



Ad-Hoc Query on illegal working

Launched by UK EMN NCP on 04/11/2015

Reply requested by 13/11/2015

Responses from Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Spain, Sweden, United Kingdom plus Croatia, Norway (22 in Total)

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1. Background Information

The UK is using the current Immigration Bill to create a new offence of illegal working that will ensure that the act of illegal working is always an offence. It will apply to those who are employed and self employed.

The new offence will apply to persons subject to immigration control who work when:

- they have not been granted permission to enter or remain in the UK,
- their permission is invalid,
- they have overstayed their permission to be in the UK or
- they are in breach of a work condition of their permission to enter / remain in the UK (this could include whether they are not permitted to work or conditions on the type of work they can undertake, or the hours that they can work).

The new offence is intended to deter illegal working and will ensure that the earnings of illegal workers can be seized as the proceeds of crime.

We are therefore very interested in whether other MS have illegal working as a criminal offence. This information will be used to inform the Immigration Bill which is currently going through Parliament.

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Questions

In the case of migrants who are in your country illegally and/or have no permission to work (or exceed permission to work):

1. Is it a criminal offence to work (for employed and/or self employed)?
2. If yes, or in some cases, please provide a brief description of the offence and who it applies to.
3. What is the sanction for working illegally?

We would very much appreciate your responses **by 13th November 2015**

2. Responses¹

		Wider Dissemination?²	
	Austria	Yes	<p>1. No. However, it is an administrative offence to unlawfully employ foreigners (Art. 28 Act Governing the Employment of Foreign Nationals). Further, it is an administrative offence for asylum-seekers to engage in self-employed activities earlier than three months after the application for international protection has been filed (Art. 10 para 3 Federal Basic Welfare Support Act).</p> <p>2. N/A.</p> <p>3. N/A.</p>
	Belgium	Yes	<p>1. Is it a criminal offence to work (for employed and/or self employed)?</p> <p>No. A person irregularly staying in Belgium is not allowed to work and risks to be expelled or ordered to leave the country, but it is not a criminal offence to work.</p> <p>It is however a criminal offence for the employer to illegally employ foreign workers. The Belgian Social Penal Code of 6 June 2010 (article 175) provides heavy penalties (among others introduced by the Law of 11 February 2013 on sanctions and measures against employers of illegally staying third country nationals, transposing the European Directive 2009/52/EC). For more information on the sanctions for employers, we refer to the Belgian answer to the EMN Ad Hoc Query number 530 launched by the UK on 20 January 2014, on “sanctions on illegal working”.</p> <p>2. If yes, or in some cases, please provide a brief description of the offence and who it applies to.</p> <p>Not applicable</p> <p>3. What is the sanction for working illegally?</p>

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the [Compilation for Wider Dissemination](#) the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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			Not applicable
	Bulgaria	Yes	<p>1. In the case of migrants who are in your country illegally and/or have no permission to work (or exceed permission to work): Is it a criminal offence to work (for employed and/or self employed)? No.</p> <p>2. If yes, or in some cases, please provide a brief description of the offence and who it applies to. N/A</p> <p>3. What is the sanction for working illegally? According to the Law for the Foreigners in Republic of Bulgaria: Art. 48c. (1) With a fine in amount from BGN 750 up to BGN 7500 shall be punished a natural person, who has hired an illegally residing foreigner, as far as the deed does not construct a crime. (2) In the cases where the infringement envisaged in Para 1 is done by a legal person, a property sanction in amount from BGN 3000 up to BGN 30 000 shall be imposed. (3) In the cases where the offences under Para 1 and 2 have been committed repeatedly, a fine from BGN 1500 up to BGN 15 000 shall be imposed, respectively a property sanction from BGN 6000 up to BGN 60 000 shall be imposed to the legal persons. (4) Penalties envisaged in Para 1- 3 shall be imposed per each one hired foreigner, who resides illegally</p>
	Cyprus	Yes	<p>1. Yes 2 + 3. Art. 19 of the Aliens and Migration Law stipulates that a person who, even if in possession of a valid residence permit, violates any clause or condition of the permit or takes up an employment without prior approval of the Director of the Migration Department based on Regulation 11 of the Aliens and Migration Regulations, is guilty of a criminal offence and is subject to imprisonment for a period not exceeding 12 months or to a fine not exceeding 1537 euro, or to both penalties.</p>
	Czech Republic	Yes	<p>1. In the case of migrants who are in your country illegally and/or have no permission to work (or exceed permission to work): Is it a criminal offence to work (for employed and/or self employed)? Illegal work is not a criminal offence in the Czech Republic. A natural person performing illegal work commits only an administrative infraction (par. 139 act 435/2004 Coll., on employment).</p> <p>2. If yes, or in some cases, please provide a brief description of the offence and who it applies to. Illegal work is defined as an employment of a natural person without a contractual employment relationship or if a foreign national performs work in breach of a work permit or without it (if it is required) or if he or she performs work without a valid permit to reside in the Czech Republic if required.</p> <p>3. What is the sanction for working illegally? A person who commits this administrative infraction can be punished by a fine of up to 100,000 CZK.</p>

