



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 15 July 2008**

**11366/08**

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**Interinstitutional File:  
2007/0094 (COD)**

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**LIMITE**

**MIGR        50  
SOC         393  
DROIPEN    59  
CODEC      911**

**OUTCOME OF PROCEEDINGS**

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of :                    Working Party on Migration and Expulsion  
on:                     1 July 2008  
No Cion doc.:        9871/07 MIGR 43 SOC 227 DROIPEN 49 CODEC 623  
Subject :              Proposal for a Directive of the European Parliament and of the Council  
                             providing for sanctions against employers of illegally staying third-country  
                             nationals

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1. At its meeting of 1 July 2008, the Working Party examined all the Articles of the draft Directive on the basis of the latest Presidency compromise suggestions.
2. The results of the discussions are set out in the Annex to this Note, with delegations' comments in the footnotes. Wordings taken on board during the discussion are highlighted in bold.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

providing for minimum standards on sanctions against employers of illegally staying

third-country nationals<sup>1</sup>

**Article 1**

*Subject matter and scope*

1. This Directive prohibits the employment of illegally staying third-country nationals in order to fight illegal immigration. To this end, it lays down minimum common sanctions and measures to be applied in the Member States against employers who infringe this prohibition.
2. This Directive shall apply without prejudice to national law prohibiting the employment of third country nationals staying legally but working in breach of their residence status.<sup>2</sup>

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<sup>1</sup> **BE, DE, FI, HU** and **SE** maintained general reservations and **SI** a scrutiny reservation on the draft Directive. **HU** maintained a parliamentary reservation on the draft Directive. **NL** suggested adding “common” before “minimum standards” in order to align it with the wording of Article 1(1).

<sup>2</sup> **BE, BG, CZ, EL, HU, NL** and **SE** preferred reverting to the previous wording: “This Article shall not apply to third-country nationals staying legally in the Member States (MS) but not allowed to work in their territory.” set out in doc 10295/08. **ES, PT** suggested maintaining the current text.

**Article 2<sup>3</sup>**  
Definitions

For the purposes of this Directive, the following definitions shall apply:

- (a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;
- (b) "illegally staying" means the presence on the territory of a Member State of a third-country national who does not fulfil, or no longer fulfils, the conditions for stay or residence in that Member State;<sup>4</sup>
- (c) "illegal employment" means employment of a third-country national who is illegally staying on the territory of a Member State;
- (d) "employer" means any natural person or any legal entity<sup>5</sup>, including temporary work agencies and other legal persons, for or under the direction of whom a third-country national exercises activities that are or ought to be remunerated under applicable national law;<sup>6</sup>
- (e) "client" means any natural person or any legal entity, including legal persons, for whom a main contractor, either directly or by way of subcontracting, executes works or provides goods or services ;<sup>7</sup>

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<sup>3</sup> **MT** entered a scrutiny reservation on the Article as a whole.

<sup>4</sup> **DE** entered a reservation on the point, stressing that the third-country nationals (TCN) under the "illegal tolerated" status should be excluded from the scope of the draft Directive.

<sup>5</sup> **DE** queried about the scope of the term "any legal entity".

<sup>6</sup> **BE** (which preferred the wording of doc. 10295/08), **CZ**, **ES**, **FI**, **PL**, **SE** entered reservations on the point.

**SE**, supported by **CZ**, **FI** suggested the following wording for this definition: "Employment means the employment of any person who, in the Member State concerned, is protected under national employment law and/or in accordance with national practice." **PL** suggested clarifying that the employment should always be under the direction of its "final user" (employer). It also stressed that in order to avoid lacunae the definition should be replaced with reference to national legislation. **EL**, **NL** advocated for the need of an EU definition for the purposes of this Directive; **NL** queried whether broader notions/definitions could be maintained at national level.

<sup>7</sup> **CZ**, **DE**, **AT**, **PL** entered reservations and **FI** a scrutiny reservation on the definition. **DE** suggested replacing the term "client" with "person awarding the contract".

