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Committee on Employment and Social Affairs

2007/0094(COD)

15.9.2008

OPINION

of the Committee on Employment and Social Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a European Parliament and Council directive providing for sanctions against employers of illegally staying third-country nationals (COM(2007)0249 – C6-0143/2007 – 2007_0094(COD))

Rapporteur(*): Edit Bauer

(*) Associated committees – Rule 47 of the Rules of Procedure

PA_Legam

SHORT JUSTIFICATION

Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals is a part of migration policy package as it was foreseen in the Policy Plan on legal migration¹ and Policy priorities in the fight against illegal immigration of the third-country nationals /2006/². This proposal was followed up in 2007 by documents:

- Commission Communication on circular migration and mobility partnership between the European Union and third countries³,
- proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment⁴,
- proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State⁵,
- Commission Communication on stepping up the fight against undeclared work⁶.

The aim of this proposal is to slow down the illegal migration, while other proposals for legislation regulate the legal migration. Proposals on migration-policy regulation make clear distinctions between legal and illegal migration. This proposal is dealing exclusively with illegal migration. Based on experience, one of the strongest pull-factor is the possibility of employment in EU.

The legal bases for the proposal is Art.63(3)(b) EC Treaty.

Estimations on the number of the third-country nationals in the EU vary between 4,5 to 8 million. Illegal employment is concentrated in certain sectors: construction, agriculture, cleaning, and hotel/catering.

The European Parliament in its Resolution "The fight against illegal immigration of third-country nationals" called on the Union and the Member States to take "firm steps to combat the illegal employment of immigrants, activating a range of penalties on employers, stepping up workplace inspections on the basis of the human and material resources needed to fight illegal recruitment, and promoting measures to protect immigrants."

The proposal follows two main principles:

- sanctions for employing illegal migrants should be proportionate, dissuasive and effective,
- principle of subsidiarity should be applied.

¹ COM(2005)0669.

² COM(2006)0402.

³ COM(2007)0248.

⁴ COM(2007)0637.

⁵ COM(2007)0638.

⁶ COM(2007)0628.

There is no doubt, that common definitions, approaches and minimum standards of combating illegal migration are needed as a basis of the common European migration policy.

AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

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 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**.

Amendment

(4) The provisions should not cover third-country nationals who are not illegally staying. This excludes third-country nationals **who are residing lawfully in a Member State but who are not permitted to work on its territory, 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.

Justification

The first part of this amendment (replacing 'neoprávnene' with 'oprávnene') is a linguistic correction only and does not concern the other languages. The Directive should also be applied to posted workers.

Amendment 2

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, **but provision should also be made for imposing more moderate financial penalties in specified and limited cases where the workers concerned are employed as domestic help. When setting the amount of the financial penalties, Member States may take into account the need to compensate the burden arising from their duty to ensure that employers pay any outstanding remuneration to the illegally employed third-country national and, where appropriate, the costs of sending back payments to the country to which the illegally employed third-country national has returned or has been returned or deported.**

Amendment 3

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 for the work they have undertaken. **If such remuneration cannot be determined, it should be based by default on the minimum wage, as established by national law, or, if no minimum wage is established in national law, on the equivalent level of remuneration considered to be the minimum income entitling citizens of the Member State concerned to social assistance in that**

Member State, or on collective agreements or practices in the relevant sector in the Member State in which the employer is established. The employer should also be required to pay, where appropriate, any costs arising from sending outstanding remuneration to the country to which the illegally employed third-country national has returned or has been returned or deported.

Amendment 4

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 **an employment** 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 **and should provide for the employee also to have the opportunity of proving the existence and duration of the employment relationship. For the purpose of calculating outstanding remuneration, the employment relationship should be presumed to have taken place in accordance with the laws, regulations, administrative provisions and/or collective agreement(s) applicable to comparable employment relationships.**

Amendment 5

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

Amendment

(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, **including temporary employment agencies**

financial sanctions against an employer at the end of the chain who employs illegally staying third-country nationals.

providing temporary staff to undertakings using their services, 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.

Justification

Temporary employment agencies should be included in the 'subcontracting chain'.

