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

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The Commission presents a report on the application of Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying thirdcountry nationals.

The report recalls the key objectives of the Directive seek to **counter the pull factor of finding work**. It toughens sanctions for illegal employment and improves detection mechanisms, while providing for protective measures designed to redress injustices suffered by irregular migrants. It forms part of a set of measures taken by the EU to effectively tackle irregular immigration; other measures include enhanced cooperation with third countries, integrated management of operational borders, an effective return policy and reinforced legislation to fight against human trafficking.

Status of transposition: Member States were to transpose Directive 2009/52/EC into their national legislation by 20 July 2011. The Commission launched **infringement proceedings against 20 Member States** for not having done so in time. These have since all been closed.

Before adopting transposing legislation, Italy and Luxembourg allowed for a period during which employers could declare illegally staying migrants working for them and, while requiring payment of a fine and fulfilment of certain conditions, enabled regularisation mechanisms.

All Member States bound by the Directive now prohibit the employment of irregular migrants and only a few have allowed an exception for those whose removal has been postponed. Several Member States have decided to go beyond the scope of the Directive, applying it also to third-country nationals who are legally-staying but whose residence permit does not allow them to perform an economic activity.

Principal conclusions: this Communication responds to the Commission's obligation to report to the European Parliament and the Council on the application of the Employers' Sanctions Directive. It provides an overview of the financial and criminal sanctions that the chain of employers may incur across the EU for illegal employment. It then sets out how protective measures for illegally employed migrants were enacted in the national legislations. It finally describes how Member States have transposed the mechanisms set out in the Directive to effectively detect and penalise illegal employment and provides an assessment of Member States' inspection reports.

Differences in the severity of the sanctions: the report notes that the severity of the sanctions as applied to employers varies considerably pursuant to the Directive. The Commission therefore raises concerns whether sanctions can always be effective, proportionate or dissuasive and will therefore have to be further assessed.

Protection of migrants: some Member States have yet to implement the protective elements of the Directive in a satisfactory manner. There remains room for improvement in all areas offering protection to irregular migrants, be it the right to make a claim against an employer, effective mechanisms for doing so or something as basic as providing systematic and objective information on their rights.

Inspections: some Member States are likely to need to make substantial efforts to improve not only their reporting on inspections, but also **the inspections themselves** and their prioritisation efforts through systematic identification of sectors at risk. On the basis of the data collected for 2012, it seems that much still needs to be done to ensure that an adequate and effective inspections system is in place. **The lack of**

such a system calls into serious doubt the effective enforcement of the prohibition of illegal employment and the efforts of the Member States to reduce differences in enforcement of the Directive.

As Member States are obliged to report on inspections each year before 1 July, the Commission will continue to monitor closely the measures taken by Member States in this area and take action if necessary. In order to raise Member States' awareness of these and other potential problems identified in the transposition of the Directive, the Commission is engaged in bilateral exchanges with each Member State and will launch EU pilot procedures where necessary.

Next steps: the Commission will provide support to Member States to ensure a satisfactory level of implementation of the Directive across the EU. As it has been doing on a continuous basis since the adoption of the Directive in 2009, the Commission will invite Member States to discuss the legal transposition and implementation of several key provisions of the Directive at upcoming meetings. If necessary, guidelines on the practical implementation of the Directive could also be drawn up including on the enforcement of the rights of migrants.