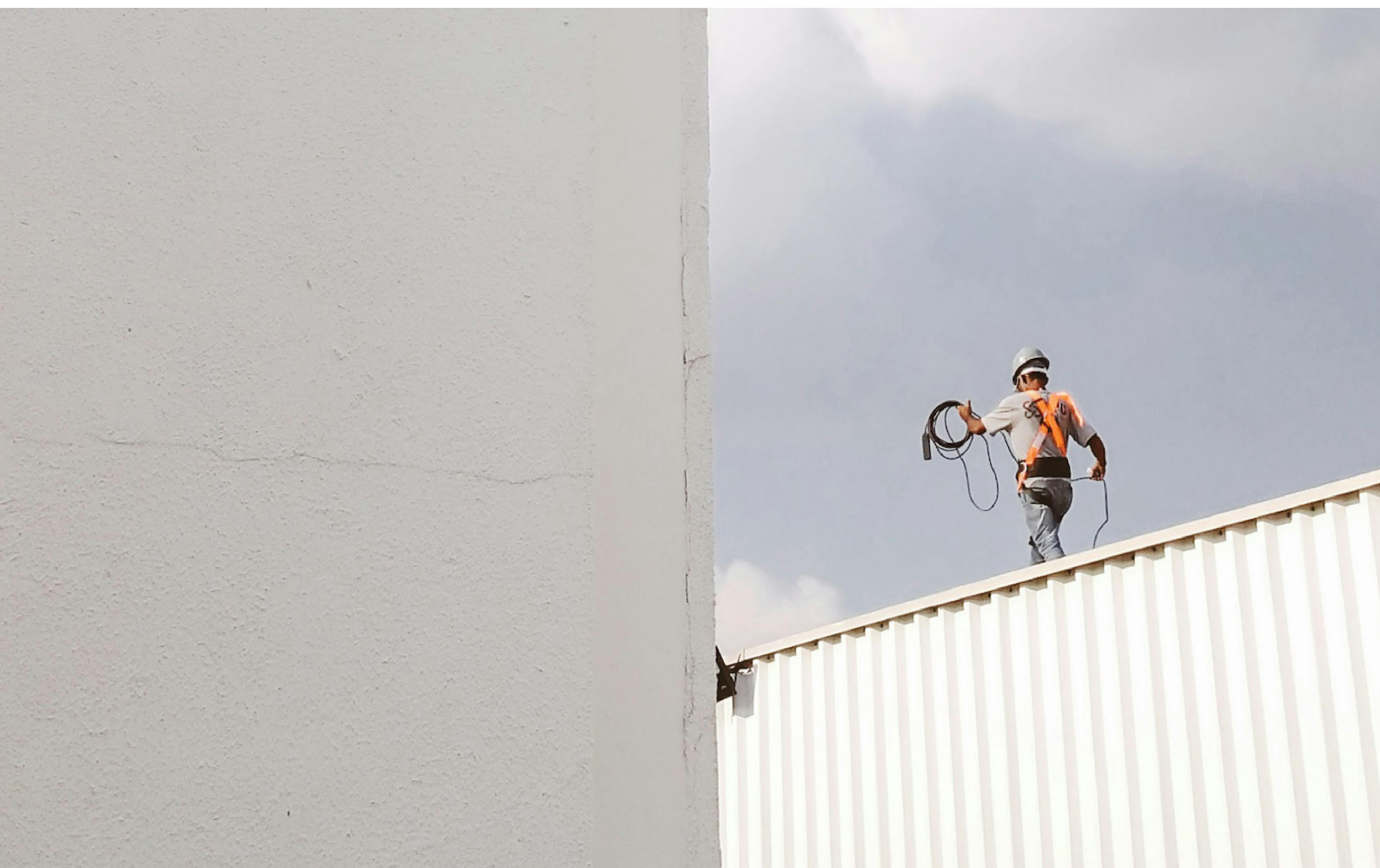




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# **Illegal Employment of Third-Country Nationals: 2017-2022 Situation Analysis. Estonia**

## European Migration Network

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

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# EXECUTIVE SUMMARY

First section of the study provides an overview of national and legal policy framework changes on illegal employment in Estonia. To better understand the migration context in Estonia, this section gives an overview of the annual immigration quota as well as the logic behind it and how migration volumes have increased in Estonia, especially in terms of labour migration. As the quota was first met in 2016, many employers and private sector organisations started to raise their concern that the immigration quota has begun to have a negative effect on economic growth. As a result, since 2017 significant changes were made to the Aliens Act (which regulates the bases for entry, stay, residence and employment in Estonia) to address the needs of economy, ease the ways to recruit foreign labour and attract skilled migrants. Alongside with increased volumes (especially in terms of short-term employment), preventing and tackling illegal employment has become one of the priorities regarding migration in general.

Second part of the study focuses on prevention measures. The list of sectors to be at greater risk to illegal employment is on a yearly basis identified in the annual broader risk assessment. Profile for illegal employment inflicts mainly employment sectors which are focused on blue-collar work and over the period of 6 years, the list has remained quite the same: construction, manufacturing, wholesale and retail trade, agriculture, and accommodation/food service-related activities. The Estonian Police and Border Guard Board (PBGB), Tax and Customs Board and Labour Inspectorate have signed (and already renewed) a cooperation agreement aimed at sharing information, conducting joint targeted inspections, and using resources as effectively as possible (covering different areas such as illegal employment, labour exploitation, tax frauds, protection of employees' rights as well as human trafficking related offences). This section also provides an overview of profile of employers as well as employees that have been found to have engaged in illegal employment.

Third section of the study focuses on identification of illegal employment measures implemented: inspections, violations, misdemeanour proceedings, free migration consultations (by PBGB), free legal advice and work environment consultations (by Labour Inspectorate), trainings, awareness raising campaigns and relevant statistics. Overview is also provided on challenges, good practices, and developments in the field of digitalisation (Migration Supervision Database MIGIS and Migration Information System RIS).

Fourth part of the study covers sanctions introduced for employers including amendments in legislation, good practices, and challenges. Several major amendments were introduced in 2018 including increasing the fines for legal entities who enable illegal employment, tenfold. Next set of amendments were approved in 2020 to prevent disregard for the rules of employment and paying income tax on the employees' salaries. In 2022, amendments addressed the assessment of reliability (of employer, educational institution, internship provider etc.), ensuring payment of required remuneration and restricting short-term employment to full-time to prevent cases where part-time work is used to deviate from the salary criterion.

Fifth section addresses outcomes for third-country nationals in illegal employment and covers topics such as procedures for lodging complaints against employer, applying for back payment, questions regarding representation and procedures in place if the third-country national is detected from illegal employment. This part also provides statistics on labour disputes regarding third-country nationals from 2017 to 2022.



# Methodology

This study is based on both primary and secondary data obtained via desk research or from the key stakeholders in the field of migration and employment. Where necessary, publicly available information was used, such as policy papers, statistics, reports, news and public websites. The majority of information has been collected from the stakeholders through formal inquiries and expert interviews.

The key stakeholders involved in the making of this study include:



**The Estonian Police and Border Guard Board (PBGB)**

is an institution of executive power within the area of government of the Ministry of the Interior and the main functions thereof are protection of public order, organisation of matters of border management, organisation of search and rescue operations at sea, and organisation of matters in the area of citizenship and migration. The PBGB also supervises temporary stay, residence and employment of third-country nationals in Estonia.



**The Labour Inspectorate of Estonia** is a government agency operating within the area of governance of the Ministry of Economic Affairs and Communications that exercises supervision and applies state coercive measures on grounds and within the limits as provided by law. The main tasks include: implement the work environment policy; exercise supervision over compliance with the legislative requirements regulating occupational health and safety and labour relations in the work environment; inform the general public, employees and employers about the risks and hazards in the work

environment, settle labour disputes and conduct conciliation procedures in a body for extra-judicial labour dispute settlement proceedings.



The main tasks of the **Ministry of Interior of Estonia**

include ensuring public order and internal security, regulating crisis management and rescue works, guarding and protecting the state border, coordinating citizenship and migration issues, co-ordination issues concerning population and supporting the development of civil society, as well as volunteer associations.



**The Estonian Tax and Customs Board**

operates in the administrative area of the Ministry of Finance. The purpose of Estonian Tax and Customs Board is to administer state revenues, implement national tax and customs policy and protect society and legal economic activity.

The information and data presented in this report were obtained from these organisations unless specified otherwise. The data collection and desk research were carried out in August 2023 – November 2023. The study uses definitions, which – unless otherwise stated – are based on the EMN Asylum and Migration Glossary.<sup>1</sup>

<sup>1</sup> EMN Glossary, [https://ec.europa.eu/home-affairs/what-we-do/networks/european\\_migration\\_network/glossary\\_en](https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_en), last accessed on 31 January 2024.



# 1. National legal and policy framework changes on illegal employment

## 1.1 Prevention of illegal employment of third-country nationals as one of the national priorities

Prevention of illegal employment of third-country nationals has been one of the national priorities since 2017 when Estonia became growingly a destination country in terms of labour migration.

In order to better understand the context, it is important to note that the number of third country nationals who can settle in Estonia, is regulated by the annual immigration quota which cannot exceed 0,1% of the permanent population of Estonia annually<sup>2</sup>. The quota system was established in the early 1990s after Estonia regained its independence and as a counter reaction towards the large-scale immigration during Soviet occupation.

The immigration quota mainly regulates labour and business migration from third countries to Estonia. The quota includes temporary residence permits for work and entrepreneurship and temporary residence permits based on a foreign agreement. Although the logic behind the immigration quota has not been significantly changed since it was established, the labour demand in Estonia started to increase in 2016 when, for the first time, the immigration quota was met. Since then, the quota has fulfilled faster and faster.

**Table 1. Immigration quota 2017-2022**  
(Source: PBGB)

| YEAR | IMMIGRATION QUOTA | NUMBER OF RESIDENCE PERMITS ISSUED UNDER THE QUOTA | FULFILMENT OF THE QUOTA |
|------|-------------------|--|-------------------------|
| 2017 | 1317              | 1317   | 100%                    |
| 2018 | 1315              | 1315   | 100%                    |
| 2019 | 1315              | 1315   | 100%                    |
| 2020 | 1314              | 1282   | 97%*                    |
| 2021 | 1315              | 1286   | 98%*                    |
| 2022 | 1311              | 1284   | 98%*                    |

\* The annual immigration quota has reserved a certain proportion of temporary residence permits for working in a performance institution as a creative employee, for professional activities as an athlete, coach, sports referee or sports employee, and for permits based on a foreign agreement. In these categories the immigration quota was not met - 2020 and 2021 were influenced by the COVID-pandemic, 2022 by Russian aggression against Ukraine.

<sup>2</sup> § 113 of the Aliens Act, available here: <https://www.riigiteataja.ee/en/eli/508092023001/consolide> Annual immigration quota does not include: employees in the field of information and communication technology as well as foreigners working in start-ups and engaged in the start-up business; family and study migration; starting a job as a lecturer; acting as a major investor and working as a top specialist (i.e. a foreigner whose employer pays at least 1.5 times the average Estonian salary); citizens of the European Union and their family members; citizens of the United States, the United Kingdom and Japan; and applicants for international protection.

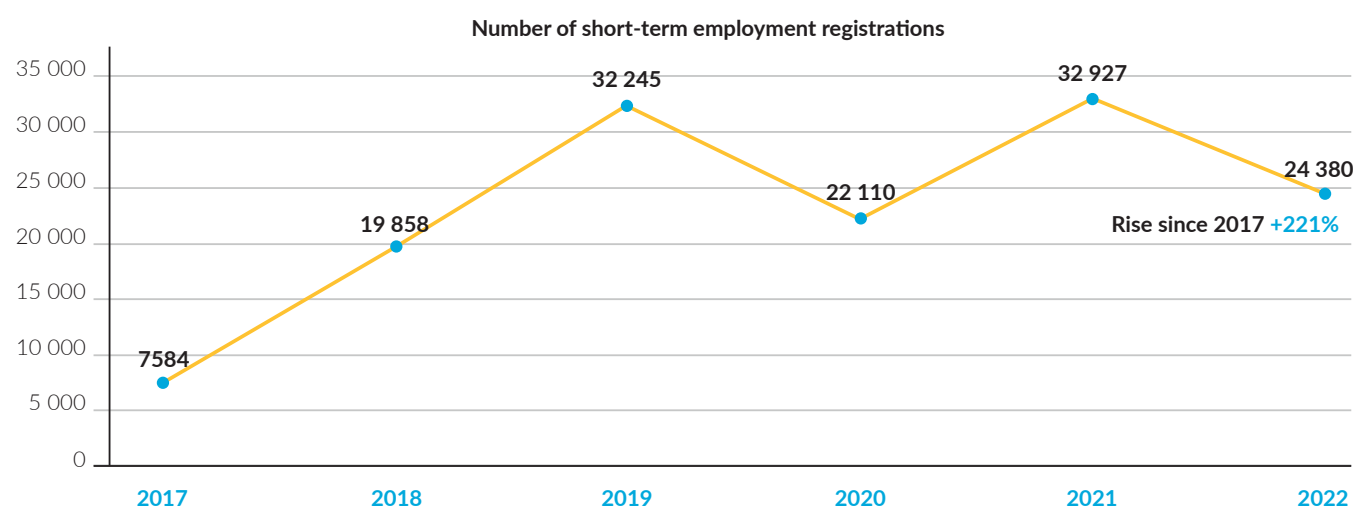


**Table 2. First-time residence permits issued for employment, 2017-2022 (Source: PBGB)**

|  | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | RISE SINCE 2017 |
|--|------|------|------|------|------|------|-----------------|
| <b>FIRST-TIME RESIDENCE PERMITS ISSUED FOR EMPLOYMENT</b>  | 1532 | 1851 | 2218 | 2089 | 2249 | 2463 | + 60%           |
| <b>TOTAL NUMBER OF FIRST-TIME RESIDENCE PERMITS ISSUED</b> | 4380 | 4912 | 5984 | 4710 | 6087 | 5989 | +37%            |

As the quota become an obstacle for employing foreign workforce, many employers and private sector organisations started to raise their concern that the immigration quota has begun to have a negative effect on economic growth. As a result, since 2017 several significant changes were made to relevant acts to address the needs of economy, ease the ways to recruit foreign labour and attract skilled migrants. In addition, several exemptions that are not subjected to the immigration quota have also been introduced<sup>3</sup>.

In 2018, significant changes in legislation regarding work migration resulted in a threefold increase in short-term employment registrations of third-country nationals. This also brought along a significant rise in misdemeanour cases concerning illegal employment and violations of employment conditions (employees were not registered by the employer, salaries were lower than required, working hours longer than agreed, etc.). Growing demand for foreign workforce, rise in illegal employment cases and tax evasion made preventing and tackling the problem one of the national political priorities.

**Table 3. Number of short-term employment registrations, 2017-2022 (Source: PBGB)**

While for previous years the labour market has been dominated by Ukraine, Russian and Belarussian citizens, their share decreased significantly in 2022 due to Russian aggression in Ukraine and Estonian stance to condemn the attack and to restrict the ability of Russia and Belarus to carry on with ordinary international life at the levels of both the state and its citizens. Sanctions were imposed on cross-border movement, employment and study possibilities for both Russian and Belarussian citizens. Regarding short-term employment, this resulted in rising share of citizens from Central-Asian region (Uzbekistan, Kazakhstan, but also Kyrgyzstan and Tajikistan) and Moldova. Regarding temporary residence permits for employment, this resulted in rising share of citizens from India and Brazil.

