthermore, the employer will be prosecuted for the violation of article 572-3, 1 to 3 of the Labour Code, in accordance with article 572-1 and article 572-4 (1). In this case, the report is sent to the Minister in charge of Labour (Minister of Labour, Employment and Social and Solidarity Economy), who will establish the administrative fine against the employer.
3. The report is also sent to the Minister in charge of Immigration, who will examine the case and will issue a duly motivated return decision.^{ccxli} Before the execution of the return decision, Mrs Diop is informed by the control agents of her rights to recover from her employer the amounts due that were not paid by the employer and the possibility to benefit from free of charge legal aid in order to recover this amounts.^{ccxli} The recovery procedure will continue even when Mrs Diop has already (been) returned to Senegal.

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

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

Annex 1 Statistical Annex**1. Inspections and sanctions for employers**

The European Commission has collected data under the reporting requirements of the Employers' Sanctions Directive impose on (Member) States⁶.

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.i.a.	n.i.a.
(a) infringement continues or is persistently repeated		n.i.a.	n.i.a.
(b) infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals		n.i.a.	n.i.a.
(c) the infringement is accompanied by particularly exploitative working conditions		n.i.a.	n.i.a.
(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.i.a.	n.i.a.
(e) the infringement relates to the illegal employment of a minor		n.i.a.	n.i.a.

⁶ IE and the UK do not participate in this Directive.

Illegal employment of Third-Country Nationals in the EU

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
n.i.a. Due to the reorganisation of the ITM they were not able to provide any information.	n.i.a.	n.i.a.	n.i.a.

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.i.a.	n.i.a.	n.i.a.	Due to the reorganisation of the ITM they were not able to provide any information.
Number of cases of identified <u>legally staying</u> and illegally employed TCNs	n.i.a.	n.i.a.	n.i.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.i.a.	n.i.a.	n.i.a.	Due to the reorganisation of the ITM they were not able to provide any information.
Number of cases of identified <u>legally staying</u> and illegally employed TCNs	n.i.a.	n.i.a.	n.i.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	0	0	0	The statistics in this table have been provided by the

Illegal employment of Third-Country Nationals in the EU

				Directorate of Immigration of the Ministry of Foreign and European Affairs.
Number of residence and/or work permits issued to detected <u>legally staying</u> and illegally working TCNs	Not available	Not available	Not available	
Number of illegally employed TCNs who were granted a period for voluntary return	Not available	Not available	Not available	
Number of illegally employed TCNs who were given an order to leave the country following a labour inspection	0	0	0	
Number of illegally employed TCNs who were deported following an inspection	0	0	0	
Number of illegally employed TCNs who were identified as victims of trafficking in human beings	0	0	1	
Number of decisions obliging employers to pay back payments/ amount equal to taxes and social security contributions	n.i.a.	n.i.a.	n.i.a.	

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

Type of sanctions available for illegally employed TCNs (e.g. fines, imprisonment, etc)	2014	2015	2016	Methodological notes
N/A				

Illegal employment of Third-Country Nationals in the EU

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
No information available.		n.i.a.	n.i.a.	Due to the reorganisation of the ITM they were not able to provide any information.

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

No information available.

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

N/A.

