



**CONSEIL DE  
L'UNION EUROPEENNE**

**Bruxelles, le 23 octobre 2008**

**DS 1006/08**

**LIMITE**

**MIGR  
SOC  
DROIPEN  
CODEC**

**DOCUMENT DE SEANCE**

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de la:	Présidence
au:	Comité stratégique sur l'immigration, les frontières et l'asile
en date du:	27/28 octobre 2008
Objet:	Proposition de directive du Parlement européen et du Conseil prévoyant des sanctions à l'encontre des employeurs de ressortissants de pays tiers en séjour irrégulier

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En vue du CSIFA des 27 et 28 octobre, les délégations trouveront, ci-joint, un tableau comparatif relatif à la proposition de directive concernant les sanctions contre les employeurs. Celui-ci comprend la proposition d'origine de la Commission et les propositions de compromis de la commission LIBE et le dernier état du texte au sein du Conseil (14617/08 MIGR 95 SOC 628 DROIPEN 82 CODEC 1393).

Les commissions LIBE et EMPLOI doivent encore se mettre d'accord sur les articles pour lesquels chacune est compétente à titre principal.

La Présidence rendra compte du trilogue informel du 23 octobre au cours duquel ce document a été diffusé. Le CSIFA est appelé à donner ses réactions sur ces amendements de compromis de la commission LIBE. Celle-ci doit voter le 4 novembre.

<i>Articles</i>	<i>Initial Commission Proposal</i>	<i>Draft LIBE Amendments</i>	<i>Last version by the Council</i>
<i>Article 1</i> <i>Subject matter and scope</i>	This Directive lays down common sanctions and measures to be applied in the Member States against employers of third-country nationals who are illegally staying on the territory of the Member States, in order to take action against illegal immigration.	This Directive lays down common sanctions and measures to be applied in the Member States against employers of third-country nationals who are illegally staying on the territory of the Member States, in order to take action against illegal immigration.	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 standards on sanctions and measures to be applied in the Member States against employers who infringe this prohibition.
<i>Article 2</i> <i>Definitions (see below)</i>	For the purposes of this Directive, the following definitions shall apply:	For the <b>specific</b> purposes of this Directive, the following definitions shall apply:	For the specific purposes of this Directive, the following definitions shall apply:
<i>Third country national</i>	(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;	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>and who is not a person enjoying the Community right of free movement, as defined in Article 2 (5) of the Schengen borders code;</b>	(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 and who is not a person enjoying the Community right of free movement, as defined in Article 2 (5) of the Schengen Borders Code;
<i>Employment</i>	(b) "employment" means exercise of remunerated activities for and under the direction of another person;	<b><u>PROBABLY EMPL competence</u></b>	(c) "employment" means exercise of activities covering whatever form of labour or work regulated under national law or <b>established</b> practice for or under the direction of an employer;

<i>Illegally staying</i>	(c) "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;	(c) "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;	(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;
<i>Illegal employment</i>	(d) "illegal employment" means employment of a third-country national who is illegally staying on the territory of a Member State;	<b><u>PROBABLY EMPL competence</u></b>	(d) "illegal employment" means employment of a third-country national who is illegally staying on the territory of a Member State;
<i>Employer</i>	(e) "employer" means any person, including legal persons, for and under the direction of whom a third-country national exercises remunerated activities;	<b><u>PROBABLY EMPL competence</u></b>	(e) "employer" means any natural person or any legal entity, including temporary work agencies, for or under the direction of whom the employment is undertaken;
<i>Subcontractor</i>	(f) "subcontractor" means a natural or legal person to whom the execution of all or part of the obligations of a prior contract is assigned.	<b><u>PROBABLY EMPL competence</u></b> ????	(h) "subcontractor" means any natural person or any legal entity, to whom the execution of all or part of the obligations of a prior contract is assigned.
<i>Legal person</i>			(i) "legal person" means any legal entity having such status under applicable national law, except for States or public bodies in the exercise of State authority and for public international organisations.