<sup>3</sup> Sisserände piirarv läheb ülevaatamisele, Äripäev, 28.07.2017, available here (in Estonian): <https://www.aripeev.ee/uudised/2017/07/28/sisserande-piirarv-laheb-ulevaatamisele>

**Table 4. Top 3 countries of nationality of TRP for employment, 2017-2022 (Source: PBGB)**

|    | 2017 |      | 2018 |      | 2019 |      | 2020 |      | 2021 |      | 2022 |     |
|----|------|------|------|------|------|------|------|------|------|------|------|-----|
| 1. | UA   | 1421 | UA   | 1619 | UA   | 1676 | UA   | 1523 | UA   | 1570 | UA   | 931 |
| 2. | BY   | 279  | BY   | 372  | BY   | 424  | BY   | 487  | BY   | 568  | RU   | 215 |
| 3. | RU   | 97   | RU   | 139  | RU   | 203  | RU   | 235  | RU   | 320  | IN   | 193 |

**Table 5. Top 3 countries of nationality of registered short-term employments, 2017-2022 (Source: PBGB)**

|    | 2017 |      | 2018 |        | 2019 |        | 2020 |        | 2021 |        | 2022 |        |
|----|------|------|------|--------|------|--------|------|--------|------|--------|------|--------|
| 1. | UA   | 5589 | UA   | 15 524 | UA   | 24 321 | UA   | 15 820 | UA   | 23 570 | UA   | 11 434 |
| 2. | BY   | 471  | BY   | 1112   | BY   | 1829   | BY   | 1375   | BY   | 1855   | UZB  | 2833   |
| 3. | RU   | 359  | RU   | 864    | RU   | 1464   | RU   | 1056   | RU   | 1801   | MD   | 2750   |

#### Most important cornerstones or examples that illustrate the topic to be a priority include:

- In 2017, PBGB launched migration consultants service<sup>4</sup> that offers free advice to support foreigners in settling in Estonia and to serve as a partner to employers, the business community and education institutions and other parties who invite foreign nationals to Estonia.
- In 2018 the Estonian Government approved a new action plan "The Illegal Employment Prevention and Prohibiting Action Plan"<sup>5</sup>.
- In 2019, PBGB in collaboration with Estonian Tax and Customs Board and Labour Inspectorate started the process of developing a common migration information system aimed to simplify the exchange of information and resources between different authorities, but also to simplify the communication between the state and the individual (via creating a self-service portal that enables to submit applications/documents and communicate with state authorities electronically on a one-stop-shop basis). Relevant changes in terms of legal framework are currently underway.
- In 2019, Ministry of Finance together with Ministry of Interior, PBGB, Estonian Tax and Customs Board and Labour Inspectorate drafted an action plan and amendments to relevant acts to prevent tax evasion and violation of employment conditions "Action plan to amend the Taxation Act (registration on construction sites)"<sup>6</sup>. Action plan aimed at targeting shadow economy particularly in the economic sector by introducing a requirement to register construction subcontracting chains, employees allowed to construction site and their time spent on the site. These measures would help to support more honest competition by ensuring that individuals on construction sites have been properly registered to work and are receiving legitimate wages for all hours worked.<sup>7</sup> Electronic registration in the field of construction entered into force on 1<sup>st</sup> October 2023.
- In 2021, Government approved the "Violence prevention agreement"<sup>8</sup> which sets out measures for violence and trafficking prevention for the years 2021-2025. The agreement also includes activities addressed to migrants and employers with particular emphasis on construction, manufacturing and service sectors.
- In 2022, PBGB finalised its migration supervision database (MIGIS, part of the broader migration information system), which enables automatic and

4 PBGB's migration consultants, available here: <https://www.politsei.ee/en/migration-consultants>

5 Action Plan for Preventing Illegal Employment, Ministry of the Interior, available here: <https://siseministeerium.ee/en/action-plan-preventing-illegal-employment>

6 Maksukorralduse seaduse muutmise seaduseelnõu väljatöötamise kavatsus (ehitusplatsidel registreerimine), 29.11.2019, available here (in Estonian): <https://www.koda.ee/sites/default/files/content-type/content/2019-12/Ehitusobjektil%20registreerimine%20VTK.pdf>

7 Paper: Electronic work registration to be introduced in construction, 13.01.2020, ERR, available here: <https://news.err.ee/1023404/paper-electronic-work-registration-to-be-introduced-in-construction>

8 Violence prevention agreement", Ministry of Justice, available here: <https://www.just.ee/en/crime-and-prevention-crime/violence-prevention-agreement>

manual data-based checks against different databases, creates risk profiles, plans and reports inspections, draws statistics and exchanges information with other state authorities. The MIGIS, as an automated migration supervision IT-solution, assist officials to track persons' compliance with the legal requirements to reside in Estonia and to prevent misuse or irregular stay. Automated checks ensure up-to-date awareness of third-country nationals staying in Estonia and thus provides faster ability to react to misuse or irregular stay. Legislative amendment to implement MIGIS was submitted to the Riigikogu in the end of 2022 and adopted in February 2023<sup>9</sup>. First stage of MIGIS went live in July 2023.

## 1.2 Policy debates regarding illegal employment since 2017

A debate and process to review the immigration quota began in 2016 when the quota was first met, and employers started to see it as an obstacle for recruiting foreign workforce<sup>10</sup>. Responding to this, the Government of Estonia called on the Minister of the Interior to gather a group of stakeholders and experts to discuss and reform the immigration quota. Based on the discussions that were held by the working group, a proposal for an urgent change to the regulation of immigration quota was presented to the Government. Conjointly, the Government extended the mandate of the working group and ordered it to develop proposals for long-term changes to immigration regulations.

The visa-free regime with respect to Ukraine had a significant impact in terms of cases of entering the country without a visa and then engaging in illegal employment. Direct WizzAir flights from Kyiv to Tallinn also made it cheaper for Ukrainians to travel to Estonia. However, there were also other factors in play – for example, the 2017 amendments to the Aliens Act simplified the conditions of registering for short-term employment and in 2018, short-term employment became even more popular as the

maximum period of employment was extended from 270 days to 360 days.

In 2018, there was also a rise in misdemeanour cases concerning illegal employment and violations of employment conditions. Illegal employment became somewhat a “hot topic” in the Estonian media and political debates<sup>11</sup>. The coverage focused mainly on the Ukrainian citizens and possible violations of employment conditions by employers (using different schemes such as posted workers and rental workforce to avoid labour protection mechanisms and taxes.) The criticisms was mainly directed at the employers in the construction sector who may have mistreated Ukrainian workers.

In 2018 Ministry of the Interior worked out a special action plan “The Illegal Employment Prevention and Prohibiting Action Plan” which covered several activities to address the labour issues of the foreigners working in Estonia and also had the purpose to prevent trafficking in human beings. Debate was followed by introducing several amendments to relevant acts and the Action Plan was updated again in 2019.

2020 was heavily affected by the COVID-19 pandemic. The shortage of seasonal workers and the restrictions started a debate on labour crisis in spring and later in July and October. During spring, the seasonal workers were not able to enter Estonia due to worldwide COVID-19 restrictions. As unemployment grew in several sectors affected by COVID-19 restrictions (e.g. tourism, entertainment), the Government suggested that the workplaces aimed for seasonal workers could be filled with local nationals or foreigners already residing in Estonia. This idea was criticised by, among others, the Chamber of Commerce<sup>12</sup>, Estonian Employers' Confederation, the Chamber of Agriculture and Commerce, and the Estonian Farmers Federation<sup>13</sup>. Second round of debate appeared in July as the visas of the foreign workers who were in Estonia as of 17 March 2020 (i.e. the beginning of emergency situation) and who were given the possibility to continue working in Estonia without time limit and remuneration requirement (see in more detail in previous paragraph) were set to expire on July 31 2020. At the same time sectors such

9 „Riigikogu võttis vastu 10 õigusakti“, Riigikogu, available here: <https://www.riigikogu.ee/istungi-ulevaated/riigikogu-vottis-vastu-10-oigusakti/> (in Estonian)

10 Migration quota troubles politicians, Postimees, 18.07.2017, available here: <https://news.postimees.ee/4182131/migration-quota-troubles-politicians>

11 Some examples of news articles published:

- Tabati järjekordsed Ukraina illegaalid, Virumaa Teataja, 30.01.2018, available here (in Estonian): <https://virumaateataja.postimees.ee/4391519/tabati-jarjekordsed-ukrainlastest-illegaalid>

- Ehitusel töötanud ukrainlased üritasid kontrollle märgates põgeneda, Postimees, 06.03.2018, available here (in Estonian): <https://www.postimees.ee/4431221/galerii-ja-video-ehitusel-tootanud-ukrainlased-uritasid-kontrolle-margates-pogeneda>

- Estonian ministry wants to make use of illegal workforce a criminal offense, 25.04.2018, Postimees, available here: <https://news.postimees.ee/4478614/estonian-ministry-would-make-use-of-illegal-workforce-a-criminal-offense>

- Ebaseaduslikku tööd ei tohi olla. Punkt, Äripäev, 11.05.2018, available here (in Estonian): <https://www.aripaev.ee/arvamused/2018/05/11/ebaseaduslikku-tood-ei-tohi-olla-punkt>

- Ümbrikupalga eest töötanud ehitajad süüdistavaid ettevõtjaid alatutes võtetes, Äripäev, 23.07.2018, available here (in Estonian): <https://www.aripaev.ee/uudised/2018/07/20/umbrikupalga-eest-tootanud-ehitajad-suudistavad-ettevotjaid-alatutes-votetes>

12 Commerce chamber: Bill restricting foreign labor will harm economy, ERR, 12.11.2020, available here: <https://news.err.ee/1158048/commerce-chamber-bill-restricting-foreign-labor-will-harm-economy>

13 Employers demand foreign labor be allowed into Estonia, ERR, 26.03.2020, available here: <https://news.err.ee/1068954/employers-demand-foreign-labor-be-allowed-into-estonia>



as construction and agriculture (especially strawberry growers) were looking at an impending shortage of workers for high times in August<sup>14</sup>. In July, the coalition amended the Government order<sup>15</sup>, thus permitting third country nationals' entry to Estonia for working.

Throughout 2020, there was a public debate on the proposed amendments to the Aliens Act, Higher Education Act and the Study Allowances and Study Loans Act. The amendments' explanatory memorandum<sup>16</sup> indicated that the aim of the changes is firstly to organise the rules for working in Estonia, taking into account the development trends of the economy and the labour market; and secondly to organise the granting of a D-visa, application for a residence permit for study purposes and the rules for living in Estonia after the studies. The draft law has received some disapproval from various stakeholders (incl. the Federation of Estonian Student Unions, the Estonian Chamber of Commerce and Industry, the Estonian Employers' Confederation, the Estonian Association of Information Technology and Telecommunications, the Estonian Service Industry Association) saying that these changes may influence the competitiveness of Estonia's economy and higher education, decreases ensuring equal opportunities, and prevent foreigners from integrating into Estonian society<sup>17</sup>. Amendments stayed in a stage of draft proposal until 2021/2022.

The year 2022 was characterised by the Russian invasion of Ukraine on February 24, which coincided with Estonia's Independence Day. In March, Riigikogu discussed<sup>18</sup> the establishment of more flexible conditions for labour migration and learning mobility for people from third countries, which among other things will simplify the inclusion of Ukrainian war refugees in the labour market. The aforementioned draft proposal was changed, particularly with emphasis on Ukrainian war refugees and those unable to return. Amendments, aimed at reorganizing the regulation for working in Estonia for third-country nationals, was passed in May 2022.

The debate shifted from implementing restrictive measures and tackling illegal employment towards the war in Ukraine, refugees and how to ensure a smooth entry into the labour market. Concerns were mainly related to the vulnerable position of refugees regarding employment and being more at risk of possibly being mistreated (lower wages, longer working hours etc.)<sup>19</sup>

## 1.3 Major changes to law, policy and practice regarding illegal employment of third-country nationals

### Law and policy changes 2017:

In 2016, the Government approved "Internal security strategy 2015-2020"<sup>20</sup> which, among other topics, set goals for balanced migration policy and prevention of illegal migration. The strategy/action plan has been renewed since. There were no significant legislative nor policy changes regarding tackling and preventing illegal employment. Amendments were planned for 2018.

However, regarding legal migration, number of amendments to the Aliens Act came into force in 2017, streamlining and simplifying the legal migration system to attract IT professionals and startup entrepreneurs and employees. ICT sector employees, start-up founders and start-up employees were excluded from the annual immigration quota. In addition, a new Start-up program was introduced in order to provide more favourable conditions for entering Estonia for start-up founders and employees (employees working in a start-up are not subjected to salary requirements, founders are exempted from the investment requirement that hold for traditional companies etc.).

### Changes in practice 2017:

While the overall number of illegal entries decreased, misuse of legal grounds for stay increased. Since March 2017, decisions with regard to registration of short-term employment and some types of residence permits were made locally in the PBGB Prefectures. Change was introduced to provide the decision-making process with access to more in-depth local information. Furthermore, the change enabled more efficient structural surveillance of the use of right of residence.

Previously, the PBGB, Tax and Customs Board and Labour Inspectorate planned their activities individually. In 2017, a cooperation agreement was signed and the three institutions started to meet regularly (quarterly) to exchange information and plan joint activities.

In order to support and facilitate third-country nationals to settle in legally, and also to reduce bureaucracy, PBGB

14 Committee sends bill amending foreigner workers' rights to Riigikogu, ERR, 14.10.2020, available here: <https://news.err.ee/1146707/committee-sends-bill-amending-foreigner-workers-rights-to-riigikogu>

15 Government order no 169 „Imposition of temporary restrictions on crossing the state border in order to prevent a new outbreak of the coronavirus SARS-CoV-2 causing the COVID-19 disease", available here: <https://www.riigiteataja.ee/en/eli/522022021005/consolidate>

16 Välismaalaste seaduse ja välismaalasele rahvusvahelise kaitse andmise seaduse muutmise seadus 241 UA, Riigikogu, 20.11.2020, available here (in Estonian): <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/3ce82c85-3124-428f-85bd-a17106aa9e5e/V%C3%A4lismaalaste%20>

17 Opinion: Interior ministry bill restricts foreign students' rights, ERR, 14.01.2020, available here: <https://news.err.ee/1023891/opinion-interior-ministry-bill-restricts-foreign-students-rights>

18 The second reading of the amendments to the Aliens Act was adjourned in the Riigikogu, 22.03.2022, Riigikogu, available here: <https://www.riigikogu.ee/en/sitting-reviews/the-second-reading-of-the-amendments-to-the-aliens-act-was-adjourned-in-the-riigikogu/>

19 Ukraina põgenikud on tööturul petturiatele kerge saak, Eesti Päevaleht, 25.10.2022, available here (in Estonian): <https://epl.delfi.ee/artikkel/120086794/ukraina-pogenikud-on-tooturul-petturiatele-kerge-saak>

20 Ministry of Interior, available here: <https://www.siseministeerium.ee/en/news/ministry-interior-finalised-internal-security-strategy-2015-2020>

launched free of charge migration advisory service in Estonian, Russian and English, which started to offer information and counselling about the legal grounds for entering and staying in Estonia, documents, application processes and requirements. Information provision was (and still is) available via phone, email, Skype, one-on-one meetings and trainings. There were almost 10 000 consultations in 2017, mostly via phone calls and in written form. Approximately half of the consultations were held in Estonian (requested by employers, family members, educational institutions and other representatives) and the other half divided roughly equally between English and Russian language. Migration advisory service was funded by the European Union through the European Social Fund and from the state budget.

### Law and policy changes in 2018:

The growing demand for foreign workforce brought a rise in illegal employment and tax evasion, making it necessary to focus more closely on illegal employment.

In July 2018, the fines for legal entities who enable illegal employment were

increased tenfold. New provisions of the Aliens Act included:

- enabling the employment of a third-country national who is staying in Estonia without a legal basis is punishable by a fine of up to 300 fine units. If the offender is a legal entity, it is punishable by a fine of up to 32 000 euros (previously, it was 3200 euros).
- enabling the violation of employment conditions of a third-country national in Estonia, incl. employing a person not in compliance with the conditions determined by the legal basis, is punishable by a fine of up to 300 fine units. If the offender is a legal entity, it is punishable by a fine of up to 32 000 euros (previously, it was 3200 euros).
- payment of remuneration less than the wage rate specified in the Act or failure to pay remuneration to a third-country worker in Estonia is punishable by a fine of up to 300 fine units. If the offender is a legal entity, it is punishable by a fine of up to 32 000 euros (previously, it was 3200 euros).