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	Denmark	Yes	
	Estonia	Yes	<p>1. In the case of migrants who are in your country illegally and/or have no permission to work (or exceed permission to work):</p> <p>Is it a criminal offence to work (for employed and/or self employed)?</p> <p>Depending on the circumstances it is a misdemeanour or a criminal offence to enter or remain in Estonia illegally. It is not a criminal offence, but a misdemeanour to work (for employed and self-employed) without a permission to work and/or while staying illegally in Estonia and it is sanctioned accordingly.</p> <p>2. If yes, or in some cases, please provide a brief description of the offence and who it applies to.</p> <p>According to the Aliens Act § 303 the taking of employment in Estonia by TCN who does not have a legal basis for employment in Estonia is punishable by a fine of up to 300 fine units (up to 1200 euros in 2015) or by detention. Article 304 of the same act stipulates that the violation of the conditions of employment in Estonia, including taking employment that is not in compliance with the conditions determined on the legal basis by a TCN is punishable by a fine of up to 300 fine units or by detention. There are additional Articles that regulate the sanctions for employers who enable employment to a TCN who does not have a legal basis or enable violation of conditions of employment to a TCN.</p> <p>In conclusion the sanctions apply to those who are staying legally, but do not have permission to work, to those who are taking employment that is not in compliance with the determined legal basis and to those who are staying illegally and are also working in Estonia.</p> <p>3. What is the sanction for working illegally?</p> <p>See above</p>
	Finland	Yes	<p>1. Yes. Alien's Act: "Section 185 <i>Violation of the Aliens Act</i> An alien who... 2) deliberately, without right to gainful employment is gainfully employed or pursues a trade;.... shall be sentenced to a fine for a violation of the Aliens Act. (323/2009)"</p> <p>2. Occupational safety and health (OSH) authorities are responsible for supervising the use of foreign labour. If an irregular migrant worker is detected, the OSH authority reports the offence to the police. The employee is primarily imposed a criminal sanction. The OSH authority may also notify the Finnish Immigration Service of irregular migrant workers. However, irregular migrant workers are rarely detected during OSH inspections.</p> <p>(If such an irregular migrant worker is detected, also the employer is primarily imposed a criminal sanction.)</p> <p>3. The police shall impose a fine on an illegally working foreigner.</p>
	France	Yes	<p>In the case of migrants who are in your country illegally and/or have no permission to work (or exceed permission to work):</p> <p>1. Is it a criminal offence to work (for employed and/or self employed)?</p> <p>According to the French Labour Code, the employment of a foreign national who does not hold a work permit constitutes an offence. Penalties provided by the Labour Code and the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA) are imposed to the employer, not the employee.</p>