<i>Additional definitions</i>			<p>(f) "client" means any natural person or any legal entity, for whom a main contractor, either directly or by way of subcontracting, executes works or provides goods or services, with the exception of a natural person for whom the employment is undertaken for his/her private purposes;</p> <p>(g) "main contractor" means any natural person or any legal entity, who takes the primary responsibility for executing works or providing goods or services and concludes a contract to do so with the client ;</p>
<b>Article 3</b> <i>Prohibition of illegal employment</i>	<p>Member States shall prohibit the employment of illegally staying third-country nationals.</p> <p>Infringements of this prohibition shall be subject to the sanctions and measures laid down in this Directive.</p>	<p>Member States shall prohibit the employment of illegally staying third-country nationals.</p> <p>Infringements of this prohibition shall be subject to the sanctions and measures laid down in this Directive</p> <p><b>3. A Member State may decide not to apply the prohibition in paragraph 1 to illegally staying third-country nationals whose removal has been postponed and who are allowed to work in accordance with national law</b></p>	<p>1. Member States shall prohibit the employment of illegally staying third-country nationals.</p> <p>2. Infringements of this prohibition shall be subject to the sanctions and measures laid down in this Directive. [...]</p> <p>3. A Member State may decide not to apply the prohibition in paragraph 1 to illegally staying third-country nationals whose removal has been postponed and who are allowed to work in accordance with national law.</p>

<p><i>Article 4 Employers' obligations</i></p>	<p>1. Member States shall oblige employers to:</p> <p>(a) require the production by third-country nationals of a residence permit or another authorisation for stay valid for the period of the employment in question;</p> <p>(b) copy or record the content of the residence permit or other authorisation for stay before employment begins;</p> <p>(c) keep for at least the duration of the employment the copies or records available for inspection by the competent authorities of the Member States.</p> <p>2. Member States shall oblige employers acting in the course of business activities or who are legal persons to notify the competent authorities designated by Member States of both the start and the termination of employment of third-country nationals at the latest within one week.</p>	<p><b><u>PROBABLY EMPL competence</u></b></p>	<p>1. Member States shall oblige employers to:</p> <p>(a) require that a third-country national before taking up the employment hold and present to the employer his/her valid residence permit or other authorisation for its stay;</p> <p>(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.</p> <p>(c) 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,</p> <p>2. Member States shall ensure that employers who have fulfilled their obligations set out in paragraph 1 shall not be held liable for infringing the prohibition referred to in Article 3 unless they know that the document presented as a valid residence permit or another authorisation for stay is a</p>
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	3. Member States shall ensure that employers are considered to have fulfilled their obligation under paragraph 1(a) unless the document presented as a residence permit or another authorisation for stay is manifestly incorrect.		forgery.
<b>Article 5</b> <i>Consequence of fulfilling the employers' obligations</i>	Member States shall ensure that employers are not liable for infringing Article 3 where they can show that they fulfilled the obligations set out in Article 4.	<b><u>Transferred to paragraph 3 of Article 4 which is EMPL competence</u></b>	[deleted]
<b>Article 6</b> <i>Financial sanctions</i>	<p>1. Member States shall take the necessary measures to ensure that any infringement of Article 3 is subject to effective, proportionate and dissuasive sanctions against the employer.</p> <p>2. Sanctions in respect of each infringement of Article 3 shall include:</p> <p>(a) financial penalties in relation to each illegally employed third-country national;</p> <p>(b) payments of the costs of return of each illegally employed third-country national in those cases where return proced. are carried out.</p>	<p>1. Member States shall take the necessary measures to ensure that any infringement of Article 3 is subject to effective, proportionate and dissuasive sanctions against the employer.</p> <p>2. Sanctions in respect of each infringement of Article 3 shall include:</p> <p>(a) financial penalties in relation to each illegally employed third-country national, <b>in which <u>at least the average costs of return are reflected in the total amount (amendment 82 Plasschaert)</u></b></p> <p><b>(b) deleted</b></p> <p><b>2 a (new). Member States may</b></p>	<p>1. Member States shall take the necessary measures to ensure that infringements of the prohibition referred to in Article 3 are subject to effective, proportionate and dissuasive sanctions against the employer.</p> <p>2. Sanctions in respect of infringements of the prohibition referred to in Article 3 shall include financial sanctions in relation to the number of illegally employed third-country nationals and payments of the costs of return of illegally employed third-country nationals in those cases where return procedures are carried out.</p>

