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Committee on Civil Liberties, Justice and Home Affairs

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*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals
(COM(2007)0249 – C6-0143/2007 – 2007/0094(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Claudio Fava

Draftswoman (*): Edit Bauer, Committee on Employment and Social Affairs

(*): Associated committees - Rule 47 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals
(COM(2007)0249 – C6-0143/2007 – 2007/0094(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0249),
 - having regard to Article 251(2) and Article 63(3)(b) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0143/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Employment and Social Affairs, the Committee on Agriculture and Rural Development and the Committee on Women's Rights and Gender Equality (A6-0000/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) The provisions **should** not cover third-country nationals who are not illegally staying. This excludes third-country nationals who are family members of citizens of the Union exercising their right to free movement within the Community, and those who, under agreements between the Community and its Member States, on the one hand, and the countries of which they are nationals, on the other, enjoy rights of free movement equivalent to those

Amendment

(4) The provisions **do** not cover third-country nationals who are not illegally staying. This excludes third-country nationals who are family members of citizens of the Union exercising their right to free movement within the Community, and those who, under agreements between the Community and its Member States, on the one hand, and the countries of which they are nationals, on the other, enjoy rights of free movement equivalent to those

of citizens of the Union. It also excludes third-country nationals who are in a situation covered by Community law, such as those who are lawfully employed in another Member State and who are posted by a service provider to another Member State in the context of the provision of services.

of citizens of the Union. It also excludes third-country nationals who are in a situation covered by Community law, such as those who are lawfully employed in another Member State and who are posted by a service provider to another Member State in the context of the provision of services.

Or. en

Amendment 2

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) To prevent the employment of illegally staying third-country nationals, employers should be required before recruiting a third-country national, including in cases where the third country national is being recruited for the purpose of posting to another Member State in the context of the provision of services, to check that they have a residence permit or another authorisation for stay valid for the period of employment. The burden on employers should be limited to checking that the document is not manifestly incorrect, such as bearing a manifestly wrong photograph. To enable Member States in particular to check for forged documents, businesses and legal persons should also be required to notify the competent authorities of the employment of a third-country national.

Amendment

(5) To prevent the employment of illegally staying third-country nationals, employers should be required before recruiting a third-country national, including in cases where the third country national is being recruited for the purpose of posting to another Member State in the context of the provision of services, to check that they have a residence permit or another authorisation for stay valid for the period of employment. The burden on employers should be limited to checking that the document is not manifestly incorrect, such as bearing a manifestly wrong photograph. To enable Member States in particular to check for forged documents, businesses and legal persons should also be required to notify the competent authorities of the employment of a third-country national. ***Member States should provide employers with clear guidelines and on-going advice on the identification of residence permits and other authorisations for stay. Sharing of best practices among Member States should be encouraged at EU level.***

Or. en

Amendment 3

Proposal for a directive Recital 7

Text proposed by the Commission

(7) To enforce the general prohibition and to deter infringements, Member States should provide for appropriate sanctions. These should include financial penalties and contributions to the costs of returning illegally staying third-country nationals.

Amendment

(7) To enforce the general prohibition and to deter infringements, Member States should provide for appropriate sanctions. These should include financial penalties and contributions to the costs of returning illegally staying third-country nationals, ***together with the possibility of more modest financial penalties in specific cases and confined to activities relating to domestic help and personal services.***

Or. xm

Amendment 4

Proposal for a directive Recital 8

Text proposed by the Commission

(8) The employer should in any case be required to pay to the third-country nationals any outstanding remuneration for the work they have undertaken and any outstanding taxes and social security contributions.

