



## Ad-Hoc Query on Monitoring of foreigners

Requested by LT EMN NCP on 20<sup>th</sup> of February 2010

Compilation produced on 8<sup>th</sup> April 2010

Responses from [Austria](#), [Belgium](#), [Czech Republic](#), [Estonia](#), [Finland](#), [France](#), [Germany](#), [Latvia](#), [Lithuania](#), [Malta](#), [Netherlands](#), [Portugal](#), [Slovak Republic](#), [Spain](#), [United Kingdom](#) (15 in Total)

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### **1. Background Information**

Lithuanian Police Department which via its territorial Migration services exercises control over the legal stay of aliens in the Republic of Lithuania and implements the Law on the legal status of aliens in practice meets several practical challenges in monitoring the legal stay of foreigners in the Republic of Lithuania. They have approached LT EMN NCP with an aim to familiarize with the best practices of other EU MS in monitoring of foreigners and have prepared this ad-hoc inquiry.

We kindly ask you to provide your answers by the **15<sup>th</sup> of March**.

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**2. Responses<sup>1</sup>**

		Wider Dissemination? <sup>2</sup>	<p>1. In Lithuania a foreigner who registers an enterprise/business is issued with a residence permit on the ground that s(he) engages in lawful activities. There is evidence that some of the enterprises/businesses are established only to receive a residence permit and in reality are not functional. Does your country have similar experience? If yes, <u>who</u> and according to <u>what criteria</u> monitors and makes decisions that the enterprise is not operating and has been set up only to obtain a residence permit?</p> <p>2. Does national legislation in your country oblige the employer who employs a foreigner to report to any relevant institution about a foreign employee? If yes: <u>what kind of information</u> must be submitted by the employer and <u>to what institutions</u>? Does legislation provide for <u>liability for failure to submit</u> the information?</p> <p>3. According to <u>what criteria</u> is a person put on the persona non grata list? Are there any <u>criteria established for defining the duration of the entry ban</u>? Please note that a similar ad-hoc query was launched by the BE NCP on the 17<sup>th</sup> of February 2010. The only difference is that we ask about <u>the existing national practices</u> whereas the BE colleagues ask about how your country <u>will regulate entry bans accordingly to the Return Directive</u>.</p>
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	Yes	<p>1. Pre-departure safeguards: People who want to set up a business in Belgium will have to apply for a professional card. The delivery of professional cards for self-employed third-country nationals falls within the competence of the federal authorities. Applications should be made with the nearest Belgian diplomatic post in their country of residence or with the municipal administration of the place of residence for people with a right of residence in Belgium. The application will be transferred to the Federal Public Service Economy, SMEs, Self-employed and Energy, which will examine the ability of the third-country national to exercise the self-employed activity. This check is even more important in case of professions to which the access is controlled (i.e. specific training or experience requirements for professions such as cook, butcher, optometrist, etc.). Furthermore, the FPS has to be shown objective evidence that the envisaged professional activity will be of benefit to the Belgian economy (e.g. because it creates a certain number of new jobs, answers an economic need, promotes innovative activity, etc) or can judge the application on terms of social, cultural, artistic or athletic benefits. Professional documents need to be attached to the application form. These documents need to demonstrate the skills and abilities of the applicant to exercise the self-employed activity her/she is requesting a permit for. In addition to the professional documents described above, the applicant is requested to submit a medical certificate (delivered by the practitioner of the diplomatic post) as well as a "certificate of good life and behaviour". If the application for a professional card is rejected, the foreigner needs to respect a waiting</p>

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

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

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			<p>period of two years before he/she can apply again, although certain exceptions apply. Once the application for the professional card is approved, the long term visa type D will be issued by the Belgian diplomatic post.</p> <p>Post Departure: In most cases the professional card is valid for two years. After these two years, they can obtain an extension, but they will have to prove that they really worked as an independent/followed the conditions attached to the deliverance of the professional card. In theory, the Immigration Department could withdraw the residence permit if they are informed of fraud, but in reality this rarely happens.</p> <p>2. An employer must notify the competent authority (Federal Public Service Economy for self-employed activity, Regional Authorities for other employment) about termination of a contract of employment with the TCN in possession of a temporary residence permit. In that case, he/she will receive an order to leave the Belgian territory.</p> <p>3. At the moment, a TCN can only receive an entry ban for reasons of public security. A “Ministerial Decision of expulsion” and a “Royal Decree concerning expulsion” are decisions with regard to a foreign national who threatened public order or national safety and/or did not observe the conditions stipulated for his residence and/or a violation of the rules restricting his freedom. As a result the foreigner cannot reenter the Belgian territory during a period of ten years, unless the measure is suspended or withdrawn. For a TCN who received an order to leave the Belgian territory, there is no entry ban. He/she can apply for a visa immediately after his/her arrival in home country. He/she of course has to meet the criteria/conditions. In case of a forced removal for example, the TCN has to refund the travel costs before he can receive a visa.</p>
	<b>Czech Republic</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further
	<b>Estonia</b>	<b>Yes</b>	<p>1.-2. In Estonia the situation is similar as in Lithuania. The Police and Border Guard Board may check any time (but certainly in the case of an extending residence permit) if the foreigner is used the residence permit on applied grounds. According to Aliens Act an alien is required to prove the facts which are the basis for the issue or extension of a visa, residence permit or work permit. For verification of the legality of an alien’s stay or employment in Estonia, the alien is required to present identification and the document which proves the legality of his stay or employment in Estonia at the demand of a customs official or an official of the Police and Border Guard Board. The employer is required to provide officials of the Police and Border Guard Board with immediate access to the workrooms, employees, data and documents pertaining to aliens employed by the employer. Upon assessment of the trustworthiness of an employer in the event of review of an application for a residence permit for employment with such employer, the results of previous checks carried out at the premises of the employer shall be taken into consideration.</p> <p>3. According to a Obligation to Leave and Prohibition on Entry Act a prohibition on entry may be temporary or permanent. A temporary prohibition on entry may have a period of validity of up to ten years.</p> <p>Failure, without imposition of prohibition on entry, to allow aliens to enter Estonia is permitted if:</p> <ol style="list-style-type: none"> <li>1) a circumstance which constitutes the basis for imposition of a prohibition to entry exist with regard the alien;</li> <li>2) the alien has committed an offence in Estonia;</li> <li>3) the alien has failed to pay a fine imposed on the alien for an offence committed in Estonia;</li> <li>4) the alien has failed to pay for the expenses for expulsion;</li> <li>5) there is reason to believe that the arrival of the alien to Estonia may pose a threat to national security, public safety or public order;</li> <li>6) there is reason to believe that the purpose of the alien’s arrival to Estonia does not correspond to the purpose of arrival claimed by the</li> </ol>