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- ⁱ Information provided via telephone interview by the labour union LCGB.
- ⁱⁱ ITM : "Il n'y a pas beaucoup de travail au noir au Luxembourg", <http://5minutes.rtl.lu/laune/actu/941438.html>, last accessed on 27 January 2017. See also <http://www.rtl.lu/letzebuerg/940960.html>, last accessed on 25 January 2017. See also response to Parliamentary Question n°2502, 18 November 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1393656&fn=1393656.pdf, last accessed on 25 January 2017.
- ⁱⁱⁱ Article L. 572-1 of the Labour Code.
- ^{iv} Article L. 571-1 (1) 1 of the Labour Code.
- ^v Neither the Customs and Excise Administration (*Administration des douanes et accises*) nor the Inspectorate of Labour (ITM) dispose of statistics relative to clandestine work or work done in the profit of private households. See response to Parliamentary Question n°2159, 22 July 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1368524&fn=1368524.pdf, p. 1, last accessed on 25 January 2017.
- ^{vi} Article L. 571-1 (2) 1 of the Labour Code.
- ^{vii} Article L. 571-1 (2) 2 of the Labour Code.
- ^{viii} See article 100 of the amended law of 29 August 2008 on free movement of persons and immigration. An irregular staying third-country national is who:
- (a) does not fulfil, or no longer fulfils, the conditions laid down in Article 34;
 - (b) remains on the territory after his/her visa has expired, or, if he/she is not subject to the obligation to possess a visa, after three months have elapsed from the date of his/her entry onto the territory;
 - (c) is not in possession of an authorisation to stay valid for a period exceeding three months or a work permit, if the latter is required;
 - (d) falls within the ambit of Article 117.
- ^{ix} Article 43 (2) of the amended Law of 29 August 2008 on free movement of persons and immigration.
- ^x Article 57 (3) of the amended law of 29 August 2008.
- ^{xi} Article 6 (1) of the Law of 18 December 2015 on the reception of applicants for international protection and temporary protection.
- ^{xii} Response to Parliamentary Question n°2159, 22 July 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1368524&fn=1368524.pdf, p. 1, last accessed on 25 January 2017.
- ^{xiii} Information provided via telephone interview by the labour union LCGB as well as via interview by the labour union OGBL.
- ^{xiv} Dionisio, Linda, Nienaber, Birte, Sommarribas Adolfo, International Migration in Luxembourg: Continuous Reporting System on Migration, OECD, Luxembourg National Report, October 2015, p. 70. Luxembourg. Available online under: http://www.emnluxembourg.lu/wp-content/uploads/2015/11/INTERNATIONAL-MIGRATION-LUXEMBOURG_FINAL.pdf, last accessed on 27 January 2017.
- ^{xv} The declarations of posted workers increase by 40% from 2014 to 2015, whereas the total number of posted workers almost doubled in the same period (from 12.066 in 2014 to 23.712 in 2015). See Inspection du Travail et des Mines, Rapport annuel 2015, p. 38-39, available online under: <http://www.itm.lu/files/live/sites/Itm/files/Itm/05.pdf>, last accessed on 19 January 2017.
- ^{xvi} Gouvernement.lu, Government Programme 2013-2018, available online under: <http://www.gouvernement.lu/3322796/Programme-gouvernemental.pdf>, p. 53, last accessed on 30 January 2017.

- xvii See: <http://www.quichet.public.lu/entreprises/fr/organismes/itm/detachement-travail-illegal/index.html>, last accessed on 27 January 2017. This information of the official administrative guide for Luxembourg has been last updated on 13 September 2016.
- This information can also be found on the website of the Ministry of Labour, Employment and Social and Solidarity Economy, see: <http://www.mte.public.lu/formulaires/detachement/index.html>, last accessed on 6 February 2017. This information has been last updated on 4 October 2016.
- xviii For further details, see response to Parliamentary Question n°1288, 14 August 2015, available online under: http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1322304&fn=1322304.pdf, p. 4, last accessed on 5 February 2017.
- See also: Dionisio, Linda, Nienaber, Birte, Sommarribas Adolfo, International Migration in Luxembourg: Continuous Reporting System on Migration, OECD, Luxembourg National Report, October 2015, p. 71. Luxembourg. Available online under http://www.emnluxembourg.lu/wp-content/uploads/2015/11/INTERNATIONAL-MIGRATION-LUXEMBOURG_FINAL.pdf, last accessed on 27 January 2017.
- See also <https://www.gouvernement.lu/2821273/02-badge-social?context=971660>, last accessed on 20 January 2017.
- xix Dionisio, Linda, Nienaber, Birte, Sommarribas Adolfo, International Migration in Luxembourg: Continuous Reporting System on Migration, OECD, Luxembourg National Report, October 2015, p. 71. Luxembourg. Available online under http://www.emnluxembourg.lu/wp-content/uploads/2015/11/INTERNATIONAL-MIGRATION-LUXEMBOURG_FINAL.pdf, last accessed on 27 January 2017.
- xx Response to Parliamentary Question n°1288, 14 August 2015, available online under: http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1322304&fn=1322304.pdf, p. 4, last accessed on 5 February 2017.
- xxi Besch, Sylvain, 2010, *Les réfugiés entre droit et politique (1990-2009)*, in *ASTI 30+: 30 ans de migrations, 30 ans de recherche, 30 ans d'engagements*, pp. 106-123, Luxembourg.
- xxii OLAI – Office luxembourgeois de l'accueil et de l'intégration, 2013, OCDE – Rapport du correspondant pour le Grand-Duché de Luxembourg, available online under: http://www.olai.public.lu/fr/publications/rapports/rapports_divers/rapport-sopemi-2013.pdf, p. 104 – 106, last accessed on 28 January 2017.
- See also: Besch, Sylvain, 2010, *Les réfugiés entre droit et politique (1990-2009)*, in *ASTI 30+: 30 ans de migrations, 30 ans de recherche, 30 ans d'engagements*, pp. 106-123, Luxembourg.
- xxiii Article 89 of the law of 29 August 2008 on free movement of persons and immigration published in Memorial A-138 of 10 September 2008. The original article foresaw the possibility of a regularization for any person whose presence does not constitute a danger for the public order, public security or public health, under condition to have abstained from using false or misleading information regarding his identity and to evidence a real willingness of integration under the following circumstances:
1. the person proves by any means that s/he has been residing continuously in the territory and that s/he has been habitually working in Luxembourg for at least eight years or,
 2. S/he proves that s/he has finished his/her school education in a school establishment in the Grand-Duchy of Luxembourg since at least six years, under the condition to apply within the year following his 18th birthday. People falling under the first condition will receive salaried worker permit if they also satisfy the conditions of article 42, paragraph (1), points 3 and 4. People being granted a residence permit under point 2 of the article will obtain the permit foreseen by article 79 if they pursue their studies or professional education.
- This possibility was abrogated by law of 21 December 2012.
- xxiv Europaforum.lu, [La Chambre des Députés transpose à l'unanimité une directive européenne qui sanctionne les employeurs de ressortissants de pays tiers en séjour irrégulier](#), 18 décembre 2012, last accessed 15 January 2015.
- See also LU EMN NCP, 2012, Policy Report on Migration and Asylum 2012, p. 18-19, available online under: <http://www.emnluxembourg.lu/wp-content/uploads/2015/08/Policy-report-on-migration-and-asylum.pdf>, last accessed on 30 January 2017.