Amendment

(8) The employer should in any case be required to pay to the third-country nationals any outstanding remuneration ***and other work-related financial entitlements*** for the work they have undertaken and any outstanding taxes and social security contributions. ***The employer should also bear, where appropriate, all the costs of transferring the above-mentioned remuneration and entitlements to the country to which the third-country national has voluntarily returned.***

Or. en

Amendment 5

Proposal for a directive Recital 9

Text proposed by the Commission

(9) Member States should ensure that claims are lodged and mechanisms created to guarantee that recovered amounts of outstanding remuneration are received by the third-country nationals to whom they are due

Amendment

(9) Member States should ensure that claims are lodged and mechanisms created to guarantee that recovered amounts of outstanding remuneration **and other work-related financial entitlements** are received by the third-country nationals to whom they are due.

Or. en

Amendment 6

Proposal for a directive Recital 10

Text proposed by the Commission

(10) Member States should further provide for a presumption of a work relationship of at least six months duration so that the burden of proof is put on the employer **in respect of at least a certain period.**

Amendment

(10) Member States should further provide for a presumption of a work relationship of at least six months duration so that the burden of proof is put on the employer, **and should also make provision for workers to be able to prove the existence and duration of the work relationship.**

Or. it

Amendment 7

Proposal for a directive Recital 11

Text proposed by the Commission

(11) Member States should provide for the possibility of further sanctions against business employers, including exclusions from entitlement to public benefits, aids or

Amendment

(11) Member States should provide for the possibility of further sanctions against business employers, including exclusions from entitlement to public benefits, aids or

subsidies, including agricultural subsidies; exclusions from public procurement procedures; and recovery of public benefits, aids or subsidies, including EU funding **managed by Member States**, that have already been granted.

subsidies, including agricultural subsidies **and EU funding**; exclusions from public procurement procedures, **including at EU level**; and recovery of public benefits, aids or subsidies, including EU funding that have already been granted.

Or. en

Amendment 8

Proposal for a directive Recital 13

Text proposed by the Commission

(13) In view of the prevalence of subcontracting in certain affected sectors, it is necessary to ensure that **all the undertakings in a chain of subcontracting are held jointly and severally** liable to pay financial sanctions against an employer at the end of the chain who employs illegally staying third-country nationals.

Amendment

(13) In view of the prevalence of subcontracting in certain affected sectors, it is necessary to ensure that **at least the contractor, of which the employer is a direct subcontractor, is** liable to pay financial sanctions against **the employer**. **In specific cases, all the undertakings in a chain of subcontracting shall be held liable to pay financial sanctions against** an employer at the end of the chain who employs illegally staying third-country nationals. **Temporary employment agencies and other intermediaries should be included in the category of subcontractors.**

Or. en

Amendment 9

Proposal for a directive Recital 15

Text proposed by the Commission

(15) To guarantee the full effectiveness of the general prohibition, there is therefore a particular need for more dissuasive sanctions in serious cases, such as:

Amendment

(15) To guarantee the full effectiveness of the general prohibition, there is therefore a particular need for more dissuasive sanctions in serious cases, such as:

repeated infringements, illegal employment of a significant number of third-country nationals, **particularly** exploitative working conditions **and** where the employer knows that the worker is a victim of human trafficking.

Working conditions should be considered particularly exploitative where there is a significant difference in pay or in working conditions, particularly those affecting workers' health and safety, from those enjoyed by legally employed workers.

repeated infringements, illegal employment of a significant number of third-country nationals, exploitative working conditions, where the employer knows that the worker is a victim of human trafficking **and where the victim is a minor.**

Working conditions should be considered particularly exploitative where there is a significant difference in pay or in working conditions, particularly those affecting workers' **pay, working hours and** health and safety, from those enjoyed by legally employed workers.

Or. xm

Amendment 10

Proposal for a directive

Recital 16

Text proposed by the Commission

(16) In all cases deemed to be serious according to the present Directive the infringement should therefore be considered a criminal offence throughout the Community **when committed intentionally**. The criminal offence should be without prejudice to application of the Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings.

Amendment

(16) In all cases deemed to be serious according to the present Directive the infringement should therefore be considered a criminal offence throughout the Community. The criminal offence should be without prejudice to application of the Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings.

