

Europe's Policy Options for Fighting the Illegal Employment of Migrant Workers



By **Dr Katerina-Marina Kyriari***

The issue of labour migration is becoming more prominent in policy debates as employers are gradually more reliant on migrant workers from non-EU countries. The Commission's legislative proposal for a directive providing for sanctions against employers of illegally staying third-country nationals forms an integral part of the EU's comprehensive and structural approach towards effective migration management. Although the phenomenon of undeclared work is not limited to migrants, the new legislation on sanctions against employers of such persons presupposes that the chance to obtain work in the EU without the required legal status is a key inducement to illegal immigration. Based on the premise that employer sanctions set the moral tone for immigration policy at the workplace, this article intends to address one of the main causes of illegal migration: the black labour market. The article highlights the importance of having a harmonized EU framework for imposing sanctions against employers of irregular migrants. It examines the scope of the draft directive and its features and evaluates national legislation by means of the following considerations: 1) What is the national legislation as far as sanctions of employers of illegal workers are concerned? 2) What kind of sanctions do they provide? 3) Are these sanctions effective and efficient? 4) How the Commission proposal can become successful in helping to remedy enforcement difficulties? 5) Which additional to preventive measures can be taken to achieve the above policy objective? 6) What consequences would the draft directive have on national legislation?

Introduction

Addressing illegal immigration has been a central part of the European Union's common immigration policy since its inception in 1999. The Treaty of Amsterdam laid down the Community's competences in this field (Title IV), with Article 63(3) of the Treaty establishing the European Community (TEC) as the explicit basis for measures on illegal immigration and illegal residence, including the repatriation of illegal residents.

The proposal for a Directive providing for sanctions against employers of illegally staying third-country nationals (TCNs)¹ takes stock of the progress made in fighting illegal immigration and forms part of the Union's efforts to develop a comprehensive migration policy. It also complements the policy plan on legal migration adopted by the Commission in December 2005 which states that "the admission of economic immigrants is inseparable from further measures to combat illegal immigration, in order to ensure the integrity and credibility of such a policy".²

Background

Since the Council Recommendation of 27 September 1996 on combating the illegal employment of TCNs,³ the sensitive issue of illegally employing third-country nationals has not been discussed again in the Council.⁴ The Commission adopted a Communication on illegal work in 1998 which intended to initiate a debate in the Member States and among social partners on the most appropriate strategy to fight undeclared work, involving both EU citizens and illegally resident TCNs. The current proposal makes it clear that in order to address the problem of illegal immigration comprehensively, the employment of illegal residents should be put back on the political agenda.

The Draft Directive for sanctioning employers of irregular workers builds on the Council Recommendation of 1996⁵ by requiring Member States to prohibit illegal employment, to provide for similar sanctions, to require employers to undertake preventive measures and other controls and to call upon the competent authorities to enforce those measures effectively. This proposal is mostly concerned with immigration policy, and not with labour or social policy

per se, entailing however some harmonisation at the EU level of criminal law.

The proposal tries to strike a balance between mobility of irregular migratory flows which regularly lead to human tragedies, domestic stability and prevention. It takes into account that a basic tenet of how the European Union manages illegal immigration is the removal of incentives in the destination countries. By tolerating the illegal employment of TCNs, Member States stimulate emigration and illegal residence. Considering also that employment is a key part of the integration process, the illegal status of migrant workers makes it more difficult for them to integrate into the local community. It blocks their access to services and takes away their ability to enforce their labour and social rights.

The scale of the phenomenon is hard to quantify as precise figures are difficult to obtain. Nevertheless, recent estimates of the number of illegal migrants in the EU range between 4.5 and 8 million, with an estimated increase by 350,000 to 500,000 per year.⁶ Between 7-16% of the Union's Gross Domestic

large-scale "fait accompli" regularisation.⁸ Some of them have carried out single 'one-shot' measures (e.g. Greece) whereas others have needed to carry out such measures more frequently (e.g. Italy).