- xxv Dionisio, Linda, Nienaber, Birte, Sommarribas Adolfo, International Migration in Luxembourg: Continuous Reporting System on Migration, OECD, Luxembourg National Report, October 2015, p. 73. Luxembourg. Available online under http://www.emnluxembourg.lu/wp-content/uploads/2015/11/INTERNATIONAL-MIGRATION-LUXEMBOURG_FINAL.pdf, last accessed on 27 January 2017.
- xxvi Europaforum.lu, [La Chambre des Députés transpose à l'unanimité une directive européenne qui sanctionne les employeurs de ressortissants de pays tiers en séjour irrégulier](#), 18 décembre 2012, last accessed on 15 January 2015.
- See also <http://www.guichet.public.lu/entreprises/en/actualites/2013/01/04-regularisation-travailleurs/index.html>, last accessed on 13 January 2017.
- xxvii Directorate of Immigration, Press Conference: Figures for the year 2013, 13 February 2014, p.14, <http://www.gouvernement.lu/3508079/bilan.pdf>
- See also response to Parliamentary question n°2787, 16 July 2013, available online under http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1209660&fn=1209660.pdf, last accessed on 27 January 2017.
- xxviii Response to Parliamentary question n°2787, 16 July 2013, available online under: http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1209660&fn=1209660.pdf, last accessed on 27 January 2017.
- Distribution by economic sector: 1. Food, beverage and hotel industry; 2. Private households; 3. Crafts; 4. Building sector.
- Distribution by nationality: 1. Chinese; 2. Brazilians; 3. Montenegrins; 4. Cape-Verdeans; 5. Serbians.
- Distribution by gender: 1. Men: 440 applications; 2. Women: 223 applications.
- xxix Interview with the Directorate of Immigration, 8 February 2017.
- xxx <https://www.100komma7.lu/article/aktualiteit/audit-itm-nach-emmer-schlecht-organiseiert>, last accessed on 20 January 2017.
- See also for example: <https://www.gouvernement.lu/798053/14biltgen>, last accessed on 20 January 2017.
- xxxi Response to Parliamentary question n°1427, 5 October 2015, available online under: http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1331549&fn=1331549.pdf, last accessed on 30 January 2017.
- xxxii Inspection du Travail et des Mines, Rapport annuel 2015, p. 14-16 as well as 28-31, available online under : <http://www.itm.lu/files/live/sites/Itm/files/Itm/05.pdf>, last accessed on 19 January 2017.
- xxxiii Response to Parliamentary Question n°2460, 18 November 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1395396&fn=1395396.pdf, p. 5-6, last accessed on 25 January 2017.
- See also Inspection du Travail et des Mines, Rapport annuel 2015, p. 17-21, available online under <http://www.itm.lu/files/live/sites/Itm/files/Itm/05.pdf>, last accessed on 19 January 2017.
- xxxiv See Frati, Camille, [La délicate restructuration de l'ITM : Reconstruction en terrain miné](#), Paperjam.lu, Edition Décembre 2015.
- xxxv Inspection du Travail et des Mines, Rapport annuel 2015, p. 30-31, available online under <http://www.itm.lu/files/live/sites/Itm/files/Itm/05.pdf>, last accessed on 19 January 2017.
- xxxvi For more details on the timeframe of the restructuring of the ITM, see: Inspection du Travail et des Mines, Rapport annuel 2015, p. 17-21, available online under <http://www.itm.lu/files/live/sites/Itm/files/Itm/05.pdf>, last accessed on 19 January 2017.
- xxxvii See Frati, Camille, [La délicate restructuration de l'ITM : Reconstruction en terrain miné](#), Paperjam.lu, Edition Décembre 2015.
- xxxviii Frati, Camille, [La délicate restructuration de l'ITM : Reconstruction en terrain miné](#), Paperjam.lu, Edition Décembre 2015.