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			<p>Only the employer can be punished by criminal sanctions when employing a foreign worker who is staying illegally on the French territory or has no permission to work. However, the temporary residence permit may be withdrawn to any foreign national exercising a professional activity in France without having prior permission to work (Article L.5221-5 of the Labour Code). In the same way, the temporary residence permit may be withdrawn to any employer, holding this residence permit, who has directly or through an intermediary employed a foreign national without permission to work in France (Article L.313-5 of the CESEDA)</p> <p>2. If yes, or in some cases, please provide a brief description of the offence and who it applies to.</p> <p>According to the French legislation, employing directly or through an intermediary, regardless of the duration, a foreign national without a work permit constitutes an offence (article L. 8256-2 of the Labour Code). It is also an offence to use knowingly directly or through an intermediary the services of an employer of foreign nationals without residence and work permits (article L. 8251-2 of the Labour Code). It is punishable by five-year imprisonment and a fine of 15,000 euros (article L. 8256-2 of the Labour Code). These penalties are increased to ten-year imprisonment and a fine of 100,000 euros when the offence is committed by an organized group.</p> <p>The offence applies to any employer of a foreign national who has no permission to work, whether or not he/she is legally staying.</p> <p>3. What is the sanction for working illegally?</p> <p>According to Article L.5221-8 of the Labour Code, the employer has to check the validity of the foreign candidate's work permit by the prefecture of the place of employment. In case of non-compliance, the employer may be subject to the following penal sanctions: fine of 3,000 euros, three-year imprisonment and fine of 45,000 euros, entry ban for at least five years...</p> <p>Besides, the employer may also be subject to the following administrative sanctions:</p> <ul style="list-style-type: none"> - for each migrant irregularly employed, a specific contribution to the French Office for Immigration and Integration (OFII) equivalent to 5,000 times the hourly rate of the guaranteed minimum wage (article L. 8253-1 of the Labour Code). This rate is currently set at 3.52 euros; - complementary penalties, such as exclusion from public grants, temporary closure of establishment (article L. 8272-2 of the Labour Code), exclusion of public contracts (articles L. 8272-4, R. 8272-10 and R. 8272-11 of the Labour Code), etc.; - for each migrant irregularly employed, a lump sum contribution representing the cost of the repatriation of the migrant to his/her country of origin (article L. 626-1 of the CESEDA)
	Germany	Yes	<p>In the case of migrants who are in your country illegally and/or have no permission to work (or exceed permission to work):</p> <p>1. Is it a criminal offence to work (for employed and/or self employed)?</p> <p>Answers 1 - 3:</p> <p>If a foreigner without a qualifying residence permit exerts intentionally or negligently employment, this constitutes an administrative offense, which is punishable by a fine of up to 5,000 euros, § 404 para. 2 no. 4 third book Social Code (SGB III) in conjunction with § 4 para. 3 sentence 1 of the Residence Act (AufenthG).</p> <p>An administrative offense is also a foreigner carrying out a self-employed work without the entitling residence permit, which can also be punished by a fine of up to 5,000 euros, § 98 para. 3 no. 1 in conjunction with § 4 para. 3 sentence 1 of the Residence Act.</p> <p>Whoever commits intentionally one of those events and instead of the required residence permit has only a Schengen visa, is punished with imprisonment</p>

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			<p>up to one year or a fine, § 95, para. 1 Residence Act.</p> <p>A not only isolated or minor infringement of legislation may result by the way of a discretionary decision in the expulsion of the foreigner, § 55 para. 2 no. 2 of the Residence Act</p> <p>2. If yes, or in some cases, please provide a brief description of the offence and who it applies to.</p> <p>see question 1</p> <p>3. What is the sanction for working illegally?</p> <p>see question 1. An administrative offence charged with an administrative fine applies on cases when the foreigner has a residence permit, but this permit does not entitle self-employed work.</p> <p>In contrast to this a foreigner , who has no residence permit and intentionally carries on the above mentioned activities , commits a criminal offence punishable with imprisonment up to one year or a pecuniary penalty.</p>
	Greece	Yes	
	Hungary	Yes	<p>1. No. In Hungarian national legislation there are provisions against illegal employment of foreigners, yet the system of sanctions follows the principle of proportionality and therefore criminalizes illegal situations only in the most serious cases, and only the employer is punished with criminal sanctions, therefore in Hungary working illegally does not fall under the scope of the Criminal Code.</p> <p>Nevertheless, employing an illegally staying third-country national can be considered a criminal offence as Section 356 (Unlawful Employment of Third-Country Nationals) under Section 356 of Act C of 2012 on the Criminal Code sets out the following:</p> <p>(1) Any person who employs:</p> <p>a) a third-country national on a regular basis or frequently without authorization to undertake gainful employment; or</p> <p>b) a substantial number of third-country nationals at one and the same time without authorization to undertake gainful employment;</p> <p>is guilty of a misdemeanor punishable by imprisonment not exceeding two years.</p> <p>2. N/A</p> <p>3. Section 43 of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals lays down the rules in this regard:</p> <p>(2) Subject to the exception set out in this Act, the immigration authority shall order the expulsion of a third-country national under immigration laws who:</p> <p>c) was engaged in any gainful employment in the absence of the prescribed work permit or any permit prescribed under statutory provision.</p> <p>As regards financial penalties it is only employers who are obliged to pay such in case of failing to fulfil their obligation of checking the existence of the right permit of the third-country national (Section 71 of Act II of 2007).</p>
	Ireland	Yes	