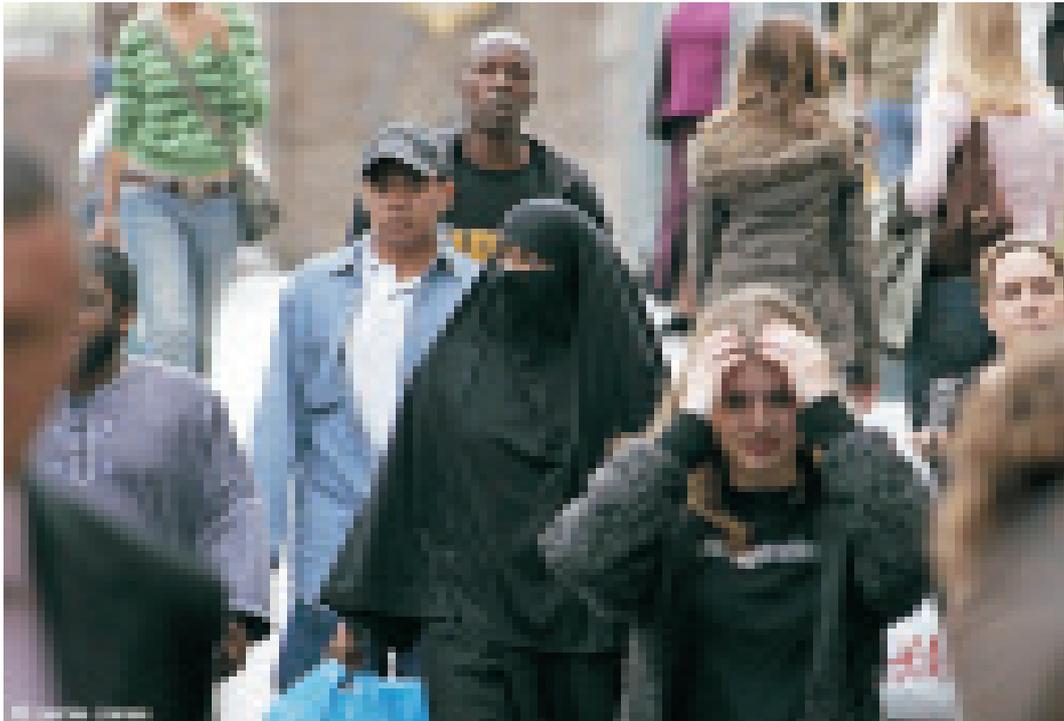
The fact that such regularisation takes place reveals the existence of a dynamic hidden economy. Regularisation of this kind is both politically and economically motivated. For example, regularisations carried out in Spain and France

have actually been driven by employers, in recognition of the fact that some sectors, particularly domestic services, have become dependent on illegal labour and therefore it is desirable to bring them into the formal economy.⁹ Large scale regularisations have implications for many parts of society since it is necessary for governments to obtain political support amongst key actors (e.g. employers

and trade unions), whilst at the same time introducing further measures to tackle illegal migration in order to maintain public support.¹⁰

In reality, some level of illegal migration will always persist in the EU. Yet, the fight against illegal immigration

A basic tenet of how the European Union manages illegal immigration is the removal of incentives in the destination countries.



The EU plans to bring an extra 20 million Asian and African workers into the Union in the next two decades.

Product (GDP) is estimated to come from the shadow economy, although this is not entirely due to illegal migrants.⁷ Construction, agriculture, cleaning, hotel/catering and textile industries are the main sectors which greatly involve undocumented work in general and attract illegal migrants in particular. It is not a coincidence that given the difficulties in tolerating the sustained presence of significant numbers of illegally residing TCNs in their territories, some Member States (e.g. UK and the Netherlands) have initiated regularisation programmes and others (e.g. Belgium, France, Italy, Greece, Portugal and Spain) have undertaken

must remain an essential part of migration management. This may start with preventive measures and the suppression of its incentives such as the possibility to carry out undeclared work. The draft Directive complements the existing policy aiming at transforming undeclared work into regular employment, which is one of the main issues of the Employment Strategy since 2001.¹¹ Although its principal focus is on employment and working conditions, it uses a form of reinforced cooperation among different policies in order to discourage illegal migration.

Main features of the proposal

The proposal contains a general prohibition on the employment of TCNs who are illegally staying within the EU territory. To ensure the effectiveness of this prohibition, employers would be required before recruiting a TCN to check that they have a residence permit or another authorisation for stay valid for the period of employment (Art. 4). Infringements would be sanctioned by penalties which may be administrative in nature (Art. 8) consisting, among others, of fines (e.g. financial penalties for each illegally employed TCN and payments of return costs) (Art. 6) as well as back payments comprising outstanding remunerations, taxes, social security contributions (Art. 7).

Businesses face a range of other punitive measures, including exclusion from entitlements to public benefits, aid, subsidies or participation in a public contract up to five years, recovery of public subsidies if these were granted to the employer during the 12 months preceding the detection of illegal employment, temporary or permanent disqualification from practice, placement under judicial supervision and a judicial winding-up order (Art. 13).

Criminal penalties would be available in four serious cases where: a) there has been a repetition of infringements within a period of two years, b) a significant number of irregular TCNs have been employed illegally, c) particularly exploitative working conditions have been attested, and d) the employer uses knowingly the services a victim of human trafficking (Art. 10).