- xxxix They only can obtain a temporary occupation authorisation if their application is not decided in the next six months after the application is filed and it is considered completed. Article 6 (1) of the Law of 18 December 2015 on the reception of applicants for international protection and temporary protection.
- xi Besch, Sylvain, 2009, Étude sur l'accès à l'emploi et à l'apprentissage des demandeurs de protection internationale et des bénéficiaires d'une attestation de tolérance, in *Droits d'asile au Grand-Duché de Luxembourg et en Europe : Développements récents*, pp. 31-43, Bruxelles.
- xii See <http://www.guichet.public.lu/entreprises/en/actualites/2013/10/03-badge-social/index.html>, last accessed on 13 January 2017.
- xiii http://www.eurodetachment-travail.eu/synthese/informer-sensibiliser/SensibiliserMO_Luxembourg_FR.html, last accessed 1st October 2015.
- xliii Information provided by the ITM.
- xliv See for example: <http://www.cc.lu/actualites/detail/cellule-de-regularisation-des-travailleurs-ressortissants-de-pays-tiers-en-sejour-irregulier/>, last accessed on 10 February 2017.
See also: <http://www.cdm.lu/news/fiche/2013/01/emploi-de-ressortissants-de-pays-tiers-en-sejour-irregulier-possibilite-exceptionnelle-de-regularisation-ouverte-jusqu-au-28-fevrier-2013>, last accessed on 10 February 2017.
- xlv See <http://www.itm.lu/home/faq/ddt/travail-noir/sejour-irregulier.html#anchor47821b88-c447-4d75-bbef-c49e4ad1f16e>
- xlvi See <http://www.guichet.public.lu/citoyens/fr/immigration/plus-3-mois/ressortissant-tiers/salarie/salarie-pays-tiers/index.html>
- xlvii Article L. 572-3 (1) 3 of the Labour Code.
- xlviii Article L. 572-3 (2) of the Labour Code.
- xlix Article L. 572-3 (1) 1 of the Labour Code.
- l Article L. 572-3 (1) 2 of the Labour Code.
- li Information provided by the Director of the Labour College ('École Supérieur du Travail').
- lii Article 1 (1) in accordance with article 425 of the Social Security Code.
- liii Article 425 of the Social Security Code.
- liv Article 445 of the Social Security Code establishes that the fine cannot exceed 2.500 €. See also, <http://www.ccss.lu/salaries/affiliation/amendes-dordre-en-cas-de-declaration-tardive-dentree-ou-de-sortie/>
- lv See <http://www.itm.lu/home/faq/ddt/travail-noir/sejour-irregulier.html#anchor47821b88-c447-4d75-bbef-c49e4ad1f16e>
- lvi See <http://www.guichet.public.lu/citoyens/fr/immigration/plus-3-mois/ressortissant-tiers/salarie/salarie-pays-tiers/index.html>
- lvii See <http://www.clae.lu/migrations/sejour-plus-de-3-mois-travail/>
- lviii See http://www.clae.lu/migrations/#_insitujobs. This programme is supported by the Luxembourg Reception and Integration Agency (OLAI) and financed by the AMIF 2014-2020.
- lix Article 43 (3) of the amended law of 29 August 2008.
- lx Article 43 (4) of the amended law of 29 August 2008.
- lxi See LU EMN NCP answer to COM Ad-Hoc Query on inspections to control the employment of irregular migrants, launched on 24 June 2015.
- lxii For more information on the Help Center and Call Center (HCC), see Inspection du Travail et des Mines, Rapport annuel 2015, p. 24-26, available online under <http://www.itm.lu/files/live/sites/Itm/files/Itm/05.pdf>, last accessed on 19 January 2017.
- lxiii See LU EMN NCP answer to COM Ad-Hoc Query on inspections to control the employment of irregular migrants, launched on 24 June 2015.

