EUROPEAN PARLIAMENT

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Committee on Agriculture and Rural Development

2007/0094(COD)

25.6.2008

OPINION

of the Committee on Agriculture and Rural Development

for the Committee on Civil Liberties, Justice and Home Affairs

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))

Draftsman: Giuseppe Castiglione

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SHORT JUSTIFICATION

The draftsman is in favour of this proposal for a directive and fully endorses its aims. Laying down measures and sanctions, including criminal sanctions, to deter employers from giving work to persons living in the EU illegally not only helps to combat illegal immigration, but also serves to foster market-oriented fair competition and, indirectly, to strengthen the right that every worker has to enjoy proper, decent working conditions.

The agricultural sector has one of the largest pools of illegal migrant labour, which satisfies a demand for workers, generally employed on a seasonal basis, to do jobs that European citizens are, more often than not, unwilling to do (tomato picking in Italy being one example). Non-Community labour thus tends to be employed in short, not to say very short, bursts (workers are employed many times over for brief spells on the same farm).

Precisely because there are large numbers of employees without the proper authorisation, and the nature of their employment is short lived, the draftsman considers it necessary to make changes to the Commission proposal over and above the general amendments intended essentially to save employers from additional red tape.

First of all, he finds it entirely acceptable that an employer should be required on principle to pay workers the outstanding remuneration owed to them, as well as unpaid social security contributions and taxes. However, he believes that if the procedure for claiming back pay arrears were triggered automatically, as the Commission is proposing, illegal migrant workers and EU workers would be treated differently in the eyes of the law, a distinction for which there appears to be no justification. It is difficult to see why the obligations under an employment relationship involving illegal immigrants should be governed by rules other than those applying in labour law, which is subject to the general principle of application whereby it is up to a worker to ask the courts to establish the extent of his entitlement.

Another unwarranted instance of unequal treatment, this time in relation to EU workers employed illegally, might arise from the fact that employment will be presumed to last at least six months. A presumption to that effect imposes the burden of proof on the employer, who would have to show that a given worker had been employed for less than six months. The necessary demonstration to the contrary would be particularly difficult for the employer (it is easier to prove that something has happened than to prove that it has not!) and would entail a totally disproportionate additional sanction, bearing in mind that, according to the evidence, the average duration of employment in the agricultural sector is about 40 days. Furthermore, the presumption could have the unfortunate effect of encouraging illegal immigration by non-Community nationals, attracted by the prospect of receiving at least six months' pay in any event, even if they worked for only a few days.

Finally, as regards the disqualifications, the draftsman believes that greater latitude should be accorded to the Member States, to enable them to allow in a more effective way for the specific features of each sector and the consequences, not least in social terms, likely to ensue if such measures were implemented.

AMENDMENTS

The Committee on Agriculture and Rural Development 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	*Amendment*
(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.	(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***, or have been granted asylum or have refugee status***.

Amendment 2

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission	*Amendment*
	(8a) In order to ensure the effectiveness of this Directive, any undue profit generated by the illegal employment of third-country nationals should be returned. Outstanding remuneration and other work-related

	financial entitlements to be paid back should therefore be equal to those which would have been enjoyed by comparable workers in a declared employment relationship.

Amendment 3

Proposal for a directive
Recital 13

Text proposed by the Commission	*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 in respect of at least a certain period.	(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. ***This presumption should, however, be reduced proportionately in the case of the contracting practices of certain sectors such as agriculture where the duration of contracts is by definition very brief***.

Justification

The presumption of innocence needs to be protected.

Amendment 4

Proposal for a directive
Recital 18

Text proposed by the Commission	*Amendment*
(18) To facilitate enforcement, there should be effective complaint mechanisms by which relevant third-country nationals can lodge complaints directly or through designated third parties such as trade unions or other associations. The designated third parties should be protected, when providing assistance to lodge complaints, against possible sanctions under rules prohibiting the facilitation of unauthorised residence.	(18) To facilitate enforcement, there should be effective complaint mechanisms by which relevant third-country nationals can lodge complaints directly or through designated third parties such as trade unions or other associations. The designated third parties should be protected, when providing assistance to lodge complaints, against possible sanctions under rules prohibiting the facilitation of unauthorised residence. ***The***

mediating role of sectoral organisations with a major grassroots presence should be boosted.

Justification

This would apply to farmers' organisations, which, thanks to their permanent contacts with all interested parties, could have a major role to play in conflict resolution.