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	Italy	Yes	<p>1. No.</p> <p>In Italy, the situation of a TCN who is in the country illegally and who works is relevant only in terms of his/her illegal stay. The working activity (as employed and/or self-employed) carried out by a TCN is never considered a criminal offence, even though he/she may have no residence permit or may have a residence permit that prohibits/limits his/her working activity.</p>
	Latvia	Yes	<p>In the case of migrants who are in your country illegally and/or have no permission to work (or exceed permission to work):</p> <p>1. Is it a criminal offence to work (for employed and/or self employed)?</p> <p>Article 280 of the Criminal law defines the punishment for violation of provisions regarding employment of persons</p> <p>(1) For a violation of restrictions or provisions regarding employment of persons provided for in law if commission thereof is by the employer and if significant damage is caused thereby, the applicable punishment is temporary deprivation of liberty or community service, or a fine.</p> <p>(2) For the employment of such person who is not entitled to remain in the Republic of Latvia if commission thereof is by the employer and if a minor is employed or if more than five persons are employed, or if a person is employed in particularly exploitative working conditions, or if a victim of human trafficking has knowingly been employed, the applicable punishment is temporary deprivation of liberty or community service, or a fine.</p> <p>2. If yes, or in some cases, please provide a brief description of the offence and who it applies to.</p> <p>The criminal law is applied to employers. There were no punishments defined by the Criminal law applied by the State Border Guard. There is an experience in application of administrative sanctions defined by the Administrative violations code (see reply on 3rd question).</p> <p>3. What is the sanction for working illegally.</p> <p>In accordance with Article 189¹ of Administrative violations code in the case of working without a work permit, the necessity of which is specified by regulatory enactments, a fine shall be imposed in an amount from 400 euro up to 700 euro.</p> <p>There is also an administrative responsibility for Violation of the prohibition of employment of foreigners defined by Article 189² of Administrative violations code:</p> <p>In the case of the employment of one or more persons (up to 5 persons), if the person or persons have the right to stay on the territory of the Republic of Latvia, but do not possess work permits, the necessity of which is specified by regulatory enactments a fine shall be imposed on a natural person or the member of the board in an amount from 140 euro up to 430 euro, with or without the suspension of the right for the member of the board to hold certain offices in commercial companies.</p> <p>In the case of the employment of more than 5 people, if the persons do not possess work permits, the necessity of which is specified by regulatory enactments a fine shall be imposed on natural persons or the member of the board in an amount from 430 euro up to 700 euro, with or without the suspension of the right for the member of the board to hold certain offices in commercial companies.</p> <p>In the case of the employment of one or more persons (up to 5 persons), who do not have the right to stay on the territory of the Republic of Latvia a fine shall be imposed on a natural person or the member of the board in an amount from 210 euro up to 500 euro, with the suspension of the right for the member of the board to hold certain offices in commercial companies.</p>
	Lithuania	Yes	1. No.