- lxiv Response to Parliamentary Question n°2460, 18 November 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1395396&fn=1395396.pdf, p. 11, last accessed on 25 January 2017.
- No further information was provided by the responsible administration on this issue.
- lxv Interview with the Directorate of Immigration, 8 February 2017.
- lxvi Information provided via interview by the labour union OGBL.
- lxvii Response to Parliamentary Question n°2460, 18 November 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1395396&fn=1395396.pdf, p. 11, last accessed on 25 January 2017.
- lxviii Response to Parliamentary Question n°2159, 22 July 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1368524&fn=1368524.pdf, p. 3, last accessed on 25 January 2017.
- lxix Information provided via interview by the labour union OGBL.
- lxx Interview with the Directorate of Immigration, 8 February 2017.
- lxxi Article 573-1 of the Labour Code.
- lxxii Article L. 612-1 (1) f) of the Labour Code as amended by the Law of 21 December 2012.
- lxxiii Article 137 of the amended Law of 29 August 2008.
- lxxiv L. 573-1 paragraph 1 of the Labour Code.
- lxxv Inspection du Travail et des Mines, Rapport annuel 2015, p. 14-16, available online under <http://www.itm.lu/files/live/sites/Itm/files/Itm/05.pdf>, last accessed on 19 January 2017.
- lxxvi Response to Parliamentary Question n°2460, 18 November 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1395396&fn=1395396.pdf, p. 6, last accessed on 13 January 2017.
- lxxvii Response to Parliamentary Question n°2460, 18 November 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1395396&fn=1395396.pdf, p. 7, last accessed on 13 January 2017.
- lxxviii Response to Parliamentary Question n°2460, 18 November 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1395396&fn=1395396.pdf, p. 7, last accessed on 13 January 2017.
- lxxix See LU EMN NCP answer to COM Ad-Hoc Query on inspections to control the employment of irregular migrants, launched on 24 June 2015.
- lxxx The Labour Code was amended by Law of 21 December 2007 on reform to the Inspectorate of Labour and Mines.
- lxxxï Until now the Luxembourg government has not enacted the grand-ducal regulation. This was noted by the International Labour Organisation in the Direct Request of Information n° C-129 adopted in 2014 and published in the 104th Session of the International Labour Conference in 2015. See Commentaires adoptés par la Commission d'experts : Luxembourg, http://www.ilo.org/dyn/normlex/fr/f?p=NORMLEXPUB:13203:0::NO::P13203_COUNTRY_ID:102757, last accessed 23 January 2017.
- lxxxii Article 613-2 of the Labour Code.
- lxxxiii See <http://www.itm.lu/home/securite---sante/construction.html>, last accessed on 13 January 2017.
- lxxxiv Inspection du Travail et des Mines, Rapport annuel 2014, Luxembourg, p. 45. available online under <http://www.itm.lu/home/securite---sante/construction.html>, last accessed on 13 January 2017.
- lxxxv Inspection du Travail et des Mines, Rapport annuel 2014, Luxembourg, p. 51. During 2014, 31 cases were deemed infractions. The inspectors drafted 30 administrative reports on clandestine labour for the Minister to apply sanctions.

lxxxvi Response to Parliamentary Question n°2460, 18 November 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1395396&fn=1395396.pdf, p. 7, last accessed on 13 January 2017.

lxxxvii Response to Parliamentary Question n°2460, 18 November 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1395396&fn=1395396.pdf, p. 9, last accessed on 13 January 2017.

See also Frati, Camille, [La délicate restructuration de l'ITM : Reconstruction en terrain miné](#), Paperjam.lu, Edition Décembre 2015.

lxxxviii Response to Parliamentary Question n°2159, 22 July 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1368524&fn=1368524.pdf, p. 3, last accessed on 12 January 2017.

lxxxix Response to Parliamentary Question n°2460, 18 November 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1395396&fn=1395396.pdf, p. 9, last accessed on 13 January 2017.

xc See <http://www.gouvernement.lu/6696819/03-assermentation-itm>, last accessed on 6 February 2017.

xci See LU EMN NCP answer to COM Ad-Hoc Query on inspections to control the employment of irregular migrants, launched on 24 June 2015.

xcii Article L. 614-3 (1) paragraph 2 of the Labour Code.

xciii Article L. 614-3 (1) paragraph 4 of the Labour Code.

xciv See LU EMN NCP answer to COM Ad-Hoc Query on inspections to control the employment of irregular migrants, launched on 24 June 2015.