- (f) "main contractor" means any natural person or any legal entity, including legal persons, who takes the primary responsibility for executing works or providing goods or services and **concludes** a contract to do so with the client ;<sup>8</sup>
- (g) "subcontractor" means any natural person or any legal entity, including legal persons, to whom the execution of all or part of the obligations of a prior contract is assigned.
- (h) "legal person" means any legal entity<sup>9</sup> having such status under applicable national law, except for States or public bodies in the exercise of State authority and for public international organisations.<sup>10</sup>

### Article 3

#### *Prohibition of illegal employment*

1. Member States shall prohibit the employment of illegally staying third-country nationals exercising activities that are or ought to be remunerated under applicable national law for or under the direction of an employer.<sup>11</sup>
2. Infringements of this prohibition shall be subject to the sanctions and measures laid down in this Directive<sup>12</sup>.

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<sup>8</sup> **DE, AT, PL** entered reservations on the definition.

<sup>9</sup> **BE** considered that taking into account this definition, the wordings "and other legal persons" or "including legal persons" in points (d)-(f) are redundant. **Cion** recalled that the definition in (h) was that used in the Third Pillar acquis.

<sup>10</sup> **DE** entered a scrutiny reservation on the point, concerned about the liability of States and public bodies involved in private-law transactions.

<sup>11</sup> **IT** queried whether broader notions/definitions could be maintained at national level, in order to cover other working relationships. **Pres** recalled that a national definition beyond the minimum standards of the Directive but within its spirit could be compatible with it. **IT** stressed that, any case, the scope of the instrument should be clearly defined.

**CZ, EL, ES, HU, NL**, entering scrutiny reservations, suggested reverting to the wording of doc. 10295/08. Additionally, **NL** suggested replacing "ought to be remunerated" with "remunerated or not".

**EL, LT** suggested reinserting the definition on "employment", whereas **HU** accepted deleting the definition. **SE**, supported by **FI**, suggested the following alternative wording for this definition: "Employer means the natural or legal person party to employment contracts or employment relationships with employees, in accordance with national law and / or practice."

## Article 4

### Employers' obligations

- 1<sup>13</sup>. Member States shall oblige employers to:
- (a) require that a third-country national before being employed hold<sup>14</sup> and present to the employer a valid residence permit or other authorisation for their stay<sup>15</sup>;
  - (b) keep for at least the duration of the employment a copy or record of the residence permit or other authorisation to stay available for possible inspection by the competent authorities of the Member States.<sup>16</sup>
  - (c) notify the competent authorities designated by Member States of the start of employment<sup>17</sup> of third-country nationals within a period laid down by each Member State, which shall not exceed ten days.

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<sup>12</sup> A recital will be inserted indicating that a Member State could provide for more severe sanctions under national law.

<sup>13</sup> **DE** entered a reservation on para. 1.

<sup>14</sup> **HU** pointed out that the TCN should not present the residence permit before actually starting the employment. **LV** considered the word “hold” as redundant. **EL** suggested keeping it.

<sup>15</sup> **ES** suggested deleting the wording “or other authorisation for their stay” or clarifying what types of document are within its scope. **NL** suggested keeping it.

**SE** suggested limiting the scope of Article 4 to TCN who hold limited residence permits.

<sup>16</sup> **EL** suggested providing in a recital that the employer should confirm the renewal of the residence permit if it has a briefer duration than the work contract.

<sup>17</sup> **BE, HU, IT, PT** suggested notifying also the termination of the employment. **AT** considered it too burdensome. **LV** suggested providing for a flexible wording whereby the period of notification would be determined by the MS. **Pres** underlined that the current wording as a minimum standard is a compromise which avoids excessive burden on employers and also protects them.

**PL** suggested limiting the obligation only to those TCN who are required to hold a work permit. **NL** considered the notification obligation too burdensome, especially as it would cover TCN staying legally for a considerable period of time.

