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

2007/0094(COD) - 16/05/2007 - Legislative proposal

PURPOSE: to sanction employers who illegally employ third-country nationals.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: this proposal forms part of the EU's overall policy to develop a comprehensive migration policy. In this instance the proposed Regulation specifically targets employers who employ third-country nationals who are working in the Community illegally.

One of Europe's gre atest "pull" factors for illegal immigrants is the possibility of finding work and a better way of life in the European Union. Illegal immigrants help meet the needs of some employers who are willing to take advantage of workers prepared to undertake what are mostly low-skilled and low paid jobs. The scale of the phenomenon is hard to quantify and estimates vary from between 4.5 million to 8 million. Illegal employment is concentrated in certain sectors namely construction, agriculture, cleaning and hotel/catering.

CONTENT: the centrepiece of the proposed Regulation is a general prohibition on the employment of third-country nationals who do not have the right to be resident in the EU. The Regulation sets out common sanctions and measures to be applied to employers who infringe that prohibition. In other words it **is the employer, and not the illegally employed third-country national, who will be punished**.

Checks on workers before being recruited: to ensure the effectiveness of the prohibition, employers would be required to undertake certain checks before recruiting a third-country national, the procedure for making complaints would be facilitated and Member States would be required to undertake a certain number of inspections. Employers who do not comply with these obligations will be required to fines and other administrative measures.

Sanctions on employers: the proposal covers not only natural or legal persons employing others in the course of business activities, but also private individuals when they act as employers. Employers of illegally staying third country nations who have not carried out the pre-recruitment check would be liable to sanctions consisting of:

- **fines**: including the cost of returning illegally staying third country nationals;

- **repayment of outstanding wages**, taxes and social security contributions;

- if appropriate other **administrative measures**, including the loss of subsidies (including EU funding) for up to 5 years and disqualification for up to 5 years.

As regards administrative fines and other measures, these may not be enough to deter certain employers. Member States would therefore be required to provide for criminal penalties for four types of serious cases:

- repeated infringements;

- the employment of a significant number of third-country nationals;

- particularly exploitative working conditions;

- where the employer knows that the worker is a victim of human trafficking.

To ensure in particular that individual employers are liable to criminal sanctions only in serious cases, a repeated infringement is criminalised only where it is the third infringement within a two-year period.

Subcontractors: 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.

Complaints mechanism: in a bid to make enforcement of the Directive more effective it is proposed that mechanisms should be put in place whereby third-country nationals can lodge complaints either directly, or through designated third parties. Further, illegal immigrants who cooperate in proceedings may be able to benefit from a temporary residence permit - as already exists elsewhere under EU law for victims of human trafficking.

Enforcement: On a final point the proposed Directive requires the Member States to inspect at least 10% of their companies every year.