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			<p>alien;</p> <p>7) there is reason to believe that the alien does not intend to leave Estonia after his basis for stay expires.</p> <p>A prohibition on entry may be applied with regard to an alien if:</p> <p>1) there is good reason to believe that his stay in Estonia may endanger the security of the Republic of Estonia, or public order, public safety, moral standards or the health of other persons;</p> <p>2) there is information or good reason to believe that he belongs to a criminal organisation, that he is connected with the illegal handling or illicit trafficking of narcotics, psychotropic substances or the illegal conveyance of persons across the border, that he is a member of a terrorist organisation or has committed an act of terrorism, or that he is involved in money laundering;</p> <p>3) he is or has been employed by an intelligence or security service of a foreign state, or there is good reason to believe that he is or has been employed by an intelligence or security service of a foreign state;</p> <p>4) he has received or there is good reason to believe that he has received special training in landing operations or in diversion or sabotage activities, or other special training, and if the knowledge and skills acquired in the process of such training can be directly applied in the formation or training of illegal armed units;</p> <p>5) he incites or there is good reason to believe that he incites racial, religious or political hatred in Estonia or a foreign state;</p> <p>6) he has been punished or there is good reason to believe that he has been punished for a serious crime against humanity or for a war crime, regardless of whether the criminal record has expired or been expunged, and regardless of the expungement of data concerning punishment from the punishment register;</p> <p>7) he has been punished for an intentionally committed criminal offence or for another offence in Estonia or a foreign state, and if the criminal record has neither expired nor been expunged or if data concerning the punishment have not been expunged from the punishment register;</p> <p>8) the alien has violated legislation regulating the stay of aliens in Estonia or the crossing of the state border by aliens;</p> <p>9) the alien has provided incorrect information or a falsified document upon application for a legal basis to stay in Estonia or extension thereof, for Estonian citizenship, asylum or an identity document;</p> <p>10) the alien has unperformed obligations to the Estonian state, a governmental authority or local government.</p> <p>But prohibition on entry shall not be applied on following cases:</p> <p>1) with regard to an alien less than 13 years of age;</p> <p>2) with regard to an alien who is of Estonian origin;</p> <p>3) with regard to an alien whose application for asylum in Estonia has been accepted for hearing or with regard to an alien who has been granted asylum in Estonia.</p>
+	Finland	Yes	<p>1. Non-EU citizens would need a residence permit for a self-employed person in order to engage in business activities in Finland. In order to gain a residence permit, the applicant's business activity must be profitable. The profitability of the business activity is estimated on the basis of various reports that are obtained in advance, such as the business plan or binding preliminary contracts and funding agreements. The deliberation is conducted by the Employment and Economic Development Centre.</p> <p>Granting a residence permit for a self-employed person requires that the individual's means of support are guaranteed. He or she must gain a regular income from the profits of the operations, salary received, personal funding withdrawals, or such items as sales profits, in an amount above the threshold for basic income support throughout the residence permit's period of validity. The sufficiency of the</p>