In addition, provisions were added to the Aliens Act (§296<sup>21</sup>) regarding the prohibition on economic activities if a physical or a legal person has systematically:

- enabled the employment of a third-country national who is staying in Estonia illegally;
- enabled a violation of employment conditions of a third-country worker in Estonia;

- paid a third-country worker in Estonia remuneration less than the wage rate specified in the Act, or has failed to pay remuneration.

Other amendments (including Public Procurement Act) provided that the contracting authority or entity does not give a public contract to a tenderer or a candidate and excludes from the procurement procedure a tenderer or a candidate who or whose member of an administrative, management or supervisory board or another legal representative or a contractual representative involved in the public procurement has been convicted by a final judgment for enabling an illegally staying third-country to work or for enabling a breach of the criteria applicable to the work performed by an third-country national in Estonia, including for payment of a salary below the statutory rate.

A minor amendment concerned also posted workers. Since 15 August 2018, employers are obliged to submit to the Labour Inspectorate information about posted workers before they begin their work. Previously, employers were obliged to submit the data on the first day of work. The new provisions also foresaw a fine in case this obligation is not fulfilled.

Regarding legal migration, the most significant amendment prolonged the maximum period of short-term employment for third-country nationals staying in the country on a visa from 270 days to 365 days within a period of 455 consecutive days. Amendment was meant to ease the recruitment and employment of third-country nationals in temporary positions and sectors or positions that are more dependent on different stages of economic cycles. In addition, top specialist were excluded from the annual immigration quota.

In order to more efficiently prevent and tackle illegal employment and tax evasion,

a new strategy document "The Illegal employment prevention and prohibiting Action Plan" was approved by the Government in 2018<sup>21</sup>. Parts of the action plan entailed the legislative amendments described above. It outlines how to improve inter-agency cooperation by drawing up mutual risk analyses, directing monitoring resources, organising joint information days, tidying up websites (the Ministry of the Interior has created an information website "Action Plan to Prevent Illegal Employment") and publishing leaflets. In late 2018, leaflets with information about legal options for working in Estonia were published. Leaflets in Estonian, English and Russian were distributed by PBGB at border crossing points, including the international airport.

21 Action plan for preventing illegal employment, available here: <https://siseministeerium.ee/en/action-plan-preventing-illegal-employment>

### Changes in practice:

Compared to 2017, the number of misdemeanour cases sharply dropped in 2018. According to PBGB, the reason for this decrease was partly related to change in migration monitoring practices:

- instead of total inspection, migration monitoring raids by PBGB became more targeted;
- legal entities and entrepreneurs were targeted more frequently than natural persons;
- the number of Ukrainians travelling to Estonia increased significantly due to direct WizzAir flights from Kyiv to Tallinn. To prevent and manage the situation more efficiently in 2018, PBGB carried out more detailed border checks to ascertain the real travel motives of Ukrainians entering the country.

As the number of short-term employment registrations more than doubled by the end of 2018, construction sector started to dominate both in terms foreign labour share engaged as well as violations regarding employment. The most widespread violation in 2018 included cases where an Estonian company hires a third-country national staying in Estonia on a legal basis but does not register the employment of the person in PBGB and fails to pay remuneration in the amount foreseen by law (i.e., at least the Estonian average salary) and labour taxes.

**Table 6. Rate of salary criterion, 2017-2022 (Source: PBGB)**

| TIME OF ACCEPTANCE OF APPLICATION<br>FOR PROCEEDINGS | RATE OF SALARY CRITERION               |                |
|--|--|----------------|
|  | ORDINARY<br>(STARTING FROM 17.01.2017) | TOP SPECIALIST |
| 16.03.2016- 16.01.2017                               | 1321                                   | 2130           |
| 17.01.2017 -01.03.2017                               | 1065                                   | 2130           |
| 02.03.2017-28.02.2018                                | 1146                                   | 2292           |
| 01.03.2018-28.02.2019                                | 1221                                   | 2442           |
| 01.03.2019-02.03.2020                                | 1310                                   | 2620           |
| 03.03.2020-02.03.2021                                | 1407                                   | 2814           |
| 03.03.2021-02.03.2022                                | 1448                                   | 2896           |
| 03.03.2022 - 02.03.2023                              | 1548                                   | 3096           |

As PBGB, Labour Inspectorate and Estonian Tax and Customs Board collected their data separately, discussions on developing a foreign workers' registration system (migration information system) to streamline the information flow between agencies and entrepreneurs started.

In 2018, the service of migration consultants continued to be popular – PBGB's 4 advisors provided 14 984 consultations, including 67 trainings in 2018. 41% of the consultations were provided in Estonian language, which suggests that the service was widely used by Estonian employers, educational institutions or Estonian relatives of third-country nationals. There was an almost equal amount of English and Russian language consultations – 29% and 30%, respectively.

### Law and policy changes in 2019:

To prevent and tackle illegal employment, "The Illegal Employment Prevention and Prohibiting Action Plan" was updated. Ministry of the Interior finalized a draft for amendments to the Aliens Act as well as to the Income Tax Act and Taxation Act (planned for 2020). Amendments were aimed at preventing possible violation of working conditions (first and foremost avoiding the set salary criteria) and evasion from income tax. According to planned amendments, the legality of third-country national's employment and its verification would be the responsibility of the company in Estonia that actually benefits from employee's work meaning that the obligation to ensure and provide proof of employment on correct legal basis also extends to companies using temporary agency work.

## Changes in practice in 2019:

In 2019, more targeted inspections were carried out. Emphasis of the inspections was on legal persons who enabled the employment for a third-country national staying in Estonia without legal basis and on the departments responsible for the registration of short-term employment. Every Prefecture of the PBGB planned its targeted inspections based on the annual risk assessment. Urgent inspections were carried out on an ad-hoc basis.

The PBGB compiled information materials mainly for embassies on legal entrance and stay in Estonia and departure from Estonia in case of unlawful stay. The material highlighted the key information on the most common types of migration, and legal bases for third-country nationals to arrive and stay in Estonia. The material was compiled by IOM Estonian office and the PBGB in the framework of the project 'Improving cooperation with third countries on the return of persons'. Materials were translated into English and Russian.

In 2019, the service of migration consultants became even more popular – PBGB's four advisors provided altogether 19 157 consultations (14 984 in 2018), including 61 trainings. 40% of the consultations were provided in Estonian language, 25% in English and 35% in Russian. The number of consultations in Russian language increased indicating that foreigners themselves started to use the service, but also Russian speaking employees showed bigger interest towards the service.

Regarding legal migration, changes were introduced to facilitate the application process of short-term employment for the employers by providing a possibility to submit applications for short-term employment registration via the self-service environment. By the end of 2019, almost 50% of all applications for short-term employment registrations were submitted online.

## Law and policy changes in 2020:

Increased demand for foreign labour created a situation where some employers did not comply with the conditions established in the Aliens Act - employers tried to find ways not to pay the Estonian average salary in order to gain an unfair competitive advantage, seemingly creating a situation whereby European Union law a lower salary could be paid than the one required by Estonian law. Such unlawful conditions impaired competitive advantage of Estonian residents in the labour market.

Thus, in 2020, Riigikogu approved amendments to the Aliens Act, the Income Tax Act and the Taxation Act, the aim of which was to prevent disregard for the rules of employment in Estonia. Amendments ensured that the income tax payable on the salary of the foreigners working in Estonia is received in Estonia and could be used for the benefit of the Estonian society<sup>22</sup>.

First set of amendments which were mainly related to provision of assessment of reliability (the PBGB may provide an assessment of the unreliability of an employer, educational institution, internship provider or other person if a foreigner comes to a person or if the obligations of a sponsor will be applicable):

- The PBGB may refuse to review application for registration of short-term employment in Estonia if the PBGB has previously made an assessment of the unreliability of the sponsor of the foreigner<sup>23</sup>.
- The issuance of a temporary residence permit for employment may be refused, if the liquidation of the employer or user undertaking has been initiated, the court has accepted the bankruptcy petition filed against the employer or user undertaking and decided to appoint an interim trustee, the employer or user undertaking has been declared bankrupt, the bankruptcy proceedings filed against the employer or user undertaking end with abatement without being declared bankrupt or the employer or user undertaking has no actual economic activity<sup>24</sup>.

Additional grounds for an application for temporary residence permit to be deemed as clearly unfounded were also introduced (e.g. application for a temporary residence permit has been submitted in order to avoid the enforcement of return, expulsion or extradition procedure, a credible reason for applying for a temporary residence permit has not been provided, explanations provided by the third-country national are inconsistent, conflicting, improbable or lacking in circumstantial or personal details etc.).<sup>25</sup>

Second set of amendments were mainly concerning an undertaking employment registered in Estonia by setting a requirement to the user to verify that a third-country national employed by the undertaking has a legal basis for the stay and employment in Estonia and to ensure that he/she is employed in Estonia on the legal basis issued for that purpose and in accordance with a contract or other agreement entered into between the employer and the user undertaking. If an employer, user undertaking or host

22 Adopted amendments to law prevent disregard for rules of employment in Estonia, Ministry of the Interior, available here: <https://www.siseministerium.ee/en/news/adopted-amendments-law-prevent-disregard-rules-employment-estonia>

23 § 107<sup>2</sup>, Aliens Act, available here: <https://www.riigiteataja.ee/en/eli/ee/521072020002/consolide>

24 § 180 p 2 (4<sup>1</sup>), Aliens Act, available here: <https://www.riigiteataja.ee/en/eli/ee/521072020002/consolide>

25 § 219 p 1 (1-6), Aliens Act, available here: <https://www.riigiteataja.ee/en/eli/ee/521072020002/consolide>

entity fails to perform the obligations, PBGB may impede some administrative coercive measures (upon compulsory enforcement the maximum penalty payment is 32,000 euros)<sup>26</sup>. If a legal person fails to perform the obligations, a fine up to 32,000 euros may be imposed<sup>27</sup>.

In June, amendments were made to the Aliens Act, Income Tax Act and Taxation Act in order to prevent the misuse of employment regulations, as well as to ensure that enterprises do not avoid paying taxes and pay foreigners the required Estonian average monthly wage. Pursuant to the amendments:

- The lawfulness of the employment of a foreigner is the responsibility of the company in Estonia that gains actual benefit from the foreigner's work, e.g. a company using temporary agency staff. This means that if the principal of a job or any other company responsible for the performance of work does not prove that it has the right to use a more favourable European Union scheme, i.e. to pay a third country national working in Estonia on a short-term basis a lower salary than stipulated by law, the foreigner has to discontinue his or her employment. The foreigner has to discontinue the employment until the employer has registered his or her employment on the right basis, which means the payment of the Estonian average salary to the foreigner.
- Upon violating the requirements for employment in Estonia and paying a salary lower than prescribed or failing to pay a salary, tax obligations to the Estonian state are also not fulfilled.
- New ground to refuse to review application for registration of short-term employment was added if PBGB has made an assessment of the unreliability of the sponsor of the third-country national.
- New grounds for refusal to register short-term employment were added (e.g. in case of violation of the Aliens Act, if the employer or the user has tax arrears etc.).

### Changes in practice in 2020:

Due to the COVID-19 pandemic, Estonia declared emergency situation on 12th of March until 17th of May in order to obstruct the spreading of the virus. Migration proceedings such as registration of short-term employment, applying or extending residence permits etc, were temporarily suspended. As the number of TCN-s arriving

to Estonia related to labour migration stopped, inspections were not carried out during the emergency situation (only when specific information/tips were forwarded). As PBGB had to make sure that rules and restrictions were followed (e.g. 2+2 rule which meant that up to two people can move together, keeping the distance of two meters from others) and reallocate its resources, more targeted inspections were carried out. In 2019 and 2020, the emphasis of the inspections was much on accommodation establishments with the aim of finding illegally staying and/or working persons.

However, in 2020, judicial obstacles arose regarding the responsibilities of a legal person particularly when implementing Article 300 (violation of conditions of employment) and Article 301 (enabling employment to a third-country national who is staying in Estonia without legal basis) of the Aliens Act. In terms of misdemeanour proceedings, the requirement to identify the executive officer or member of the body who committed the act causes problems. It is often a violation of the supervisory obligation, i.e., a violation committed in the form of inaction, and it is not clear how the responsibilities of the board and other management personnel are distributed in a particular company. The requirement to identify the managing employee each time seems impractical from the procedural point of view as violations may be minor. At the same time, retreating from the principle of fault liability is not acceptable.

In 2020, the number of misdemeanour proceedings against entrepreneurs decreased due the aforementioned problems regarding the implementation of particularly Article 300 of the Aliens Act. PBGB's decisions were contested in court and conducting similar procedures affecting the liability of legal entities was suspended by the 4<sup>th</sup> of May 2020 decision no 4-19-4632 of Riigikohus<sup>28</sup>.

### Law and policy changes in 2021:

In June 2021, the government approved the renewed "Internal security development plan 2020-2030"<sup>29</sup>, which among other topics, sets goals for Estonian migration (including ensuring efficient migration surveillance), citizenship and identity management policy.

In July, a new strategical document by the Ministry of Justice - Violence Prevention Agreement<sup>30</sup> - for preventing trafficking was confirmed by the government. The agreement set out 14 measures for violence prevention and it has one special measure (nr 7) of trafficking which sets for the years 2021-2025 list of activities, which

26 § 296<sup>2</sup>, Aliens Act, available here: <https://www.riigiteataja.ee/en/eli/ee/521072020002/consolide>

27 § 306<sup>1</sup>, Aliens Act, available here: <https://www.riigiteataja.ee/en/eli/ee/521072020002/consolide>

28 Riigikohtu 14.05.2020 decision no 4-19-4632, available here (in Estonian): <https://www.riigiteataja.ee/kohtulahendid/fail.html?id=268029463>

29 Thematic page of the development plan, Ministry of the Interior, available here (in Estonian): <https://www.siseministeerium.ee/stak2030>

30 Thematic page of the agreement, Ministry of Justice, available here: <https://www.just.ee/en/crime-and-prevention-crime/violence-prevention-agreement>



also include activities addressed to migrants and also to employers. For example:

- Training will be provided to employers, in particular in the construction, manufacturing, and service sectors and in the manufacturing industry, as well as to users of seasonal workers in agriculture and elsewhere, to ensure safe and non-discriminatory recruitment chains and to improve the knowledge of employers of migrant worker recruitment rules.
- The knowledge of employees about labour laws, especially among those coming to work in Estonia from abroad, will be increased.
- Inspections based on risk analysis will be organised and data exchange will be intensified to reduce the illegal employment of migrants in Estonia.
- In criminal proceedings, co-operation with the countries of origin of migrants will be enhanced to support investigative measures. The annual plan of the activities will be done early 2022. New Internal Security Fund (ISF) project is planned to address the rights of the migrant workers, give input to awareness raising activities for employers, and also to foreign workers who are third-country nationals.

## Changes in practice in 2021:

In 2021, a national legislation concerning the creation of a national automated biometric identification system (ABIS<sup>31</sup>) database was adopted by the government and entered into force in July 2021. The ABIS database allows the state to capture and store biometric personal data – fingerprints and facial images – and to compare biometric data. Efficient authentication and verification of identity helps law enforcement bodies to prevent forgeries and solve crimes, thus having a positive effect on both public order and security. The new database went live in 2022.

PBGB continued within its cooperation framework with the Estonian Tax and Customs Board and the Labour Inspectorate, activities to prevent and tackle illegal employment in Estonia and to ensure that foreign labour-force, who are employed in Estonia, will pay their taxes in Estonia. Information on the employer's responsibilities, when hiring foreign labour-force, was also shared. Driver to continue with preventive activities was continually quite high number of violations of working conditions.