2. Member States shall ensure that employers are considered to have fulfilled their obligation under paragraph 1(a) unless the document presented as a valid residence permit or another authorisation for stay is manifestly incorrect<sup>18</sup> or the employer knows that it is a forgery.<sup>19</sup>
3. Employers who have fulfilled their obligations set out in paragraph 1 shall not be held liable for infringing Article 3.<sup>20</sup>

## Article 5

### *Consequence of fulfilling the employers' obligations*

*[Transferred to paragraph 3 of Article 4]*

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<sup>18</sup> In relation to this provision it is suggested to insert the following wording in recital 5 of the Preamble :

“To prevent the employment of illegally staying third-country nationals, employers should be required before recruiting a third-country national, including in cases where the third country national is being recruited for the purpose of posting to another Member State in the context of the provision of services, to check that they have a residence permit or another authorisation for stay [...]. The burden on employers should be limited to checking that the document is not manifestly incorrect, such as bearing a manifestly wrong photograph or other anomaly that would be apparent to a reasonably attentive employer who is untrained in the identification of false documents. To enable Member States in particular to check for forged documents, businesses and legal persons should also be required to notify the competent authorities of the employment of a third-country national.”

<sup>19</sup> **BE, NL, PT** (all three suggesting deletion) as well as **CZ, DE, ES, SE** entered reservations on para. 2. **PL** pointing at the difficulty for the employer to establish the falsity of the document, suggested limiting the liability of the employer only to cases where he knew that the TCN was illegally staying and that this liability should be ceased if he informed the authorities. **LT** suggested replacing “knows” with “presumes”. **BE** queried if criminal liability could be waived in a First Pillar instrument.

<sup>20</sup> **BE, NL, SE** entered reservations on this para. considering it redundant. **PL** suggested starting the para with the words: "**MS shall ensure that** employers who have..."

## Article 6

### *Financial sanctions*

1. Member States shall take the necessary measures to ensure that any infringement of the prohibition referred to in Article 3 is subject to effective, proportionate and dissuasive sanctions against the employer.
2. Sanctions in respect of each infringement of **the prohibition referred to in** Article 3 shall include<sup>21</sup>:
  - (a) financial **sanctions** in relation to each illegally employed third-country national;
  - (b) payments of the costs of return of illegally employed third-country nationals in those cases where return procedures are carried out.<sup>22</sup>

## Article 7

### *Back payments to be made by employers*<sup>23</sup>

1. In respect of each infringement of the prohibition referred to in Article 3 Member States shall enact mechanisms to ensure that illegally employed third-country nationals:
  - (a) can introduce a claim subject to a period of prescription defined under national law and can enforce a judgement against the employer for any outstanding remuneration including in cases in which they have or have been returned;<sup>24</sup>

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<sup>21</sup> **DE** queried if the financial sanctions “shall” be imposed to “each” illegally employed TCN and suggested replacing “shall” with “may” in the introductory sentence.

<sup>22</sup> **NL, SE** suggested making point (b) optional (replacing “shall” with “may”). **ES** (which suggested transferring this point to Article 7 or in a new para. in Article 6, without prejudice to the financial sanctions in para. 1 and 2) and **EL, AT** opposed this suggestion on the basis that it could create a pull factor for some MS.

<sup>23</sup> **MT** entered a scrutiny reservation on the Article.

It is suggested to insert the following recital in the Preamble:

"The illegally employed third-country national cannot derive a right to entry, stay and access to the labour market from the illegal employment relationship or from the payment or back payment of remunerations, social security contributions or taxes by the employer or by a legal entity which has to pay instead of him".

<sup>24</sup> **LV** entered a reservation on the point, focusing on the practical problems which might arise from its implementation.

(b) are as soon as possible and systematically<sup>25</sup> informed about the possibility to introduce such a claim, before the enforcement of any return decision.