Amendment 6

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) The criminal offence should be punishable by effective, proportionate and dissuasive criminal sanctions, which should ***also*** apply to ***legal persons*** throughout the Community, ***because many employers are*** legal persons.

Amendment

(17) The criminal offence should be punishable by effective, proportionate and dissuasive criminal sanctions, which should apply to ***employers*** throughout the Community, ***be they natural or legal persons, including the legal representatives of*** legal persons.

Amendment 7

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 labour conditions, legal entities, victims' associations, non-governmental organisations and other bodies such as trade unions should be entitled to intervene in legal proceedings either on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts. To encourage victims to lodge complaints, designated third parties should be entitled to keep confidential the identity and place of

residence of complainants.

Amendment 8

Proposal for a directive Recital 20

Text proposed by the Commission

(20) To ensure a **sufficient** level of enforcement and **to avoid significant** differences in the level of enforcement in the Member States, a certain proportion of companies established in each Member State should be inspected.

Amendment

(20) To ensure a **satisfactory** level of enforcement **of this Directive** and **reduce, as far as possible,** differences in the level of enforcement in the Member States, a certain proportion of companies established in each Member State should be inspected. **Those inspections may be carried out within the framework of other inspection activities, such as the monitoring of compliance with health and safety provisions in the workplace. A clear distinction should be maintained between labour inspection, the objective of which is to verify the proper application of labour law, and immigration inspection, which does not share the same objectives or ethics. Member States should not, in particular, reallocate the funding granted to labour law enforcement agencies to immigration inspection activities for the purpose of application of this Directive.**

Amendment 9

Proposal for a directive Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) This directive should not prevent Member States from adopting measures designed to convert undeclared employment relationships into declared employment relationships or from bringing within the law the situation of undeclared workers.

Justification

This provision is necessary to define the scope of this directive in relation to national measures taken by Member States on their own initiative to combat undeclared work and regularise the situation of undeclared workers.

Amendment 10

**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 activities **that are or ought to be remunerated under applicable national law** for **or** under the direction **and/or supervision of an employer**;

Amendment 11

**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 **natural or legal** person for **or** under the direction **and/or supervision** of whom a third-country national exercises activities **that are or ought to be remunerated under applicable national law, including temporary employment agencies**;

Justification

Employer should be defined as natural or legal person, including temporary employment agencies.

Amendment 12

Proposal for a directive
Article 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) "natural person acting in the capacity of an employer" means any person for whom a third-country national exercises remunerated activities as a domestic worker;

Justification

The situation of natural persons acting in the capacity of employers of domestic workers must be defined in connection with Article 4 to provide for a simplified system of employers' obligations and Article 6 to ensure financial penalties can be made more appropriate to this particular form of employment relationship.

Amendment 13

Proposal for a directive
Article 2 – point e b (new)

Text proposed by the Commission

Amendment

(eb) "legal person" means any legal entity having the status of a legal person under applicable national law;

Amendment 14

Proposal for a directive
Article 2 – point f

Text proposed by the Commission

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.

(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 other intermediaries;***

Justification

Temporary employment agencies should be included in the definition of subcontractors in view of the increasingly important role they play in subcontracting and employing third

country nationals.

Amendment 15

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

Text proposed by the Commission

Amendment

(fa) "Remuneration" means any net wages and salaries as well as any work-related financial entitlements and in-kind benefits that are equivalent to those which would have been enjoyed by comparable workers in a declared employment relationship;

Amendment 16

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

Amendment

Infringements of this prohibition shall be subject to the sanctions and measures laid down in this Directive.

Employers infringing this prohibition shall be subject to the sanctions and measures laid down in this Directive.

Justification

This amendment seeks to clarify the text.

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 third-country nationals ***to present, before being employed, a valid*** residence permit or ***other*** authorisation for stay;

Where the duration of the employment contract exceeds the period of validity of the valid residence permit or other

authorisation for stay, Member States shall oblige employers to require the employed third-country national to present, on the date of expiry of the residence permit or other authorisation for stay presented before being employed, a new valid residence permit or other authorisation for stay. Failure by the employed third-country national to present a new valid residence permit or other authorisation for stay shall entitle the employer to rescind the employment relationship from the date of expiry of the residence permit or other authorisation for stay.