## Law and policy changes in 2022:

Several major amendments were introduced in the Aliens Act in 2022, some went into force in 2023. As there was an increase in the misuse of working conditions for both short-term employment as well as working on a basis of

a temporary residence permit, the following amendment was introduced:

- Short-term employment was restricted to full-time employment<sup>32</sup> and the foreigner has to be paid at least the Estonian average salary regardless of the agreed working hours.
- If a foreigner works on the basis of a temporary residence permit intended for employment, the employer must pay the foreigner at least the Estonian average salary regardless of the workload agreed in the employment contract. Amendment was made in order to prevent cases where the employer uses part-time work to deviate from the salary criterion in order to pay less than required.

One of the most important legal amendments regarding labour exploitation entered into force regarding ensuring payment of required remuneration<sup>33</sup>:

- If an employer fails to perform the obligation to pay the remuneration provided in the Aliens Act, the PBGB issues a precept to the employer to pay the corresponding remuneration.
- A precept may be issued retroactively for the entire period of employment when the employer did not pay the required remuneration to the alien.
- In the event of failure to pay remuneration for employment by the due term, the right of an alien to stay and work in Estonia expires on the day following that term.
- In the case of a failure to comply with the precept, the PBGB may impose a penalty payment of up to 32,000 euros on the employer.
- Payment of a non-compliance levy does not grant an employee the right for employment in Estonia.
- Previous provisions are also applied to an undertaking which is acting as an intermediary of temporary agency workers, a user undertaking and the host entity of a posted employee.

Before the amendment, there were not enough effective measures provided by the act in order to sanction employers who did not fulfil conditions set for employment nor salary in order to avoid tax payments and gain competitive advantage.

Regarding the war in Ukraine, amendment to allow Ukrainian citizens who worked in Estonia before the 24th of February on the basis of short-term employment to continue their employment after its expiration without being subject to short-term employment requirements. Employer is obliged to pay the foreigner at least 0,8 times the average salary of the respective area of activity to avoid possible exploitation of those unable to return or those fleeing from the war. This was decided in order to support

31 More about ABIS, available here: <https://www.siseministeerium.ee/en/activities/efficient-population-management/abis>

32 § 106, Aliens Act, available here: <https://www.riigiteataja.ee/en/eli/508092023001/consolide>

33 § 286<sup>3</sup>, Aliens Act, available here: <https://www.riigiteataja.ee/en/eli/508092023001/consolide>



the self-sufficiency of Ukrainian citizens staying in Estonia and provide them with an opportunity to work temporarily without excessive bureaucracy and requirements for registering short-term employment.

### Changes in practice in 2022:

To enable better migration management via an IT-Tool, the PBGB, relevant ministries and the IT and Development Center at the Estonian Ministry of Interior (SMIT) finalised a detailed analysis on Migration Supervision Database (MIGIS). Discussions on developing MIGIS as part of a broader migration information system (RIS) started back in 2018. MIGIS is an IT-tool enabling automatic and manual checks within different databases, create risk profiles, plan and report inspections, draw statistics etc. and provide possibility to the prompt exchange of information with other state authorities (Labour Inspectorate and Tax and Customs Board). System will allow to perform checks in legal migration area in a broader scope i.e., to determine whether person use issued permits/visas purposefully and in accordance with set conditions (including work, study, family migration, entrepreneurship, permanent residency). Automated checks ensure up-to-date awareness of third-country nationals staying in Estonia and thus provides faster ability to react to misuse or irregular stay. Legislative amendment to implement MIGIS was submitted to the Riigikogu in the end of 2022 and adopted on 23rd February 2023. First stage of MIGIS was implemented/went live in July 2023. Full implementation is planned for 2024.

PBGB also continued to develop information systems such as: RIS (migration information system), VIISA 2.0 (visa information system) and RAKS2 (international protection system). Developments carried out in 2022 included self-service portal for short-term employment registration and residence permit application process enabling clients to launch applications, monitor the process of applications and to communicate with the PBGB.

PBGB continued to provide free legal migration counselling service and increased the number of migration advisors to 7. Advisors carried out a total of 28 information days (for employers, educational institutions, foreign employees, Ukrainian citizens, and beneficiaries of temporary protection) and provided information via Skype, phone and e-mail on more than 25,000 occasions. Migration advisors play an important role raising awareness of employers, entrepreneurs, educational institutions and to others who invite foreigners to Estonia as well as foreigners, whether employees, students or other. The need for migration

related counselling has increased since introducing the service in 2017. Service plays an important role on providing legal migration related information including the introduction on legislative changes.

The Estonian Labour Inspectorate paid more attention to inspecting the working conditions, including labour relations, of employees from the Ukraine, as they might be a vulnerable group in the Estonian labour market. The Labour Inspectorate received additional budget funds for supervision and control of the working conditions of Ukrainian war refugees, but also to support and counsel employees personally to prevent their misuse and exploitation. As of the end of 2022, the Labour Inspectorate carried out 819 company inspections which included a total of 3,261 employees' workplaces. Inspection of the working conditions of war refugees from Ukraine covered 20% of their monitoring. In 2022, inspectorate received a total of 1,869 labour dispute committees, of which 70 labour dispute committees were from Ukrainians. Only few of them were Ukrainian war refugees, majority were from Ukrainians who resided in Estonia before 24 February 2022.

### New and planned changes for the future:

Action plan drawn in 2019 by the Ministry of Finance together with Ministry of Interior, PBGB, Estonian Tax and Customs Board and Labour Inspectorate conditions ("Action plan to amend the Taxation Act (registration on construction sites)") resulted in relevant legal amendments being passed and new obligations being introduced in construction sector starting from 1<sup>st</sup> of October 2023.

Starting from 1<sup>st</sup> of October 2023<sup>34</sup>, larger constructions, subcontracting chains and employees allowed on constructions must be registered in the System for Registration of Subcontracting Chain and Working Time at the e-services environment of the Tax and Customs Board. The purpose of the obligation is to ensure fair competition and reduce the tax gap in the construction sector. The Estonian Tax and Customs Board has estimated the tax loss resulting from the payment of envelope wages broadly at 99.8 million euros per year. The estimated tax gap related to the construction sector in particular reaches over 20 million euros per year.<sup>35</sup>

Construction companies can start ordering special smart cards for their employees, the issuance of which will start in November, and then they must also start registering the time spent on constructions. The orders for employee

34 Electronic registration in the field of construction, Estonian Tax and Customs Board, available here: <https://www.emta.ee/en/business-client/registration-business/electronic-registration-field-construction>

35 Requirement to register construction subcontracting chains comes into force, Estonian Tax and Customs Board, available here: <https://www.emta.ee/en/news/requirement-register-construction-subcontracting-chains-comes-force>

cards meant for builders will be accepted and the cards will be issued by Hansab AS, which won the corresponding procurement. The data is transferred to the System for Registration of Subcontracting Chain and Working Time (TTKI) created by the Estonian Tax and Customs Board, where information about the customer of the construction service, the construction, the registration system used, main and subcontractors and employees working on the construction is gathered.

All companies are obliged to register constructions and people working there, if:

- the duration of construction work exceeds 30 working days and at least 20 people are at work at a time; or the workload exceeds 500 man-days;
- building of the construction starts after 1 October 2023 or is in progress and the expected completion deadline is later than 1 October 2024.

**Table 7. Obligations in construction sector since 1<sup>st</sup> of October 2023**  
(Source: Tax and Customs Board)

|    | OBLIGATIONS OF THE MAIN CONTRACTOR  | OBLIGATIONS OF THE CONSTRUCTION COMPANY   | OBLIGATIONS OF THE EMPLOYEE   |
|----|---|---|---|
| 1. | Submit the data in the TTKI information system of the Tax and Customs Board before starting construction work.  | Confirm the execution of work in the TTKI system.   | Register entry and exit from the construction with a smart card (employee card) or other permitted electronic registration means. |
| 2. | Ensure proper installation, use and working condition of the electronic registration system on the construction.  | Indicate in the TTKI system the persons (workers and subcontractors) allowed to the construction.   |   |
| 3. | Submit data on the time persons stay on the construction to the Tax and Customs Board.  | Ensure that people allowed to the construction have a smart card (employee card) for entering and exiting the construction.               |   |
| 4. | Keep the data on the time persons stay on the construction during the construction work and for 4 months after the completion of the construction work. | Ensure that persons allowed to the construction record in the electronic registration system all entries and exits from the construction. |   |

Developments are planned for migration information system RIS in order to move towards a single access “window” for different e-services related to legal migration. Developments include:

- updating a digital environment for processing short-term employment registrations;
- building capacity for short-term employment data exchange between PBGB, Tax and Customs Board and Labour Inspectorate;
- updating digital environment for processing residence permit applications and creating a self-service portal for submitting applications, creating data exchange possibilities via X-road<sup>36</sup> with the PBGB, Tax and Customs Board, Labour Inspectorate and Estonian Unemployment Insurance Fund;
- building a consultation service between aforementioned authorities.

As the share of Ukrainian and Russian citizens in the labour market decreased significantly due to the war in Ukraine

and imposed sanctions on cross-border movement, the share of citizens from Central-Asian regions started to increase, including from countries primarily Islamic. Islamic communities are often seen more closed due to cultural differences and harder to reach in terms of services offered by the state. To enable a better coherence with the society and knowledge on practical aspects of adaption (such as the education system, language learning possibilities etc.), the Ministry of Culture (Cultural Diversity Department) in cooperation with the Ministry of Interior (Religious Affairs Department) launched a project to hold information days in the Estonian Islamic Centre. First information day was held in October 2023 separately for men (after Friday prayer) and for women on a weekend to reach as many visitors of the Centre as possible. The first information day was introductory to gather topics that raise the most questions - topics such as kindergarten placement, education system, language learning options and local labour market environment were addressed. As the first meeting proved a success, information days are also planned for the future.

<sup>36</sup> X-Road®, an open-source software and ecosystem solution that provides unified and secure data exchange between private and public sector organisations.







## 2. Prevention measures introduced to tackle illegal employment

### 2.1 Risk assessment and risk sectors

Migration authorities and labour authorities cooperate in relation to monitoring employers and workers in general. PBGB, Tax and Customs Board and Labour Inspectorate have a cooperation agreement under which joint inspections are being performed. The cooperation agreement has been renewed (in 2023). The three different institutions share information for risk analysis purposes and plan joint targeted actions in order to use the resources effectively and cover all different areas (illegal employment of third country nationals, human trafficking related offences, labour exploitation, tax frauds, but also the protection of their rights). Cooperation with other institutions is carried out on an ad-hoc basis. On regional level there is a daily operational cooperation in place. All the above-mentioned authorities are independent in organizing their work. The inspections based on risk assessment are usually shared among the three mentioned institutions and the inspections are carried out in cooperation where possible and necessary.

PBGB establishes a risk analysis annually based on the statistics of the previous years. Risk analyses are also drawn on ad hoc basis i.e. based on necessity. The list of sectors to be at greater risk to illegal employment is on a yearly basis identified in the annual broader risk

assessment in relation to migration. To identify the risk sectors all relevant information is taken into account. This also includes historical results of the inspections carried out and detected unlawful behaviour, criminal intelligence changes in a socioeconomical environment, changes in employment sector, changes in migration flow in general etc. Every Prefecture of the PBGB plans its targeted inspections based on the annual risk assessment. Urgent inspections are carried out on an ad-hoc basis.

#### **List of sectors identified to be at greater risk of illegal employment:**

- Construction;
- Manufacturing;
- Wholesale and retail trade;
- Transportation and storage;
- Agriculture, forestry and fishing;
- Accommodation and food service activities.

## 2.2 Profiles of employers and employees that have been found to have engaged in illegal employment schemes

For the purposes of this study, the PBGB has provided the profile of employers that have been engaged in illegal employment within the framework of 2020 to 2022.

**Table 8. Profile of employers that have been found to have engaged in illegal employment schemes of third-country nationals, 2020-2022 (Source: PBGB)**

|  | 2020*   | 2021**  | 2022***   |
|--|---|---|---|
| <b>FIELD OF ACTIVITY</b>                     | <ul style="list-style-type: none"> <li>- Construction</li> <li>- Manufacturing</li> <li>- Agriculture</li> <li>- Accommodation and food services</li> </ul> <p>Focus: temporary employment agencies, persons providing rideshare platform services.</p> | <ul style="list-style-type: none"> <li>- Acting as intermediary of temporary agency work</li> <li>- Construction</li> <li>- Metal industries</li> <li>- Agriculture</li> <li>- Accommodation and food services</li> </ul> <p>Focus: seasonal work and employers who submit more applications for registering short-term employment.</p> | <ul style="list-style-type: none"> <li>- Acting as intermediary of temporary agency work (large companies)</li> <li>- Rideshare platform services (large companies)</li> <li>- Construction (small companies)</li> <li>- Food services (small companies)</li> <li>- Transportation (small companies)</li> </ul> |
| <b>AVERAGE NO OF EMPLOYEES</b>               | Up to 4   | Up to 90  | Up to 200   |
| <b>AVERAGE TIME IN BUSINESS</b>              | 1-4 years   | Up to 5 years   | Up to 5 years   |
| <b>BUSINESS-RELATED OFFENCES</b>             | Annual report not submitted or debts  | Annual report usually submitted but debts are present, possible prior violations  | Annual report usually submitted but debts are present, possible prior violations  |
| <b>MEMBERS OF THE BOARD</b>                  | Often Russian/Slavic nationalities  | Estonian citizenship, share of Estonian and Russian native speakers is equal  | Estonian citizenship, mostly Russian native speakers  |
| <b>PLACE WHERE THE WORKS ARE CARRIED OUT</b> | Harju county, Tartu county, Võru county, Pärnu county   | Harju county, Tartu county, Ida-Viru county, Pärnu county   | Mostly Harju county   |

\*33 companies that have applied for registering short-term employment at least 50 times per 2020 and violations were found.

\*\* 50 companies that have applied for registering short-term employment more than 50 times per 2021 and violations were found.

\*\*\* 50 companies that applied for registering short-term employment more than 50 times per 2022 and violations were found.

**2020** → a third of the 33 companies analysed were acting as temporary employment agencies (36%) and 27% in the field construction. Main recruited nationalities were Ukrainians, but also Uzbeks, Bangladeshi and Tajiks. There were several cases where the person/employee arrived at the airport but could not name anything other than the name of the company he/she were supposed to commence employment.

**2021** → the share of intermediaries for temporary agency work in all short-term employment registrations rose to 23%. Overall, the number of temporary employment agencies operating in the Estonian market almost doubled within the years 2020 and 2021. Temporary agency work was mainly used in the manufacturing industry.

In 2021, attempts to find labour via Central Asian intermediaries increased. On average, companies that had the most violations, submitted 158 applications for short-term employment registrations. These companies often had problems with following good business practice and meeting the proper wage benchmark.

### TOP5 companies involved in violations, mainly:

- did not register short-term employment;
- did not enter necessary data into the employment register;
- nearly fifth of the employees did not have a legal ground to stay in Estonia.

**2022** → the share of intermediaries of temporary agency work remained stable compared to 2021 with hired foreign labour being mainly used in manufacturing and construction. However, the use of agency work in administrative and support service activities increased more than fourfold.

For the purposes of this study, the PBGB has provided the profile of employees that have been engaged in illegal employment within the framework of 2020 to 2022.

**Table 9. Profile of third-country national employees that have been found to have engaged in illegal employment, 2020-2022 (Source: PBGB)**

|                            | 2020*   | 2021**  | 2022***  |
|----------------------------|---|---|--|
| <b>AVERAGE AGE</b>         | 39  | 36  | 34   |
| <b>SEX</b>                 | Male  | Male  | Male   |
| <b>CITIZENSHIP</b>         | Ukraine, Belarus, Georgia, Moldova, Uzbekistan                            | Ukraine, Belarus, Uzbekistan  | Uzbekistan, Moldova, Russia, Belarus, Georgia  |
| <b>BASES OF EMPLOYMENT</b> | Short-term employment   | Short-term employment   | Short-term employment  |
| <b>EMPLOYMENT SECTOR</b>   | Construction, manufacturing, agriculture, accommodation and food services | Construction, manufacturing, agriculture, accommodation and food services | Ridesharing platforms, construction, accommodation and food services, transportation |
| <b>PLACE OF EMPLOYMENT</b> | Harju county, Tartu county, Võru county, Pärnu county                     | Tallinn (capital), Tartu, Kohtla-Järve                                    | Harju county, Tartu county, Ida-Viru county  |

**2020** → employees mostly arrived legally, either with a visa or visa free. Cases were frequent where short-term employment registration had expired; the decision on short-term employment registration was not yet in force, but the person was already working; and commencing employment right after arriving early to Estonia without the employer registering the short-term employment.