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			<p>income is determined by the Employment and Economic Development Centre.</p> <p>While extending the person's stay in Finland the local Police determines whether the person has resided in the country during the first fixed-term residence permit. If the person has not done any business, application for renewal of the first fixed-term residence permit may be rejected. If the person does not have any other grounds for residence permit he or she may be subject to expulsion.</p> <p>2. Section 73 of the Aliens Act:  <i>Employer's obligations</i></p> <p>(1) An employer shall attach to an application for a residence permit for an employed person:</p> <ol style="list-style-type: none"> <li>1) written information on principal terms of work referred to in Chapter 2, section 4 of the Employment Contracts Act (55/2001);</li> <li>2) an assurance that the terms comply with the provisions in force and the relevant collective agreement or, if a collective agreement is not applied, that the terms correspond to those applied to employees in the labour market doing similar work; and</li> <li>3) upon request by an employment office, a statement confirming that the employer has met and will meet his or her obligations as an employer.</li> </ol> <p>(2) An employer shall ensure that an alien entering his or her service and working in his or her employment has the required residence permit for an employed person or that the alien does not need a residence permit.</p> <p>(3) An employer who employs a person other than an EU citizen or comparable person or his or her family member, or an alien residing in the country under a permanent residence permit shall submit a statement referred to in subsection 1 to the employment office without delay, and inform the shop steward, the elected representative and the occupational safety and health representative of the alien's name and the applicable collective agreement.</p> <p>(4) An employer shall keep the information on the aliens in his or her employment and on the grounds for their right to work easily available at the workplace for inspection by occupational safety and health authorities, if necessary. The employer shall store the information on the termination of the alien's employment for four years.</p> <p>An employer who deliberately or through gross negligence fails to fulfil the obligations provided in section 73 of the Aliens Act <u>shall be sentenced for employer's violation of the Aliens Act to a fine</u>, unless a more severe punishment for the act is provided elsewhere in the law (section 186 of the Aliens Act).</p> <p>3. Entry ban is decided on case by case basis. The duration may be between one to ten years or temporary. There is no accurate criterion on determining the entry ban. Grounds for refusal of entry are laid down in Section 148 of the Aliens Act. A serious offence punishable</p>
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			<p>by imprisonment leads to a longer refusal of entry. <u>Also dishonesty while applying residence permit may lead to an entry ban for 2-3 years.</u> When considering prohibition of entry and its duration, account will also be taken of whether the alien has any such ties to Finland that would suffer unreasonably from prohibition of entry (family or other).</p>
	<p><b>France</b></p>	<p><b>Yes</b></p>	<p><b>1. Yes.</b> A foreigner, wishing to create his company, is compelled to meet certain conditions. Obtaining a residence permit depends on the viability of the proposed project. Creating a business is open to nationals of EU Member States, and nationals of the European Economic Area and Swiss Confederation.</p> <p>On the other hand, the entrepreneur of foreign nationality, to create his company in France, will:</p> <ul style="list-style-type: none"> <li>▶ require a long stay visa in his country of origin;</li> <li>▶ obtain a temporary residence card, which indicates the business the foreigner wants to develop in France. Obtaining this residence permit will be conditioned by the viability of the proposed project. A business plan will be required, proving the long-term economic performance of the proposed business creation.</li> </ul> <p>If the file is complete, the prefecture shall give a receipt to the foreigner for filling an application for temporary residence permit. It is the prefecture which is responsible for determining whether the proposed business creation is viable. This receipt allows the foreigner to create his business and complete the formalities with a Centre for Business Formalities (CFE). Although there are always risks of fraud, the conditions the foreigner must meet to create a business make the fraud difficult.</p> <p><b>2. Yes.</b> When the foreign national lives in France, the employer must make sure, before hiring the foreigner, that he has a work permit allowing him to occupy the position he intends to offer. Criminal penalties and an administrative penalty (payment of a special contribution to the OFII, French Office for Immigration and Integration) are provided if the employer does not carry out these measures. If the foreigner does not have an authorization to work, he must apply for it to the Prefecture of his place of residence.</p> <p>An employer wishing to hire a foreigner outside the EU and the European Economic Area must make sure there is no available and qualified workforce on the national territory.</p> <p>The Act of July 24, 2006 provides that when the foreigner intends to take up employment in a position or geographical area characterized by difficulties in recruiting and on a list established by the national administration, he receives a residence permit. This list of positions, drawn by region, called "in tension" is annexed to the decree of January 18, 2008.</p> <p>The employer addresses the job centre or another organization seeking local candidates who can fulfil the required functions. If any job seeker can meet the supply, the job centre issues a certificate to the employer that allows him to file the case to the departmental directorate in charge of employment of his department. The departmental directorate in charge of employment then proceeds to review the files on a case by case basis. When the application is accepted, the file is forwarded to the OFII which organizes the mandatory</p>

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			<p>medical examination within 3 months after the foreigner's arrival in France.</p> <p>3. French legislation has no provisions concerning 'entry bans'. The comparable measures would be 'the legal interdiction from French territory' (interdiction judiciaire du territoire) and the expulsion decree (arrêté d'expulsion).</p> <p>- <b>The legal interdiction from the territory</b> is a judicial measure imposed to a foreign national who has committed an offence or a crime. But this measure is not equivalent to entry bans as it is a complementary penalty delivered by the criminal court sanctioning given offences. It prevents a convicted foreign national from entering and residing on the French territory for a fixed period or permanently. The temporary legal interdiction from the territory has a variable duration: 1, 3, 5 or 10 years depending on the seriousness of the committed crime or offence. After the ban, the foreigner can return to France if he meets the conditions. A permanent legal interdiction from the territory prevents the foreigner from returning to France permanently.</p> <p>- <b>The expulsion decree (arrêté d'expulsion)</b> is also granted to foreign nationals whose conduct is likely to seriously threaten public order (CESEDA, Article L. 521-1). The expulsion decree is a measure of administrative police which is delivered by the Minister of Interior or the prefect. The expulsion order prevents a foreigner from returning to France as long as the measure has not been abrogated by the authority which pronounced it.</p>
	<p><b>Germany</b></p>	<p><b>Yes</b></p>	<p>1. To prevent abuse, an in-depth examination of the conditions to be fulfilled is carried out before the residence title is issued or extended. The issuance of a residence permit valid for a maximum duration of three years for the purpose of self-employed economic activities, e.g. as an entrepreneur, depends on the volume of (capital) investment, on the sustainability of the business model, the experience of the foreigner as entrepreneur, the impact on the employment and training situation and on the contribution of the business idea towards innovation and research. When examining these conditions, the competent bodies for the planned business location, i.e. the competent trade and industry authorities, the representative bodies for public-sector professional groups and the competent authorities regulating admission to the profession concerned shall be involved appropriately by the competent Foreigners' Authority. After expiry of the three-year period, the foreigner can be issued an unlimited settlement permit if the foreigner has successfully realised the planned activity and the subsistence of himself and the dependents living with him as a family unit and whom he is required to support is ensured by adequate income. The legal basis is Section 21 of the Federal Residence Act.</p> <p>2. It is the foreigner's responsibility to report to the Foreigners' Authority that he has a job securing his subsistence which is the condition for obtaining a residence title. In case of unemployment it is also his responsibility to report this fact to the social and employment authorities (but not to the Foreigner's Authority). In case the foreigner receives social assistance benefits which are not based on his own contributions to the social insurance system, the social authorities will inform the competent Foreigners' Authority accordingly.</p> <p>Employers have the – sole - obligation to provide information and to cooperate with the responsible authorities of the customs administration in combating undeclared work and non-observance of the mandatory terms of employment in the area of cross-border services. This applies in particular to foreign employees. Failure to comply with these obligations constitutes an administrative offence and can be penalised with an administrative fine.</p> <p>3. The current legislation and practice in Germany were described in the answer to the enquiry of the Belgian NCP referred to in the</p>