xcv Article L. 612 (1) f) of the Labour Code.

xcvi Frati, Camille, [La délicate restructuration de l'ITM : Reconstruction en terrain miné](#), Paperjam.lu, Edition Décembre 2015.

xcvii Article 137 of the amended law of 29 August 2008.

xcviii Article 137 of the amended law of 29 August 2008.

xcix Article L. 573-1 as well as Art. L. 572-3 (2) of the Labour Code.

c Article 614-3 (1) paragraph 2 of the Labour Code.

ci Article L. 614-3 (1) paragraph 2 of the Labour Code.

cii Article L. 614-3 (1) paragraph 4 of the Labour Code.

ciii Article 614-3 (3) a) of the Labour Code.

civ Article 614-3 (3) b) of the Labour Code.

cv Article 614-3 (4) of the Labour Code.

cvi Article 614-4 (1) a) of the Labour Code.

cvii Article 614-4 (1) b) of the Labour Code.

cviii Article 614-4 (1) d) of the Labour Code.

cix Article 614-4 (1) c) of the Labour Code.

cx Article L. 573-1 of the Labour Code.

cxii Article L. 573-2 of the Labour Code.

cxiii Article L. 614-12 (3) of the Labour Code.

cxiiii Article L. 614-12 (4) of the Labour Code.

- cxiv See LU EMN NCP answer to COM Ad-Hoc Query on inspections to control the employment of irregular migrants, launched on 24 June 2015.
- cxv Article 137 of the amended law of 29 August 2008.
- cxvi Article L. 614-4 (1) a) in regard with article L. 572-3 (1) 2 of the Labour Code.
- cxvii Article 614-3 (3) a) and b) of the Labour Code.
- cxviii Frati, Camille, [La délicate restructuration de l'ITM : Reconstruction en terrain miné](#), Paperjam.lu, Edition Décembre 2015.
- cxix Article L. 614-5 of the Labour Code.
- cxx Article L. 572-4 (1) of the Labour Code.
- cxxi Response to Parliamentary Question n°2460, 18 November 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1395396&fn=1395396.pdf, p. 11, last accessed on 25 January 2017.
- cxvii Response to Parliamentary Question n°2159, 22 July 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1368524&fn=1368524.pdf, p. 3, last accessed on 25 January 2017.
- cxviii There are no sanctions foreseen by the law because the law of 21 December 2012 amended partially article 140 of the amended law of 29 August 2008, which foresees the sanctions for the employee.
- cxviii Article 614-4 (1) a) and b) in accordance with articles L. 614-12 (1) and (2) and L. 614-13 (1) of the Labour Code.
- cxvii Article 614-12 (1) of the Labour Code.
- cxviii Article 614-12 (1) of the Labour Code.
- cxviii Article 614-13 (1) of the Labour Code.
- cxviii Article 614-13 (5) of the Labour Code.
- cxviii Interview with the Directorate of Immigration, 8 February 2017.
- cxviii Article L-572-5 (1) 1 to 5 of the Labour Code.
- cxviii Article L. 572-6 2 of the Labour Code.
- cxviii Article 573-5 (1) of the Labour Code.
- cxviii Article L. 572-6 1 of the Labour Code.
- cxviii Article 572-5 (2) of the Labour Code.
- cxviii Article L. 572-5 (2) of the Labour Code in accordance with article 6 (4) e of the Law of 2 September 2011. See also, Administrative Court, n° 33720C of 13 March 2014.
- cxviii Article 51 (1), 52 (2) in accordance with article 101 (1) 1 of the amended Law of 29 August 2008.
- cxviii Article 51 (2), 52 (2) in accordance with article 101 (1) of the amended law of 29 August 2008.
- cxviii Article 15 (6) of the amended Law of 27 July 1993 regarding 1. Economic development and diversification as amended by article IV law of 21 December 2012.
- cxviii Article 16 of the amended law of 30 June 2004 on the creation of a general framework of aid regime for the Small and Medium Sized Enterprises sector as amended by article V law of 21 December 2012.
- cxli Article 12 (9) of the amended Law of 15 July 2008 on regional economic development as amended by article VI of the Law of 21 December 2012.
- cxlii Article 21 (7) of the amended Law of 5 June 2009 on the promotion of research, development and innovation as amended by article VIII law of 21 December 2012.
- cxliii Article 15 (3) of the amended Law of 18 February 2010 on aid regime to the protection of the environment and the rational use of natural resources as amended by article IX law of 21 December 2012.