Amendment 18

Proposal for a directive

Article 4 – paragraph 1 – point b

Text proposed by the Commission

(b) *copy or record the content* of the residence permit or other authorisation for stay *before employment begins*;

Amendment

(b) *include a copy* of the residence permit or other authorisation for stay *in the documentation required in connection with the procedures already provided for by the Member State when workers are employed and notify the competent authorities of the Member State of both the start and the termination of employment of third-country nationals*;

Justification

To avoid increasing the bureaucratic burden on employers, information and notifications concerning the employment of third country nationals should be incorporated into the normal procedures relating to the employment of workers which are already in place under the national systems.

Amendment 19

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall oblige employers acting in the course of business activities or who are legal persons to notify the competent authorities designated by Member States of both the start and the termination of employment of third-country nationals at the latest within one week.

deleted

Amendment 20

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

Text proposed by the Commission

Amendment

2a. Member States may provide for a simplified system of employers' obligations for natural persons acting in the capacity of an employer.

Amendment 21

Proposal for a directive Article 4 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States may allow employers and workers a sufficient period of time within which to bring an irregular employment situation within national law.

Justification

It would be appropriate to enable Member States to allow employers and employees a period of time in which to regularise the worker's employment situation (which would also be useful in the event of protracted administrative procedures).

Amendment 22

Proposal for a directive Article 4 – paragraph 3

Text proposed by the Commission

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**.

Amendment

3. Member States shall ensure that employers are considered to have fulfilled their obligation under *paragraph 1(a)* **except if** the document presented as a **valid** residence permit or **other** authorisation for stay **has anomalies that could not be overlooked by a reasonably attentive employer or if it is established that the employer could not reasonably have been unaware of the falsification of the document in question**.

Amendment 23

Proposal for a directive Article 5

Text proposed by the Commission

Article 5

Consequence of fulfilling the employers' obligations

Member States shall ensure that employers are not liable for infringing Article 3 where they can show that they fulfilled the obligations set out in Article 4.

Amendment

deleted

Justification

The article is obsolete.

Amendment 24

Proposal for a directive
Article 6 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

Sanctions in respect of **each infringement** of Article 3 shall include:

Sanctions **applied** in respect of **infringements** of Article 3 shall include:

Justification

Article 3 does not specify infringements but is concerned with prohibiting the employment of illegally staying third country nationals, infringement of these provisions constituting an offence because of the resulting danger in social terms.

Amendment 25

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**

Justification

On employers cannot be imposed responsibility for return of illegal migrants. The Directive should not bring upon the employers the cost of repatriation for each illegally employed third country national in those cases where return procedures are carried out. It is however admissible to impose financial penalties to the employers who employ illegally staying third country nationals, which would include also the cost of repatriation.

Amendment 26

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

Text proposed by the Commission

Amendment

2a. Member States may provide for reduced financial penalties where the employer is a natural person acting in the capacity of an employer;

Amendment 27

Proposal for a directive

Article 7 – paragraph 1 – introductory part

Text proposed by the Commission

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

Amendment

1. **Without prejudice to Article 4(2b)**, in respect of **infringements** of Article 3 Member States shall ensure that the employer pays:

Amendment 28

Proposal for a directive

Article 7 – paragraph 1 – point a

Text proposed by the Commission

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

Amendment

(a) any outstanding remuneration to the illegally employed third-country national; **where the agreed level of remuneration cannot be established, it shall be deemed to be the minimum wage as established by national law. In Member States where no minimum wage is established, the agreed level of remuneration shall be determined by reference to the minimum income entitling citizens of the Member State concerned to social assistance in that Member State or in line with applicable collective agreements or practices in the relevant sector;**

Amendment 29

Proposal for a directive

Article 7 – paragraph 1 – point b

Text proposed by the Commission

(b) any **outstanding** taxes and social security contributions, including relevant administrative fines.

Amendment

(b) **an amount equal to** any taxes and social security contributions **that the employer would have paid had the third-country national been legally employed**, including **penalty payments for delays and** relevant administrative fines;

Amendment 30

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ba) where appropriate, any costs arising from sending back payments to the country to which the third-country national has returned or has been returned or deported.