Amendment 5

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.	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. ***Where the law of a Member State already requires employers to notify the competent national authority of the start of employment and/or subsequent related developments, the obligation to notify the employment of a third-country national shall be discharged in relation to that authority.***

Amendment 6

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

Text proposed by the Commission	*Amendment*
	2a. Member States shall, in any event, take every step required to make for the necessary degree of cooperation and a proper exchange of information among the various national authorities

concerned.

Amendment 7

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. Member States shall take the necessary measures to ensure that any infringement of Article 3 ***for which employers are made responsible under Article 5*** is subject to effective, proportionate and dissuasive sanctions against the employer.

Amendment 8

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 9

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

Text proposed by the Commission	*Amendment*
(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***;	(a) ***take the steps required*** to ensure that ***a third-country national staying illegally may apply*** to claim back outstanding remuneration ***in accordance with the national procedures provided for that purpose***;

Amendment 10

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

Text proposed by the Commission	*Amendment*
(b) provide that a work relationship of at least 6** months **duration be presumed unless the employer can prove differently.	***deleted***

Amendment 11

Proposal for a directive
Article 7 – paragraph 4

Text proposed by the Commission	*Amendment*
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).	***deleted***

Amendment 12

Proposal for a directive
Article 8 – introductory part

Text proposed by the Commission	*Amendment*
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:	Member States shall take the necessary measures to ensure that an employer acting in the course of business activities may also, ***in more serious or exceptionally serious cases***, be subject to ***at least one of*** the following measures:

Amendment 13

Proposal for a directive
Article 8 – point c

Text proposed by the Commission	*Amendment*
(c) recovery of public benefits, aid, or subsidies, including EU funding managed by Member States, granted to the employer during the ***12 months preceding the detection*** of illegal employment;	(c) recovery of public benefits, aid, or subsidies, including EU funding managed by Member States, granted to the employer during the ***time*** of illegal employment; ***where the actual duration of the illegal employment cannot be determined, an employment relationship of at least three months' duration shall be assumed;***

Justification

The 12-month period chosen is too long and would lead to unfair hardship, thus violating the principle of proportionality.

Amendment 14

Proposal for a directive
Article 14 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Member States shall not impose sanctions against designated third parties providing assistance to the third-country national to lodge complaints, on the grounds of facilitation of unauthorised residence.	2. Member States shall not impose sanctions against designated third parties providing assistance to the third-country national to lodge complaints, on the grounds of facilitation of unauthorised residence***, this being especially so in the case of the representative organisations of particular sectors***.

Justification

This would apply to farmers' organisations, which, thanks to their permanent contacts with all interested parties, could have a major role to play in conflict resolution.

Amendment 15

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission	*Amendment*
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.	2. ***Where the*** selection of companies to be inspected ***is*** based on a risk assessment ***(deletion)***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***, the Member States may be authorised to deviate from the requirement in paragraph 1 once they have informed the Commission of this***.

Amendment 16

Proposal for a directive
Article 15 a (new)

Text proposed by the Commission	*Amendment*
	Article 15a
	Safeguarding the level of protection
	Nothing in this Directive shall constitute grounds for a reduction in the level of protection of vulnerable third country nationals already afforded by Member States in the fields covered by this Directive.

Amendment 17

Proposal for a directive
Article 16 – first indent

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	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.

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 ***or Article 13***.

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	AGRI 27.9.2007
Drafts(wo)man Date appointed	Giuseppe Castiglione 8.10.2007
Discussed in committee	25.6.2008
Date adopted	25.6.2008
Result of final vote	+: 34 –: 1 0: 0
Members present for the final vote	Vincenzo Aita, Bernadette Bourzai, Niels Busk, Luis Manuel Capoulas Santos, Giuseppe Castiglione, Albert Deß, Gintaras Didžiokas, Michl Ebner, Carmen Fraga Estévez, Ioannis Gklavakis, Lutz Goepel, Friedrich-Wilhelm Graefe zu Baringdorf, Esther Herranz García, Lily Jacobs, Elisabeth Jeggle, Heinz Kindermann, Stéphane Le Foll, James Nicholson, Neil Parish, María Isabel Salinas García, Agnes Schierhuber, Willem Schuth, Czesław Adam Siekierski, Alyn Smith, Petya Stavreva, Witold Tomczak, Donato Tommaso Veraldi, Janusz Wojciechowski, Andrzej Tomasz Zapałowski
Substitute(s) present for the final vote	Katerina Batzeli, Ilda Figueiredo, Wiesław Stefan Kuc, Astrid Lulling, Maria Petre, Brian Simpson
Substitute(s) under Rule 178(2) present for the final vote	Paulo Casaca