Or. it

Amendment 11

Proposal for a directive

Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) In order to provide for an effective

level of protection against exploitative employment conditions, associations, organisations or other legal entities and trade unions should be empowered to bring or intervene in proceedings, either on behalf or in support of any victim, , without prejudice to national rules concerning representation and defence before the courts. To encourage the lodging of complaints by victims, third parties should be allowed to keep the identity and place of residence of the complainants confidential.

Or. en

Amendment 12

Proposal for a directive Recital 19

Text proposed by the Commission

(19) To supplement the complaint mechanisms, Member States should grant residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who have been subjected to particularly exploitative working conditions and who cooperate in criminal proceedings against the employer. Such permits should be granted under the same conditions as those granted under Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration who cooperate with the competent authorities.

Amendment

(19) To supplement the complaint mechanisms, Member States should grant residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who have been subjected to particularly exploitative working conditions and who cooperate in criminal proceedings against the employer. ***Member States should also issue residence permits of a limited duration to third country nationals who are minors.*** Such permits should be granted under the same conditions as those granted under Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration who cooperate with the competent authorities.

Or. it

Amendment 13

Proposal for a directive Article 2 - point b

Text proposed by the Commission

(b) "employment" means exercise of remunerated activities for and under the direction of another person;

Amendment

(b) "employment" means exercise of remunerated activities for and under the direction **or supervision** of another person;

Or. en

Amendment 14

Proposal for a directive Article 2 - point e

Text proposed by the Commission

(e) "employer" means any person, including legal persons, for and under the direction of whom a third-country national exercises **remunerated** activities;

Amendment

(e) "employer" means any person, including legal persons, for **whom and/or** under the direction **or supervision** of whom a third-country national exercises activities **which are, or ought to be, remunerated;**

Or. en

Amendment 15

Proposal for a directive Article 2 - point f

Text proposed by the Commission

(f) "subcontractor" means a natural or legal person to whom the execution of all or part of the obligations of a prior contract is assigned.

Amendment

(f) "subcontractor" means a natural or legal person to whom the execution of all or part of the obligations of a prior contract is assigned, **including temporary employment agencies and any other**

intermediaries.

Or. en

Amendment 16

Proposal for a directive Article 2 - point f a (new)

Text proposed by the Commission

Amendment

(fa) "remuneration" means rates of pay, including overtime rates, that are equal to those which would have been enjoyed by comparable workers in a declared employment relationship.

Or. en

Amendment 17

Proposal for a directive Article 4 - paragraph 1 - point a

Text proposed by the Commission

Amendment

(a) require the production by third-country nationals of a residence permit or another authorisation for stay valid for the period of ***the*** employment ***in question***;

(a) require the production by third-country nationals of a residence permit or another authorisation for stay ***which is*** valid ***at the start of employment and may be renewed*** for the ***remaining*** period of employment;

Or. en

Amendment 18

Proposal for a directive Article 4 - paragraph 1 - letter c

Text proposed by the Commission

Amendment

(c) keep for at least the duration of the

(c) keep for at least the duration of the

employment the copies or records available for inspection by the competent authorities of the Member States.

employment, **and for the subsequent 12 months**, the copies or records available for inspection by the competent authorities of the Member States, **including in electronic format**.

Or. it

Amendment 19

Proposal for a directive Article 4 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Member States may provide for a simplified system of obligations for employers where the latter are private individuals employing in the context of domestic help activities and personal services.

Or. xm

Amendment 20

Proposal for a directive Article 4 - paragraph 3

Text proposed by the Commission

Amendment

(3) Member States shall ensure that employers are considered to have fulfilled their obligation under paragraph 1(a) unless the document presented as a residence permit or another authorisation for stay is manifestly incorrect.

(3) Member States shall ensure that employers are considered to have fulfilled their obligation under paragraph 1(a) unless the document presented as a residence permit or another authorisation for stay is manifestly incorrect **or the employer knows that it is a forgery**.