Cases where the number of days allowed without a visa had been exceeded and the person went to the PBGB's service to apply for a long-stay visa and found out then that he/she had exceeded the maximum stay allowed in Schengen area, were also common.

**2021** → employees mostly arrived legally (visa, visa free) via internal borders. The majority of illegally staying and working persons were Ukrainian citizens. Upon arrival, third-country nationals often started working before applying for short-term employment registration or receiving a decision on registration. Often, the period of stay and employment exceeded allowed maximum period under visa or visa-free regime. On several occasions, travel purpose was stated to be visiting friends or close relatives, but the actual intention was to find employment.

**2022** → share of third-country nationals from Central Asian countries increased significantly. They mainly filled vacancies in construction and manufacturing sectors formerly occupied with Ukrainians.

## 2.3 Measures and incentives to tackle illegal employment

### Preventing employers from engaging in the illegal employment of third-country nationals

- In 2018, Government adopted new action plan for preventing illegal employment and alongside with the action plan, several amendments were made to the Aliens Act. With the formerly applicable rates of fines, violators that were fined still saved more by not paying taxes. The amendment to the Aliens Act that entered into force in July 2018, increased the maximum monetary fine tenfold for employers who are legal persons and use illegal labour. While the former maximum rate was 3,200 euros, the new maximum is 32,000 euros. With the same amendments, obligation to exclude a participant from public procurement proceedings was introduced, if the participant is a company that has been punished for facilitating a violation of the requirements for foreigners working in Estonia. In the case of public contracts for construction works, sub-contractors have to be replaced or another way to perform the work must be found, if the sub-contractors have not complied with the rules for the employment of foreigners. Possibilities were created for prohibiting the economic operation of companies that consistently employ foreigners in violation of legal acts.<sup>37</sup>

<sup>37</sup> Ministry of the Interior's thematic page, available here: <https://siseministeerium.ee/en/action-plan-preventing-illegal-employment>



- Among other activities, the action plan aimed at simplifying the documentation related to employing a foreigner and to hold information days and prepare information materials for employers and job intermediaries. In 2019, PBGB introduced a possibility for employers to submit applications for short-term employment registration via the self-service environment<sup>38</sup>. Regarding free migration counselling service introduced in 2017, advisors started to carry out information days for, among others, employers with an emphasis on regulations, procedures, amendments in the law etc. Information days have been carried out every year, some are held together with the Tax and Customs Board as well as the Labour Inspectorate. In total, more than 250 information days and trainings have been held since 2017 to 2022. In terms of information materials, PBGB distributed leaflets (in Estonian, Russian and English) about legal options for working in Estonia at border crossing points and at the international airport in 2018, and comprised special information materials for embassies on legal entry and stay in Estonia but also regarding departure (in cooperation with IOM Estonian office). Aforementioned also applies as a measure to prevent third-country nationals from becoming illegally employed.
- At the initiative of the PBGB, information days were held in Minsk, Warsaw, Helsinki and Tallinn (together with the Labour Inspectorate) in 2019. Information days addressed consular offices and foreign representations of third countries. Information was provided about legal migratory pathways, the possibilities of working in Estonia and the procedures regarding illegal migration. In total, 20 representatives participated. Similar activities are planned for November 2023 (Warsaw and Berlin) and in the first half of 2024 (Tallinn, Helsinki and Stockholm).
- Labour Inspectorate has continuously updated its webpage Working Life Portal<sup>39</sup> which is available in Estonian, English and Russian. The webpage provides information concerning work environment, labour legislation, relations at work, labour services etc.
- In May 2022, amendment to the Aliens Act entered into force with the aim of clarifying the provisions on liability of legal persons to overcome legal obstacles met back in 2020 (please see above, 4 May 2020 decision no 4-19-4632 of Riigikohus). Obligations and responsibility of the employer, a

member of management board or another representative to whom the performance of the corresponding obligation was delegated, was clarified so that it follows the Aliens Act and offences can be therefore enforced.

### Preventing third-country nationals from becoming illegally employed

- In addition to the free migration consultants service introduced in 2017 by the PBGB (please see above), the legal advisors and work environment consultants of the Labour Inspectorate have provided free counselling services related to the Labour Inspectorate since 2008 (phone, by email, via Skype and face to face). The legal advisors give answers to questions concerning employment contracts, working and rest time, holidays, wages and other matters related to labour relations as well as collective labour relations. The work environment consultants answer questions about safety at work and healthy workplaces. The goal of the counselling service is to help all parties of a working relation to know and fulfil all their contractual rights and obligations, to promote lawful actions and to reduce and prevent conflicts and violations<sup>40</sup>.
- Concerning Ukrainian war refugees specifically, the Labour Inspectorate has created several information materials/webpages such as "Ukrainian war refugees and employment relations"<sup>41</sup> and special leaflet for employers who wish to hire Ukrainian refugees<sup>42</sup>. Labour Inspectorate also carried out two awareness raising campaigns (in 2022 and 2022/2023): (1) "Labour Inspectorate will help you find answers related to working life"<sup>43</sup> which was directed primarily at Ukrainian war refugees who had already entered or planned to enter into Estonian labour market. As part of the campaign, Labour Inspectorate distributed leaflets, held different events and cooperated with television and radio. (2) "Labour Inspectorate – your assistant in working life"<sup>44</sup> was aimed at awareness raising regarding Labour Inspectorate and its services. In addition. The Labour Inspectorate has free counselling service directed at Ukrainian refugees via two advisors from Ukraine who can provide assistance in Ukrainian. Labour Inspectorate has also hired a communication specialist who mainly works on social media in Russian language.
- As the most common violations have included cases where an Estonian company employs a third-country national who is lawfully staying in

38 PBGB's self-service environment is available here: <https://www.politsei.ee/et/iseteenindus>

39 Working Life Portal, available here: <https://tooelu.ee/en>

40 Free counselling service at the Labour Inspectorate, available here: <https://tooelu.ee/en/71/free-counselling-service-labour-inspectorate>

41 Available here: <https://www.tooelu.ee/en/392/ukrainian-war-refugees-and-employment-relations>

42 Available here: <https://www.tooelu.ee/sites/default/files/2023-03/Infoleht%20t%C3%B6%20andjatele%20Ukraina%20s%C3%B5jap%C3%B5geniku%20t%C3%B6%20lev%C3%B5tmise%2028v%C3%A4riline%29%20EST%202023.pdf>

43 In Estonian: Tööinspektsioon aitab leida vastuseid tööeluga seotud küsimustele.

44 In Estonian: Sinu abiline tööelus.

Estonia but fails to register the employment at the PBGB and does not pay the employee required salary nor labour taxes, emphasis on targeted inspections has been more on legal persons who have enabled the employment without proper registration.

- Emphasis has also been on information provision. In addition to different thematic webpages, Ministry of Interior and Ministry of Culture have created a webpage called [newinestonia.ee](https://newinestonia.ee)<sup>45</sup> that offers training and information materials regarding third-country nationals rights and obligations during a temporary stay. Webpage also includes wide range of videos including on short-term employment. Website is available in Estonian, English, Russian and Ukrainian. Another important webpage is Labour Inspectorate's [toolu.ee](https://toolu.ee)<sup>46</sup> (working life portal) which provides information on work environment, labour legislation, relations at work, labour services and also on news and events. Webpage is available in Estonian, English and Russian.

## 2.4 Challenges and good practices regarding the prevention of illegal employment since 2017

The most severe challenge was related with judicial obstacles regarding the responsibilities of a legal person found violating conditions of employment and enabling employment of a third-country national who is staying in Estonia without legal basis. Due to PBGB's decisions being contested in court and similar proceedings being suspended by the highest court (Riigikohus, please see under Q2), the ability to conduct misdemeanour proceedings against legal persons was obstructed from 2020 until 2022. In 2022, relevant amendments entered into force - obligations and responsibility of the employer, a member of management board or another representative to whom the performance of the corresponding obligation was delegated, was clarified.

Good practices include: (1) cooperation agreement between the PBGB, Tax and Customs Board and Labour Inspectorate (including joint inspections, meetings and shared risk analyses), (2) introducing free migration

consultation service, (3) free legal advisors and work environment consultants in the Labour inspectorate and (4) conducting information days (including for consular offices). As the cooperation agreement has been addressed previously, overview is provided for practices 2-4.

In 2017, PBGB launched a free migration consultants service<sup>47</sup>. The main function of the consultants is to support foreigners in settling in Estonia and to serve as a partner to employers, the business community and education institutions and other parties who invite foreign nationals to Estonia. If necessary, consultants can be invited to trainings and information days. Advisers provide service in Estonian, English and Russian. The service is free of charge.

Counselling is provided over the phone, by email, via Skype and face to face. By advance arrangement, consultants can be met in Tallinn and in Tartu.

### Foreigners are welcome to meet with consultants to discuss:

- living in Estonia;
- working in Estonia;
- doing business in Estonia;
- doing research in Estonia;
- studying in Estonia.

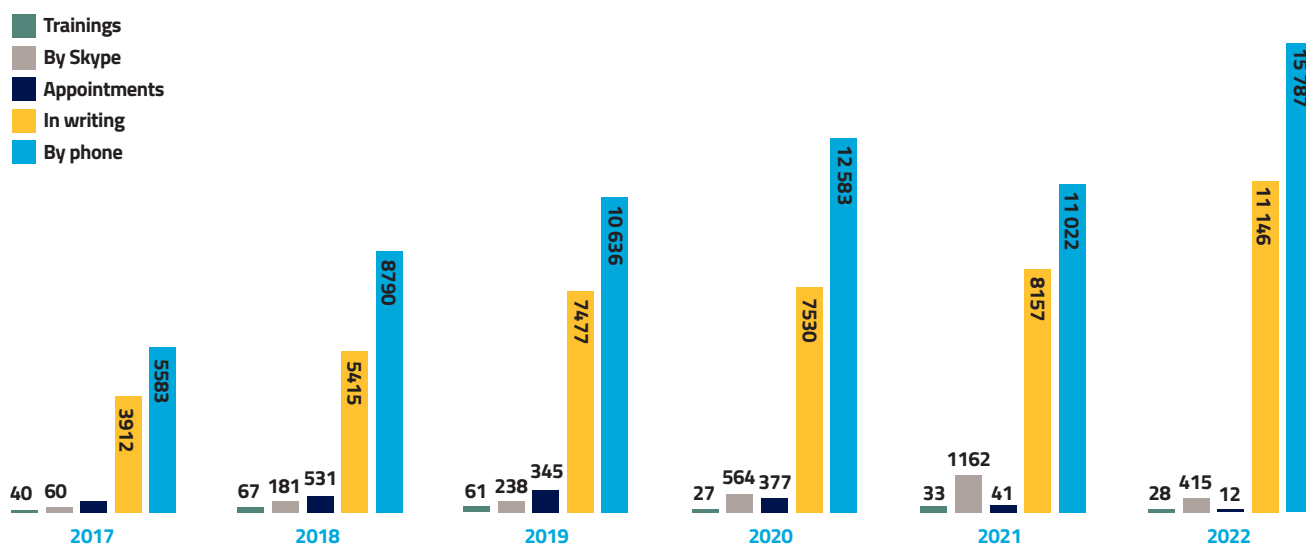
### Companies, institutions, organizations and individuals who wish are welcome to discuss the following with consultants:

- inviting foreigners to Estonia;
- hiring foreigners in Estonia;
- inviting foreigners to Estonia to study.

The number of consultations has increased significantly since introducing the service meaning that it has become an important tool for information provision regarding legal migration and at the same time, tackling irregular migration. In 2017, 4 migration consultants provided the service. As the service became more popular, additional consultants were hired in 2020 and 2021. Since 2022, 7 migration consultants are available for information provision.

<sup>45</sup> Available here: <https://newinestonia.ee/>

<sup>46</sup> Available here: <https://toolu.ee/en>

**Table 10. Number of migration consultations provided by the PBGB, 2017-2022**


Since 2017, the number of consultations provided by phone and in writing have increased almost three times (+183% and +185% respectively). The number of consultations provided via Skype has increased almost seven times (+592%). Foreigners have constituted approximately 60% of all inquiries made, employers, educational institutions and other sponsors approximately 31%. Regarding thematic subdivision, largest share of inquiries have been made regarding labour migration (appr. 40%), followed by family migration (appr. 12%) and study migration (appr. 5%). General information regarding migration constitutes approximately 20% of inquiries made.

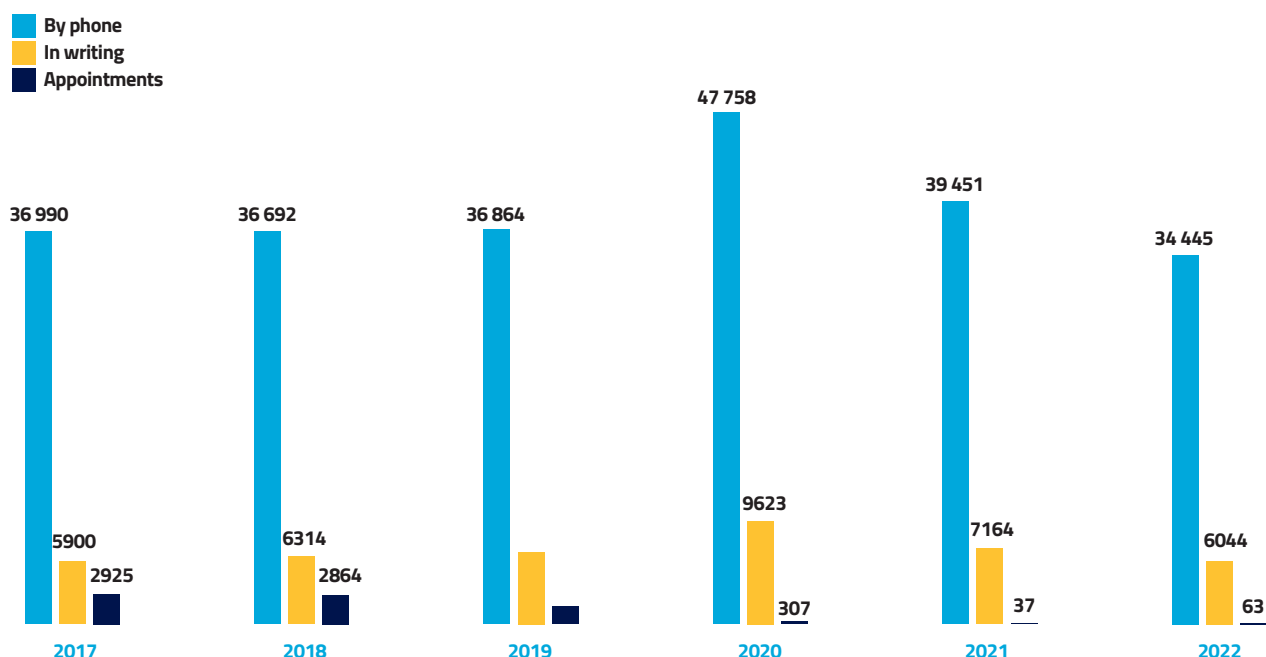
Training provided by the migration consultants have been held also in English (together with Labour Inspectorate, Social Insurance Board and Tax and Customs Board). Thematic trainings have been held regarding short-term employment, law amendments and specifically regarding Ukrainian employees as well as for Ukrainian citizens living in Estonia (trainings were held in 2022 regarding beneficiaries of temporary protection as well as those Ukrainian citizens staying in Estonia outside the scope of temporary protection i.e. the Aliens Act was amended so that Ukrainian citizens were provided with a legal basis for entry and stay, including those who resided in Estonia prior the start of the aggression and whose legal basis to stay would have otherwise expired; amendments eased conditions and requirements for short-term employment to ensure smooth entry into the labour market).