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			2. N/a. 3. If a person stays in country illegally and does not possess a permission to work, the Migration Department receives notification and initiates the return of that person. If, however, a person has a residence permit but works illegally, no sanctions are given.
	Luxembourg	Yes	1. No. 2. N/A. N/A.
	Malta	Yes	
	Netherlands	Yes	<p>In the case of migrants who are in your country illegally and/or have no permission to work (or exceed permission to work):</p> <p>1. Is it a criminal offence to work (for employed and/or self employed)? No, it is not a criminal offence to work without a work permit. Hiring employees without a work permit however is prohibited by law, unless exceptions are applicable in which a work permit is not required.</p> <p>2. If yes, or in some cases, please provide a brief description of the offence and who it applies to. The offence applies to employers who hire a person who does not have a work permit. The employer is responsible for obtaining a work permit.</p> <p>3. What is the sanction for working illegally? When hiring persons without a work permit, a fine can be imposed on the employer. The maximum fine for this offence is 81.000 euros</p>
	Poland	Yes	<p>1. In Poland it is a petty offense punishable by fine. Details are regulated in the Act of 20 April 2004 on employment promotion and labour market institutions</p> <p>2. Whoever entrusts illegal work performance to a foreigner, shall be subject to financial punishment in the amount not lower that PLN 3,000.</p> <p>3. Whoever entrusts illegal work performance to a foreigner, shall be subject to financial punishment in the amount not lower that PLN 3,000. A foreigner who performs work illegally, shall be subject to financial punishment in the amount not lower than PLN 1,000. Whoever forces a foreigner to perform illegal work by way of deception, exploiting error, exploiting professional dependency or exploiting the inability to properly comprehend the undertaken action, shall be subject to financial penalty not exceeding PLN 10, 000. Whoever demands from a foreigner financial benefit for undertaking actions aimed at obtaining work permit or another document entitling to perform work, shall be subject to financial penalty of not less than PLN 3,000. Whoever by means of deception, exploiting error or exploiting the inability to properly comprehend the undertaken action, forces another person to entrust illegal work to a foreigner, shall be subject to financial penalty not exceeding PLN 10,000. Whoever fails to fulfil the obligation referred to Article 88i of the Act on employment promotion and labour market institutions shall be subject to financial penalty of not less than PLN 100.</p>
	Portugal	Yes	

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	Romania	Yes	
	Slovak Republic	Yes	<p>1. In the case of migrants who are in your country illegally and/or have no permission to work (or exceed permission to work):</p> <p>1. Is it a criminal offence to work (for employed and/or self employed)?</p> <p>In case of employed, it is not a criminal offence. It is an administrative offence. These offenses are handled by the Central Office of Labour, Social Affairs and Family and local labour offices. Third country national works illegally if he/she performs work for a legal person or a natural person – an entrepreneur without an employment contract, work permit (if his/hers case requires it), or temporary residence for the purpose of employment, based on which it is possible to work in Slovakia. If a third country national works illegally in the Slovak Republic, he/she risks a fine up to 331, 93 EUR, administrative expulsion and residence ban in the Slovak Republic for 1 to 3 years.</p> <p>In case of self-employed, which is classified in the Slovak Republic as trading and not employment, is unauthorized business/trading a criminal offence (according to the national legislation).</p> <p>2. If yes, or in some cases, please provide a brief description of the offence and who it applies to.</p> <p>Unauthorized business/trading: Who runs unauthorized business/trades unauthorized in a small scale, shall be punished by a term of imprisonment for one year. The perpetrator will be punished by the deprivation of liberty between 6 months and 3 years if he commits such an offence in a more serious manner, will use someone else as work force, and will gain a bigger benefit, or as public official or in connection with his employment, profession or function. The perpetrator will be punished by the deprivation of liberty between 1 and 5 years if he commits such an offence and causes large-scale damage or as a member of dangerous grouping.</p> <p>3. What is the sanction for working illegally?</p> <p>Please see the answer to the question 1.</p>
	Slovenia	Yes	
	Spain	Yes	<p>1. No. Just the employment of irregular migrants is considered a criminal offence.</p> <p>2. N/A.</p> <p>3. N/A.</p>
	Sweden	Yes	<p>In the case of migrants who are in your country illegally and/or have no permission to work (or exceed permission to work):</p> <p>1. Is it a criminal offence to work (for employed and/or self employed)?</p> <p>Yes, for employed.</p> <p>First of all, the Aliens Act foresees that a fine shall be imposed on an alien who is staying in Sweden intentionally or through negligence without having the prescribed permit and without the alien having applied for such a permit or a person in charge of a preliminary investigation having applied for a temporary residence permit for the alien. In the case of minor offences, however, prosecution shall only be initiated if this is called for in the public interest.</p> <p>Also according to the Aliens Act, a fine shall be imposed on an alien who intentionally or through negligence is employed in a position or conducts an activity that requires a work permit without holding such a permit.</p>