Or. en

Amendment 21

Proposal for a directive Article 5 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall allow employers a reasonable time to bring the situation of an employed third-country national into conformity with national law.

Or. en

Amendment 22

Proposal for a directive Article 6 - paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall take the necessary measures to ensure that any infringement of Article 3 is subject to effective, proportionate and dissuasive sanctions against the employer.

1. ***Without prejudice to Article 5(1)(a),*** Member States shall take the necessary measures to ensure that any infringement of Article 3 is subject to effective, proportionate and dissuasive sanctions against the employer.

Or. en

Amendment 23

Proposal for a directive Article 6 - paragraph 2 - point b

Text proposed by the Commission

Amendment

(b) payments of the costs of return of each illegally employed third-country national in those cases where return procedures are carried out.

deleted

Amendment 24

Proposal for a directive Article 6 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Member States may provide for reduced financial penalties in cases where the employer is a private individual employing a third country national to provide domestic help or personal services.

Or. xm

Amendment 25

Proposal for a directive Article 7 - paragraph 1 - introductory part and point a

Text proposed by the Commission

Amendment

1. In respect of each infringement of Article 3 Member States shall ensure that the employer pays:

(a) any outstanding remuneration to the illegally employed third-country national;

1. ***Without prejudice to Article 5 (1)(a)***, in the respect of each infringement of Article 3 Member States shall ensure that the employer pays:

(a) any outstanding remuneration ***and other work-related financial entitlements*** to the illegally employed third-country national;

Or. en

Amendment 26

Proposal for a directive

Article 7 - paragraph 1 - point b a (new)

Text proposed by the Commission

Amendment

(ba) where appropriate, all the costs of transferring the remuneration and the entitlements mentioned in point (a) to the country to which the third-country national has voluntarily returned.

Or. en

Amendment 27

Proposal for a directive

Article 7 - paragraph 1 - subparagraph 1 a (new)

Text proposed by the Commission

Amendment

If it is not possible to determine the remuneration as defined in Article 2 (f)(a), reference shall be made to the minimum remuneration as laid down by the applicable laws on minimum wages, collective agreements or practices in the relevant occupational branches, unless either the employer or the employee can prove otherwise. In those Member States which do not provide for minimum wages, the minimum level of remuneration shall be presumed to be the income level below which citizens of the Member State concerned are entitled to social benefits or to be in line with that prevailing under applicable collective agreements or practices in the relevant employment sectors.

Or. xm

Amendment 28

Proposal for a directive Article 7 - paragraph 2 - point a

Text proposed by the Commission

(a) enact mechanisms to ensure that the necessary procedures to claim back outstanding remuneration are triggered automatically without the need for the third-country national to introduce a claim;

Amendment

(a) enact mechanisms to ensure that the necessary procedures to claim back outstanding remuneration **and other work-related financial entitlements** are triggered automatically without the need for the third-country national to introduce a claim;

Or. en

Amendment 29

Proposal for a directive Article 7 - paragraph 2 - point b

Text proposed by the Commission

(b) provide that a work relationship of at least 6 months duration be presumed unless the employer can prove differently.

Amendment

(b) provide that a work relationship of at least 6 months duration be presumed unless the employer **or the illegally employed third-country national** can prove differently.

Or. en

Amendment 30

Proposal for a directive Article 7 - paragraph 3

Text proposed by the Commission

3. Member States shall take the necessary measures to ensure that illegally employed third-country nationals receive any back payment of remuneration recovered under paragraph 1(a), including in cases in which

Amendment

3. Member States shall take the necessary measures to ensure that illegally employed third-country nationals receive any back payment of remuneration **and other work-related financial entitlements** recovered

they have *or have been* returned.

under paragraph 1(a) *and subparagraph 1a*, including in cases in which they have *voluntarily* returned.