2. In respect of the claims referred to paragraph 1, Member States shall provide that:

(a) a work relationship of at least 3 months<sup>26</sup> duration be presumed unless the employer or the employee can prove differently and.

(b) the agreed level of remuneration be presumed to have been<sup>27</sup> the wage according to the applicable laws on minimum wages, collective agreements or practices in the relevant occupational branches unless one of the employer or the employee can prove differently.

3. Member States shall take the necessary measures to facilitate the receipt by illegally employed third-country nationals of any back payment of remuneration that is recovered under the claims referred to in paragraph 1, including in cases in which they have or have been returned.<sup>28</sup>

4<sup>29</sup>. In respect of each<sup>30</sup> infringement of the prohibition referred to in Article 3, Member States shall ensure that the employer is responsible to pay any outstanding taxes and social security contributions relating to the illegal employment, **as well as** relevant administrative fines, as defined in national law.

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<sup>25</sup> **DE** entered a reservation on the wording “as soon as possible and systematically” and the obligations it may generate for the MS. **EL** pointed out that “as soon as possible” is covered by “systematically”.

<sup>26</sup> **CZ, ES, HU, AT** entered scrutiny reservations on the presumption of a work relationship and on its presumed duration of three months.

<sup>27</sup> **FI** suggested adding the words “**at least** the wage **provided for in** the applicable...” and deleting the last part of the sentence: “... unless one of the employer...”

<sup>28</sup> **NL** suggested deleting this para. **DE, LV** entered reservations on it, stressing that it could not involve their external representations in this back-payment system. **HU** suggested clarifying in a recital that MS would not be obliged to cover any unpaid remuneration owed to a TCN.

<sup>29</sup> **IT** suggested transferring this para. back to Article 6.

<sup>30</sup> **NL** suggested deleting “each” and referring to “infringements”.



## Article 8

### *Other measures*

- 1<sup>31</sup>. Member States shall take the necessary measures to ensure that employers may also, if appropriate, be subject to the following measures :
- (a) exclusion from entitlement to public benefits, aid or subsidies for up to five years;
  - (b) exclusion from participation in a public contract for up to five years;
  - (c) recovery of public benefits, aid, or subsidies, including EU funding managed by Member States, granted to the employer for up to [...] 12 months<sup>32</sup> preceding the detection of illegal employment;
  - (d) 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 situation<sup>33</sup> or the percentage of illegally employed third-country nationals.
2. Paragraph (1) may not apply where the employer is a natural person and the employment is for **his** private household purposes.<sup>34</sup>

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<sup>31</sup> **DE** entered a reservation on para. 1 (points a-d). **NL** entered a reservation on points (a) and (c).

**IT** suggested replacing "if appropriate" with: "if justified by the gravity of the situation or the percentage of illegally employed third-country nationals" taken from point (d) of this para. **Pres** pointed out that the current wording "may, if appropriate" provides enough flexibility to MS. **EL** thought that the reference to business activities in this provision should have been maintained.

<sup>32</sup> **AT** entered a scrutiny reservation on the length of the term (twelve months) and suggested either the actual duration of the illegal work or a three-month presumption if the duration of illegal work is not known. It also suggested aligning the wording of Articles 8 and 13.

<sup>33</sup> **PL** entered a reservation on the wording "if justified by the gravity of the situation" considering it as likely to cause incoherence.

<sup>34</sup> **EL** entered a scrutiny reservation on para. 2.

## Article 9

### *Subcontracting*<sup>35</sup>

- 1<sup>36</sup>. Where the employer is a main contractor and without prejudice to the provisions of national law concerning the rights of contribution or recourse **or in the field of social security**, Member States shall ensure<sup>37</sup> that the client may, in place of the employer, be held liable to pay:
- (a) any financial sanction imposed under Article 6, and
  - (b) any back payments due under Article 7.
2. Where the employer is a subcontractor and without prejudice to the provisions of national law concerning the rights of contribution or recourse **or in the field of social security**, Member States shall ensure that the contractor of which the employer is a direct subcontractor may, in place of the employing subcontractor, be held liable to make the payments identified in paragraph 1.