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			<p>2. If yes, or in some cases, please provide a brief description of the offence and who it applies to. Please see above.</p> <p>3. What is the sanction for working illegally? The sanction is a fine.</p>
	United Kingdom	Yes	<p>1. It is already a criminal offence to enter or remain in the UK illegally. The UK currently has powers to prosecute migrants who have permission to be in the UK and are working illegally in breach of their conditions of stay. However, people who have entered the UK illegally or overstayed their visa, may not always be committing a separate offence of working illegally. This is because someone who has permission to enter or remain in the UK and is subject to a work condition (for example they are not permitted to work or they are permitted to work under certain conditions related to the type of work they can undertake or the hours that they can work) commits an offence by breaching that condition under section 24(1)(e) of the Immigration Act 1971. Someone who enters the UK as an illegal entrant or who overstays their permission (fails to leave the UK when their permission to be in the UK comes to an end) will not be subject to an immigration work condition and accordingly whilst they commit an offence by being an illegal entrant or overstaying their leave, they do not currently commit an offence of breaching a work condition.</p> <p>2. The UK will use the new Immigration Bill to create a new offence of illegal working that will ensure that the act of illegal working is always a criminal offence and specifically includes those who are</p> <ul style="list-style-type: none"> • working in breach of conditions of their visa/residence permit by working when they do not have permission to do so (be it because they are not allowed to work at all, or because they are working too many hours, in wrong sector etc) and/or • those who work while they are illegally resident (after entering the UK illegally or overstaying). <p>It will apply to those who are employed and self employed. The new offence is intended to deter illegal working and will ensure that the earnings of illegal workers can be seized as the proceeds of crime.</p> <p>3. The maximum penalty on conviction for this offence will be six months' imprisonment and/or a fine. The fine is unlimited in England and Wales, £10,000 in Scotland and £5,000 in Northern Ireland.</p>
	Croatia	Yes	<p>In the case of migrants who are in your country illegally and/or have no permission to work (or exceed permission to work):</p> <p>1. Is it a criminal offence to work (for employed and/or self-employed)? According to the Foreigners Act work illegally in HR is not criminal offence.</p> <p>2. If yes, or in some cases, please provide a brief description of the offence and who it applies to. N/A</p> <p>3. What is the sanction for working illegally? The fine amounting for a migrant could be from HRK 3.000,00 to HRK 7.000,00, whereas fine amounting from HRK 10.000,00 to HRK 15.000,00 shall be imposed on an employer – physical person who has employed migrant without residence and work permit, and fine amounting from HRK 50.000,00 to HRK 100.000,00 shall be imposed on an employer – legal entity that has employed migrant without residence and work permit.</p>

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	Norway	Yes	<p>In the case of migrants who are in your country illegally and/or have no permission to work (or exceed permission to work):</p> <p>1. Is it a criminal offence to work (for employed and/or self employed)?</p> <p>Yes</p> <p>2. If yes, or in some cases, please provide a brief description of the offence and who it applies to.</p> <p>It is a criminal offence for the foreigner to work as employee or as self-employed) if s/he does not have a permit that includes a permission to work. This applies to all third country nationals in the following situations:</p> <ul style="list-style-type: none"> - the TCN does not have a currently valid residence permit. - the TCN has a residence permit which does not include a permission to work - the TCN has a residence permit and works despite the limitations stipulated in the residence permit (typical limitations: that the permit is for a specific job for a specific employer, for a specific type of work, according to a specific contract, only for up to 20 hours a week) <p>3. What is the sanction for working illegally?</p> <p>The primary sanction to be considered is expulsion of the TCN from Norway, but criminal prosecution is possible. For the employer who has made use of the TCN's labour, the sanction is criminal prosecution.</p>
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