Or. en

Amendment 31

Proposal for a directive Article 7 - paragraph 4

Text proposed by the Commission

4. *In respect of criminal offences covered by Article 10(1)(c)*, Member States shall take the necessary measures to ensure that the execution of any return decision is postponed until the third-country national has received any back payment of their remuneration recovered under paragraph 1(a).

Amendment

4. Member States shall take the necessary measures to ensure that the execution of any return decision is postponed until the third-country national has received any back payment of their remuneration *and other work-related financial entitlements* recovered under paragraph 1(a) *and subparagraph 1a*.

Or. en

Amendment 32

Proposal for a directive Article 8 - introductory part

Text proposed by the Commission

Member States shall take the necessary measures to ensure that *an employer* acting in the course of business activities *may also*, if appropriate, be subject to the following measures:

Amendment

Member States shall take the necessary measures to ensure that *employers* acting in the course of business activities *shall*, if appropriate, be subject to the following measures:

Or. en

Amendment 33

Proposal for a directive Article 8 - point a

Text proposed by the Commission

(a) exclusion from entitlement to public benefits, aid or subsidies for up to five years;

Amendment

(a) exclusion from entitlement to public benefits, aid or subsidies, ***including EU funding***, for up to five years;

Or. en

Amendment 34

Proposal for a directive Article 8 - point b

Text proposed by the Commission

(b) exclusion from participation in *a* public *contract* for up to five years;

Amendment

(b) exclusion from participation in public ***contracts, including contracts awarded by EU institutions***, for up to five years;

Or. en

Amendment 35

Proposal for a directive Article 8 - point d

Text proposed by the Commission

(d) temporary or permanent closure of the establishments that have been used to commit the infringement.

Amendment

(d) temporary or permanent closure of the establishments that have been used to commit the infringement, ***or temporary or permanent withdrawal of a licence to conduct the business activity in question, if justified by the gravity of the situation or the number of illegally employed third-country nationals and with due regard for the application of national laws on employment.***

Amendment 36

Proposal for a directive

Article 9 - paragraph 1 - introductory part

Text proposed by the Commission

1. Where the employer is a subcontractor, Member States shall ensure that the *main* contractor *and any intermediate* subcontractor *are* liable to pay:

Amendment

1. Where the employer is a subcontractor, Member States shall ensure that the contractor, *of which the employer is a direct* subcontractor, *is* liable to pay:

Or. en

Amendment 37

Proposal for a directive

Article 9 - paragraph 2

Text proposed by the Commission

2. The main contractor and any intermediate subcontractor *shall under paragraph 1 be* liable *jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.*

Amendment

2. *Member States shall ensure that* the main contractor and any intermediate subcontractor, *where they knew or ought to have known that the employing subcontractor employed illegally staying third-country nationals, are* liable *to make the payments specified in paragraph 1(a), (b) and (ba) and subparagraph 1a of Article 7, in the place of the employing subcontractor or the contractor of which the employer is a direct subcontractor.*

Or. en

Amendment 38

Proposal for a directive

Article 10 - paragraph 1 - introductory part

Text proposed by the Commission

1. Each Member State shall ensure that the infringement referred to in Article 3 constitutes a criminal offence **when committed intentionally**, in the following circumstances:

Amendment

1. Each Member State shall ensure that the infringement referred to in Article 3 constitutes a criminal offence, in the following circumstances:

Or. en

Amendment 39

Proposal for a directive

Article 10 - paragraph 1 - letter c

Text proposed by the Commission

(c) the infringement is accompanied by **particularly** exploitative working conditions, **such as** a significant difference in working conditions from those enjoyed by legally employed workers; or

Amendment

(c) the infringement is accompanied by exploitative working conditions, **including violence, threats, intimidation and degrading treatment and** a significant difference in working conditions from those enjoyed by legally employed workers; ore

Or. it

Amendment 40

Proposal for a directive

Article 10 - paragraph 1 - point d

Text proposed by the Commission

(d) the infringement is committed by an employer who uses work or services exacted from a person, **with the knowledge** that that person is a victim of trafficking in

Amendment

(d) the infringement is committed by an employer who uses work or services exacted from a person, **and knows or ought to have known**, that that person is a

human beings.

victim of trafficking in human beings.