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			issue; hence, reference is made to this.
 Latvia	Yes	<p>1. Yes. There have not been any criteria established yet except of salary of these representatives of commercial entities which equals to double average salary in country (at the moment – 960 LVL = appr. 1350 EUR per month). If salary criterion has been fulfilled and all other taxes paid (if any) authorities are not entitled to cancel the residence permit. However, working on amendments to Immigration Law there are some regulations included regarding this issue. First, if a foreigner is founder of company, his investment should be at least 25 000 LVL (35200 EUR), the company should employ at least 5 employees and three out of them should be citizens of EU countries or permanent residents of Latvia, and – the third criteria – taxes paid during previous year should not be less than 10000 LVL (14000EUR). For other businessmen who are involved in boards or councils of enterprises criteria will be quite similar but they will be included into Cabinet of Ministers regulations. These changes should come into force from 1<sup>st</sup> July 2010.</p> <p>2. No. Employers should report only number of employed persons, not specifying their citizenship.</p> <p>3. There are several institutions and various reasons for including a third-country national into list of undesired persons (this is excerpt from Section 61 of Immigration Law):</p> <p>“(1) The decision regarding including a third-country national in the List of those persons for whom the entry in the Republic of Latvia is prohibited (hereinafter – List) shall be taken by the Minister for the Interior if:</p> <ol style="list-style-type: none"> <li>1) competent State authorities have reason to believe that a third-country national participates in anti-state or criminal organisations or is a member thereof;</li> <li>2) competent State authorities have reason to believe that a third-country national causes a threat to national security or public order and safety or, by entering Latvia, may hinder pre-trial investigations or the work of law enforcement institutions in discovering a criminal offence.</li> <li>3) competent State authorities have reason to believe that a third-country national has committed or is planning to commit a serious or extremely serious crime;</li> <li>4) a third-country national has committed a crime against humanity, an international or war crime or has participated in mass repression if such has been determined by a court judgement;</li> <li>5) competent foreign authorities have supplied information which forbids a third-country national to enter and reside in the Republic of Latvia; or</li> <li>6) the entry and residence of a third-country national into the Republic of Latvia is not desirable for other reasons on the basis of an opinion delivered by competent authorities of the Republic of Latvia.</li> </ol> <p>(2) If a third-country national is an undesirable person for the Republic of Latvia (<i>persona non grata</i>) a decision regarding his or her inclusion in the List shall be taken by the Minister for Foreign Affairs.</p> <p>(3) If in accordance with the procedures prescribed by this Law a decision has been taken to refuse the issue of a visa, cancel or revoke a visa, a decision regarding the inclusion of a third-country national in the List shall be taken by the Director of the Consular Department or by a diplomatic official of the mission which is authorised to perform consular functions.</p> <p>(4) A decision regarding the inclusion of a third-country national in the List shall be taken by an official of the Office of Citizenship and Migration Affairs, if:</p> <ol style="list-style-type: none"> <li>1) a decision has been taken to refuse the issue of a visa, cancel or revoke a visa;</li> <li>2) a decision has been taken to refuse the issue of a residence permit or cancel a residence permit;</li> </ol>	

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			<p>3) a return decision has been issued or a decision taken regarding the forced return of a third-country national;          4) a third-country national has helped another third-country national to enter illegally the Republic of Latvia and it has been determined by a court judgement;          5) a third-country national within the period of the preceding year has breached procedures prescribed by regulatory enactments for the entry and residence of third-country nationals in the Republic of Latvia or customs regulations;          6) a third-country national has been returned from the Republic of Latvia and the expenses related to the return have not been compensated in the State budget.</p> <p>(5) A decision regarding the inclusion of a third-country national in the List shall be taken by the Chief of the State Border Guard or his or her authorised official, if:</p> <p>1) in accordance with the provisions of Regulation No. 562/2006 of the Parliament and of the Council of 15 March 2006, a decision regarding the refusal to enter the Republic of Latvia has been taken on the grounds that the third-country national has presented forged travel documents, visa or a residence permit;          2) a decision has been taken regarding the forced return of a third-country national;          3) a third-country national has breached the procedures specified in regulatory enactments for entry and residence of third-country nationals into the Republic of Latvia and such breach was determined at the moment of his or her departure from the Republic of Latvia; or          4) a decision has been taken to refuse the issue of a visa, to cancel or revoke a visa.</p> <p>Provisions regarding term of entry ban are stipulated in Section 63 of the Immigration Law:</p> <p>(1) A third-country national may be included in the List, prohibiting entry for a time period <u>to three</u> years, if:</p> <p>1) a decision has been taken to refuse the issue of a visa, cancel or revoke a visa;          2) a decision has been taken to refuse the issue of a residence permit or to cancel a residence permit;          3) in accordance with the provisions of Regulation No. 562/2006 of the Parliament and of the Council of 15 March 2006, a decision regarding the refusal to enter the Republic of Latvia has been taken on the grounds that the third-country national has presented forged travel documents, visa or a residence permit;          4) a third-country national has been issued a return decision; and          5) in accordance with Section 61, Paragraph four, Clauses 4, 5 and 6, and Paragraph five, Clause 3 of this Law, a decision has been taken regarding the inclusion of the third-country national in the List.</p> <p>(2) A third-country national may be included in the List, determining a re-entry ban for a period of <u>from three to five</u> years if a decision has been taken to return him or her forcibly.</p> <p>(3) A third-country national may be included in the List by prohibiting entry for a <u>specific or an indefinite period</u> of time:</p> <p>1) in accordance with Section 61, Paragraphs one or two of this Law (in case if decision is taken by Minister of Interior and Minister of Foreign Affairs); or          2) if after returning him or her from the Republic of Latvia the expenses related to the return have not been compensated in the State budget.</p>
	<b>Lithuania</b>	<b>Yes</b>	1. Yes. Checks on enterprises established by aliens are organized and made by territorial Migration services. Consultations are held with

