



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 30 January 2009 (02.02)
(OR. fr)**

**16680/1/08
REV 1**

**CIREFI 24
COMIX 881**

DECLASSIFICATION

of document: 16680/08 RESTREINT UE

dated: 5 December 2008

new classification: none

Subject: Analysis of replies to the questionnaire on the illegal employment of
third-country nationals

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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**Brussels, 5 December 2008 (15.12)
(OR. fr)**

16680/08

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NOTE

from: Presidency
to: CIREFI

Subject: **Analysis of replies to the questionnaire on the illegal employment of third-country nationals**

Introduction

One of the priorities of the French Presidency has been the question of managing migratory flows. While Member States have gradually been adopting converging measures in this area, steps taken so far remain insufficient. On the initiative of the French Presidency, the European Pact on Immigration and Asylum was adopted by the European Council on 15 and 16 October 2008. The Pact invites Member States to "take rigorous action, also in the interest of the immigrants, by way of dissuasive and proportionate penalties against those who exploit illegal immigrants (employers, etc.)". A proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals is currently being negotiated.

Furthermore, in its communication COM(2008) 359/4, the European Commission emphasised the importance of combating illegal employment, which "undermines legal immigration and has negative implications with regard to cohesion and fair competition".

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Among the common principles underlying the further development of the common immigration policy, the Commission pointed up in particular the need for political and operational solidarity in this area. It thus called on the European Union and the Member States to strengthen information sharing and joint discussion within the European Union, with a view to exchanging best practices, increasing mutual trust and adopting coordinated approaches to issues of mutual interest, while taking into account differences in immigration traditions and realities.

In order to facilitate exchanges of good practice and quantify illegal employment involving third-country nationals more precisely, a questionnaire was submitted to our colleagues within CIREFI with a view to collecting information about the actors in the fight against illegal employment of third-country nationals, preventive measures relating to illegal employment of third-country nationals, measures sanctioning illegal employment of third-country nationals and the assessment of the results of policies implemented.

I – ANALYTICAL OVERVIEW OF CONTRIBUTIONS FROM MEMBER STATES

The actors in the fight against illegal employment of third-country nationals

Although the police force and/or gendarmerie are involved in two-thirds of the Member States, in most cases the fight against illegal employment of third-country nationals is led, as might be expected, by the ministries of finance, labour and/or social affairs (in particular the labour inspectorate). In around ten Member States, the fight against illegal employment is the responsibility of immigration departments.

Cooperation exists between the various departments involved, with respect to both prevention and law enforcement; it is frequently conducted within the framework of memoranda of agreement and steered by coordination groups. Cooperation also takes the form of exchanges of information, within the framework of national legislation; such exchanges are clearly an essential condition for efficient action by the departments. Joint operations have been set up in some Member States. Lastly, one Member State has set up an analysis centre.

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Preventive and law-enforcement measures relating to illegal employment of third-country nationals

The activities of the competent departments seem to involve mainly law enforcement, although an increasing number of preventive measures – such as information campaigns targeting employers and pre-recruitment declaration procedures – are being implemented. One Member State has an annual prevention plan and another carries out checks upstream via its embassies and diplomatic missions.

Within the Member States, the common penalty for employers of illegally staying third-country nationals is an administrative fine; it is sometimes compounded by withdrawal of the offender's residence permit where he is himself a third-country national. More seldom, national laws provide for criminal penalties such as prison sentences and the closure of establishments.

Furthermore, the costs of removing illegally staying and illegally employed third-country nationals are, in most Member States, charged to their employers; in two Member States, such employers are even required to pay the costs of administrative detention and interpretation services. Two Member States have introduced a special financial contribution.

The main measures taken against legally staying but illegally employed third-country nationals continue to be withdrawal of their residence permits and removal, sometimes compounded by an administrative fine. Criminal penalties are also provided for in three Member States.

Assessment of the policies implemented

In the light of the information forwarded by the Member States, the statistical analysis of the extent of illegal employment, in particular involving third-country nationals, has developed to varying degrees and in diverse forms throughout the European Union, including: reports and assessments of labour inspectorates, a specialised computer programme in one Member State, collation and analysis operations in most Member States, and a six-monthly assessment of the activity of third-country workers in one Member State.

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Only the sectors most affected by illegal employment are clearly identified by all Member States: construction, the hospitality industry, agriculture, the hospital sector and manufacturing industries.

Available statistical data, which remain partial and heterogeneous, relate either to facts noted by the various police departments or to checks carried out by labour inspectorates. They are not readily comparable, so major trends since 2006 are hard to identify.

Accordingly, in the absence of preventive measures and thorough statistical analysis, no reliable assessment can be carried out with respect to the policies implemented within the European Union on illegal employment of third-country nationals.

Three main observations can be made on the basis of these summary considerations:

- ▶ Within the Member States, there is cooperation between those involved in combating illegal employment of third-country nationals at European level, even though the players are many and diverse. Ensuring cooperation between the Member States would appear to be a challenge to be addressed in this area, with the aim of exchanging – and subsequently harmonising – good practice.
- ▶ The law-enforcement response largely prevails in the Member States, although the welcome development of an array of preventive measures can be noted (reflected in particular in the increasing number of Member States implementing checks prior to recruitment).
- ▶ Generally speaking, the phenomenon remains difficult to analyse both in quantitative and qualitative terms, even though some effort has been made to implement proper tools; accordingly, its extent and development at EU level can still not readily be measured.

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II – THE CONTRIBUTION OF CANADA AND THE UNITED STATES

Canada briefed CIREFI on its Temporary Foreign Worker Programme (TFWP). Among other things, that programme enables Canadian employers to hire workers from third countries on a temporary basis where no Canadian national or permanent resident is likely to fill the post (165 000 people in 2007). The process is subject to demand for labour from employers, without quotas or restrictions (regarding professions, skills, country of origin, etc.). In most cases, a work permit is mandatory. Lastly, an assessment of the labour market impact is required in certain cases.

- ▶ The programme was launched in 2002 and generalised with the adoption of the Immigration and Refugee Protection Act (IRPA), initially focusing on unskilled workers: the programme stemmed from the observation that unskilled workers were the most vulnerable population group and therefore the one most likely to suffer from exploitation (through illegal employment) and abusive practices on the part of national employers.

The United States briefed CIREFI on their E-Verify (Employment Eligibility Verification) system, which came into force in November 1997. The purpose of that programme is to detect false documents and combat illegal employment and discrimination on recruitment. It interconnects the databases of the immigration and homeland security departments. It is a voluntary programme enabling employers to check online whether their new employees have a work permit. Employers use a specific form (I-9) for this purpose, together with documents such as passports, social security cards and driving licences.

- ▶ The E-Verify system has made it possible *inter alia* to reduce illegal employment and the number of checks of cases of discrimination related to foreigner status.

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Conclusion

The French initiative to take a theme-based approach to CIREFI proceedings was well received by delegations. Furthermore, the European Commission welcomed the theme chosen by the French Presidency – illegal employment of third-country nationals – which ties in with its own work within the Working Party on Migration and Expulsion and its recent communication.

The quality of contributions from colleagues should be emphasised; furthermore, the briefings by Canada and the United States offered a useful insight into this issue as seen from across the Atlantic.

The French Presidency would therefore invite its colleagues to continue this theme-based and geographical approach during forthcoming presidencies. Several of the issues touched upon to date would warrant closer attention, such as isolated minors, the follow-up to the question of Iraqi refugees and readmission.

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