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- cxliii Article L.572-7 paragraph 1 of the Labour Code.
- cxliv Article L.572-7 paragraph 1 of the Labour Code.
- cxlv Article L.572-7 paragraph 2 of the Labour Code.
- cxlvi Art. L.572-8 of the Labour Code.
- cxlvii Article L. 573-1 of the Labour Code.
- cxlviii Article L. 573-2 of the Labour Code.
- cxlix The employer must 1) request the presentation from the third-country national of his/her authorisation of stay/residence permit before the employment contract starts; 2) keep a copy of the authorisation of stay/residence permit in file; and 3) have notified the Minister in charge of Immigration when the employment contract of the third country national starts three working days after the first day of work.
- cl Article L. 572-3 (3) of the Labour Code.
- cli Article L. 572-3 (1) 2 of the Labour Code.
- clii Articles 12 and 14 of the Constitution of the Grand Duchy of Luxembourg of 17 October 1868 published by Memorial 23 of 22 October 1868. Coordinated text of 20 October 2016.
- cliii Contrario sensu of articles L-572-3 1 (2) in accordance with article L. 573-3 (3) of the Labour Code.
- cliv See Judgement of the Court of Appeal, n° 37423 of 22 November 2012.
- clv See Judgement of the Court of Appeal, n° 37423 of 22 November 2012.
- clvi See Judgement of the Court of Appeal, n° 37423 of 22 November 2012.
- clvii Response to Parliamentary Question n°2460, 18 November 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1395396&fn=1395396.pdf, p. 11, last accessed on 25 January 2017.
- clviii Response to Parliamentary Question n°2159, 22 July 2016, http://www.chd.lu/wps/PA_ArchiveSolR/FTSShowAttachment?mime=application%2fpdf&id=1368524&fn=1368524.pdf, p. 3, last accessed on 25 January 2017.
- clix Information provided via telephone interview by the labour union LCGB as well as via interview by the labour union OGBL and by the Directorate of Immigration.
- clx Interview with the Directorate of Immigration, 8 February 2017.
- clxi Article 100 (1) a) to c) of the amended Law of 29 August 2008
- clxii Article 137 of the amended law of 29 August 2008 and article L. 573-1 paragraph 1 of the Labour Code.
- clxiii Article 109 (1) of the amended law of 29 August 2008.
- clxiv Article 100 (1) of the amended law of 29 August 2008.
- clxv Article 109 (1) and 110 (1) of the amended law of 29 August 2008.
- clxvi Article 110 (3) of the amended law of 29 August 2008.
- clxvii Article 572-7 (1) paragraph 1 of the Labour Code
- clxviii Article 572-8 of the Labour Code.
- clxix Article 111 (2) of the amended Law of 29 August 2008.
- clxx Article 112 (1) of the amended Law of 29 August 2008.
- clxxi This sanction has been abolished with the adoption of the law of 21 December 2012.
- clxxii Article 120 (1) of the amended law of 29 August 2008.
- clxxiii Article L. 572-5 (1) 4 of the Labour Code in regards with articles 95 to 97 of the amended law of 29 August 2008.
- clxxiv Article 78 (3) in accordance with article 79 (3) of the amended law of 29 August 2008.

