

Immigration policy: sanctions against employers of illegally staying third-country nationals

2007/0094(COD) - 04/02/2009 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament amended, under the 1st reading of the codecision procedure, the proposal for a directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals.

The vote on the legislative resolution was postponed to a future plenary session in accordance with Article 51(2) of Parliament's Rules of Procedure. In the meantime, Members adopted the following main amendments to the directive, which were the result of a compromise negotiated with the Council:

Scope: Members clarified that the Directive prohibits the employment of illegally staying third-country nationals in order to fight illegal immigration. To this end, it lays down minimum common standards on sanctions and measures to be applied in the Member States against employers who infringe this prohibition. "Third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code.

Definitions: Parliament added definitions for "legal person"; "temporary-work agency"; "particularly exploitative working conditions" and "remuneration of illegally staying third country national".

Employers' obligations: Member States may provide for a simplified procedure for notification where the employer is a natural person and the employment is for his or her private purposes. They may also provide that notification is not required where the employee has been granted a long term residence status under Council Directive 2003/109/EC. Employers who have fulfilled their obligations shall not be held liable for infringing the prohibition unless they know that the document presented as a valid residence permit or another authorisation for stay is a forgery.

Financial sanctions: Member States may provide for reduced financial penalties in cases where the employer is a natural person who employs an illegally staying third country national for his or her private purposes and where no particularly exploitative working conditions are involved.

Back payments to be made by employers: Members' amendments to this clause clarified the nature of the payments that the employer is responsible for as well as the availability of effective procedures to claim the payment. Illegally employed third-country nationals shall be systematically and objectively informed about their rights under these provisions before the enforcement of any return decision.

Other measures: the provisions of this Article are extended to EU funding and to EU procurement.

Subcontracting: Members stated that a contractor that has undertaken due diligence obligations as defined by national law shall not be held liable under the terms of the legislation.

Criminal offence: it is added that contraventions may constitute a criminal offence, when the infringement relates to the illegal employment of a minor.

Facilitation of complaints: third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of the Directive are complied with, may engage either on behalf of or in support of an illegally employed third-country national, with his/her

approval, in any administrative or civil proceedings provided for with the objective of implementing the Directive.

Inspections: Member States shall regularly identify the sectors of activity in which the employment of illegally staying third-country nationals are concentrated on their territory. In respect of each of those sectors, each year before 1 July they must communicate to the Commission the inspections, both in absolute numbers and as a percentage of the employers for each sector, carried out in the previous year as well as their results.

Penalties for legal persons: Member States may decide that a list of employers who are legal persons and who have been held liable for the criminal offence is rendered public.