



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 12 May 2009 (13.05)  
(OR. fr,en,nl)**

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2007/0094 (COD)**

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SOC 264  
DROIPEN 23**

**ADDENDUM TO "I/A" ITEM NOTE**

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from: General Secretariat of the Council

to: COREPER /COUNCIL

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No Cion prop: 9871/07 MIGR 43 SOC 227 DROIPEN 49 CODEC 623

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Subject : Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals  
**[first reading]**  
– Adoption of the legislative act (LA + S)  
Statements

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**Statement by Poland concerning the Directive**

Poland supports the idea of combating illegal immigration and the related exploitation, which are seen in several Member States of the European Union, by means of various measures which include economic instruments as well as penalties provided for in accordance with national law.

Poland has always maintained that the system of sanctions relating to the employment of illegally staying third-country nationals should be consistent with penalties for other forms of illegal employment and should be based primarily on administrative and financial liability. In this context we stress the dissuasive role of the efficient enforcement of sanctions, which requires them to be proportional and effective.

Poland would emphasise that personal liability is one of the foundations of the legal system. It believes that no person should ever automatically be held liable for any breaches of the law by others, when there was no opportunity for a normally diligent person within the nature of a particular legal relationship to know that any irregularity has taken place.

Poland favours efficient monitoring of the work and other forms of economic activity of migrants as a means of preventing abuse of the immigration rules on the one hand and of labour standards and migrant workers' rights on the other.

### **Statement by Finland, Hungary, Poland and Sweden concerning the Directive**

Finland, Hungary, Poland and Sweden consider it important to fight illegal immigration and illegal residence, and thus fully support the main aim of the Directive.

However, Finland, Hungary, Poland and Sweden wish to underline that the European Community only has the competence to adopt criminal law provisions when the criteria laid down by the European Court of Justice in its judgements in cases C-176/03 and C-440/05 are fulfilled. In the opinion of Finland, Hungary, Poland and Sweden, this has not been established as regards this Directive and, therefore, the competence of the European Community to adopt criminal law provisions in the field of illegal immigration and illegal residence remains unclear.

Thus, Finland, Hungary, Poland and Sweden regret that the Council did not adopt a solution allowing the Member States to choose the manner in which to implement the Directive when including the requirement whereby the employment of illegally staying third-country nationals is prohibited.

### **Joint statement by the European Parliament and the Council**

The Parliament and the Council state that rules on subcontracting agreed upon in Article 8 of this Directive shall be without prejudice to other provisions on this issue to be adopted in future legislative instruments.

### **Statement by Germany on Article 10(2) and Article 12(2)**

With regard both to the publication of the judicial decision in Article 10(2) and the list of employers held liable in Article 12(2) of this Directive, Germany would point to the consequences of Article 6(2) of the Treaty on European Union for the institutions, and for the Member States when they come to transpose this Directive into national law.

### **Statement by Belgium concerning Article 8 of the Directive**

Belgium considers that the employer's obligations referred to in Article 8 of this instrument should be seen in the context of the instrument's intended objectives.

### **Statement by Lithuania**

Under Lithuanian law, the mere fact that a person, who has already been punished with an administrative penalty for a particular act, has again committed a similar act, subject to an administrative penalty, does not entail criminal liability of that person for the second act. However, if the repetitive commission of such infringements demonstrates a persistent, habitual pattern (infringements are made systematically, in a business manner, etc.), such conduct may qualify as a criminal offence subject to criminal prosecution.

Lithuania is of the view that in this manner the requirements set out in Article 9(1)(a) of the Directive are appropriately reflected in its national law.

### **Statement by the Netherlands**

The Netherlands considers the Directive to be of great importance for combating illegal immigration and illegal employment. The Netherlands therefore endorses the Directive, even though it considers that the provisions of Article 8 will mean that illegal employees acquire more rights than legal employees. The article introduces a chain of liability for payment of arrears owed to illegal employees which does not exist for legal employees.

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