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<sup>35</sup> **DE, EL, IT, LT, PL** and **SE** entered reservations and **BE, FI** a scrutiny reservation on Article 9 as a whole.

<sup>36</sup> **EE, LV** (both suggested the only the subcontractor who has directly employed the illegally staying third-country nationals should be held liable) as well as **BE, CZ, DE, EL, HU, IT, NL, AT, PL** and **PT**, entered reservations on para. 1, in particular concerning the liability of the client. **BE, CZ** pointed out that the liability should cover only those who are engaged in business activities and not all the end users. **PL** felt that para. 1 (in particular the liability of client) is covered by para. 2 and thus it is redundant. **NL** indicated that as an alternative to deletion of the Article, it could accept deleting point 1(b) thereof.

<sup>37</sup> **ES** entered a scrutiny reservation on para. 1 concerning the notion of “client”.  
**BE** queried the involvement of a Member State in holding liable a party other than the employer. **Pres** clarified that all MS have to do is to enact the relevant legal instruments.

3. A contractor **or a client** that has undertaken due diligence obligations as defined by national law shall not be held liable under paragraph 1 or 2.<sup>38</sup>
4. Where the employer is a subcontractor, Member States shall ensure that the client, main contractor and any intermediate subcontractor, where they knew<sup>39</sup> that the employing subcontractor employed illegally staying third-country nationals may be held liable to make the payments identified in paragraph 1 in place of the employing subcontractor or the contractor of which the employer is a direct subcontractor.<sup>40</sup>

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<sup>38</sup> **EL** queried the scope of the term "contractor" in the provision. **LV** felt that the wording would impose a very heavy burden of proof on the employer.

<sup>39</sup> **EL, LV** suggested adding "or ought to have known".

<sup>40</sup> **IT** considered para. 4 as redundant and queried the allocation of burden of proof in it.

## Article 10<sup>41</sup>

### *Criminal offence*

1. Each Member State shall ensure that the infringement referred to in Article 3 constitutes a criminal offence when committed intentionally<sup>42</sup>, in the following circumstances:
  - (a) the infringement continues or is repeated<sup>43</sup> after competent national authorities or courts have within a period of two years made a previous finding that the employer has infringed Article 3. A previous finding shall be regarded as a final administrative or court decision without possibility for further appeals;<sup>44</sup>
  - (b) the infringement is in respect of the simultaneous employment of several<sup>45</sup> illegally employed third-country nationals. This shall be the case if at least four third-country nationals in question are illegally employed or if the number of third-country nationals that are illegally employed constitutes at least 50% of the employer's employees.

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<sup>41</sup> **LT** entered reservations on Articles 10-11 and 13. **CZ, DE, LV, FI** [which suggested deleting points (a) to (e)], **HU, PL SE** entered reservations and **SI** a scrutiny reservation on Articles 10-13. **LV** suggested, if the Articles were to be maintained, providing for a criminal sanction in the case of serious infringements without stipulating criteria. **MT** entered a scrutiny reservation on Article 10

<sup>42</sup> **ES** considered the word intentionally redundant as it was already covered by Article 3.

<sup>43</sup> **LV** queried the inclusion of an infringement which is "repeated" and suggested leaving this point to national legislation.

<sup>44</sup> **ES** entered a reservation on point (a).

<sup>45</sup> **EL, ES, IT, LT** entered scrutiny reservations on point (b) in relation to the minimum percentage of illegally staying TCN working for the specific employer and (**ES, IT**) suggested leaving it to the national legislation, whereas **EL, LT** ( supported by **Cion**) feared that the alternative of 50% of employees could be discriminatory against the small enterprises. **EL, PL** ( supported by **Cion**) considered the term "several" as vague and suggested replacing it with "significant number".