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			<p>specialists of State Tax and State Labour Inspectorates. The monitoring of such enterprises is a new area which is in the process of development therefore no solid criteria are set.</p> <p>2. An employer must notify the Migration Department or a division of a territorial Migration service about termination of a contract of employment with the alien in possession of a temporary residence permit. According to such report the residence permit issued to an alien is withdrawn and s(he) must leave the territory of the Republic of Lithuania. There is no liability for failure to submit the information.</p> <p>3. If an alien falls under below mentioned criteria, s(he) is may be entered for a fixed or indefinite period into the list of <i>persona non grata</i>:</p> <ul style="list-style-type: none"> <li>- has been refused a visa or his/her visa has been annulled</li> <li>- has been refused a residence permit or his/her residence permit has been withdrawn</li> <li>- has been refused entry into the Republic of Lithuania</li> <li>- has been obliged to depart</li> <li>- has been expelled from the Republic of Lithuania or returned to the country of origin or a foreign country</li> <li>- has attempted to unlawfully depart or has departed from the Republic of Lithuania</li> <li>- whose entry or stay in the republic of Lithuania would constitute a threat to national security or public order</li> </ul> <p>There are no established criteria for defining the duration of the entry ban. Every case is accessed individually.</p>
	<p><b>Malta</b></p>	<p><b>Yes</b></p>	<p>1. In Lithuania a foreigner who registers an enterprise/business is issued with a residence permit on the ground that s(he) engages in lawful activities. There is evidence that some of the enterprises/businesses are established only to receive a residence permit and in reality are not functional. Does your country have similar experience? If yes, who and according to what criteria monitors and makes decisions that the enterprise is not operating and has been set up only to obtain a residence permit?</p> <p>In Malta a person who registers a company will get a residence permit if he obtains an employment licence which is issued by the Employment and Training Corporation (the national public employment service) . The relative application would be assessed on the following criteria,</p> <ul style="list-style-type: none"> <li>a. Investment of at least Eur 100,000 without a Maltese partner; or an investment or shareholding equivalent to Eur 40,000 with a Maltese partner. Investment must consist of fixed assets and/or capital used for the business purposes. Rental contracts do not qualify;</li> <li>b. Highly skilled innovators with a sound business plan who commit to recruiting at least three EEA/Swiss nationals within eighteen months of establishment;</li> <li>c. Sole representative of an overseas company (with a sound reputation and established for at least three years abroad) wishing to open a branch in Malta;</li> <li>d. Directors forming part of a project that has been formally approved by Malta Enterprise and formally notified by the latter to ETC.</li> </ul>

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			<p>In the case of (a) above, a Business Plan is required, indicating clearly when such investment is to occur, within twelve months from application. In the case of (b) above, the Business Plan must be submitted with the application. In the case of (c), evidence of such representation is required on application. In the case of (d), formal notification by Malta Enterprise is required on application.</p> <p>When the application of the person concerned comes up for renewal, the individual in question would be asked to present to the Corporation a copy of the preceding year's accounts. If these would not be in hand the applicant would be asked to present other evidence of any economic activity that would have taken place in the preceding year. An update on the status of the Business Plan will also be asked for. If this information is not submitted a refusal for renewal of employment licence will be issued and his residence permit would be cancelled.</p> <p>2. Does national legislation in your country oblige the employer who employs a foreigner to report to any relevant institution about a foreign employee? If yes: what kind of information must be submitted by the employer and to what institutions? Does legislation provide for liability for failure to submit the information? National legislation obliges an employer to notify the Employment and Training Corporation if the employee is no longer employed.</p> <p>3. According to what criteria is a person put on the persona non grata list? Are there any criteria established for defining the duration of the entry ban? Please note that a similar ad-hoc query was launched by the BE NCP on the 17th of February 2010. The only difference is that we ask about the existing national practices whereas the BE colleagues ask about how your country will regulate entry bans accordingly to the Return Directive</p> <p>.At present, entry bans are imposed on all over-stayers, even those who leave voluntarily and present themselves at the airport. The entry-ban remains valid for a period of 5 years. Any requests for entry prior to the 5-year ban are considered on their own merits by the Principal Immigration Officer. In general all declared prohibited immigrants who are issued with a removal order are put on the persona non grata list. Article 5 of Chapter 217 of the Laws of Malta defines prohibited immigrants.</p>
	<p><b>Netherlands</b></p>	<p><b>Yes</b></p>	<p>1 - In the Netherlands a foreigner who registers an enterprise/business should provide evidence that he has come to the Netherlands to engage in activities which are not related to paid employment. For instance, this evidence can be a registration in the trade register of The Netherlands Chamber of Commerce. Also he has to demonstrate that he is in fact doing labour. This can for example be proved by a trade balance with the profits and costs of his enterprise. In the Netherlands the presumptions exist that indeed this law of the EU is being abused. Particularly it refers to foreigners who register as a prostitute, but the presumption is that they are actually engaged in (forced) paid employment. But this presumption has not been determined yet. Organisations who are involved are the labour inspection, the Social Intelligence and Investigation Service (SIOD), the police and the Royal Netherlands Marechaussee (KMar).</p> <p>2 - In the current policy there is no obligation as such for the employer. The employer has to request for a work permit at the Netherlands Employees Insurance Agency, the work placement division, when he employs a TCN or a foreigner from Romania or</p>