		<p><b>provide for reduced financial penalties in cases where the employer is a private individual employing a third country national to provide domestic help or personal services while taking care to ensure there is no domestic slavery involved</b></p> <p><b>(amendment 85 and 86 Marinescu-Roure)</b></p>	
<p><b>Article 7</b> <i>Back payments to be made by employers</i></p>	<p>1. In respect of each infringement of Article 3 Member States shall ensure that the employer pays:</p> <p>(a) any outstanding remuneration to the illegally employed third-country national;</p> <p>(b) any outstanding taxes and social security contributions, including relevant administrative fines.</p> <p>2. In order to apply paragraph 1(a), Member States shall:</p> <p>(a) enact mechanisms to ensure that the necessary procedures to claim back</p>	<p><b><u>PROBABLY EMPL Competence</u></b></p> <p>No agreement on the paragraph 4</p> <p>???</p>	<p>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:</p> <p>(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;</p> <p>(b) are systematically informed about the possibility to introduce such a claim, before the enforcement of any return decision.</p> <p>2. In respect of the claims referred to paragraph 1, Member States shall provide that:</p>

	<p>outstanding remuneration are triggered automatically without the need for the third-country national to introduce a claim;</p> <p>(b) provide that a work relationship of at least 6 months duration be presumed unless the employer can prove differently.</p> <p>3. Member States shall take the necessary measures to ensure that illegally employed third-country nationals receive any back payment of remuneration recovered under paragraph 1(a), including in cases in which they have or have been returned.</p> <p>4. In respect of criminal offences covered by Article 10(1)(c), Member States shall take the necessary measures to ensure that the execution of any return decision is postponed until the third-country national has received any back payment of their</p>		<p>(a) a work relationship of at least 3 months duration be presumed unless the employer or the employee can prove differently and</p> <p>(b) the agreed level of remuneration be presumed to have been at least the wage provided for by 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, while respecting, where appropriate, the mandatory national provisions concerning wages.</p> <p>3. Member States shall ensure that the necessary mechanisms, including the availability of civil procedures, are in place to ensure that illegally employed third-country nationals are able to receive 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.</p> <p>4. In respect of infringements 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</p>
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	remuneration recovered under paragraph 1(a).		employment, as well as relevant administrative fines, as defined in national law.
<b>Article 8</b> <i>Other measures</i>	<p>Member States shall take the necessary measures to ensure that an employer acting in the course of business activities may also, if appropriate, be subject to the following measures:</p> <p>(a) exclusion from entitlement to public benefits, aid or subsidies for up to five years;</p> <p>(b) exclusion from participation in a public contract for up to five years;</p> <p>(c) recovery of public benefits, aid, or subsidies, including EU funding managed by Member States, granted to the employer during the 12 months preceding the detection of illegal employment;</p> <p>(d) temporary or permanent closure of the establishments that have been used to commit the infringement.</p>	<p>1. Member States shall take the necessary measures to ensure that <b>employers shall also (em.95 by Busuttill +my em.32)</b> be subject to the following measures :</p> <p>(a) exclusion from entitlement to public benefits, aid or subsidies, <b>including EU funding (my am 33 am+ .97 by Plasshaert)</b> for up to five years;</p> <p>(b) exclusion from participation in a public contract <b>as defined in Directive 2004/18/EC</b> for up to five years; <b>(by Council)</b></p> <p>(c) recovery of public benefits, aid, or subsidies, including EU funding managed by Member States, granted to the employer during 12 months preceding the detection of illegal employment;</p> <p>(d) temporary or permanent closure of the establishments that have been used to commit the infringement, <b>or temporary or permanent withdrawal of a licence to conduct the business activity in question, in case of</b></p>	<p>1. Member States shall take the necessary measures to ensure that employers may also, if justified by the gravity of the situation, be subject to the following measures:</p> <p>(a) exclusion from entitlement to some or all public benefits, aid or subsidies for up to five years;</p> <p>(b) exclusion from participation in a public contract as defined in Directive 2004/18/EC for up to five years;</p> <p>(c) 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;</p> <p>(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.</p>