Or. en

Amendment 41

Proposal for a directive

Article 10 - paragraph 1 - point d a (new)

Text proposed by the Commission

Amendment

(da) the infringement involves the employment of a minor.

Or. en

Amendment 42

Proposal for a directive

Article 12 - paragraph 1 - introductory part

Text proposed by the Commission

Amendment

1. Member States shall ensure that legal persons ***can be*** held liable for the criminal offence referred to in Article 10 where such offence has been committed for their benefit by any person, acting either individually or as part of an organ of the legal person, ***who has a leading position within the legal person***, based on

1. Member States shall ensure that legal persons ***are*** held liable for the criminal offence referred to in Article 10 where such offence has been committed for their benefit by any person, acting either individually or as part of an organ of the legal person, based on

Or. en

Amendment 43

Proposal for a directive Article 13 - letter a

Text proposed by the Commission

(a) exclusion from entitlement to public *benefits or aid*;

Amendment

(a) exclusion from entitlement to public *including Community funding*;

Or. it

Amendment 44

Proposal for a directive Article 13 - point a a (new)

Text proposed by the Commission

(aa) recovery of public benefits, aid or subsidies, including EU funding, granted to the employer during the 12 months preceding the detection of the illegal employment;

Amendment

Or. en

Amendment 45

Proposal for a directive Article 13 - letter b

Text proposed by the Commission

(b) exclusion from participation in a public contract for up to five years;

Amendment

(b) exclusion from participation in a public contract, *including at EU level*, for up to five years

Or. xm

Amendment 46

Proposal for a directive Article 14 - paragraph 1

Text proposed by the Commission

1. Member States shall provide for effective mechanisms through which third-country nationals in illegal employment can lodge complaints against their employers, directly or through *designated* third parties.

Amendment

1. Member States shall provide for effective mechanisms through which third-country nationals in illegal employment can lodge complaints against their employers, directly or through third parties.

Or. en

Amendment 47

Proposal for a directive Article 14 - paragraph 1 a (new)

Text proposed by the Commission

Amendment

***1a. Member States shall ensure that third parties such as associations, organisations or other legal entities whose statutory activities include support to third-country nationals and trade unions may bring and/or intervene in court or administrative proceedings, either on behalf or in support of the third-country national with his or her approval, provided for the enforcement of this Directive, without prejudice to national rules concerning representation and defence before the courts.
These third parties shall be allowed to keep the identity and place of residence of the complainants confidential, without prejudice to national rules concerning representation and defence before the courts.***

Or. en

Amendment 48

Proposal for a directive Article 14 - paragraph 3

Text proposed by the Commission

(3) In respect of criminal offences covered by Article 10(1)(c), Member States shall under the conditions of Articles 4 to 15 of Directive 2004/81/EC grant residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who are or have been subjected .

Amendment

(3) In respect of criminal offences covered by Article 10(1)(c), **(d) and (e)**, Member States shall under the conditions of Articles 4 to 15 of Directive 2004/81/EC grant residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who are or have been subjected

Or. it

Amendment 49

Proposal for a directive Article 15 - paragraph 1

Text proposed by the Commission

1. Member States shall ensure that at least **10%** of companies established on their territory per year are subject to inspections to control employment of illegally staying third-country nationals.

Amendment

1. Member States shall ensure that at least **5%** of companies established **or operating** on their territory per year are subject to inspections to control employment of illegally staying third-country nationals.

Or. en

Amendment 50

Proposal for a directive Article 15 - paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that inspections referred to in paragraphs 1 and 2 are without prejudice to employment inspections carried out solely

with a view to assessing working conditions, with particular regard to assessment of safety and health conditions, regardless of the status of the worker.