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			<p>Bulgaria.</p> <p>3 - The Netherlands has defined concrete criteria in national legislation on including persons into SIS according tot article 96 Schengen Convention. For The Netherlands the decisions on these alerts are taken by the Immigration and Naturalisation Service (IND). Decisions may be based on a threat to public policy or public security or to national security which the presence of an alien in national territory may pose.</p> <p>An alert can be entered in the SIS for the following categories of aliens:</p> <ul style="list-style-type: none"> <li>· persons who have been declared “unwanted alien” by virtue of the Alien’s Act 2000 (minimum five to ten years);</li> <li>· non-criminal aliens after their removal from The Netherlands (two years);</li> <li>· aliens who have been charged with a drug smuggling offence, but who have not (yet) been prosecuted (two years);</li> <li>· aliens who have been sentenced to imprisonment for three months maximum (two years);</li> <li>· aliens who have been sentenced to imprisonment for three to six months (three years);</li> <li>· aliens who have been sentenced to imprisonment for more than six months (five years);</li> <li>· aliens who have used false or falsified travel or identity documents (five years);</li> <li>· aliens who have withdrawn from surveillance, for example if they have not acted according to a duty to report (three years);</li> <li>· aliens who are considered a threat to national security, according to the judgement of the Minister for Alien’s Affairs and Integration, on the basis of substantial indications of an Intelligence Service (ten years).</li> </ul> <p>The above mentioned criteria are laid down in the Dutch Aliens Act implementation guidelines 2000.</p>
	<p><b>Portugal</b></p>	<p><b>Yes</b></p>	<p>1. Yes. In accordance with the dispositions in the legal Framework (Act 23/2007 of July 4th), article 60 establishes the grant of a residence visa for the exercise of an independent professional activity or for immigrant entrepreneurs, after which a residence permit for the exercise of an independent professional activity might be granted.</p> <p>2. The Labour Legal Framework – Labour Code / Act number 7/2009 of 12 February, Article 5, paragraph five, determines that any labour contract signed with a foreign or with a stateless person, should be communicated to the Authority for Labour Conditions (Autoridade para as Condições do Trabalho) in advance of its execution, and its termination should also be communicated to the same entity, fifteen days after its cessation (exceptions made to EEA citizens and to citizens from countries that give our nationals the same labour conditions as to their own). The contravention to this disposition represents a serious offense, punishable by a pecuniary fine.</p> <p>3. The removed foreigner has an entry ban for a period no less than five years.</p>
	<p><b>Slovak Republic</b></p>	<p><b>Yes</b></p>	<p>1. According to the Slovak legislation (Act on Stay of Aliens) a foreigner, who would like to carry out a business in the Slovak Republic must apply for a temporary residence permit for the purpose of entrepreneurship. This permit can be issued to the foreigner by the respective police department only if he/she fulfils legitimate conditions (e.g. the foreigner must have an entrepreneurship authorization). Within an assessment procedure of the temporary residence permit for the purpose of entrepreneurship application, the police department considers the public interest, especially the security aspects and cooperates with the other state bodies (Division of Trading Entrepreneurship, Companies Register of the District Court) in order to check the entrepreneurship legitimation. The respective police</p>