		<b>criminal offence as defined at the Article 10.</b>	
			2. Member States may decide not to apply paragraph (1) where the employer is a natural person and the employment is for his or her private purposes.
<b>Article 9</b> <i>Subcontracting</i>	<p>1. Where the employer is a subcontractor, Member States shall ensure that the main contractor and any intermediate subcontractor are liable to pay:</p> <p>(a) any sanction imposed under Article 6, and</p> <p>(b) any back payments due under Article 7.</p> <p>2. The main contractor and any intermediate subcontractor shall under paragraph 1 be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.</p>	<p>1. Where the employer is a subcontractor <b>and without prejudice to the provisions of national law concerning the rights of contribution or recourse or in the field of social security</b>, Member States shall ensure that <b>the contractor of which the employer is a direct subcontractor</b> may be held liable to pay, if he knew <b>or ought to have known that the employing subcontractor employed illegally staying third country nationals.:</b></p> <p>(a) any <b>financial</b> sanction imposed under Article 6, and</p> <p>(b) any back payments due under Article 7<b>(1)-(3)</b>.</p>	<p>1. 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 may provide that the client may, in place of the employer, be held liable to pay:</p> <p>(a) any financial sanction imposed under Article 6, and</p> <p>(b) any back payments due under Article 7(1)-(3).</p> <p>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</p>

			<p>employer is a direct subcontractor may, in place of the employing subcontractor, be held liable to make the payments identified in paragraph 1.</p> <p>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.</p> <p>4. Where the employer is a subcontractor, Member States shall ensure that the client, main contractor and any intermediate subcontractor, where they knew 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.</p>
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<p><b>Article 10</b> <i>Criminal offence</i></p>	<p>1. Each Member State shall ensure that the infringement referred to in Article 3 constitutes a criminal offence <u>when committed intentionally</u>, in the following circumstances:</p> <p>(a) the infringement continues or is repeated after competent national authorities or courts have within a period of two years made two previous findings that the employer has infringed Article 3;</p> <p>(b) the infringement is in respect of a significant number of illegally employed third-country nationals. This shall be the case if at least four third-country nationals are illegally employed;</p> <p>(c) the infringement is accompanied by particularly exploitative working conditions, such as a significant difference in working conditions from those enjoyed by legally employed workers; or</p> <p>(d) the infringement is committed by an employer who uses work or services exacted from a person, with the knowledge that that person is a victim of trafficking in human beings.</p>	<p><b>1. Each Member State shall ensure that the infringement referred to in Article 3 constitutes a criminal offence, in the following circumstances <u>(em.38)</u>:</b></p> <p>(a) the infringement continues or is repeated after competent national authorities or courts have within a period of two years made two previous findings that the employer has infringed Article 3</p> <p>(b) the infringement is in respect of a significant number of illegally <b>staying</b> third-country <b>nationals who are employed illegally (am.108 by Busuttill)</b>. This shall be the case if at least four third-country nationals are illegally employed;</p> <p>(c) the infringement is accompanied by particularly exploitative working conditions, such as <b>abuse, violence, intimidation ,degrading treatment, gender based discrimination and (my em.39+110 by Busuttill +em. 111 Passchaert +112by Popa )</b> a significant difference in working conditions from those enjoyed by legally employed workers; or</p> <p>(d) the infringement is committed by an</p>	<p>1. Each Member State shall ensure that the infringement referred to in Article 3 constitutes a criminal offence when committed intentionally, in <b>each of</b> the following circumstances as defined by national law:</p> <p>(a) the infringement is persistently repeated;</p> <p>(b) the infringement is in respect of the simultaneous employment of a significant number of illegally employed third-country nationals;</p> <p>(c) the infringement is accompanied by particularly exploitative working conditions [...];</p> <p>(d) [Deleted]</p> <p>(e) the infringement relates to the illegal employment of a minor.</p> <p>2. Member States shall ensure that inciting, aiding and abetting the intentional conduct referred to in paragraph 1 is punishable as a criminal offence.</p>
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	<p>2. Member States shall ensure that participation in or instigation of the conducts referred to in paragraph 1 constitutes a criminal offences.</p>	<p>employer who uses work or services exacted from a person, <b>who knows or ought to have known (my emend.40)</b>, that that person is a victim of trafficking in human beings.</p> <p><b>(e) the infringement involves the employment of a minor (my em.41 +113 Busuttil and em.114 Jukneviene)</b></p> <p>2. Member States shall ensure that participation in or instigation of the conducts referred to in paragraph 1 constitutes a criminal offences</p>	
<p><b>Article 11</b> <i>Sanctions for the criminal offence</i></p>	<p>1. Member States shall ensure that the commission of the criminal offence referred to in Article 10 is punishable by effective, proportionate and dissuasive criminal sanctions.</p> <p>2. The criminal sanctions provided for in this article may be accompanied by other sanctions or measures, in particular those provided for in Articles 6, 7 and 8, and by the publication of the judicial decision relating to the conviction or any sanctions or measures applied.</p>	<p>1. Member States shall ensure that the commission of the criminal offence referred to in Article 10 is punishable by effective, proportionate and dissuasive criminal sanctions.</p> <p>2. The criminal sanctions provided for in this article may be accompanied by other sanctions or measures, in particular those provided for in Articles 6, 7 and 8, and by the publication of the judicial decision relating to the conviction or any sanctions or measures applied.</p>	<p>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.</p> <p>2. [The criminal penalties provided for in this article may under national law be applied without prejudice to other sanctions or measures of a non-criminal nature.] <b>(transferred to recital 17)</b></p>

