Basic information

2007/0094(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Immigration policy: sanctions against employers of illegally staying third-country nationals **Subject** 7.10.08 Migration policy	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	FAVA Claudio (PSE)	11/06/2007

Committee for opinion	Rapporteur for opinion	Appointed
EMPL Employment and Social Affairs (Associated committee)	BAUER Edit (PPE-DE)	05/06/2007
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
AGRI Agriculture and Rural Development	CASTIGLIONE Giuseppe (PPE-DE)	08/10/2007
FEMM Women's Rights and Gender Equality	DE LANGE Esther (PPE-DE)	03/07/2007

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2887	2008-07-24
Justice and Home Affairs (JHA)	2838	2007-12-06
Justice and Home Affairs (JHA)	2807	2007-06-12
Employment, Social Policy, Health and Consumer Affairs	2893	2008-10-02
Employment, Social Policy, Health and Consumer Affairs	2837	2007-12-05
Agriculture and Fisheries	2944	2009-05-25

European Commission

Commission DG	Commissioner
Justice and Consumers	BARROT Jacques

Key events

Date	Event	Reference	Summary
16/05/2007	Legislative proposal published	COM(2007)0249	Summary
12/06/2007	Debate in Council		
19/06/2007	Committee referral announced in Parliament, 1st reading		
12/07/2007	Referral to associated committees announced in Parliament		
05/12/2007	Debate in Council		
06/12/2007	Debate in Council		
24/07/2008	Debate in Council		Summary
02/10/2008	Debate in Council		
21/01/2009	Vote in committee, 1st reading		Summary
27/01/2009	Committee report tabled for plenary, 1st reading	A6-0026/2009	
03/02/2009	Debate in Parliament		
04/02/2009	Decision by Parliament, 1st reading	T6-0043/2009	Summary
04/02/2009	Results of vote in Parliament		
19/02/2009	Decision by Parliament, 1st reading	T6-0069/2009	Summary
19/02/2009	Results of vote in Parliament		
25/05/2009	Act adopted by Council after Parliament's 1st reading		
18/06/2009	Final act signed		
18/06/2009	End of procedure in Parliament		
30/06/2009	Final act published in Official Journal		

Technical information

Procedure reference	2007/0094(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	EC Treaty (after Amsterdam) EC 063-p3b
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/49835

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	FEMM	PE392.187	12/11/2007	
Committee opinion	AGRI	PE402.795	25/06/2008	
Committee draft report		PE409.510	04/07/2008	
Committee opinion	EMPL	PE404.765	15/09/2008	
Amendments tabled in committee		PE413.940	06/11/2008	
Committee report tabled for plenary, 1st reading/single reading		A6-0026/2009	27/01/2009	
Text adopted by Parliament, partial vote at 1st reading /single reading		T6-0043/2009	04/02/2009	Summary
Text adopted by Parliament, 1st reading/single reading		T6-0069/2009	19/02/2009	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	03612/2009/LEX	18/06/2009	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2007)0249	16/05/2007	Summary
Document attached to the procedure	SEC(2007)0596	16/05/2007	
Document attached to the procedure	SEC(2007)0603	16/05/2007	
Document attached to the procedure	SEC(2007)0604	16/05/2007	
Follow-up document	COM(2014)0286	22/05/2014	Summary
Follow-up document	COM(2021)0592	29/09/2021	
Follow-up document	COM(2026)0260	08/05/2026	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2014)0286	20/10/2014	

Additional information		
Source	**Document**	**Date**
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act	
Directive 2009/0052 OJ L 168 30.06.2009, p. 0024	Summary
Corrigendum to final act 32009L0052R(01) OJ L 208 03.08.2012, p. 0022	

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

2007/0094(COD) - 22/05/2014 - Follow-up document

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.

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

2007/0094(COD) - 04/02/2009 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament amended, under the 1st reading of the codecision procedure, 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 vote on the legislative resolution was postponed to a future plenary session in accordance with Article 51(2) of Parliament's Rules of Procedure. In the meantime, Members adopted the following main amendments to the directive, which were the result of a compromise negotiated with the Council:

Scope: 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.

Definitions: Parliament added definitions for "legal person"; "temporary-work agency"; "particularly exploitative working conditions" and "remuneration of illegally staying third country national".

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. They may also provide that notification is not required where the employee has been granted a long term residence status under Council Directive 2003/109/EC. Employers who have fulfilled their obligations shall not be held liable for infringing the prohibition unless they know that the document presented as a valid residence permit or another authorisation for stay is a forgery.