- clxxv Articles 95, 97 and 98 of the amended law of 29 August 2008.
- clxxvi Article 42 (1), 43 (2) and (3) in accordance with article 101 (1) 1) of the amended law of 29 August 2008.
- clxxvii Interview with the Directorate of Immigration, 8 February 2017.
- clxxviii Interview with the Directorate of Immigration, 8 February 2017.
- clxxix Interview with the Directorate of Immigration, 8 February 2017.
- clxxx Article 120 (1) of the amended law of 29 August 2008.
- clxxxi Article 101 (1) 1) of the amended law of 29 August 2008.
- clxxxii Article 100 (1) c) of the amended law of 29 August 2008.
- clxxxiii Interview with the Directorate of Immigration, 8 February 2017.
- clxxxiv Interview with the Directorate of Immigration, 8 February 2017.
- clxxxv Article 100 (2) of the amended Law of 29 August 2008.
- clxxxvi Article L. 572-7 (1) paragraph 1 in accordance with article 572-2 (9) of the Labour Code.
- clxxxvii Article L. 572-7 (1) paragraph 2 of the Labour Code.
- clxxxviii Article L. 572-7 (2) of the Labour Code.
- clxxxix Article L. 572-9 of the Labour Code.
- cx Article 572-10 (1) of the Labour Code.
- cxci Article 572-10 (2) of the Labour Code.
- cxcii Information provided via telephone interview by the labour union LCGB as well as via interview by the labour union OGBL.
- cxci Article L. 572-9 of the Labour Code.
- cxci Information provided via telephone interview by the labour union LCGB.
- cxci Article L. 572-8 paragraph 1 of the Labour Code.
- cxci Article L. 572-8 paragraph 2 of the Labour Code.
- cxci Information provided via telephone interview by the labour union LCGB as well as via interview by the labour union OGBL.
- cxci Article 572-7 (1) of the Labour Code.
- cxci Article 572-7 (1) in accordance with article 37-1 (1) 5) of the amended law of 10 August 1991 on the profession of lawyer.
- cc Article 137 of the amended law of 29 August 2008.
- ccci Article 100 (1) a) of the amended law of 29 August 2008.
- ccii Article 111 (2) of the amended law of 29 August 2008.
- cciii LU EMN NCP answer to FI Ad-hoc query on asylum proceeding and returns to Somalia launched on 31 March 2015.
- cciv Article 125bis (1) of the amended law of 29 August 2008.
- ccv Article 27 of the law of 18 December 2009 on social aid and article 125bis (2) of the amended law of 29 August 2008.
- ccvi Article 125bis (1) of the amended law of 29 August 2008.
- ccvii Article 125bis (3) of the amended law of 29 August 2008.
- ccviii Article 42 of the amended law of 29 August 2008.
- ccix Article 125bis (3) of the amended law of 29 August 2008.
- ccx Article 39 (1) of the amended law of 29 August 2008.

- ccxi Article L. 622-4 of the Labour Code.
- ccxii Article 57 (3) paragraph 1) of the amended law of 29 August 2008.
- ccxiii Article 57 (3) paragraph 2) of the amended law of 29 August 2008 in accordance with article L. 211-6 of the Labour Code.
- ccxiv Article 137 of the amended law of 29 August 2008.
- ccxv Article 57 (4) paragraph 1) of the amended law of 29 August 2008.
- ccxvi Interview with the Directorate of Immigration, 8 February 2017.
- ccxvii Article 43 (1) paragraph 2) of the amended law of 29 August 2008.
- ccxviii Article 43 (2) of the amended law of 29 August 2008.
- ccxix Article 43 (3) of the amended law of 29 August 2008.
- ccxx Article 43 (5) of the amended law of 29 August 2008.
- ccxxi Article L. 572-3 1 to 3 of the Labour Code in accordance with article 43 (5) of the amended law of 29 August 2008.
- ccxxii We can consider that Ms Jao a highly qualified worker in accordance with article 1 of the amended grand-ducal regulation of 26 September 2008 establishing the level of minimum remuneration for highly qualified worker implementing the law of 29 August 2008 on free movement of persons and immigration as amended by grand-ducal regulation of 25 January 2012.
- ccxxiii According to the Governmental Council decree of 22 May 2015 the profession of web developer is considered a highly qualified profession that is in shortage in Luxembourg.
- ccxxiv Article 45-1 (1) of the amended Law of 29 August 2008.
- ccxxv Article 45-1 (2) of the amended Law of 29 August 2008.
- ccxxvi Article 45-1 (3) of the amended Law of 29 August 2008.
- ccxxvii Article 45-1 (3) of the amended Law of 29 August 2008.
- ccxxviii Article 45-1 (4) of the amended Law of 29 August 2008.
- ccxxix Article 45-2 (1) in accordance with article 45-1 (3) of the amended Law of 29 August 2008.
- ccxxx Article 100 (1) c) of the amended Law of 29 August 2008.
- ccxxxi Article 100 (1) of the amended Law of 29 August 2008.
- ccxxxii Article 39 (1) of the amended Law of 29 August 2008.
- ccxxxiii Article 111 (2) of the amended Law of 29 August 2008.
- ccxxxiv LU EMN NCP answer to COM Ad-hoc query on voluntary return policy launched on 18 December 2013.
- ccxxxv See bill n° 6992, [parliamentary document n° 6992/00 of 18 May 2016](#),
- ccxxxvi Article 100 (1) c) of the amended Law of 29 August 2008.
- ccxxxvii Article 100 (1) c) of the amended Law of 29 August 2008.
- ccxxxviii Article 193, 196 and 197 of the Penal Code, [law of 16 June 1879 published in the Memorial 1879, p. 589. Coordinated text of 10 July 2016](#).
- ccxxxix Article 67 paragraph 3 of the Penal Code.
- ccxl Article 100 of the amended law of 29 August 2008.
- ccxli Article 572-7 (1) of the Labour Code.