- (c) the infringement is accompanied by particularly exploitative working conditions, such as a significant difference in working conditions or terms of employment from those enjoyed by legally employed workers.<sup>46</sup>
  - (d) [Deleted]<sup>47</sup>
  - (e) the infringement relates to the **illegal** employment of a minor.<sup>48</sup>
2. Member States shall ensure that inciting, aiding and abetting the intentional conduct referred to in paragraph 1 is punishable as a criminal offence.

### Article 11

#### *<sup>49</sup>Penalties for the criminal offence*

1. Member States shall take the necessary measures to ensure that natural persons who commit the criminal offence referred to in Article 10 are punishable by effective, proportionate and dissuasive criminal penalties.
2. The criminal penalties provided for in this article may under national law be applied without prejudice to other sanctions or measures, in particular those provided for in Articles 6, 7 and 8, and **may be accompanied** by the publication of the judicial decision relating to the conviction or any sanctions or measures applied.<sup>50</sup>

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<sup>46</sup> **PL** entered a reservation on points (c) (where it suggested deleting the second part of the sentence i.e., "such as...workers") and (e). **ES** suggested clarifying the wording "particularly exploitative working conditions" and adding the word "highly" before the words "significant difference". **IT** maintained a scrutiny reservation on the last sentence of the point.

<sup>47</sup> **Cion** regretted the deletion of point (d) in relation to victims of trafficking in human beings.

<sup>48</sup> **LV** suggested agreeing on a concrete age under which this point should apply.

<sup>49</sup> **NL** suggested adding in the beginning of the title the word "Criminal".

<sup>50</sup> **LT, NL** suggested deleting paragraph 2. **Pres** recalled that it is an optional provision.

## **Article 12<sup>51</sup>**

### *Liability of legal persons*

1. Member States shall ensure that legal persons can be held liable for the offence referred to in Article 10 where such offence has been committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on
  - (a) a power of representation of the legal person, or
  - (b) an authority to take decisions on behalf of the legal person, or
  - (c) an authority to exercise control within the legal person.
2. Member States shall also ensure that a legal person may be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the criminal offence referred to in Article 10 for the benefit of that legal person by a person under its authority.
3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offence referred to in Article 10.
4. [Deleted]

## **Article 13<sup>52</sup>**

### *Penalties for legal persons*

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 10 is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other measures such as:

- (a) exclusion from entitlement to public benefits, aid or subsidies for up to five years;
- (b) exclusion from participation in a public contract for up to five years;

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<sup>51</sup> ES entered reservations on Articles 12 and 13 concerning the liability of legal persons.

<sup>52</sup> NL entered a reservation on Article 13 and suggested deleting points (a) to (d).

- (c) recovery of public benefits, aid, or subsidies, including EU funding managed by Member States, granted to the employer **up to** 12 months preceding the detection of illegal employment;
- (d) placing under judicial supervision;
- (e) a judicial winding-up order.

## **Article 14**

### *Facilitation of complaints*

1. Member States shall ensure that there are effective mechanisms through which third-country nationals in illegal employment can lodge complaints against their employers, directly or through third parties designated by Member States.<sup>53</sup>
2. Member States shall not impose sanctions on the grounds of facilitation of unauthorised residence against designated third parties providing assistance to the third-country national to lodge complaints.<sup>54</sup>
3. In respect of criminal offences covered by Article 10(1)(c), Member States may on a case-by-case basis<sup>55</sup> under national legislation grant residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who are or have been subjected to exploitative working conditions and cooperate in proceedings against the employer.<sup>56</sup>
4. [Deleted]<sup>57</sup>

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<sup>53</sup> **CZ** entered a reservation on para. 1 asking for the deletion of the wording "or through third parties designated by MS". **Pres** recalled that the discretion for the designation of these third parties lies with the MS.

<sup>54</sup> **DE, EE, HU** entered a reservation on para. 2.