		<b>3 Member States shall take the necessary measures to ensure that a list of employers who infringe this directive is rendered public (em.115 by Busuttill)</b>	
<i>Article 12 Liability of legal persons</i>	<p>1. Member States shall ensure that legal persons can be held liable for the criminal 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</p> <p>(a) a power of representation of the legal person, or</p> <p>(b) an authority to take decisions on behalf of the legal person, or</p> <p>(c) an authority to exercise control within the legal person.</p> <p>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</p>	<p>1. Member States shall ensure that legal persons <b>are</b> held liable for the criminal 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, based on <b>(my am.42)</b></p> <p>(a) a power of representation of the legal person, or</p> <p>(b) an authority to take decisions on behalf of the legal person, or</p> <p>(c) an authority to exercise control within the legal person.</p> <p>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</p>	<p>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</p> <p>(a) a power of representation of the legal person, or</p> <p>(b) an authority to take decisions on behalf of the legal person, or</p> <p>(c) an authority to exercise control within the legal person.</p> <p>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</p>

	<p>10 for the benefit of that legal person by a person under its authority.</p> <p>3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the offence referred to in Article 10.</p>	<p>by a person under its authority.</p> <p>3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, instigators or accessories in the offence referred to in Article 10.</p>	<p>10 for the benefit of that legal person by a person under its authority.</p> <p>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.</p> <p>4. [Deleted]</p>
<p><b>Article 13</b> <i>Sanctions against legal persons</i></p>	<p>Member States shall ensure that a legal person held liable for a criminal offence pursuant to Article 10 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:</p> <p>(a) exclusion from entitlement to public benefits or aid;</p> <p>(b) exclusion from participation in a public contract for up to five years;</p> <p>(c) temporary or permanent disqualification from the practice of agricultural, industrial or commercial activities;</p>	<p>Member States shall ensure that a legal person held liable for a criminal offence pursuant to Article 10 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:</p> <p>(a) exclusion from entitlement to public benefits, aid or subsidies, <b>including EU funding (my am 33 am+ .97 by Plasshaert)</b> for up to five years;</p> <p>(b) exclusion from participation in a public contract <b>as defined in Directive 2004/18/EC</b> for up to five years; <b>(by Council)</b></p>	<p>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.</p>

	<p>(d) placing under judicial supervision;</p> <p>(e) a judicial winding-up order.</p>	<p><b>(c) recovery of public benefits, aid, or subsidies, including EU funding also if managed by Member States, granted to the employer during 12 months preceding the detection of illegal employment;</b></p> <p>(d) temporary or permanent disqualification from the practice of agricultural, industrial or commercial activities;</p> <p>(e) placing under judicial supervision;</p> <p>(f) a judicial winding-up order</p>	
<p><b>Article 14</b> <i>Facilitation of complaints</i></p>	<p>1. Member States shall provide for effective mechanisms through which third-country nationals in illegal employment can lodge complaints against their employers, directly or through designated third parties.</p> <p>2. Member States shall not impose sanctions against designated third parties providing assistance to the third-country national to lodge complaints, on the grounds of facilitation of unauthorised residence.</p>	<p>1. Member States shall <b>ensure that there are</b> 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 <b>(Council)</b></p> <p><u><i>par. 1 bis is a proposal of compromise which includes em.125 by Busuttil and am.127 by Catania+ my am.47</i></u></p> <p><b>1 bis. Member States shall ensure that legal entities, associations, non-governmental organisations, local authorities and other bodies such as</b></p>	<p>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.</p> <p>2. Providing assistance to third-country nationals to lodge complaints should not be considered as facilitation of unauthorized residence under Directive 2002/90/EC.</p>