Amendment 31

Proposal for a directive

Article 7 – paragraph 2

Text proposed by the Commission

Amendment

2. In order to apply paragraph 1(a), Member States shall:

2. In order to apply paragraph 1(a), Member States shall 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.

(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;

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

2a. In order to apply paragraphs 1(a) and (b), Member States shall provide that a work relationship of at least 6 months duration be presumed unless the employer ***or the employee*** can prove differently.

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 infringing Article 3 while** acting in the course of business activities **shall** also **be subject, where** appropriate, to the following measures:

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 Community funding managed by Member States**, for up to five years;

Amendment 34

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 the temporary or permanent withdrawal of a licence to conduct the business activity in question, if justified in particular by the gravity of the infringement or the percentage of illegally employed third-country nationals by the employer concerned.**

Amendment 35

Proposal for a directive
Article 10 – 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 infringement *of* Article 3 constitutes *an* offence when committed intentionally, in the following circumstances:

Justification

This modification underlines the gravity of infringement of the provisions of Article 3 which, in certain circumstances, present a greater degree of danger in social terms and should therefore be penalised accordingly.

Amendment 36

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 human beings.

Amendment

(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 human beings *or is underage*.

Justification

Severe penalties should apply to employers knowingly making use of illegally resident underage labour. Minors are an extremely vulnerable social category requiring social protection.

Amendment 37

Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that participation in or instigation of the conducts referred to in paragraph 1 constitutes a criminal *offences*.

Amendment

2. Member States shall ensure that participation *or complicity* in or instigation *or concealment* of the conducts referred to in paragraph 1 constitutes a criminal

offence.

Amendment 38

Proposal for a directive Article 11 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that the commission of the criminal offence referred to in Article 10 is ***punishable*** by effective, proportionate and dissuasive criminal sanctions.

Amendment

1. Member States shall ensure that the commission of the criminal offence referred to in Article 10 is ***punished*** by effective, proportionate and dissuasive criminal sanctions.

Amendment 39

Proposal for a directive Article 11 – paragraph 2

Text proposed by the Commission

2. The criminal sanctions provided for in this article may be accompanied by other sanctions or measures, ***in particular*** those provided for in Articles 6, 7 and 8, and by the publication of the judicial decision relating to the conviction or any sanctions or measures applied.

Amendment

2. The criminal sanctions provided for in this article may be accompanied by other sanctions or measures, ***for example*** those provided for in Articles 6, 7 and 8, and by the publication of the judicial decision relating to the conviction ***or the decision to apply*** sanctions or ***other*** measures applied.

Justification

Under existing legislation, the degree of seriousness and resulting danger arising in social terms determines whether an act is classifiable as a criminal offence. Measures taken against employers infringing the provisions of Article 3 are governed exclusively by this article. Hence the formulation 'in particular' is inappropriate.

Amendment 40

Proposal for a directive Article 13 – point a

Text proposed by the Commission

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

Amendment

(a) exclusion from entitlement to public benefits, aid ***or subsidies, including***

Amendment 41

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 designated third parties *in accordance with Article 14a.*

Amendment 42

Proposal for a directive Article 14 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In respect of criminal offences covered by Article 10(1)(d), Member States shall, in accordance with 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 victims of trafficking in human beings and who cooperate in proceedings against the employer.

Amendment 43

Proposal for a directive Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Designated third parties

Member States shall ensure that legal entities, associations, non-governmental organisations, local authorities and other bodies such as trade unions, which have, in accordance with the criteria laid down in the relevant national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may, either on behalf or in support of an illegally employed third-country national, intervene in any judicial, administrative and/or criminal proceedings provided for with the objective of implementing this Directive.

Amendment 44

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 ***effective and adequate*** inspections ***are carried out on their territory*** to control employment of illegally staying third-country nationals.

Amendment 45

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

2. ***The selection of companies to be inspected shall be based on a risk assessment to be drawn up by the competent authorities in the Member States taking into account factors such as the sector in which a company operates and any past record of infringement.***

Amendment

2. ***Member States shall, on the basis of risk assessments, regularly identify the sectors of activity in which the employment of illegally staying third-country nationals is prevalent on their territory. Member States shall publicise the sectors identified as a result of those risk assessments.***

Justification

Member States should assess the risk of concentration of employing illegal immigrants in

different sectors. This would help to concentrate the inspections in those sectors, where risk is higher, what allows decreasing the requested percentage of inspection. This could contribute to lowering the costs of implementing measures foreseen by this Directive.

Amendment 46

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 labour inspections, carried out also with the view to assessing work conditions.

Amendment 47

Proposal for a directive Article 15 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. In the case of posted workers who are third-country nationals, Member States' inspection services may avail themselves of the cooperation and exchange of information provided for in Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996* concerning the posting of workers in the framework of the provision of services, in order to verify that the third-country nationals concerned are lawfully employed in the Member State of origin.

****OJ L 18, 21.1.1997, p. 1***

Amendment 48

Proposal for a directive
Article 15 a (new)

Text proposed by the Commission

Amendment

Article 15 a

Relationship to national measures

This directive shall not prejudice national measures to encourage the conversion of undeclared work into declared employment relationships and to help undeclared workers bring their status within the law.

Justification

It is necessary to define the relationship between the scope of this directive and national measures taken by Member States on their own initiative to combat undeclared work and regularise the situation of undeclared workers.

Amendment 49

Proposal for a directive
Article 16 – paragraph 1

Text proposed by the Commission

Amendment

By [*Three years after the date referred to in Article 17*] at the latest, and every three years thereafter, Member States shall transmit information to the Commission on the implementation of this Directive in the form of a report which shall include the numbers and results of inspections carried out pursuant to **Article 15** and details of measures applied under Article 8.

By [*Three years after the date referred to in Article 17*] at the latest, and every three years thereafter, Member States shall transmit information to the Commission on the implementation of this Directive in the form of a report which shall include ***the sectors identified pursuant to Article 15(2)***, the numbers and results of inspections carried out pursuant to **Article 15(3)** and details of measures applied under Article 8.

Amendment 50

Proposal for a directive
Article 16 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

Member States may, at the time of the first report, also present an assessment of any effects that the implementation of this Directive has had on the employment of legally staying third-country nationals.

Amendment 51

Proposal for a directive
Article 16 – paragraph 2

Text proposed by the Commission

Amendment

On the basis of those reports, the Commission shall submit a report to the European Parliament and the Council.

On the basis of those reports, the Commission shall, ***within twelve months following the reception of the reports presented by the Member States***, submit a report to the European Parliament and the Council. ***That report may be accompanied by proposals for an amendment of this Directive.***

PROCEDURE

Title	Sanctions against employers of illegally staying third-country nationals	
References	COM(2007)0249 – C6-0143/2007 – 2007/0094(COD)	
Committee responsible	LIBE	
Opinion by Date announced in plenary	EMPL 19.6.2007	
Associated committee(s) - date announced in plenary	12.7.2007	
Drafts(wo)man Date appointed	Edit Bauer 5.6.2007	
Discussed in committee	25.6.2008	9.9.2008
Date adopted	10.9.2008	
Result of final vote	+: 24	-: 6
	0: 13	
Members present for the final vote	Jan Andersson, Edit Bauer, Iles Braghetto, Philip Bushill-Matthews, Milan Cabrnoch, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Jean Louis Cottigny, Proinsias De Rossa, Carlo Fatuzzo, Ilda Figueiredo, Roger Helmer, Stephen Hughes, Karin Jöns, Ona Juknevičienė, Jan Jerzy Kułakowski, Jean Lambert, Bernard Lehideux, Elizabeth Lynne, Thomas Mann, Maria Matsouka, Mary Lou McDonald, Elisabeth Morin, Juan Andrés Naranjo Escobar, Csaba Óry, Siiri Oviir, Pier Antonio Panzeri, Rovana Plumb, Jacek Protasiewicz, Bilyana Ilieva Raeva, Elisabeth Schroedter, José Albino Silva Peneda, Jean Spautz, Gabriele Stauner, Ewa Tomaszewska, Anne Van Lancker, Gabriele Zimmer	
Substitute(s) present for the final vote	Petru Filip, Donata Gottardi, Rumiana Jeleva, Sepp Kustatscher, Claude Moraes, Csaba Sógor	