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. Illegally employed third-country nationals shall be systematically and objectively informed about their rights under these provisions before the enforcement of any return decision.

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.

Facilitation of complaints: third parties which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of the Directive are complied with, may engage either on behalf of or in support of an illegally employed third-country national, with his /her approval, in any administrative or civil proceedings provided for with the objective of implementing the Directive.

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.

Penalties for legal persons: Member States may decide that a list of employers who are legal persons and who have been held liable for the criminal offence is rendered public.

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

2007/0094(COD) - 19/02/2009 - Text adopted by Parliament, 1st reading/single reading

The European Parliament finally adopted, by 522 to 105 with 34 abstentions, a legislative resolution amending 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 vote for the amendments made by Parliament in its sitting of 4 February 2009 had been postponed to a later sitting.

Parliament approved the Commission proposal as amended on 4 February 2009 (please refer to the summary of the partial vote of that date.)

A Joint Statement by the European Parliament and the Council annexed to the resolution states that rules on subcontracting agreed upon in this Directive shall be without prejudice to other provisions on this issue to be adopted in future legislative instruments.

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

2007/0094(COD) - 18/06/2009 - Final act

PURPOSE: to prohibit the employment of illegally staying third-country nationals in order to fight illegal immigration in the EU and to provide minimum common standards on sanctions and measures to be applied in the Member States against employers who infringe that prohibition.

LEGISLATIVE ACT: Directive 2009/52/EC of the European Parliament and of the Council providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

BACKGROUND: one of Europe's greatest "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. New rules are needed to put an end to abuses by unscrupulous employers who make contracts with illegally-staying providing them in the labour market with low salaries and poor labour conditions. To fight against illegal immigration, it is necessary to lay down a framework containing common sanctions and measures to be applied to employers who infringe that prohibition.

CONTENT: following a first reading agreement with the European Parliament, the European Parliament and the Council adopted a Directive aimed at fighting illegal immigration by **prohibiting the employment of illegally staying third-country nationals**. The Directive lays down **minimum common standards** on sanctions and measures to be applied in the EU Member States against employers who infringe that prohibition.

Obligations on employers: before employing a third-country national, Member States shall oblige employers to:

- require that a third-country national before taking up the employment holds and presents to the employer a valid residence permit or other authorisation for his or her stay;
- keep for at least the duration of the employment a copy or record of the residence permit or other authorisation for stay available for possible inspection by the competent authorities of the Member States;
- notify the competent authorities designated by Member States of the start of employment of third-country nationals within a period laid down by each Member State .

Member States may provide for a **simplified procedure for notification** where the employers are natural persons and the employment is for their private purposes. Member States may provide that notification is not required where the employee has been granted long-term residence status under Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents.

Member States shall ensure that employers who have fulfilled their obligations shall not be held liable for an infringement of the prohibition unless the employers knew that the document presented as a valid residence permit or another authorisation for stay was a forgery.

Sanctions: to enforce the general prohibition and to deter infringements, Member States should provide for appropriate sanctions.

1) financial sanctions: these shall include:

- financial sanctions which shall increase in amount according to the number of illegally employed third-country nationals;
- payments of the costs of return of illegally employed third-country nationals in those cases where return procedures are carried out.

Member States may provide for reduced financial sanctions 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.

2) Back payments to be made by employers: in respect of each infringement of the prohibition, Member States shall ensure that the employer shall be liable to pay:

- any outstanding remuneration to the illegally employed third-country national. The agreed level of remuneration shall be presumed to have been at least as high as the wage provided for by the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless either the employer or the employee can prove otherwise, while respecting, where appropriate, the mandatory national provisions on wages;
- an amount equal to any taxes and social security contributions that the employer would have paid had the third-country national been legally employed, including penalty payments for delays and relevant administrative fines;
- where appropriate, any cost arising from sending back payments to the country to which the third-country national has returned or has been returned.

3) Other measures: Member States shall take the necessary measures to ensure that employers shall also, if appropriate, be subject to the following measures:

- exclusion from entitlement to some or all public benefits, aid or subsidies, including EU funding managed by Member States, for up to five years;
- exclusion from participation in a public contract for up to five years;
- recovery of some or all public benefits, aid, or subsidies, including EU funding managed by Member States, granted to the employer for up to 12 months preceding the detection of illegal employment;
- temporary or permanent closure of the establishments that have been used to commit the infringement, or temporary or permanent withdrawal of a licence to conduct the business activity in question, if justified by the gravity of the infringement.