Or. en

Amendment 51

Proposal for a directive Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15a

Relationship with national measures

This Directive shall be without prejudice to national measures promoting the conversion of undeclared employment into declared employment and regularisations of undocumented workers.

Or. en

EXPLANATORY STATEMENT

It is estimated that there are between 4.5 million to 8 million illegal immigrants in the EU, a figure that is steadily increasing notably because of easy access to illegal work.

Illegal employment is concentrated in certain sectors namely construction, agriculture, cleaning and hotel/catering.

One of the social consequences of this phenomenon is that these immigrants are employed under exploitative conditions. Illegal immigrants help meet the needs of some unscrupulous employers who are willing to take advantage of workers prepared to undertake what are mostly low-skilled and low paid jobs.

On the one hand, illegal employment can depress wages and working conditions, may distort competition between businesses and means that the undeclared workers will not benefit from health insurance and pension rights. On the other hand, illegally employed third country nationals (TCNs) are in an additionally vulnerable position because if apprehended they are likely to be returned to their country of origin.

The present Commission's proposal, issued in May 2007¹, intends to contribute to combating illegal immigration and exploitation of workers who are undocumented TCNs.

The rapporteur believes that, although the protection of the rights of illegally employed immigrants is not the main aim of the Commission proposal, it should nevertheless be included in the proposal's definitions.

This proposal aims to achieve a minimum level of harmonisation at the European level and requires Member States to prohibit illegal employment, provides for common sanctions, and requires employers to undertake preventive measures and other controls.

The idea is that the employer, and not the illegally employed third-country national, who should be punished.

The measure seeks to provide a harmonised EU framework for imposing sanctions on employers for hiring TCNs who do not enjoy a regular status of stay in the EU.

The proposal would establish a common policy consisting of three main features. First, employers would be subject to a number of new administrative obligations that would need to be fulfilled before recruiting any TCNs. Non-compliance would lead to a series of punitive measures, financial sanctions and criminal penalties. Second, the procedure for operationalising complaints would be harmonised; and third, each Member State would be

¹ *Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third country nationals*

required to inspect the employee records in 10% of its registered companies.

Observations by the Rapporteur

The Rapporteur regrets the narrow scope of the proposed directive.

The provisions of this Directive are designed to reduce illegal immigration into the EU. Consequently, the appropriate legal basis is Article 63(3)(b) of the EC Treaty. That legal base does not cover measures relating to TCNs who are legally staying in the EU but who may also be a victim of labour exploitation. For example, the instrument does not cover nationals of those Member States who have joined the EU since 2004 and 2007 and who are still subject to transitional arrangements, thereby limiting their free access to the labour markets of a number of the EU-15 Member States.

Article 2 - In order to offer a better protection against exploitation, the definitions of terms such as “employer”, “subcontractor”, “remuneration” should be as all-encompassing as possible. For example, “employer” should include temporary work agencies and other intermediaries.

Remuneration should also include overtime rates – this is important when the employer has to pay any outstanding remuneration to the illegally employed third-country national.

Article 4 - The Rapporteur welcomes the preventive measures foreseen by the proposal: the article 4 obliges employers to examine the residence permits or other authorisation for stay of potential employees before hiring them, and also to maintain records on the dates of the start and end of the employment and to transmit these to the relevant authorities. For economic operators, the administrative burden can be considered as proportionate to the objective of the proposal. Member States should provide employers with clear guidelines and on-going advice on the identification of residence permits and other authorisations for stay. Sharing of best practices among Member States should be encouraged at the EU level.

The Rapporteur is in favour of a simplification of these formalities when the employer is a private person.

It is not asked to the employers to have a rigorous knowledge of the aspect of the residence permits or other authorisation for stay. The Rapporteur considers that an employer can be held liable only if the document is manifestly incorrect or if the employer knows that it is a forgery. He also believes that measures should be taken by Member States in order to provide employers with clear guidelines and on-going advice on the identification of residence permits and other authorisations for stay. A system of sharing of best practices among Member States should also be put in place at the EU level.