<sup>55</sup> **PL** suggested deleting the wording "on a case-by-case basis". **Pres** recalled that there is no automatic granting of a residence permit.

<sup>56</sup> **DE, ES, SE** (with concern on the notion of "exploitative working conditions") entered reservations on para. 3.

<sup>57</sup> **Cion** expressed its disappointment for the deletion of para. 4 linked with the 2004/81/EC Directive on victims of human trafficking.

## Article 15

### *Inspections*

1. Member States shall ensure that effective and adequate inspections are carried out on their territory to control employment of illegally staying third-country nationals.<sup>58</sup>
2. 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 are concentrated on their territory.
3. In each of the sectors identified under paragraph 2, Member States shall ensure that, subject to paragraph 4, each year at least 5% of employers are subject to inspections<sup>59</sup> to control employment of illegally staying third-country nationals<sup>60</sup>.
4. Member States shall reach the 5% level referred to in paragraph 3 by [*three years from the date of entry into force of the Directive*] at the latest.<sup>61</sup>

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<sup>58</sup> **CZ** queried if the scope of this Article covers households. **Pres** pointed out that MS are entitled to carry out inspections on households which should only be excluded in the calculation of the inspection percentage in para. 3.

<sup>59</sup> **MT** suggested adding after "inspections" the wording "... that may lead...".

<sup>60</sup> **CZ, DE, MT, PL** entered reservations and **IT, LT** a scrutiny reservation on para. 3. **NL**, supported by **CZ, DE, EE, EL, HU, LT, SE** pointed out that they would prefer the following wording for this para.:

"1. Member States shall ensure that inspections are carried out on their territory to control employment of illegally staying third-country nationals.

2. The selection of places of employment to be inspected shall primarily be based on a risk assessment to be drawn up by the competent authorities in the Member States.

3. Member States shall carry out an effective and adequate number of inspections on their territory, primarily based on the risk assessment referred to in paragraph 2

4 [...]"

It is suggested to insert a recital in the Preamble stating that the inspections could also be used to control matters other than the employment of illegally staying third country nationals.

<sup>61</sup> **MT** entered a reservation on this para.



## Article 16

### *Reporting*<sup>62</sup>

1. [After the date referred to in Article 17], Member States shall each year before 1 May transmit to the Commission the sectors identified pursuant to Article 15(2) and data on the numbers and results of inspections carried out pursuant to Article 15(3).<sup>63</sup>
2. By [Three years after the data referred to in Article 17] at the latest, and every three years thereafter, Member States shall transmit information to the Commission on the implementation of this Directive in the form of a report which shall include the numbers and results of inspections carried out pursuant to Article 15 and measures applied under Article 8 **in relation to the risk analysis referred to in this paragraph.**<sup>64</sup>

On the basis of those reports, the Commission shall submit a report to the European Parliament and the Council.

## Article 17

### *Transposition*<sup>65</sup>

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months from the date of publication in the *Official Journal of the European Union*] at the latest. They shall forthwith communicate to the Commission the text of those provisions<sup>66</sup>.

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<sup>62</sup> **DE** entered a reservation on Article 16 obligation to report, underlining that it would add up the administrative burden created by the draft Directive.

<sup>63</sup> **HU** entered a reservation on the para, suggesting that **Cion** should have report deadlines alike MS.

<sup>64</sup> **DE, AT** entered a reservation on the focus of the report to Article 8. **Pres** recalled that the obligation should be fulfilled once every three years.

<sup>65</sup> **Cion** regretted the deletion of the MS obligation to draw a correlation table on the Directive.

<sup>66</sup> The following recital will be added in the Preamble:

“In accordance with paragraph 34 of the interinstitutional agreement on better-law making, Member States will be encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this directive and the transposition measures and to make them public”.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### **Article 18**

#### *Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

### **Article 19**

#### *Addressees*

This Directive is addressed to the Member States.

Done at ...,

*For the European Parliament*

*The President*

*For the Council*

*The President*