	<p>3. In respect of criminal offences covered by Article 10(1)(c), Member States shall under the conditions of Articles 4 to 15 of Directive 2004/81/EC 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.</p>	<p><b>trade unions, which have, in accordance with the criteria laid down in the relevant national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of an illegally employed third-country national, in any judicial, administrative and/or criminal proceedings provided for with the objective of implementing this Directive</b></p> <p>2. Member States shall not impose sanctions against designated third parties providing assistance to the third-country national to lodge complaints, on the grounds of facilitation of unauthorised residence</p> <p><u>3. In respect of criminal offences covered by Article 10(1)(c) and (d) and (e), Member States shall define the conditions under which they may grant case by case permits of limited duration linked to the length of the relevant national proceedings, to third-country nationals who are or have been subjected to particularly exploitative working conditions or who are victims of trafficking or who are minors and who cooperate in proceedings against the employer</u></p>	<p>3. In respect of criminal offences covered by Article 10(1)(c), Member States may 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 particularly exploitative working conditions and cooperate in proceedings against the employer.</p> <p>4. [Deleted]</p>
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<p><i>Article 15</i> <i>Inspections</i></p>	<p>1. Member States shall ensure that at least 10% of companies established on their territory per year are subject to inspections to control employment of illegally staying third-country nationals.</p> <p>2. The selection of companies to be inspected shall be based on a risk assessment to be drawn up by the competent authorities in the Member States taking into account factors such as the sector in which a company operates and any past record of infringement.</p>	<p><b><u>PROBABLY EMPL competence</u></b></p>	<p>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. Such inspections shall be based primarily on a risk assessment to be drawn up by the competent authorities in the Member States.</p> <p>2. With a view to increasing effectiveness of inspections:</p> <p>(a) Member States shall ensure that:</p> <p>(i) national legislation gives adequate powers to competent authorities to make the inspections referred to in paragraph 1;</p> <p>(ii) information about illegal employment, including the results of previous inspections, is collected and processed for effective implementation of this Directive; and</p> <p>(iii) sufficient staff are available with the skills and qualifications needed to carry out effectively the inspections referred to in paragraph 1.</p>
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			<p>(b) 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. In respect of each of those sectors, Member States shall each year before 1 July communicate to the Commission the following data:</p> <p>(i) a national target for the number of inspections, expressed as a percentage of the employers in the sector, for the current year; and</p> <p>(ii) the number of inspections carried out in the previous year as well as their results.</p>
<i>Article 16 Reporting</i>	<p>By [Three years after the date 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 details of measures applied under Article 8.</p> <p>On the basis of those reports, the Commission shall submit a report to the</p>	<p>1. 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 <b>the impact</b> of inspections carried out pursuant to Article 15 and measures applied under <b>Articles 7, 8 and 14</b>.</p> <p><b>On the basis of the information transmitted under this Article</b> the Commission shall submit a report to the</p>	<p>1. The Commission shall submit by [three years after the data referred to in Article 17] at the latest, and every three years thereafter a report to the European Parliament and the Council including, where appropriate, proposals for amending the provisions in Article 15.</p> <p>2. Member States shall send the Commission all the information that is appropriate for drawing up those reports which shall include the impact of inspections carried out pursuant to</p>

	European Parliament and the Council.	European Parliament and the Council <b>including, where appropriate, proposals for amending the provisions in Articles 7, 8, 14 and 15.</b>	Article 15 and, as far as possible, measures applied under Article 8.  On the basis of those reports and the notifications made under 15(2)(b), the Commission shall submit.
<b>Article 17</b> <i>Transposition</i>	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 and a correlation table between those provisions and this Directive.  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.	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 and a correlation table between those provisions and this Directive.  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.	1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by <i>[24 months from the date of publication in the Official Journal of the European Union]</i> at the latest. They shall forthwith communicate to the Commission the text of those provisions.  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.	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.	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.