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AMENDMENTS
52 - 142

Draft report
Claudio Fava
(PE409.510v01-00)

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

Proposal for a directive
(COM(2007)0249 – C6-0143/2007 – 2007/0094(COD))

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Amendment 52
Marian-Jean Marinescu

Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission	*Amendment*
	(2a) This Directive lays down dissuasive sanctions in relation to employers who benefit from the illegal status of a migrant and create illegal and unfair competition to the disadvantage of other honest employers.

Or. en

Amendment 53
Ioannis Varvitsiotis

Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission	*Amendment*
	(3) There is also a need to consider the situation of legally resident third-country nationals who are employed illegally, in order to supplement existing measures,

Or. el

Justification

There is a gap in the law on this point.

Amendment 54
Giusto Catania

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 who are the subject of international protection measures.***

Or. it

Amendment 55
Ona Juknevičienė

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	(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***.	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.

Or. en

Justification

This directive should also be applied to posted workers

Amendment 56
Rareş-Lucian Niculescu

Proposal for a directive
Recital 5

Text proposed by the Commission	*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.	(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 ensure that employers are adequately informed as to the form and content of the residence permit issued to third country nationals.

Or. ro

Justification

Anyone seeking to ascertain whether a document is valid must have at their disposal adequate information as to the criteria that document has to fulfil.

Amendment 57
Jean Lambert

Proposal for a directive
Recital 7

Text proposed by the Commission	*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.***	(7) To enforce the general prohibition and to deter infringements, Member States should provide for appropriate sanctions. These should include financial penalties.

Or. en

Amendment 58
Giusto Catania

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission	*Amendment*
	(8a) In order to secure 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.

Or. en

Amendment 59
Simon Busuttil

Proposal for a directive
Recital 10

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 ***may*** provide for ***the employee and the third-country national to have the possibility of proving the existence and duration of the work*** relationship.

Or. en

Amendment 60
Ona Juknevičienė

Proposal for a directive
Recital 10

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 ***an existing*** work relationship so that the burden of proof is put on the employer***. Member States should also provide for employees to have an opportunity to prove the existence and duration of their work relationship***.

Or. en

Amendment 61
Simon Busuttil

Proposal for a directive
Recital 13

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

Or. en

Amendment 62
Marian-Jean Marinescu

Proposal for a directive
Recital 13

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

Or. en

Justification

Both "contractors" and "subcontractors" are defined as "employers". All employers should be held responsible for the persons they hire.

Amendment 63
Ona Juknevičienė

Proposal for a directive
Recital 15

Text proposed by the Commission	*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.	(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, ***illegal employment of a minor,*** 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.

Or. en

Amendment 64
Simon Busuttil

Proposal for a directive
Recital 19

Text proposed by the Commission	*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. Such permits should be granted under the same	***deleted***

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. en

Amendment 65
Ona Juknevičienė

Proposal for a directive
Recital 19

Text proposed by the Commission	*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. 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.	(19) To supplement the complaint mechanisms, Member States should grant residence permits of limited duration ***and access to the legal work market*** 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.

Or. en

Amendment 66
Jean Lambert

Proposal for a directive
Recital 19

Text proposed by the Commission	*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. 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.	(19) To supplement the complaint mechanisms, Member States should grant residence permits of limited duration ***and access to the legal work market*** 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.

Or. en

Amendment 67
Rareş-Lucian Niculescu

Proposal for a directive
Recital 19

Text proposed by the Commission	*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. Such permits should be	(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***, as well as to their family***

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.	***members***. 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. ro

Justification

The families of third country nationals who enjoy this right should not be separated from their families. Not inserting this clause would deprive the measure of operational effectiveness. Directive 2004/81/EC of 29 April 2004 contains no provisions regarding the situation of family members.

Amendment 68
Jean Lambert

Proposal for a directive
Recital 20 a (new)

Text proposed by the Commission	*Amendment*
	(20a) This Directive should be seen as complementary to other measures taken to address the issue of undeclared work.

Or. en

Amendment 69
Marian-Jean Marinescu

Proposal for a directive
Article 1 - paragraph 1

Text proposed by the Commission	*Amendment*
1. This Directive lays down common sanctions and measures to be applied in the	1. This Directive lays down common sanctions and measures to be applied in the

Member States against employers of third-country nationals who are illegally staying on the territory of the Member States, in order to take action against illegal immigration.	Member States against employers of third-country nationals who are illegally staying on the territory of the Member States, in order to take action against illegal immigration ***and to counter undeclared work and exploitation***.

Or. en

Amendment 70
Ioannis Varvitsiotis

Proposal for a directive
Article 1 - paragraph 1

Text proposed by the Commission	*Amendment*
1. This Directive lays down common sanctions and measures to be applied in the Member States against employers of third-country nationals who are illegally staying on the territory of the Member States, in order to take action against illegal immigration.	1. This Directive lays down ***the minimum common measures and*** sanctions to be applied in the Member States against employers of third-country nationals who are illegally staying on the territory of the Member States, in order to take action against illegal immigration.

Or. el

Justification

The aim of the Directive is to lay down minimum common measures.

Amendment 71
Ona Juknevičienė

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 any other***

intermediary.

Or. en

Amendment 72
Marian-Jean Marinescu

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

Text proposed by the Commission	*Amendment*
	(fa) "temporary employment agency" means a natural or legal person through which temporary workers are able to access jobs, and includes any natural or legal person who charges employers a fee, whether direct or indirect, for seeking suitable temporary workers.

Or. en

Amendment 73
Simon Busuttil

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 a work permit*** or another authorisation for stay valid for the period of the employment in question***, before the commencement of their employment. In cases where the duration of the employment contract exceeds the period of validity of the valid residence permit or another authorisation for stay under this paragraph, Member States shall oblige employers to require the employed third-country national to present, on the date of expiry of the residence permit or another authorisation***

for stay presented at the time of being employed, a new valid residence permit or another authorisation for stay.

Or. en

Amendment 74
Jeanine Hennis-Plasschaert

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 valid for the period of the employment in question***, or one which is valid at the start of employment and can be renewed for the remaining period of employment***;

Or. en

Amendment 75
Simon Busuttil

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 ***within a period laid down by each Member State***.

Or. en

Amendment 76
Jeanine Hennis-Plasschaert

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***

Or. en

Justification

Too much bureaucracy, too little effect; administrative burden.

Amendment 77
Simon Busuttil

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 in cases where the employer employs people to carry out domestic work.

Or. en

Amendment 78
Martine Roure

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 obligations for employers where the latter are private individuals employing someone to perform activities relating to domestic help and personal services. They shall nevertheless take the necessary measures to combat domestic slavery.

Or. fr

Amendment 79
Marian-Jean Marinescu

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

Text proposed by the Commission	*Amendment*
	2a. Member States shall provide clear guidelines and advice to employers on resident permits or other authorisations for stay.

Or. en

Amendment 80
Simon Busuttil

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	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***.	their obligation under paragraph 1(a) unless the document presented as a residence permit***, a work permit*** or another authorisation for stay is manifestly ***falsified***.

Or. en

Amendment 81
Rareş-Lucian Niculescu

Proposal for a directive
Article 4 - paragraph 3 a (new)

Text proposed by the Commission	*Amendment*
	3a. Member States must ensure that employers handle job applications equitably and conduct a non-discriminatory check on the papers of all applicants offered employment.

Or. ro

Justification

Employers must avoid discriminatory practices when recruiting, and conduct a check on the papers of everyone they hire, handling all job applications equitably. Employers cannot assume that someone belonging to an ethnic minority is an immigrant. Conducting checks solely on the papers of people who appear by their accent or appearance to be foreigners will be construed as discriminating on the grounds of race.

Amendment 82
Jeanine Hennis-Plasschaert

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

Text proposed by the Commission	*Amendment*
(a) financial penalties in relation to each illegally employed third-country national;	(a) financial penalties in relation to each illegally employed third-country national***, in which the average costs of return are***

reflected in the total amount;

Or. en

Justification

The financial penalties should reflect an estimation of the costs of return, as determined by the national authorities in order to establish a truly deterrent effect.

Amendment 83
Marian-Jean Marinescu

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

Text proposed by the Commission	*Amendment*
(a) financial penalties in relation to each illegally employed third-country national;	(a) financial penalties in relation to each illegally employed third-country national***, which shall rise progressively in line with the number of illegally employed third-country nationals;***

Or. en

Amendment 84
Jeanine Hennis-Plasschaert

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***

Or. en

Justification

Experiences in a number of Member States show that this is too complex. It should be incorporated in the financial penalties.

Amendment 85
Marian-Jean Marinescu

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 in cases where the employer is a private individual employing a third-country national to provide domestic help or personal services and when the employee testifies the fairness of his or her treatment by the employer during the employment period.

Or. en

Amendment 86
Martine Roure

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 in cases where the employer is a private individual employing a third country national to provide domestic help or personal services, while taking care to ensure there is no domestic slavery involved.

Or. fr

Amendment 87
Simon Busuttil

Proposal for a directive
Article 7 - paragraph 1 - point a

Text proposed by the Commission	*Amendment*
(a) any outstanding remuneration to the illegally employed third-country national;	(a) any outstanding remuneration to the illegally employed third-country national***; where the agreed level of remuneration cannot be established, it shall be presumed to have been 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***;

Or. en

Amendment 88
Stefano Zappalà, Roberta Angelilli

Proposal for a directive
Article 7 - paragraph 2 - introductory part and point a

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 ***illegally employed third-country nationals:***
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) can submit a claim, subject to a prescription period set in accordance with national law, for the payment of any

outstanding remuneration, and secure implementation of a measure to that effect against the employer;
b) are informed systematically and at the earliest opportunity that they may submit such a claim, prior to the execution of any repatriation measure;
c) can exercise their rights through the use of forms that can be understood by the persons for whom it is intended.

Or. it

Justification

In most Member States, EU workers have to submit a specific claim to the competent authorities. It is therefore hard to see why a new system should be created for third-country nationals. A new and different system would make for unjustified differential treatment of third-country workers and EU workers. It seems unacceptable that an individual right should be the subject of an automatic mechanism. Use of a form drawn up in a language the worker can understand would permit them to exercise their rights unequivocally.

Amendment 89
Simon Busuttil

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***

Or. en

Amendment 90
Ona Juknevičienė

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

Text proposed by the Commission	*Amendment*
(b) ***provide that a*** work relationship ***of at***	(b) ***presume an existing*** work relationship

least 6 months duration be presumed unless the employer can prove differently.	unless the employer ***or the illegally employed third-country national*** can prove differently.

Or. en

Amendment 91
Ioannis Varvitsiotis

Proposal for a directive
Article 7 - paragraph 3

Text proposed by the Commission	*Amendment*
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 they have or have been returned.	3. Member States shall take the necessary measures to ensure that illegally employed third-country nationals ***are able to*** receive any back payment of remuneration recovered under paragraph 1(a), including in cases in which they have or have been returned.

Or. el

Justification

A mechanism must be set up to enable employed third-country nationals to receive any back pay.

Amendment 92
Simon Busuttil

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	***deleted***

paragraph 1(a).

Or. en

Amendment 93
Jeanine Hennis-Plasschaert

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).	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 ***and other work-related financial entitlements*** recovered under paragraph 1(a).

Or. en

Justification

The financial entitlements should include all work-related entitlements.

Amendment 94
Giusto Catania

Proposal for a directive
Article 7 - paragraph 4 a (new)

Text proposed by the Commission	*Amendment*
	4a. Member States shall take steps to encourage the integration into the labour market of workers emerging from irregular employment situations.

Or. it

Amendment 95
Simon Busuttil

Proposal for a directive
Article 8 - introductory part

Text proposed by the Commission	*Amendment*
8. 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:	8. Member States shall take the necessary measures to ensure that an employer acting in the course of business activities ***shall*** also be subject to the following measures:

Or. en

Amendment 96
Jeanine Hennis-Plasschaert

Proposal for a directive
Article 8 - introductory part

Text proposed by the Commission	*Amendment*
8. 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:	8. Member States shall take the necessary measures to ensure that ***employers*** acting in the course of business activities ***shall***, if ***justified by the gravity of the situation or the percentage of illegally employed third-country nationals***, be subject to the following measures:

Or. en

Justification

The gravity of the situation shall be leading in all cases.

Amendment 97
Jeanine Hennis-Plasschaert

Proposal for a directive
Article 8 - point a

Text proposed by the Commission	*Amendment*
(a) exclusion from entitlement to public benefits, aid or subsidies for up to five years;	(a) exclusion from entitlement to public benefits, aid or subsidies***, including EU funding managed by Member States,*** for up to five years;

Or. en

Justification

The wording of recital 11, article 8 points a and c should be in line.

Amendment 98
Hubert Pirker

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 ***actual period of the work relationship or, where the duration of that period is unknown, the duration of the relationship as presumed in accordance with Article 7, paragraph 2(b);***

Or. de

Justification

In order to satisfy the proportionality principle, the measures to be imposed should be tailored to the actual duration of the work relationship or the presumption that the duration

was six months.

Amendment 99
Nicolae Vlad Popa

Proposal for a directive
Article 8 - point d

Text proposed by the Commission	*Amendment*
(d) temporary or permanent closure of the establishments that have been used to commit the infringement.	***deleted***

Or. en

Amendment 100
Simon Busuttil

Proposal for a directive
Article 8 - point d

Text proposed by the Commission	*Amendment*
(d) temporary or permanent ***closure of the establishments that have been used to commit the infringement***.	(d) temporary or permanent ***withdrawal of a licence to conduct the business activity in question, if justified in particular by the gravity of the situation or the number of illegally staying third-country nationals employed by the employer concerned***.

Or. en

Amendment 101
Jeanine Hennis-Plasschaert

Proposal for a directive
Article 8 - point d

Text proposed by the Commission	*Amendment*
(d) temporary or permanent closure of the establishments that have been used to	(d) temporary or permanent closure of the establishments that have been used to

commit the infringement.	commit the infringement***, or temporary or permanent withdrawal of a licence to conduct the business activity in question***.

Or. en

Justification

Withdrawal of a license should be a possibility as well.

Amendment 102
Marian-Jean Marinescu

Proposal for a directive
Article 9

Text proposed by the Commission	*Amendment*
1. Where the employer is a subcontractor, Member States shall ensure that the main contractor and any intermediate subcontractor are liable to pay:	***deleted***
(a) any sanction imposed under Article 6, and	
(b) any back payments due under Article 7.	
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.	

Or. en

Justification

Both "contractors" and "subcontractors" are defined as "employers". That is why this Article is superfluous. All employers should be held responsible for the persons they hire.

Amendment 103
Simon Busuttil

Proposal for a directive
Article 9 - paragraph 1 - introductory part

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

Or. en

Amendment 104
Simon Busuttil

Proposal for a directive
Article 9 - paragraph 1 - point a

Text proposed by the Commission	*Amendment*
(a) any sanction imposed under Article 6, and	***deleted***

Or. en

Amendment 105
Simon Busuttil

Proposal for a directive
Article 9 - paragraph 1 - point b

Text proposed by the Commission	*Amendment*
(b) any back payments due under Article 7.	***deleted***

Or. en

Amendment 106
Simon Busuttil

Proposal for a directive
Article 9 - paragraph 2

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

Or. en

Amendment 107
Ioannis Varvitsiotis

Proposal for a directive
Article 10 - paragraph 1 - introductory part

Text proposed by the Commission	*Amendment*
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:	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***, and in accordance with the provisions of national legislation:***

Or. el

Justification

There is a need for clarification since the matter is to be dealt with in the national context.

Amendment 108
Simon Busuttil

Proposal for a directive
Article 10 - paragraph 1 - point b

Text proposed by the Commission	*Amendment*
(b) the infringement is in respect of a significant number of illegally ***employed*** third-country nationals. This shall be the case if at least four third-country nationals are illegally employed;	(b) the infringement is in respect of a significant number of illegally ***staying*** third-country nationals ***who are employed illegally***. This shall be the case if at least four third-country nationals are illegally employed;

Or. en

Amendment 109
Simon Busuttil

Proposal for a directive
Article 10 - paragraph 1 - point c

Text proposed by the Commission	*Amendment*
(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	(c) the infringement is accompanied by ***abuse, violence, threats, intimidation, degrading treatment, gender-based discrimination or*** particularly exploitative working conditions, such as a significant difference in working conditions from those enjoyed by legally employed workers; or

Or. en

Amendment 110
Jean Lambert

Proposal for a directive
Article 10 - paragraph 1 - point c

Text proposed by the Commission	*Amendment*
(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;	(c) the infringement is accompanied by particularly exploitative working conditions, such as a significant difference in working ***and wage*** conditions from those enjoyed by legally employed workers;

Or. fr

Amendment 111
Jeanine Hennis-Plasschaert

Proposal for a directive
Article 10 - paragraph 1 - point c

Text proposed by the Commission	*Amendment*
(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	(c) the infringement is accompanied by exploitative working conditions, such as ***violence, threats, intimidation, degrading treatment and/or*** a significant difference in working conditions from those enjoyed by legally employed workers; or

Or. en

Amendment 112
Nicolae Vlad Popa

Proposal for a directive
Article 10 - paragraph 1 - point c

Text proposed by the Commission	*Amendment*
(c) the infringement is accompanied by particularly exploitative working conditions, such as a significant difference	(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	in working conditions from those enjoyed by legally employed workers***, including violence, threats, intimidation or degrading treatment***; or

Or. en

Amendment 113
Simon Busuttil

Proposal for a directive
Article 10 - paragraph 1 - point d a (new)

Text proposed by the Commission	*Amendment*
	(da) the infringement is in respect of illegally staying third-country nationals who are minors.

Or. en

Amendment 114
Ona Juknevičienė

Proposal for a directive
Article 10 - paragraph 1 - point d a (new)

Text proposed by the Commission	*Amendment*
	(da) the infringement is committed by an employer who employs a minor.

Or. en

Amendment 115
Simon Busuttil

Proposal for a directive
Article 11 a (new)

Text proposed by the Commission	*Amendment*
	Article 11a
	Member States shall take the necessary measures to ensure that a list of employers who have infringed this Directive is made public.

Or. en

Amendment 116
Simon Busuttil

Proposal for a directive
Article 13 – introductory part

Text proposed by the Commission	*Amendment*
Member States shall ensure that a legal person held liable for a criminal offence pursuant to Article 10 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions ***such as****:*	Member States shall ensure that a legal person held liable for a criminal offence pursuant to Article 10 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions ***applicable under this Directive for natural persons.***

Or. en

Amendment 117
Simon Busuttil

Proposal for a directive
Article 13 - point a

Text proposed by the Commission	*Amendment*
(a) exclusion from entitlement to public	***deleted***

benefits or aid;

Or. en

Amendment 118
Jeanine Hennis-Plasschaert

Proposal for a directive
Article 13 - point a

Text proposed by the Commission	*Amendment*
(a) exclusion from entitlement to public benefits or aid;	(a) exclusion from entitlement to public benefits or aid***, including EU funding, also if managed by Member States***;

Or. en

Justification

The wording should be in line with the wording of article 8.

Amendment 119
Simon Busuttil

Proposal for a directive
Article 13 - point b

Text proposed by the Commission	*Amendment*
(b) exclusion from participation in a public contract for up to five years;	***deleted***

Or. en

Amendment 120
Simon Busuttil

Proposal for a directive
Article 13 - point c

Text proposed by the Commission	*Amendment*
(c) temporary or permanent disqualification from the practice of agricultural, industrial or commercial activities;	***deleted***

Or. en

Amendment 121
Simon Busuttil

Proposal for a directive
Article 13 - point d

Text proposed by the Commission	*Amendment*
(d) placing under judicial supervision;	***deleted***

Or. en

Amendment 122
Simon Busuttil

Proposal for a directive
Article 13 - point e

Text proposed by the Commission	*Amendment*
(e) a judicial winding-up order.	***deleted***

Or. en

Amendment 123
Simon Busuttil

Proposal for a directive
Article 14 - paragraph 1

Text proposed by the Commission	*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.	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 ***and in a confidential manner.***

Or. en

Amendment 124
Rareş-Lucian Niculescu

Proposal for a directive
Article 14 - paragraph 1

Text proposed by the Commission	*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.	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***, and anyone learning of a case of illegal employment can report this to the competent authorities***.

Or. fr

Justification

Important information may also be provided by persons other than illegally-employed third-country nationals, such as other employees.

Amendment 125
Simon Busuttil

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

Text proposed by the Commission	*Amendment*
	1a. 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 engage, either on behalf or in support of an illegally employed third-country national, in any judicial, administrative and/or criminal proceedings provided for with the objective of implementing this Directive.

Or. en

Amendment 126
Rareş-Lucian Niculescu

Proposal for a directive
Article 14 - paragraph 2 a (new)

Text proposed by the Commission	*Amendment*
	(2a) Persons who denounce cases of illegal employment must be afforded legal protection against any unfair measures taken as a consequence of that denunciation.

Or. ro

Justification

In order for implementation of the directive to be effective, measures must be introduced to protect anyone denouncing illegal employment in order to shield them against any unfair

measures taken as a consequence of that denunciation.

Amendment 127
Simon Busuttil

Proposal for a directive
Article 14 - paragraph 3

Text proposed by the Commission	*Amendment*
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 to exploitative working conditions and cooperate in proceedings against the employer.	***deleted***

Or. en

Amendment 128
Jean Lambert

Proposal for a directive
Article 14 - paragraph 3

Text proposed by the Commission	*Amendment*
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 to exploitative working conditions and cooperate in proceedings against the employer.	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 ***and access to the legal work market*** to third-country nationals who are or have been subjected to exploitative working conditions and cooperate in proceedings against the employer.

Or. en

Amendment 129
Ioannis Varvitsiotis

Proposal for a directive
Article 14 - paragraph 3

Text proposed by the Commission	*Amendment*
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 to exploitative working conditions and cooperate in proceedings against the employer.	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 ***be able to*** 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 to exploitative working conditions and cooperate in proceedings against the employer.

Or. el

Justification

This should be left to the discretion of the Member States in order to avoid any irregularities.

Amendment 130
Rareş-Lucian Niculescu

Proposal for a directive
Article 14 - paragraph 3

Text proposed by the Commission	*Amendment*
(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	(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 to exploitative working conditions and cooperate in proceedings against the employer.	been subjected to exploitative working conditions and cooperate in proceedings against the employer, ***as well as to their family members***.

Or. fr

Justification

See Amendment 2.

Amendment 131
Giusto Catania

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

Text proposed by the Commission	*Amendment*
	3a. In respect of the prohibition laid down in Article 3, Member States shall, under the conditions of Articles 4 to 15 of Directive 2004/81/EC, grant residence permits of a minimum duration of six months to third-country nationals applying for these, in order to facilitate the search for work, education and/or professional training.

Or. it

Amendment 132
Giusto Catania

Proposal for a directive
Article 14 a (new)

Text proposed by the Commission	*Amendment*
	Article 14a
	Designated third parties
	1. Member States shall ensure that legal entities, associations, non-governmental organisations, local authorities and organisations such as trade unions, which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of a third-country national in illegal employment in any judicial, administrative and/ or criminal procedure provided for the enforcement of obligations under this Directive.
	2. For the purpose of application of this Directive, Member States shall not impose sanctions against designated parties providing assistance to third-country national, on the grounds of facilitation of unauthorised residence.

Or. en

Amendment 133
Simon Busuttil

Proposal for a directive
Article 15 - paragraph 1

Text proposed by the Commission	*Amendment*
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	1. Member States shall ensure that companies established on their territory are subject to ***regular, effective and adequate*** inspections to control employment of

third-country nationals.	illegally staying third-country nationals. ***Such 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.***

Or. en

Amendment 134
Nicolae Vlad Popa

Proposal for a directive
Article 15 - paragraph 1

Text proposed by the Commission	*Amendment*
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.	1. Member States shall ensure that at least ***4 % and no more than*** 10% of companies established on their territory per year are subject to inspections to control employment of illegally staying third-country nationals.

Or. en

Amendment 135
Rareş-Lucian Niculescu

Proposal for a directive
Article 15 - paragraph 1

Text proposed by the Commission	*Amendment*
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.	1. Member States shall ensure that at least ***3%*** of companies established on their territory per year are subject to inspections to control employment of illegally staying third-country nationals.

Or. ro

Justification

Inspecting 10% of employers is an ambitious, but unrealistic, objective. A figure of 3% is closer to the actual potentials of the competent authorities.

Amendment 136
Nicolae Vlad Popa

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. The selection of companies to be inspected shall be based on a ***random selection software and then 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.

Or. en

Amendment 137
Ioannis Varvitsiotis

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. 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 ***data relating to previous or pending infringements. All these factors shall be reviewed on a regular basis.***

Or. el

Amendment 138
Jean Lambert

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

Text proposed by the Commission	*Amendment*
	2a. Member States shall ensure that the inspections referred to in paragraphs 1 and 2 are without prejudice to employment inspections carried out only to assess working conditions, with particular regard to an assessment of safety and health conditions, regardless of the status of the worker. A clear distinction shall be made between the inspections referred to in this paragraph and inspections relating to immigration.

Or. en

Amendment 139
Giusto Catania

Proposal for a directive
Article 15 a (new)

Text proposed by the Commission	*Amendment*
	Article 15a
	Non-regression
	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.

Or. en

Amendment 140
Jean Lambert

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 numbers and results of inspections carried out pursuant to Article 15 and details of measures applied under ***Articles 7,*** 8 ***and 14. Member States shall also transmit, by the same deadline, studies on the impact of the measures taken to combat undeclared work.***

Or. fr

Amendment 141
Jean Lambert

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

Text proposed by the Commission	*Amendment*
	Member States shall, 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 as well as citizens and residents of ethnic minority descent.

Or. en

Amendment 142
Rareş-Lucian Niculescu

Proposal for a directive
Article 17 - paragraph 1 a (new)

Text proposed by the Commission	*Amendment*
	(1a) In the case of the Republic of Bulgaria and Romania, Article 15(1) shall take effect 48 months from the date of publication of this Directive in the Official Journal of the European Union.

Or. ro

Justification

Since Romania and Bulgaria are not yet destination countries for economic migrants, the illegal employment of third-country nationals is not a widespread phenomenon there. Implementation of Article 15(1) of the Directive would lead to a substantial increase in the financial effort and human resources involved, which in current conditions would be disproportionate and over-burdensome.