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			<p>department undertakes the inspection on the place of the business and interviews the foreigner about the subject of his/her business. Such inspections are made at the time of the assessment of the temporary residence permit application and also during the time when such permit is granted. If the police department finds out that the foreigner runs the business only for the purpose of getting the residence permit and that the business does not function in reality, the residence permit is revoked.</p> <p>2. If an employer employs a foreigner who holds a basic work permit and a short term residence permit issued with the purpose of employment, the employer is not obliged to report about the foreign employee to any relevant institution. The issued permits are registered by the Central Labour Office of the Ministry of Labour, Social affairs and Family of the Slovak Republic. The Central Labour Office of the Ministry of Labour, Social Affairs and Family of the Slovak Republic is obliged to inform in writing the respective police department about the granting and revoking of the employment permit. The Trades Licensing Office is obliged to follow the same deadline concerning the granting and revoking the trade permission.</p> <p>The employer is obliged to inform in writing the Central Labour Office of the Ministry of Labour, Social affairs and Family of the Slovak Republic within 7 working days if the foreign employee to whom the work permit was issued, does not show up at the work or if the employment of the foreigner ends before the date of expiry of the work permit. The employer is also obliged to inform about this the local Alien and Border Police department within 3 working days in writing. Violation of these obligations is seen as an administrative delict and the employer will need to pay a fine.</p> <p>The employer is obliged to inform in writing on the Information card the Labour office about the starting day of the employment of the foreigner who is not obliged to have a work permit and about his/her last day of the employment within 7 working days from the first day of his/her employment and within 7 days from the last day of his/her employment.</p> <p>Violation of these obligations is seen as a violation of the employment legislation. However, no liability for failure to submit the information exists.</p> <p>3. The regulation of administrative expulsion and the entry bans is regulated by 48/2002 Coll. On Stay of Aliens which states that the reasons  <u>for 5 years entry bans</u> are following: if the foreigner  threatens the security of the state, the public order, the health, rights and freedoms of others and nature on selected protected areas,  was lawfully sentenced for a willful crime and was not sentenced to deportation,  violates the law concerning narcotics and psychotropic substances,  presents him/herself with false or forged documents or the documents of other person,  performs other activities then on which he/she was granted the respective residence permit or visa, or  contracts a marriage for the sole purpose of being granted the residence permit.  <u>for up to 5 years entry bans (minimum 1 year)</u> are following: if the foreigner  enters the territory of the Slovak Republic without the permission or resides in the Slovak Republic without permission,  refuses to plausible prove his or her identity,  resides in the Slovak Republic according to an international agreement or according to the decision of the Slovak Republic and  acts in conflict with this international agreement or with the decision of the Slovak government,  states within the execution of this law false or incomplete or misleading information or presents him/herself with false or forged</p>
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			<p>documents or the documents of other person,          if the respective control body finds out that the purpose for which the temporary residence permit has been granted to the foreigner has ran out and that the foreigner did not inform the police authority about this matter,          obstructs an execution of the decision of the state authorities or          in another manner seriously violates or repeatedly violates generally binding legal regulations.  <u>for up to 10 years entry bans (maximum) are following:</u> if the foreigner seriously threatens the security of the state. If there are more reasons for administrative expulsion, the police authority set the duration of the entry ban according to the strictest provisions.</p>
	Spain	Yes	<p><b>1.</b> In accordance with Spanish legislation, any foreigner who intends to work through self-employment in Spain must apply for and obtain the so-called “initial residence and work permit for self-employment”, for which the foreigner must certify the following:</p> <ul style="list-style-type: none"> <li>a) compliance with the requirements of legislation in effect applicable to nationals for the setting up and operation of the planned activity.</li> <li>b) possession of any professional qualifications that may be required or sufficient proven experience in exercising the professional activity, as well as the necessary academic qualifications for professions requiring specific certifications and, when required, membership in a professional college.</li> <li>c) that the foreseen investment for the start of the project is sufficient and of its incidence, should it be the case, on job creation.</li> <li>d) possession of certification which proves membership in a professional college, in the event of wishing to exercise independent professional activities that so require.</li> <li>e) that exercising the activity will produce sufficient economic resources for the interested party's board and accommodation during the first year, at least, once the resources for maintaining the activity are subtracted.</li> </ul> <p>In any case, as may be observed, <b>the establishment of a business on behalf of a foreigner in Spain requires compliance with the same legal requirements applicable to nationals. Likewise, legislation on employment-related inspections and their application to companies and workplaces is the same for national and foreign employers. In Spain, inspection-related activities are not carried out by “migration” authorities but rather by the Employment and Social Security Inspectorate</b>, the administrative body responsible for the public service of controlling and supervising compliance with regulations on social affairs, including services related with requirements as to any pertinent administrative responsibilities in which companies and workers incur, as well as advisory and information-related services for these on employment issues and social security.</p> <p><b>2.</b> Concerning the hiring of foreigners, on one hand the legislation on alien affairs requires the employer to apply for the residence and work permit for salaried employment, which must accompany the employment contract. This matter is pending regulation through Regulations that develop the recently approved Law on Alien Affairs. The following documentation must accompany the official form when applying for the residence and work permit for salaried employment:</p> <ul style="list-style-type: none"> <li>a) Fiscal Identification Number and documentary proof of the company’s registration with the Social Security system, or proof of exemption, when applicable; in the event the company is established as a legal person, public deed which grants power of attorney to the physical person submitting the application.</li> </ul>