Legal advisors and work environment consultants of the Labour Inspectorate have provided free counselling services related to the Labour Inspectorate since 2008 (via *phone, by email, via Skype and face to face*). The legal advisors give answers to questions concerning employment contracts, working and rest time, holidays, wages and other matters related to labour relations as well as collective labour relations. The work environment consultants answer questions about safety at work and healthy workplaces. The goal of the counselling service is to help all parties of a working relation to know and fulfil all their contractual and agrees rights and obligations, to promote lawful actions and to reduce and prevent conflicts and violations<sup>48</sup>.

47 PBGB's migration consultants thematic page, available here: <https://www.politsei.ee/en/migration-consultants>

48 Free counselling service at the Labour Inspectorate, available here: <https://tooeu.ee/en/71/free-counselling-service-labour-inspectorate>

**Table 11. Number of consultations provided by the Labour Inspectorate, 2017-2022**  
(Source: Labour Inspectorate)



The service has proved to be necessary and highly popular. The share of consultations was highest in 2020 when most inquiries were related to COVID19-pandemic and issues such as how to maintain employment relations as long as possible, what rights are entitled to employees whose wages and workload has been reduced, how to redirect employees to take (unpaid) leave etc and questions related to redundancies, pay cuts, termination of contracts and unpaid wages. In general, most inquiries have been related to the termination of employment contracts, unpaid wages and redundancies.

PBGB (border and migration officers/monitoring experts and migration consultants), sometimes together with the Estonian Tax and Customs board and the Labour Inspectorate, have organized (and plan to organize in the

future) information days for employers to raise awareness when recruiting foreign workers aimed at preventing illegal employment. Information days provide information on new legislative amendments, requirements regarding the employment of third-country nationals (such as registering short-term employment, meeting the wage criteria, working hours etc.) and offer an opportunity for Q&A. At the initiative of the PBGB, information days were also held in Minsk, Warsaw, Helsinki and Tallinn (together with the Labour Inspectorate) in 2019. Information days addressed consular offices and foreign representations of third countries. Information was provided about legal migratory pathways, the possibilities of working in Estonia and the procedures regarding illegal migration. Similar activities are planned for November 2023 (Warsaw and Berlin) and in the first half of 2024 (Tallinn, Helsinki and Stockholm).





## 3. Identification of illegal employment measures implemented

### 3.1 Cooperation between national authorities

PBGB cooperates closely with both the Estonian Tax and Customs Board and the Labour Inspectorate. Labour Inspectorate focuses on making employment rights effective, including tackling undeclared work. Tax and Customs Board is responsible for collecting tax revenue. These three institutions have a cooperation agreement under which joint targeted inspections are being performed and information is shared to use the resources effectively. Cooperation with other institutions is carried out on an ad-hoc basis. In the second quarter of 2023, the cooperation agreement between the PBGB and the Labour Inspectorate was renewed with the aim to increase the effectiveness of cooperation in carrying out state supervision of the requirements and working conditions of foreign workers working in Estonia and in detecting cases of trafficking in human beings. The agreement provides an opportunity for more efficient procedures and effective protection of persons, it also enhances the efficiency of the parties' day-to-day work in administrative cooperation.

Labour Inspectorate has cooperation agreements with the (1) Baltic states (Estonia, Latvia and Lithuania – cross-border cooperation including posted workers), (2) with Norwegian Labour Inspectorates (awareness raising and exchanging information), (3) with Polish Labour Inspectorates (aimed at improving and guaranteeing the working conditions for employees posted to both countries territories) and (4) with Labour Inspectorates of South of Finland (to ensure the rights and equal treatment of workers posted from Estonia to Finland).<sup>49</sup>

Cooperation with other Member States is done via IMI (Internal Market Information) with an emphasis on posted workers (also from third-countries), reporting possible infringements, serving documents/decisions and their cross-border enforcement.

### 3.2 Inspections, violations and fines

**First of all**, three main institutions involved in tackling illegal employment – PBGB, the Tax and Customs Board and the Labour Inspectorate, have a cooperation agreement. These three different institutions share information for risk analysis purposes and plan joint targeted actions in order to use the resources effectively and cover all different areas (illegal employment of third-country nationals, human trafficking related offences, tax frauds, labour inspections, but also protection of workers' rights). Cooperation with other institutions is carried out on an ad-hoc basis. All the above-mentioned authorities are independent in organizing their work. The inspections based on risk assessment are usually shared among the three mentioned institutions and the inspections are carried out in cooperation where possible and necessary. Cooperation also includes organizing joint information days, mainly for employers, temporary agency work intermediaries etc.

**Secondly**, PBGB draws a risk analysis annually based on the statistics of the previous years. The list of sectors to be at greater risk to illegal employment is on a yearly basis identified in the annual broader risk assessment in relation to migration. To identify the risk sectors all relevant information is taken into account: previous results of the inspections carried out and detected unlawful behaviour, criminal intelligence changes in a socioeconomical environment, changes in employment sector, changes in migration flow in general etc. PBGB also has an annual work plan which highlights different goals in important fields of work including identification of illegal employment of third-country nationals. National target for inspections to be carried out are established annually. Based on the risk assessment, targeted inspections are organized. Every Prefecture plans its targeted inspections based on the annual risk assessment. Urgent inspections are carried out on an ad-hoc basis. Statistics are collected on the inspection visits stating the number of:

<sup>49</sup> Estonian Labour Inspectorates' inter-agency treaties can be found here: <https://www.ti.ee/en/government-agency-news-and-contacts/about-us/inter-agency-treaties>



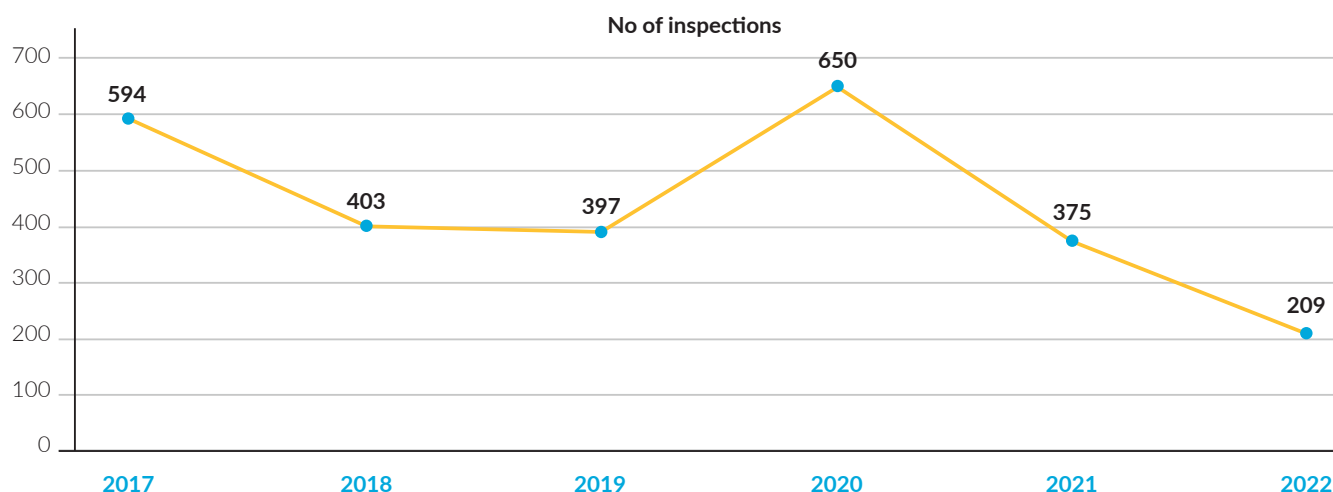
- carried out visits by sector;
- inspections with HITs;
- officials participating;
- partners participating;
- assistant police officers (volunteers);
- employees and employers checked;
- violations detected;
- misdemeanour proceedings.

The list of risk sectors has remained the same over past years including construction, manufacturing, wholesale and retail trade, agriculture, forestry and fishing, and accommodation and food service activities.

**Thirdly**, the new Migration Supervision Database (MIGIS) ensures up-to-date awareness of third-country nationals staying in Estonia and thus provides faster ability to

react to misuse or irregular stay. Regarding carrying out inspections that are adequate and effective, MIGIS enables prompt information exchange between authorities involved in inspections as well as automated checks against different databases via X-Road in order to gather necessary information. MIGIS also enables the management of carried out inspections (collecting data on companies and employees inspected, results, partner authorities involved etc.) and drawing reports based on data inserted. Officials can check companies and see if inspections have been carried out, whether any previous violations have been found and if the company has been added to a so-called watch list by involved authorities or PBGB's prefectures (e.g. the company has had previous violations and thus is in need of further attention).

**Tabel 12: Number of inspections conducted, 2017-2022 (Source: PBGB)**



Due to changes in data collection and developments towards more digitalised systems, data by sector for the years 2017 and 2018 is currently not available. However, from 2019 until 2022, the largest share of inspections have been carried out in:

- construction – approximately 26% of all inspections;
- manufacturing – approximately 10% of all inspections.

**In 2017** and years to come, main profile for illegal employment has inflicted the employment sectors which are mainly focused on blue-collar work: there has been a broad use of low skill labour demand by employers (e.g., short-term and seasonal work). Main risk profiles have included sectors and places of employment where there is minimal connection with clients and high percentage of cash transactions. Since, 2017, the focus of illicit activities in relation to third country national employment mainly shifted towards the misuse of legal grounds for stay and work.

In 2017, 594 inspections were carried out. Due to changes in data collection and developments towards more digitalised systems, number of misdemeanour proceedings initiated is not available.

**In 2018**, 403 inspections were carried out. PBGB noted that irregular migration was affected by the World Cup held in the Russian Federation – third-country nationals who arrived in Russia with a FIFA fad ID tried to proceed into Europe. In order to fight more efficiently against illegal employment, in April 2018, national action plan for preventing illegal employment was adopted. Action plan covered various activities on the legislative and operational level and activities were planned to be carried out during 2018 and subsequent years. The spectre of illegal activities in labour migration broadened: misuse cases were mostly related to misuse of legal grounds and not employing illegally staying migrants. Regulations regarding employing foreign labour and temporary agency work became more complex resulting in misuse due to employers not fulfilling all necessary procedural requirements.

Due to changes in data collection and developments towards more digitalised systems, number of misdemeanour proceedings initiated is not available.

**In 2019**, more targeted inspections were carried out. Emphasis of the inspections was on legal persons who enabled the employment for an alien staying in Estonia without legal basis and on the departments responsible for the registration of short-term employment. In total, 397 inspections were carried out. The largest increase of apprehensions was at Tallinn Airport (due to the addition of scheduled flights from Kiev), almost 80% of violators were citizens of Ukraine. Misuse cases were mostly related to the conditions for visa-free movement (e.g. insufficient financial resources to stay in the country or could not justify the purpose of entering the country) and not employing illegally staying migrants.

Most common violations included cases where short-term employment was registered as seasonal work in order to avoid paying the required average salary to the third country national and where an Estonian company employed an alien legally staying in Estonia but did not register employment with PBGB and thus did not pay the required Estonian average salary and labour tax. Slightly more than half of the inspections carried out by the PBGB were for the purpose of controlling labour migration, and misdemeanour proceedings were initiated against approximately one tenth of the inspected companies. In 2019, misdemeanour proceedings were initiated against 112 persons and 45 companies within the framework of inspections.

PBGB continued to use a practice where the employer is held liable in the event of the alien being caught from illegal or not registered employment. The foreigner cannot apply for short-term employment him/herself, this is the task of the employer.

**In 2020**, due to the COVID-19 pandemic, Estonia declared emergency situation on 12<sup>th</sup> of March until 17<sup>th</sup> of May in order to obstruct the spreading of the virus. Migration proceedings such as registration of short-term employment, applying or extending residence permits etc., were temporarily suspended. In addition, the number of misdemeanour proceedings was affected by judicial obstacles regarding the responsibilities of a legal person. PBGB's decisions were contested in court and conducting similar procedures affecting the liability of legal entities was suspended<sup>50</sup>.

In 2020, a total of 650 inspections were carried out. Misuse cases were mostly related to COVID-19 restrictions, but also violating grounds for employment and exceeding the time of legal stay. Increased attention was given to agencies acting as intermediaries as well as to car-sharing

service platforms and TCN-s working there. In some cases, employers cited infringements as a reason of ignorance (e.g. when changing the employer, information in short-term employment application has to be changed). In 2020, misdemeanour proceedings were initiated against 195 persons and 15 companies within the framework of inspections.

**In 2021**, PBGB continued within its cooperation framework with the Estonian Tax and Customs Board and the Labour Inspectorate. Activities were carried out to prevent and tackle illegal employment in Estonia and to ensure that foreign labour-force will pay their taxes in Estonia. Information on the employer's responsibilities, when hiring foreign labour-force, was also shared. PBGB conducted more thorough proceedings regarding registering short-term employment and temporary residence permits for employment, also follow-up checks on employers were carried out.

In total, 375 inspections were carried out. The main reason for refusal of entry was the Decree of the Government of the Republic No. 169 "On Temporary Restrictions on Crossing the State Border to Prevent the Spread of the Coronavirus"<sup>51</sup>, which covered 64% of the total number of refusals of entry. In 2021, misdemeanour proceedings were initiated against 140 persons and 27 companies within the framework of inspections.

**In 2022**, 209 inspections were carried out. Migration at land borders was directly linked to Russia's military aggression against Ukraine, which resulted in both additional movement of Ukrainian and Russian citizens across the border. Most cases regarding refusal of entry were due to Ukrainian citizens who were not war refugees (they had previously lived in Russia for a long time and/or held dual citizenship - Russian and Ukrainian). In 2022, misdemeanour proceedings were initiated against 58 persons and 10 companies within the framework of inspections.

Main reasons for decreased number of inspections and misdemeanour proceedings were related to the unprecedented influx of Ukrainian war refugees which resulted in re-allocating PBGB's resources, several major amendments made in the Aliens Act regarding Ukrainian citizens (mainly providing legal basis for entry and stay in Estonia, possibility to continue short-term employment after its expiration without being subject to short-term employment requirements) and sanctions against Russian and Belarussian citizens in terms of their entry and employment in Estonia. As noted before, the number of short-term employment registrations dropped by 26% in 2022 compared to 2021. However, PBGB continued with targeted inspections and continues to do so in the future.

50 Riigikohtu 14.05.2020 decision no 4-19-4632, available here (in Estonian): <https://www.riigiteataja.ee/kohtulahendid/fail.html?id=268029463>

51 Government order no 169 „Imposition of temporary restrictions on crossing the state border in order to prevent a new outbreak of the coronavirus SARS-CoV-2 causing the COVID-19 disease“, available here: <https://www.riigiteataja.ee/en/eli/504042022001/consolide>

**Table 13. Number of violations regarding employment, 2017-2022 (Source: PBGB)**

| <b>VIOLATION (ALIENS ACT)</b>   | <b>2017</b> | <b>2018</b> | <b>2019</b> | <b>2020</b> | <b>2021</b> | <b>2022</b> | <b>TOTAL</b> |
|---|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| <b>§ 300 – ENABLING EMPLOYMENT TO ALIEN WHO IS STAYING IN ESTONIA WITHOUT LEGAL BASIS</b> | 8           | 20          | 21          | 5           | 0           | 3           | <b>57</b>    |
| <b>§ 301 – ENABLING VIOLATIONS OF CONDITIONS OF EMPLOYMENT OF ALIEN IN ESTONIA</b>        | 74          | 89          | 119         | 35          | 3           | 17          | <b>337</b>   |
| <b>§ 302 – PAYMENT OF REMUNERATION LESS THAN WAGE CRITERIA</b>                            | 0           | 3           | 0           | 0           | 1           | 0           | <b>4</b>     |
| <b>§ 303 – EMPLOYMENT OF ALIEN WHO IS STAYING IN ESTONIA WITHOUT LEGAL BASIS</b>          | 24          | 44          | 11          | 24          | 30          | 15          | <b>148</b>   |
| <b>§ 304 – VIOLATION OF CONDITIONS OF EMPLOYMENT IN ESTONIA OF ALIEN</b>                  | 357         | 136         | 112         | 148         | 183         | 111         | <b>1047</b>  |
| <b>§ 305 – SUBMISSION OF FALSE INFORMATION OR FALSIFIED DOCUMENTS</b>                     | 1           | 0           | 0           | 0           | 0           | 0           | <b>1</b>     |
| <b>§ 306 – FAILURE TO PERFORM NOTIFICATION OBLIGATION</b>                                 | 0           | 3           | 1           | 0           | 0           | 0           | <b>4</b>     |
| <b>TOTAL</b>  | <b>464</b>  | <b>295</b>  | <b>264</b>  | <b>212</b>  | <b>217</b>  | <b>146</b>  | <b>1598</b>  |

Regarding violations in 2017 to 2022, approximately 65% are related to violation of conditions of employment (§304), followed by enabling violation of employment conditions by employers or legal persons (21%, §301) and employment of illegally staying third-country nationals (9%, §303).