For more flexibility, Member States should be allowed to give a reasonable delay for employers to bring the situation of the employed third country national in line with national law.

Article 6 - Sanctions include financial penalties; the Rapporteur proposes that a reduction of these penalties can be consented when the employer is a natural person who employs illegal TCN to provide domestic help and personal services.

Article 7 - It is natural that employers pay the outstanding remuneration that is due to the illegally employed TCN; however, this provision should be extended to any other work-related financial entitlements and to all the costs resulting from transferring the remuneration and the entitlements to abroad, in the case of the third country national having returned to his/her country, in order not to penalise the TCN.

When the agreed remuneration cannot be established, this can be determined with reference to the applicable laws on minimum wages, collective agreements or practices or to the minimum income under which citizens of the Member State concerned are entitled to social assistance.

Member states are required to foresee mechanisms to ensure that the TCN receive back outstanding payments automatically, without the need for the TCN to introduce a claim, and even in cases where the person has returned. This could be seen as more favourable and discriminatory for EU workers who are required to lodge a complaint with the relevant bodies to secure outstanding payment. However, the Rapporteur would like to remind the logical backing the Commission's proposal: the undocumented TCN live underground, they fear detention and return, constitute an "easily exploitable" workforce and are much more vulnerable than other workers.

The Rapporteur supports the Commission's proposal that states that a work relationship is presumed to be of at least 6 months, unless the employer or the illegally employed third-country national can prove differently.

Article 8 - This article foresees other sanctions for firms who employ TCN, such as exclusion from entitlement to public funds, contracts and recovery of benefits received. The Rapporteur considers that it is important that the provisions of this article are also extended to EU funding and to EU procurement.

Article 9 - The Proposal also extends its provisions to subcontractors and the Commission's intention was that all the undertakings in a chain of subcontracting are held jointly and severally liable to pay financial sanctions against an employer at the end of the chain who employs illegally staying TCNs. However, the Rapporteur understands that it would be difficult to place a burden on the main contractor as the latter is not in a position to control compliance in practice. Therefore, he accepts to limit the liability of subcontractors in the chain.

Article 10 - Furthermore, in certain specified cases, contraventions may even constitute a criminal offence, in which case the employer may face placement under judicial supervision and a judicial winding-up order as well as other sanctions. This is the case when the working conditions are particularly exploitative, when the employer knows or ought to have known, that the TCN is a victim of trafficking in human beings or when the TCN is a minor.

Article 14 - Most notably, the Proposal asks that Member States establish mechanisms that allow exploited migrant workers to lodge complaints against their employers, if not personally, then through third parties.

Further, in certain specific cases and under the conditions of Articles 4 to 15 of Directive 2004/81/EC¹, illegal immigrants may be able to benefit from a temporary residence permit.

Article 15 - The Commission's proposal requires Member States to ensure that the employee records of at least 10% of the companies established on their territory are inspected; the current average national requirement is 2 %.

The Rapporteur welcomes the idea of increasing the number of inspections – this would improve enforcement and send a clear message to employers that the threat of being caught in case of violation is real or increased.

However, the Rapporteur is aware about the fact that the proposal will increase the administrative burden on the Member States, because compliance with that provision would require a substantial increase in financial and personnel resources by the Member States. Therefore, he proposes that the percentage of 10% is replaced by 5%.

Conclusion

The fight against illegal immigration is a key component of the EU's strategy on immigration. In this field, the main aim of this directive should be to stop the exploitation of illegal migrants and not have the side effect of reducing the possibilities for TCN to find work. The present directive would be very useful in that sense. In this context, we also find it necessary to introduce measures aimed at protecting the rights of migrant workers, including illegal migrants, who have been exploited by their employers.

In this respect, effectiveness depends largely on enforcement, which is a responsibility of the Member States, which the Commission is and will be called to monitor.

¹ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities