NOTICE TO MEMBERS

Subject: Petition No 0309/2019 by A. I. (Ukrainian) on tackling alleged human trafficking and money laundering while employing non-EU workers

1. Summary of petition

The petitioner, a Ukrainian worker, has been employed in Poland from the end of 2016 to the beginning of 2019 through a temporary work agency. In his opinion, the agency managers invented a fake and fraudulent system of employment in order to take advantage of the system and of the employees, without giving them any social guarantees. The conditions of employment were unsafe for their health and illegal in the light of the Polish law. He evokes that having been outsourced for more than 2 years by this agency, major parts of his salaries were not declared and non-taxed, and the exceeding of the standard working hours was not remunerated. He has addressed the Polish regulatory institutions, the judiciary and the media in this regard. The petitioner’s main accusations are alleged breaches of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

2. Admissibility

Declared admissible on 30 September 2019. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 7 February 2022
Directive 2011/98/EU\(^1\) covers “third-country workers”, defined as “third-country nationals who are residing legally in the territory and are allowed to work in the context of a paid relationship in that Member State according to national law and practices” (Article 2(b)). Such third-country workers shall enjoy “equal treatment with nationals of the Member State where they reside” as regards among other things “working conditions, including pay and dismissal as well as health and safety at the workplace” (Article 12(1) (a)). According to the petitioner, the employer in question employs both third-country workers and Polish citizens, but the petition does not highlight different treatment of third-country nationals compared to citizens. Based on the information provided by the petitioner, it cannot be clearly established if there has been a violation of EU law as regards Directive 2011/98/EU.

During an exchange of information with the Polish authorities in an EU Pilot launched on 26 June 2019, the Commission sought clarifications on whether all third-country workers in Poland, in particular those who are subject to Directive 2011/98/EU, are entitled to equal treatment with nationals. Exchanges between the Commission and the Polish authorities are still ongoing and the Commission cannot provide more information at this stage.

It appears from the petition that the petitioner and other third-country nationals employed by the temporary-work agency are legally staying in Poland. As Directive 2009/52/EC\(^2\) covers third-country nationals that are staying illegally on the territory, the petition does not seem to indicate any violation of Directive 2009/52/EC.

Directive 2011/36/EU\(^3\) addresses trafficking in human beings. Poland has notified the Commission of its national provisions transposing the Directive. Articles 115 point (22) and 189a of the Penal Code define the trafficking in human beings offence and its criminalisation, including the case of trafficking for forced labour of services. It is for the national authorities in the first place to establish the facts of the case and assess whether the alleged conduct amounts to an offence. The petitioner states, that “no appropriate reaction has been forthcoming from the state authorities of the Republic of Poland.” Based on the information provided by the petitioner, it is not possible for the Commission to assess whether there has been any violation of Directive 2011/36/EU. The petitioner may consult the website of the European Anti-trafficking Coordinator on the anti-trafficking situation in Poland, which contains the necessary national contacts to report any alleged case of trafficking in human beings (link: https://ec.europa.eu/anti-trafficking/eu-countries/poland_en).

The Commission has been monitoring the correct and complete transposition of Directive 2011/36/EU and its implementation. In 2016, the Commission issued a report\(^4\) on how Member States transposed the Directive and any relevant follow-up on the findings. As per the Directive,
two progress reports\(^5\) prepared by the EU Anti Trafficking Coordinator in cooperation with the Member States have been adopted and preparations for the third report are ongoing. Directive 2011/36/EU is a comprehensive instrument, ensuring its full application is a joint responsibility of Member States and the European Commission.

The petitioner also claims a violation of Directive (EU) 2018/1673\(^6\) on combating money laundering by criminal law, without specifying how Poland has failed to comply with the Directive. The Directive ensures that serious offences, including the alleged offences referred to by the petitioner, qualify as criminal activity for the purposes of money laundering. The Directive also requires Member States to provide for the liability of legal persons. The transposition deadline was 3 December 2020 and the Polish authorities informed the Commission on 20 December 2020 that Poland completed the transposition of the Directive\(^7\).

The petition does not offer any factual elements, which may constitute the basis of an assessment by the Commission. However, as set out above, the review and legal qualification of the facts remain the exclusive competence of national authorities. The Commission has launched the evaluation of Directive 2011/36/EU and will assess its revision by the end of 2022.

**Conclusion**

Based on the currently available information provided by the petitioner, the Commission cannot find substantiated evidence of a systematic violation by Poland of Directives 2011/98/EU, 2009/52/EC, 2011/36/EU or Directive (EU) 2018/1673. While the Commission sympathises with the difficult situation described by the petitioner, it is not possible to consider the concrete case as an “evidence of problems and weaknesses in the control mechanism in the implementation of EU Directives”. Moreover, the Commission does not consider it necessary to propose a new legislative definition of “forced labour” or a new legal mechanism to combat trafficking in human beings.

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7 The Commission’s assessment of the notified measures is not yet completed.