When looking violations regarding employment of a third-country national who is staying in Estonia without legal basis (§ 303), the TOP 3 nationalities are:

- Ukraine (54%)
- Moldova (10%)
- Belarus (5%)

Regarding violation of employment conditions (§304), the TOP 3 nationalities are:

- Ukraine (67%)
- Belarus (12%)
- Moldova (5%)

**Table 14. Total sum of fines issued, 2017-2022 (Source: PBGB)**

| VIOLATION (ALIENS ACT)  | 2017          | 2018           | 2019           | 2020          | 2021          | 2022          | TOTAL          |
|---|---------------|----------------|----------------|---------------|---------------|---------------|----------------|
| <b>§ 300 – ENABLING EMPLOYMENT TO ALIEN WHO IS STAYING IN ESTONIA WITHOUT LEGAL BASIS</b> | 2680          | 18 700         | 28 520         | 2800          | -             | 5500          | <b>58 200</b>  |
| <b>§ 301 – ENABLING VIOLATIONS OF CONDITIONS OF EMPLOYMENT OF ALIEN IN ESTONIA</b>        | 29 300        | 94 320         | 336 820        | 36 560        | 1400          | 68 590        | <b>566 990</b> |
| <b>§ 302 – PAYMENT OF REMUNERATION LESS THAN WAGE CRITERIA</b>                            | -             | 3100           | -              | -             | -             | -             | <b>3100</b>    |
| <b>§ 303 – EMPLOYMENT OF ALIEN WHO IS STAYING IN ESTONIA WITHOUT LEGAL BASIS</b>          | 2768          | 7864           | 620            | 2780          | 4160          | 1276          | <b>19 468</b>  |
| <b>§ 304 – VIOLATION OF CONDITIONS OF EMPLOYMENT IN ESTONIA OF ALIEN</b>                  | 35 056        | 9484           | 24 428         | 16 508        | 28 132        | 22 604        | <b>136 212</b> |
| <b>§ 305 – SUBMISSION OF FALSE INFORMATION OR FALSIFIED DOCUMENTS</b>                     | 60            | -              | -              | -             | -             | -             | <b>60</b>      |
| <b>§ 306 – FAILURE TO PERFORM NOTIFICATION OBLIGATION</b>                                 | -             | 2300           | 200            | -             | -             | -             | <b>2500</b>    |
| <b>TOTAL</b>  | <b>69 864</b> | <b>135 768</b> | <b>390 588</b> | <b>58 648</b> | <b>33 692</b> | <b>97 970</b> | <b>786 530</b> |

In 2019, companies providing illegal employment were fined more than on the previous years. Fines in total made in 2019 were twice as on the previous year. On the other hand, fines for third-country nationals for illegal employment decreased significantly as PBGB continued to use a practice where the employer is held liable in the event of a third-country national being caught from illegal or not registered employment. The foreigner cannot apply for short-term employment him/herself, this is the task of the employer.

Due to the pandemic and travel restrictions, the number of border crossings decreased significantly (by 77% in comparison with 2019). Air travel and travel by sea decreased respectively by 72% and 94%. During the emergency situation, border control was also restored at internal borders (from 17<sup>th</sup> of March until 17<sup>th</sup> of May). In terms of labour migration, proceedings such as registering short-term employment were temporarily suspended and the PBGB had to reallocate its resources. This resulted in decreased numbers of short-term employment registrations (-31% compared to 2019) and issued temporary residence permits for employment (-6%). As the number of third-country nationals arriving to Estonia related to labour migration stopped, inspections were not carried out during the emergency situation (only when specific information/

tips were forwarded). Even though the situation stabilized, the share of fines issued decreased significantly.

Another reason why the number of misdemeanour proceedings and fines against employers and legal persons decreased was due to PBGB's decisions being contested at court. Procedures affecting the liability of legal persons/entities when implementing Article 300 of the Aliens Act was suspended by the 4<sup>th</sup> of May 2020 decision no 4-19-4632 of Riigikohus<sup>52</sup>. A legal entity (private company) was fined under Article 300 (2) of the Aliens Act as the production manager and member of the management board did not sufficiently check the status of the third-country nationals employed and thus enabled them to work without having a legal basis to stay nor work in Estonia. However, the court found that as the employer was a legal person, the production manager and member of the management board could not be identified with the legal person they represented. Since the natural persons acting on behalf of the legal person did not fulfil the constituent elements of the misdemeanour, proceedings must be closed.

In 2022, amendment to the Aliens Act entered into force with the aim of clarifying the provisions on liability of legal persons. Obligations and responsibility of the employer, a member of management board or another representative

52 Riigikohtu 14.05.2020 decision no 4-19-4632, available here (in Estonian): <https://www.riigiteataja.ee/kohtulahendid/fail.html?id=268029463>

to whom the performance of the corresponding obligation was delegated, was clarified so that it follows the Aliens Act and offences can be therefore enforced. Thus, the legal obstacles while implementing Article 300 and commencing misdemeanour proceedings were overcome with amendments made to the Aliens Act (came into force in May 2022).

### 3.3 Challenges and good practices in the area of the identification of illegal employment of third country nationals since 2017

#### Challenges include:

- Challenges were related to the rapid increase of short-term employment registrations in 2018 and 2019. Number of registrations grew from 7584 registrations in 2017 to 19 858 in 2018 (+162%) and 32 245 in 2019 (+325% compared to 2017). As this brought along rising numbers in violations, action plan to prevent and tackle illegal employment was adopted and amendments to relevant laws implemented since 2018.
- In 2020, judicial obstacles arose regarding the responsibilities of a legal person particularly when implementing Article 300 (violation of conditions of employment) and Article 301 (enabling employment to a third-country national who is staying in Estonia without legal basis) of the Aliens Act. PBGB's decisions were contested in court and conducting similar procedures affecting the liability of legal entities was suspended by the 4th of May 2020 decision no 4-19-4632 of Riigikohus. As a result, holding legal persons responsible for violations became more complicated and the number of misdemeanour proceedings against companies/employers decreased.
- In May 2022, amendment to the Aliens Act entered into force with the aim of clarifying the provisions on liability of legal persons to overcome aforementioned legal obstacles. Obligations and responsibility of the employer, a member of management board or another representative to whom the performance of the corresponding obligation was delegated, was clarified so that it follows the Aliens Act and offences can be therefore enforced.

#### Good practices include:

- Cooperation agreement between the PBGB, Tax and Customs Board and Labour Inspectorate. Cooperation agreement means that the three institutions meet regularly, carry out joint targeted inspections and share risk analyses (either annual or based on ad hoc necessity). The cooperation agreement was renewed in 2023.

- Introducing PBGB's free migration consultation service (in 2019) and Labour Inspectorate's free legal advice/work environment related consultations (in 2008).
- Organizing information days/trainings targeted at employers and employees (as well as Ukrainian refugees in particular) by PBGB, Tax and Customs Board and Labour Inspectorate. In addition, organizing information days for consular offices and foreign representations of third countries.

#### • Digitalisation:

- Migration Supervision Database (MIGIS) was finalized in 2022 and first stage went live in July 2023. MIGIS enables automatic and manual data-based checks against different databases, creates risk profiles, plans and reports inspections, draws statistics and exchanges information with other state authorities. Automated checks ensure up-to-date awareness of third-country nationals staying in Estonia and thus provides faster ability to react to misuse or irregular stay.

Migration information system (RIS) is currently under development. In 2019, self-service portal for employers to submit their short-term employment registrations was introduced. Next steps include updating digital environment for processing short-term employment applications, building data exchange capacity and consultation service between different institutions and creating a digital environment for submitting residence permit applications and updating digital environment for processing residence permit applications.







## 4. Sanctions for employers introduced

### 4.1 Amendments to legislation on sanctions to employers for illegally employing third-country nationals since 2017

In 2018, the fines for legal entities who enable illegal employment were increased tenfold. New provisions of the Aliens Act included:

- enabling the employment of a third-country national who is staying in Estonia without a legal basis is punishable by a fine of up to 300 fine units. If the offender is a legal entity, it is punishable by a fine of up to 32 000 euros (previously, it was 3200 euros).
- enabling the violation of employment conditions of a third-country national in Estonia, incl. employing a person not in compliance with the conditions determined by the legal basis, is punishable by a fine of up to 300 fine units. If the offender is a legal entity, it is punishable by a fine of up to 32 000 euros (previously, it was 3200 euros).
- payment of remuneration less than the wage rate specified in the Act or failure to pay remuneration to a third-country worker in Estonia is punishable by a fine of up to 300 fine units. If the offender is a legal entity, it is punishable by a fine of up to 32 000 euros (previously, it was 3200 euros).

In addition, provisions were added to the Aliens Act (§296<sup>1</sup>) regarding the prohibition on economic activities if a physical or a legal person has systematically:

- enabled the employment of a third-country national who is staying in Estonia illegally;
- enabled a violation of employment conditions of a third-country worker in Estonia;
- paid a third-country worker in Estonia remuneration less than the wage rate specified in the Act, or has failed to pay remuneration.

Other amendments (including Public Procurement Act) provided that the contracting authority or entity does not give a public contract to a tenderer or a candidate and excludes from the procurement procedure a tenderer or a candidate who or whose member of an administrative, management or supervisory board or another legal representative or a contractual representative involved in the public procurement has been convicted by a final judgment for enabling an illegally staying third-country to work or for enabling a breach of the criteria applicable to the work performed by an third-country national in Estonia, including for payment of a salary below the statutory rate.

A minor amendment concerned also posted workers. Since 15 August 2018, employers are obliged to submit to the Labour Inspectorate information about posted workers before they begin their work. Previously, employers were obliged to submit the data on the first day of work. The new provisions also foresaw a fine in case this obligation is not fulfilled.

In 2020, Riigikogu approved amendments to the Aliens Act, the Income Tax Act and the Taxation Act, the aim of which was to prevent disregard for the rules of employment in Estonia. Amendments ensured that the income tax payable on the salary of the foreigners working in Estonia is received in Estonia and could be used for the benefit of the Estonian society<sup>53</sup>.

First set of amendments which were mainly related to provision of assessment of reliability (the PBGB may provide an assessment of the unreliability of an employer, educational institution, internship provider or other person if a foreigner comes to a person or if the obligations of a sponsor will be applicable):

- The PBGB may refuse to review application for registration of short-term employment in Estonia if the PBGB has previously made an assessment of the unreliability of the sponsor of the foreigner<sup>54</sup>.

<sup>53</sup> Adopted amendments to law prevent disregard for rules of employment in Estonia, Ministry of the Interior, available here: <https://www.siseministeerium.ee/en/news/adopted-amendments-law-prevent-disregard-rules-employment-estonia>

<sup>54</sup> § 107<sup>2</sup>, Aliens Act, available here: <https://www.riigiteataja.ee/en/eli/ee/521072020002/consolide>

- The issuance of an TRP for employment may be refused, if the liquidation of the employer or user undertaking has been initiated, the court has accepted the bankruptcy petition filed against the employer or user undertaking and decided to appoint an interim trustee, the employer or user undertaking has been declared bankrupt, the bankruptcy proceedings filed against the employer or user undertaking end with abatement without being declared bankrupt or the employer or user undertaking has no actual economic activity<sup>55</sup>.

Several major amendments were introduced in 2022:

- Short-term employment was restricted to full-time employment<sup>56</sup> and the foreigner has to be paid at least the Estonian average salary regardless of the agreed working hours. If a foreigner works on the basis of a temporary residence permit intended for employment, the employer must pay the foreigner at least the Estonian average salary regardless of the workload agreed in the employment contract. Amendment was made in order to prevent cases where the employer uses part-time work to deviate from the salary criterion in order to pay less than required.
- If a third-country national works on the basis of a temporary residence permit intended for employment, the employer must pay the third-country national at least the Estonian average salary regardless of the workload agreed in the employment contract.

One of the most important legal amendments regarding labour exploitation entered into force regarding ensuring payment of required remuneration<sup>57</sup>:

- If an employer fails to perform the obligation to pay the remuneration provided in the Aliens Act, the PBGB issues a precept to the employer to pay the corresponding remuneration.
- A precept may be issued retroactively for the entire period of employment when the employer did not pay the required remuneration to the alien.
- In the event of failure to pay remuneration for employment by the due term, the right of an alien to stay and work in Estonia expires on the day following that term.
- In the case of a failure to comply with the precept, the PBGB may impose a penalty payment of up to 32,000 euros on the employer.
- Payment of a non-compliance levy does not grant an employee the right for employment in Estonia.
- Previous provisions are also applied to an undertaking which is acting as an intermediary of temporary agency workers, a user undertaking and the host entity of a posted employee.

Before the amendment, there were not enough effective measures provided by the act in order to sanction employers who did not fulfil conditions set for employment nor salary in order to avoid tax payments and gain competitive advantage.

## 4.2 Challenges and good practices in the area of sanctioning employers since 2017

### Challenges:

- In 2020, judicial obstacles arose regarding the responsibilities of a legal person particularly when implementing Article 300 (violation of conditions of employment) and Article 301 (enabling employment to a third-country national who is staying in Estonia without legal basis) of the Aliens Act. PBGB's decisions were contested in court and conducting similar procedures affecting the liability of legal entities was suspended by the 4<sup>th</sup> of May 2020 decision no 4-19-4632 of Riigikohus. As a result, holding legal persons responsible for violations became more complicated and the number of misdemeanour proceedings against companies/employers decreased.
- In May 2022, amendment to the Aliens Act entered into force with the aim of clarifying the provisions on liability of legal persons to overcome aforementioned legal obstacles. Obligations and responsibility of the employer, a member of management board or another representative to whom the performance of the corresponding obligation was delegated, was clarified so that it follows the Aliens Act and offences can be therefore enforced.

### Good practices:

- Although the aforementioned amendment to the Aliens Act entered into force only in May 2022, it is expected to be an efficient tool in terms of sanctioning employers.

Another example of good practice entails the amendment made to the Aliens Act in 2020 by providing a clause for assessment of reliability<sup>58</sup>: PBGB has the possibility to provide an assessment of the unreliability of an employer, educational institution, internship provider or other person. A consular officer or the PBGB may take into account the assessment of the sponsor relating to a future long-stay visa application, application for extension of stay, application for registering short-term employment, application for residence permit or application for the extension of a residence permit. This assessment made is valid for up to one year.

55 § 180 p 2 (4<sup>1</sup>), Aliens Act, available here: <https://www.riigiteataja.ee/en/eli/ee/521072020002/consolide>

56 § 106, Aliens Act, available here: <https://www.riigiteataja.ee/en/eli/508092023001/consolide>

57 § 286<sup>3</sup>, Aliens Act, available here: <https://www.riigiteataja.ee/en/eli/508092023001/consolide>

58 §40<sup>2</sup> of the Aliens Act, available here: <https://www.riigiteataja.ee/en/eli/508092023001/consolide>





## 5. Outcomes for third-country national

### 5.1 Different situations of illegal employment and the outcomes

#### a ) third-country nationals with a residence permit and a work permit.

If the PBGB has determined that the third-country national has a legal basis to stay in Estonia (visa, visa-free or temporary residence permit) and legal ground to work in Estonia (e.g., short-term employment has been properly registered, temporary residence permit is valid, entry has been made to the employment register) and no other violations are present, no additional procedures follow. If any other type of violation has been determined (such as regarding occupational health or safety, work equipment, first aid etc.), Labour Inspectorate will assess the situation and take action against the employer if necessary (issue a precept, issue or impose a penalty payment).

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

Third-country nationals who are residing in Estonia on the basis of residence permit, are, in general, permitted to work in Estonia. Since 2013, separate work permits are not issued. Third-country nationals who are temporarily staying in Estonia (for example, on the basis of a visa or visa-free) are permitted to work if the right to work follows directly from a law or a treaty or their short-term employment has been previously registered by the employer in the PBGB.<sup>59</sup>

This case may refer to a situation where (1) a third-country national has a legal basis to stay in Estonia (visa or visa-free), but short-term employment has not been registered or (2) a third-country national has a temporary residence permit and is allowed to work, but the required entry to the employment register is absent. If an officer has determined a situation of illegal employment, the third-country national is either taken to the police station or the identification document of the third-country national is taken into custody for the time of the proceedings (officer will assess whether it is necessary or not). Officer

will explain the situation and provide information on legal employment requirements. Misdemeanour proceedings are commenced under Article 304 of the Aliens Act (violation of conditions of employment in Estonia of alien).

Depending on the severity of the violation, the third-country national's legal stay may be prematurely terminated, and a period of 7-days is provided to organize his/her voluntary departure from Estonia/the Schengen area (this may apply to a situation where a third-country national is in Estonia on a basis of a visa or visa-free but has not registered short-term employment). If the identification document is in the custody of the PBGB, the third-country national will be provided with a copy to make necessary bookings. Officer in charge must be informed about the date and time of departure. If necessary, the officer will meet the third-country national at the time of departure to return the travel/identification document. If the person does not comply with the term of voluntary leave, the return decision will be enforced (depending on the circumstances).

If the person fails to cooperate or the authority concludes from his/her attitudes that he or she does not wish to comply with the obligation to leave, legal ground to stay may be revoked right away. In this case, misdemeanour proceeding will be followed by proceedings regarding illegal stay (administrative procedure) and the person might be detained for 48 hours. If it is not possible to return the third-country national within 48 hours, PBGB may apply for detention to the administrative court for up to 2 months to ensure compliance with the obligation to leave.

If the third-country national has a temporary residence permit but the required entry has not been made to the employment registry, other circumstances are taken into consideration. However, the main responsibility falls on the employer.

#### c ) third-country nationals without a residence permit and a work permit.

This case may refer to a situation where the third-country national has entered, stayed and worked in Estonia without

<sup>59</sup> Working in Estonia, available here: <https://www2.politsei.ee/en/teenused/working-in-estonia/>

legal basis. If an officer has determined a situation of illegal stay and illegal employment, the third-country national is taken to the police station and both – misdemeanour and illegal stay proceedings – are commenced. Procedure will establish all necessary facts (time and reason for arrival, circumstances regarding employment etc.) and voluntary leave will be assigned. To ensure compliance with the precept to leave, surveillance measures may be imposed on the third-country national. If the person does not comply with the term of voluntary leave, the return decision will be enforced.

If the person fails to cooperate or the authority concludes from his/her attitudes that he or she does not wish to comply with the obligation to leave, the person might be detained for 48 hours. If it is not possible to return the third-country national within 48 hours, PBGB may apply for detention to the administrative court for up to 2 months to ensure compliance with the obligation to leave.

## 5.2 Lodging complaint against the employer

Requirements to submit application/petition to the labour dispute committee are the same regardless whether the third-country national is in illegal employment or not.

A labour dispute committee is an extrajudicial authority which adjudicates disputes arising from employment relationships, i.e., the relationships between employees and employers, impartially, efficiently, purposefully, and fairly. If disagreements have arisen between the parties to an employment relationship, which the parties cannot solve independently, they may have recourse to a labour dispute committee for a resolution of the conflict. The labour dispute committee helps reconcile the parties through conciliation proceedings, helps the parties to the dispute find a compromise and helps conclude a settlement agreement. The labour dispute committee resolves individual and collective labour disputes.

Both employees and employers can file a petition with a labour dispute committee. The petition must be signed. The petition filed with a labour dispute committee can be prepared on paper, signed by hand and subsequently sent by post. Alternatively, it can be digitally signed and emailed.

### A petition can be filed with a labour dispute committee:

- by emailing it;
- by sending it by post to the relevant address of the permanent labour dispute committees.

A petitioner must describe the factual circumstances which form the basis of a claim. This means that a petitioner explains the circumstances of the employment relationship and the labour dispute in a freely selected format and substantiates each claim separately. Factual circumstances must also describe the agreements between the employer and the employee which are relevant to the resolution of the claims (such as the time of concluding the employment contract, whether the contract has a specified or an unspecified term, the time and reason for the termination of the contract, the amount of wages, pay day, work load, location of employment, use of holiday, and so on). A petitioner must substantiate all their claims.

Petition samples and introductory video is available on the Labour Inspectorate's webpage.<sup>60</sup>

If an employee has a problem with the working environment or an employment relationship which the employer has not addressed or, in the view of the employee, has not addressed adequately, it is also possible to tip-off (i.e., send a complaint to) the Labour Inspectorate about the violation. A violation can be reported in a free format, and depending on the content of the tip-off, the Labour Inspectorate will decide whether to conduct an inspection, send a letter of formal notice or inform other authorities. Sometimes a tip-off may also be left unchecked. The person who sent the tip-off is guaranteed anonymity.<sup>61</sup>

**Tabel 15. Labour disputes regarding third-country nationals 2017-2022**  
(Source: Labour Inspectorate)

|                 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | TOTAL |
|-----------------|------|------|------|------|------|------|-------|
| LABOUR DISPUTES | 26   | 14   | 212  | 298  | 242  | 254  | 1046  |

<sup>60</sup> Labour Inspectorate, available here: <https://www.ti.ee/en/extrajudicial-proceeding-labor-disputes/how-submit-application/preparing-petition-regarding-labour>

<sup>61</sup> Labour Inspectorate, available here: <https://www.ti.ee/en/government-agency-news-and-contacts/contacts/reporting-violation-sending-tip>

Requirements for the application (as well as for the supporting evidence) are the same for all in terms of labour disputes. If the third-country national employee does not have a legal basis to stay in the country, he/she can participate in the proceedings through a representative or in a hearing online. If the claim is monetary, member of the labour dispute committee can review the case in writing and communicate the decision to parties (including electronically if the parties have provided their e-mail addresses).

Additionally, although the proceedings of labour dispute committee are conducted in Estonian, the hearing may be held in another language with the agreement of all parties and the members of the committee. However, the procedural documents must be drafted and submitted in Estonian or translated into Estonian).

Article 17 of the Labour dispute resolution act regulate the representation of a person in the labour dispute committee. The right of representation may arise from a transaction (by power of attorney) or by law (statutory right of representation). Thus, a representative can be, inter alia, a trade union, an employee's representative and the Gender Equality and Equal Treatment Commissioner<sup>62</sup>, but also essentially a family member. The representative does not need to have a legal education as is the case in court.

In addition, according to Article 17 (7) of the Trade Unions Act, trade unions have the power to represent their members in labour dispute resolution bodies. In the case of a dispute arising out of a collective agreement, the representative may be a single person or an association representing all the employees involved in the dispute.

There are no differences whether the third-country national have stayed in the country irregularly.

### 5.3 Remuneration of a third-country national employee

Aliens Act addresses the issue of ensuring a payment of required remuneration within Article 286<sup>3</sup>. For example, if the employer fails to pay the remuneration, the PBGB may issue a precept to the employer to pay the corresponding remuneration. This precept may also be issued retroactively. If the employer fails to pay remuneration for employment by the due date specified in the issued precept, PBGB may impose a penalty payment up to 32, 000 euros on the employer.

In terms of labour dispute proceedings, decision made by the labour dispute committee that has entered into force is binding to all parties. Article 65 of the Labour Dispute Resolution Act regulates the immediate enforcement of the

decision. At the request of one party, the labour dispute committee may declare the decision ordering payment of wages to be subject to immediate enforcement to the extent essential for the employee but not exceeding the extent of two months' wages. However, upon recourse to a court for contesting the decision, which is subject to immediate enforcement, one has the right to apply for suspension of immediate enforcement by way of securing the action.

The decision of the labour dispute committee will enter into force after 30 days have passed since the decision was served if neither party has filed an action with a court to contest the decision. The deadline is counted from the day after the date of receiving the decision. If the employee or the employer (party or parties) do not agree with the decision made by the labour dispute committee, they have 30 calendar days from the date of receipt of the decision to refer the same labour dispute to the county court for consideration.

Upon having recourse to the court, the decision of the labour dispute committee will not enter into force. Upon partial contesting of a decision of the labour dispute committee, the decision will enter into force for the part that was not contested in court.

In order for the remuneration to be paid back, the claim must be proven and remuneration must have become payable. The employment contracts act sets out the time, place and manner of payment of wages (§ 33). Wages must be paid at least once a month on an agreed due date, known as a payday. However, the employee and the employer may agree to pay wages at shorter intervals (e.g. weekly). The wages therefore become payable at the payday. In the event of termination of the employment contract, the employer must reimburse the employee on the day of termination of the employment contract for any amounts earned but not yet paid (wages, unused holiday remuneration, sick pay, daily allowance, other benefits, if agreed or payable by law).

The employee has a right to refer a claim for back payment to a labour dispute authority within 3 years of the date on which it became payable. Thus, the back payment does not depend on the duration of the employment contract (even if the contract has lasted for one day and the employee has worked that day, he/she is entitled for the claim).

The Labour Inspectorate has a special extrajudicial authority called the labour dispute committee<sup>63</sup>.

A labour dispute committee is an independent extrajudicial authority that does not protect the interests of either the employer or the employee but resolves labour disputes impartially pursuant to legislations. The duty of a labour

<sup>62</sup> Gender Equality and Equal Treatment Commissioner, available here: <https://volinik.ee/en/eu-citizen/en/>

<sup>63</sup> Labour Inspectorate's thematic page, available here: <https://www.tooelu.ee/en/58/labour-disputes>

dispute committee is to conduct proceedings purposefully and efficiently and to resolve a labour dispute properly, as easily and quickly as possible and with the lowest expenses possible. Only the following disputes can be referred to the labour dispute committee:

- a labour dispute arising from the employment relationship between an employee and an employer registered in Estonia, an employer operating in Estonia through a branch or an employer registered as a non-resident employer and from the preparation for such an employment relationship (individual labour dispute);
- a labour dispute arising from section 7 of the Working Conditions of Employees Posted to Estonia Act between an employee posted to Estonia and their employer (individual labour dispute);
- a collective labour dispute arising from the performance of a collective agreement (collective labour dispute).

The labour dispute committee does not settle disputes concerning occupational accidents or occupational diseases, or compensation for the damage caused by the health damage, personal injuries or deaths arising from them. These disputes shall be referred to the county court.

The decision made by the labour dispute committee that has entered into force is binding to all parties (also in terms of the Code of enforcement procedure). According to Article 65 of the Labour dispute resolution act, at the request of a party, the labour dispute committee may declare a decision ordering payment of wages to be subject to immediate enforcement to the extent essential for the employee but not exceeding the extent of two months' wages. At the same time, the other has the right to apply for suspension of immediate enforcement.

Enforcement procedures can also be conducted via a representative (e.g. the representative submits an application to the enforcer, communicates with the enforcer etc.), so there are no differences compared to ordinary enforcement proceedings.

Information on rights and obligations as well as procedures are introduced and carried out in a language that the third-country national understands (with an interpreter if necessary). Information provided depends on the situation of the third-country national – if he/se is staying in the country irregularly, information is provided regarding relevant procedures and opportunities (including the possibility to leave voluntarily and/or with the help of IOM Estonia).







## 6. Conclusions

Prevention of illegal employment of third-country nationals has been one of the national priorities since 2017 when Estonia became growingly a destination country in terms of labour migration. As labour migration in the context of temporary residence permits is regulated by the annual immigration quota which has been met since 2016, demand for foreign work force resulted in growing volume of short-term employment registrations – numbers grew from 7584 registrations in 2017 to 32 245 registrations in 2019 (+325%). While for previous years the labour market was dominated by Ukraine, Russian and Belarussian citizens, their share decreased significantly in 2022 due to Russian aggression in Ukraine and imposed sanctions on cross-border movement, employment and study possibilities for both Russian and Belarussian citizens. This resulted in rising share of citizens from Central-Asian region.

As the growing demand for foreign workforce brought a rise in both volume of labour migration as well as cases of illegal employment and tax evasion, focusing more closely on illegal employment became a necessity. In 2017, PBGB, Tax and Customs Board and Labour Inspectorate signed a cooperation agreement to share information for risk analysis purposes, meet regularly and conduct joint targeted inspections for more effective use of resources while covering different areas of employment violations (illegal employment of third country nationals, human trafficking related offences, labour exploitation, tax frauds, but also the protection of their rights). In 2018 the Estonian Government approved “The Illegal Employment Prevention and Prohibiting Action Plan”. In 2019, PBGB in collaboration with Estonian Tax and Customs Board and Labour Inspectorate started the process of developing a common migration information system. Since then, digitalisation has been one of the priorities in migration management:

- MIGIS (Migration Supervision Database) enables automatic and manual checks against different databases, create risk profiles, plan and report inspections, draw statistics etc. and provide possibility to the prompt exchange of information with other state authorities. System allows to perform checks

regarding migration in a broader scope i.e., to determine whether issued permits/visas are used purposefully and in accordance with set conditions (including work, study, family migration, entrepreneurship, permanent residency). Automated checks ensure up-to-date awareness of third-country nationals staying in Estonia and thus provides faster ability to react to misuse or irregular stay. First stage of MIGIS was implemented in 2023.

- RIS (Migration Information System) is aimed at providing a single access “window” for different e-services. Developments include updating digital environment for processing short-term employment registrations (self-portal for submitting applications for short-term employment registrations was introduced in 2019), residence permits, enabling consultation service and data exchange possibilities via X-Road between relevant authorities. Updates and developments are currently undergoing.

Since 2017, legislation has been amended several times of which most important set of amendments regarding illegal employment were introduced in 2018, 2020 and 2022. In 2018, fines for legal entities who enable illegal employment, were increased tenfold. Provisions were added to prohibit economic activities if employer has systemically enabled the employment of a third-country national who is staying in Estonia without a legal basis, has violated employment conditions or has not paid the requested remuneration. In 2020, PBGB was provided with a provision of assessment of reliability (for employers, educational institutions, internship providers etc.) valid for up to one year. Assessment can be used in relation to future visa, residence permit and extension procedures. Additionally, amendments entered into force aimed to prevent the misuse of employment regulations as well as to ensure that enterprises do not avoid paying taxes and pay foreigners the required Estonian average monthly wage. In 2022, short-term employment was restricted to full-time employment and requirement to pay the employee at least the average Estonian salary regardless of the workload agreed was introduced. Before these amendments,

there were not enough effective measures in place to sanction employers who did not fulfil conditions set for employment nor salary in order to avoid tax payments and gain competitive advantage.

Good practices for the period of 2017 to 2022 include: cooperation agreement between the PBGB, Tax and Customs Board and Labour Inspectorate; introducing free migration consultation service by the PBGB; free legal advisors and work environment consultants service by the Labour inspectorate; and conducting information days (including for consular offices). One of the most severe challenges has been related to responsibilities of a legal person/entity that have violated conditions of employment. Due to PBGB's decisions being contested in court and similar proceedings being suspended by the highest court decision, the ability to conduct misdemeanour proceedings against legal persons was obstructed from 2020 until 2022. In 2022, relevant amendments entered into force clarifying the scope of obligations and liability of an employer, a member of management board or another representative to whom the performance of the corresponding obligation was delegated.

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