Immigration policy: sanctions against employers of illegally staying third-country nationals

2007/0094(COD) - 21/01/2009

The Committee on Civil Liberties, Justice and Home Affairs adopted a report drafted by Claudio **FAVA** (PSE, IT) and amended the proposal for a directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals.

The main amendments – made in 1st reading of codecision procedure – are as follows :

Scope: Members felt that the scope of the directive was too narrow. The legal base, Article 63(3)(b) of the EC Treaty, does not cover measures relating to nationals of those Member States who have joined the EU since 2004 and 2007 and who are still subject to transitional arrangements, thereby limiting their free access to the labour markets of a number of the EU-15 Member States. Members clarified that the Directive prohibits the employment of illegally staying third-country nationals in order to fight illegal immigration. To this end, it lays down minimum common standards on sanctions and measures to be applied in the Member States against employers who infringe this prohibition. "Third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code.

Employers' obligations: Member States may provide for a simplified procedure for notification where the employer is a natural person and the employment is for his or her private purposes.

Financial sanctions: Member States may provide for reduced financial penalties in cases where the employer is a natural person who employs an illegally staying third country national for his or her private purposes and where no particularly exploitative working conditions are involved.

Back payments to be made by employers: Members' amendments to this clause clarified the nature of the payments that the employer is responsible for as well as the availability of effective procedures to claim the payment.

Other measures: the provisions of this Article are extended to EU funding and to EU procurement.

Subcontracting: Members stated that a contractor that has undertaken due diligence obligations as defined by national law shall not be held liable under the terms of the legislation.

Criminal offence: it is added that contraventions may constitute a criminal offence, when the infringement relates to the illegal employment of a minor.

Inspections: Member States shall regularly identify the sectors of activity in which the employment of illegally staying third-country nationals are concentrated on their territory. In respect of each of those sectors, each year before 1 July they must communicate to the Commission the inspections, both in absolute numbers and as a percentage of the employers for each sector, carried out in the previous year as well as their results.