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			<p>b) Employment contract per the official form established for this purpose.</p> <p>c) In the event the competent authority considers it necessary to assure that the employer will be able to assume the obligations arising from the work contract, the latter must certify, through documentary evidence as expressly reasoned and required, financial, material or personal resources available for the business project and for fulfilling said obligations.</p> <p>d) Copy of the foreign worker's complete passport or travel document in effect.</p> <p>e) Documentary proof, in the event the interested party so claims, of the concurrence of any of the specific circumstances set forth in Article 40 of Organic Law 4/2000.</p> <p>f) Duly certified professional qualifications which prove that the foreigner has the training required for the practice of the profession, when applicable.</p> <p>The documentation is forwarded to the Sub-delegates of the Government (in the case of Autonomous Communities with several provinces) or the Delegates of the Government (in the case of single-province Autonomous Communities), the competent bodies for deciding on the granting or denial of the mentioned work permit. In fact, the competent bodies for deciding on the matter take procedural steps concerning the application: to this end, they request reports from 1) the Tax Administration Agency (as regards the employer's compliance with tax-related obligations); 2) the General Treasury of Social Security (as regards the employer's compliance with social security obligations); 3) the General Directorate of the Police and the Civil Guard, and 4) the Central Register of Convicts and Defaulters.</p> <p>The competent authority, upon reviewing the documentation presented and the reports obtained, issues a reasoned decision as to the work and residence permit applied for.</p> <p>Finally, if the competent body in charge of this decision finds that the supporting documentation is incomplete, the applicant will be officially notified so as to have the opportunity to correct the detected faults within ten days, and will be warned that upon failing to do so within this period, <b>the application will be withdrawn and the applicant's file closed upon issuing the corresponding decision.</b></p> <p>In any case, the employer is required to register the worker with the Social Security system, and failure to do so (or in the event the work contract is not registered under the conditions which were grounds for the application) will be considered a serious breach.</p> <p>It is observed that, in the case of Lithuania, the employer must notify the termination of the labour relation, whereby the residence permit which was granted automatically expires and the foreigner is obligated to leave the country.</p> <p>In Spain, employers are obligated to notify the end of the laboural relation, but this communication does not produce the expiration of the work and residence permit for salaried employment, given that this permit is issued for one year (including the possibility for applying for its renewal, per the conditions set forth by law).</p> <p><b>3.- (NOTE:</b> In Spain, the expression "<i>persona non grata</i>" is used in accordance with the <i>Vienna Convention on Consular Relations</i> of 1963, and the <i>Vienna Convention on Consular Relations</i> of 1961. Therefore, in accordance with both Conventions, this declaration only</p>
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			<p>applies to a consular official or other private personnel members of the consular mission, or the head or other member of the diplomatic personnel from the diplomatic mission who is not accepted by the State.)</p> <p>At the moment, the duration of the prohibition <b>is determined in consideration of concurrent circumstances particular to each case, but may not exceed 5 years</b>. Exceptionally, when the foreigner poses a serious threat to public order, public security or public health, <b>prohibition of entry may be imposed for up to 10 years</b>.</p> <p>Spanish legislation has neither specified a duration for prohibition of entry (this is, for example, if it is of 1, 2 or 3 years) nor has specified the duration of the prohibition depending on the nature of the breach committed by the foreigner. <b>In this sense, the duration of prohibition of entry shall be that which, for each specific case, is set forth in the decision for removal issued by the competent body within the time period set forth by Law.</b></p>
	<p>Sweden</p>	<p>Yes</p>	<ol style="list-style-type: none"> <li>1. Applications for Residence Permits from third country nationals who plan to set up enterprises or businesses (self employed persons) are closely examined and the conditions to receive a permit are demanding (these conditions are described in earlier Ad-Hoc Queries within the EMN). As a result of the demanding conditions we have very few experiences of enterprises and businesses set up only for the reason to receive a Residence Permit. If the applicant have such intentions hopefully they are revealed at the examination of the application. During year 2009 approximately 35 per cent of the applications from self employed persons were rejected but there can be several reasons for the rejection and it is not justified to say that all 35 per cent were applications where the applicant had other intentions than to run the business. - The applications are examined by the National Migration Board.</li> <li>2. No, the employer is not obliged to report when he/she employs a foreigner.</li> <li>3. A judgment or order of expulsion on account of criminal offences issued by a general court shall contain a prohibition against the alien returning to Sweden for a certain time or for an unlimited time.</li> </ol> <p>When the Swedish Migration Board orders a refusal of entry or expulsion, the order may be combined with a prohibition against the alien returning to Sweden during a certain period of time. A refusal-of-entry or expulsion order that refers to an EEA national or a member of his or her family may be combined with such a prohibition as is referred to in the first paragraph only if the order has been issued on grounds of public order and security.</p> <p>The criteria for blocking/banning a person from returning to Sweden are:</p> <ul style="list-style-type: none"> <li>- the alien has committed a criminal offence (not petty crimes)</li> <li>- the alien has used false identities in combination with the usage of false documents</li> <li>- the alien has been illegally in Sweden for a longer time</li> <li>- the alien has violated an earlier issued prohibition against the alien returning to Sweden</li> </ul> <p>The duration of the entry ban is generally two years, but in exceptional cases for a longer period, as a rule for four years. Every case is assessed individually. The consequences of the ban is that the person in question is put on the Schengen Information System list of</p>

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			blocked/banned persons for the Schengen area..
	<b>United Kingdom</b>	<b>Yes</b>	<p>1. The UK operates two immigration routes for third country nationals seeking admission specifically for the purpose of establishing a business: there is a route under Tier 1 of the Points Based System (where the applicant is required to demonstrate that they will be making a minimum investment of £200,000) and a separate arrangement for sole representatives of overseas business seeking entry to establish a branch of that business in the UK. In both case admission is initially temporary i.e. leave is granted for an initial period off three years. At the end of that period, the migrant would need to apply for an extension of stay and at this point applications may be subject to checks to establish that the migrant has set up a business. These checks would be made by the UK Border Agency.</p> <p>2. Employers are not necessarily required to report the employment of a third country nationals. Where migrants are admitted on conditions that do not restrict their access to the labour market (e.g. family reunification categories and those admitted under Tier 1 of the Points based System), no such reporting requirement exists. However, sponsored skilled workers admitted under Tier 2 of the Points Based System must be sponsored by an employer which has been licensed with the UK Border Agency for that purpose. Details of the individual migrants sponsored by these employers are kept on a Sponsor management System, and sponsors are required to report to UKBA changes in the circumstances of the workers they sponsor. If they do not, they may have their licence removed.</p> <p>3. A person is considered for the General Grounds for Refusal under Para 320 (7) (b) of the rules if they have been dealt with as Immigration offenders or deported from the UK following criminal prosecution and sentence. The length of the ban is dependent on the type of offending and who pays for the cost of the removal. The differing timescales are contained with the paragraph of the rules linked below.</p> <p><a href="http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part9/">http://www.ukba.homeoffice.gov.uk/policyandlaw/immigrationlaw/immigrationrules/part9/</a></p>

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