4) Criminal offence: Member States shall ensure that the infringement of the prohibition constitutes a criminal offence when **committed intentionally**, in each of the following circumstances as defined by national law: (i) the infringement continues or is persistently repeated; (ii) the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals; (iii) the infringement is accompanied by particularly exploitative working conditions; (iv) the infringement is committed by an employer who, while not having been charged with or convicted of an offence

established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings; (v) the infringement relates to the illegal employment of a minor.

Member States shall ensure that inciting, aiding and abetting the intentional conduct is punishable as a criminal offence.

Rights to third-country nationals employed illegally: it is also provides that third-country nationals employed illegally may also benefit from the following rights:

Right to claim for outstanding remuneration: Member States shall enact mechanisms to ensure that illegally employed third-country nationals:

- may introduce a claim, subject to a limitation period defined in national law, against their employer and eventually enforce a judgment against the employer for any outstanding remuneration, including in cases in which they have, or have been, returned; or
- when provided for by national legislation, may call on the competent authority of the Member State to start procedures to recover outstanding remuneration without the need for them to introduce a claim in that case.

Right to be informed: illegally employed third-country nationals shall be systematically and objectively informed about their rights before the enforcement of any return decision.

Right to complain: Member States shall ensure that there are effective mechanisms through which third-country nationals in illegal employment may lodge complaints against their employers, directly or through third parties designated by Member States such as trade unions or other associations or a competent authority of the Member State when provided for by national legislation. Providing assistance to third-country nationals to lodge complaints shall not be considered as facilitation of unauthorised residence. Member States shall define in national law the conditions under which they may grant, on a case-by-case basis, **permits of limited duration**, linked to the length of the relevant national proceedings, to the third-country nationals involved, under arrangements comparable to those applicable to third-country nationals who fall within the scope of Directive 2004/81/EC.

Subcontracting: where the employer is a subcontractor, Member States shall ensure that the contractor of which the employer is a direct subcontractor may, in addition to or in place of the employer, be liable to pay: (i) any financial sanction imposed under this Directive; (ii) any back payments due. Member States may provide for **more stringent liability rules under national law**.

Legal persons: a legal person held responsible for a criminal offence shall also be held liable in every M

Liability of legal persons: Member States shall ensure that legal persons may be held liable for the offence referred to this Directive where such an offence has been committed for their benefit by any person

who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, on the basis of: (a) a power of representation of the legal person; (b) an authority to take decisions on behalf of the legal person; or (c) an authority to exercise control within the legal person.

Member States shall also ensure that a legal person may be held liable where the lack of supervision or control has made possible the commission of the criminal offence for the benefit of that legal person by a person under its authority.

As regards the **penalties** for legal persons, the Directive provides that Member States may decide that a list of employers who are legal persons and who have been held liable for the criminal offence is made public.

Inspections: to ensure a satisfactory level of enforcement of this Directive and to reduce, as far as possible, differences in the level of enforcement in the Member States, Member States should ensure that effective and adequate inspections are carried out on their territory and should communicate data on the inspections they carry out to the Commission before 1 July of each year. Member States shall, on the basis of a risk assessment, regularly identify the sectors of activity in which the employment of illegally staying third-country nationals is concentrated on their territory.

More favourable provisions: Member States may adopt or maintain provisions that are more favourable to third-country nationals (in particular back payments to be made by employers and facilitation of complaints) or eventually, in certain cases, impose stricter obligations on employers.

to whom it applies in relation with Articles 6 and 13, provided that such provisions are compatible with this Directive.

Report: by 20 July 2014, and every three years thereafter, the Commission shall submit a report to the European Parliament and the Council including, where appropriate, proposals for amending pertinent provisions of the Directive.

Territorial provisions: Ireland, the United Kingdom and Denmark are not taking part in the adoption of this Directive and are therefore not bound by it or subject to its application.

ENTRY INTO FORCE: 20.07.2009.

TRANSPOSITION: 20.07.2011.

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.

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

2007/0094(COD) - 24/07/2008

The Council held a **policy debate** on two key issues in this proposal:

1. the inclusion of minimum rules for criminal sanctions against employers;
2. inspections to be made in the sectors of activity most open to abuse.

In the public debate, most delegations considered that, in order to combat the employment of illegally resident third-country nationals effectively, the Directive had to provide for effective sanctions. Most delegations were in favour of carrying out targeted high-quality inspections in the sectors of activity identified by each Member State as most open to abuse.