Furthermore, the proposal would allow foreign nationals to register complaints and have protection against exploitative working conditions (Art. 14). Third parties would be protected when providing assistance to lodge complaints if they have been involved in any facilitation of unauthorised entry or residence. Additionally, those who cooperate in proceedings should be entitled – such as the victims of human trafficking who collaborate with the competent authorities¹² – to a short-term residence permit valid for at least six months. As regards issues relating to outstanding remunerations, taxes and social security contributions presuming that a work relationship was of at least six months duration, the claiming procedures should be triggered automatically without the need for the TCN to introduce a claim.¹³

Finally, the Commission proposal for a directive on employer sanctions suggests that Member States would be required to undertake a certain number of inspections reaching at least 10% of their companies every year (Art. 15). The selection of the companies subject to control would be based on a risk assessment analysis carried out by the competent national bodies, taking into account the sector in which a company operates and any past record of infringement. Whether inspections will be linked to those designed to detect breaches of health and safety law,

breaches of tax or customs regulations and other crimes is still unknown at this stage.

An assessment on the proposal's main provisions

(a) Legal basis

As already mentioned, the aim of this proposal is to cut irregular immigration by stopping the irregular employment of migrants through employer sanctions. Even though the Commission has been criticised for not basing the draft Directive on the labour provisions of the EC Treaty, the chosen legal basis of Article 63(3)(b) is correct because the principal focus of the proposed legislation is neither on employment, nor on working conditions.

(b) Irregularity of stay

The use of irregularity of stay of the TCN as the sole reason for sanctions deliberately overlooks EU citizens and legal TCN migrant workers who may also be subject to labour exploitation. Irregular migrants are more vulnerable than any other category as they are willing to accept any type of work in order to survive and potential employers can exploit their precarious situation.¹⁴

Illegal migration is a social fact that will always characterise national markets due to the interplay between supply and demand. On the one hand, demand for illegal activity is determined by the tolerance of crime in the host society. On the other, the supply of irregular migrants depends on the expected profit that can be obtained from irregular migrants (e.g. low wages, no payment of taxes and social security contributions, competitive products etc). Consequently, when expected returns from irregular migration increase, the number of irregular migrants will also increase because they become more

attractive to employers. In this context, the draft directive tries to reduce the social costs of irregular migration by approximating the form and range of sanctions across Member States.

(c) Financial sanctions and criminal offences

The activation of a range of effective, proportionate and dissuasive penalties against employers of illegally staying third-country nationals for all Member States should only be seen as a legal alternative to reducing irregular migration. As the ECJ has affirmed in many cases, the Commission does not have competence to decide on the amount of fines or types of penalties and therefore it does not aim to harmonise substantive criminal law or rules of criminal procedure.¹⁵

The table in Appendix clearly illustrates that at least 26 of the 27 Member States already have employer sanctions and preventive measures in place and in 19 States there are national provisions for criminal sanctions. One may notice, however, that not only does the scope and scale of these

In reality, some level of illegal migration will always persist in the EU.

The supply of irregular migrants depends on the expected profit that can be obtained from irregular migrants.

measures vary greatly, but also the enforcement. For example, 4 Member States (Denmark, Luxembourg, Cyprus and Ireland) do not have administrative fines in place; 10 Member States (Estonia, Portugal, Czech Republic, Slovakia, Bulgaria, Cyprus, Malta, Lithuania, Slovenia and Sweden) do not foresee criminal sanctions, whereas in Denmark, Poland, Czech Republic and Sweden the illegal employee can also be fined. Administrative and criminal fines do not apply together in Spain, whilst in Poland and Sweden fines can be imposed per illegal worker or for the offence. Apart from the Netherlands, differences in fines depend on the type of the crime, the number of illegally employed workers and the existence of aggravating circumstances. Aside from Slovenia and Cyprus, preventive measures exist in all other Member States. These may be summarised as

- a) placing the responsibility on the employer to declare new employees and verify their status;
- b) encouraging employment of documented workers;
- c) linking social security with written employment contracts;
- d) raising awareness;
- e) providing financial incentives for employers.

The existence of a common minimum level of sanctions on employers will guarantee that all Member States apply high sanctions and consequently that there would not be a rise in illegal immigrants' movements to Member States with lower levels of sanctions.

Indeed, the higher the income difference between receiving and sending countries, and the smaller the probability of being detected and the severity of punishment, the higher the number of illegal migrants tends to be.¹⁶ In contrast, a higher degree of probability of detection in combination with a lower degree of tolerance, negatively affects the expected net gain from moving.¹⁷ If a company runs a greater risk of being detected due to the increase in inspections and uniform sanctions applying to the whole EU, then the potential utility losses will have to be subtracted from potential opportunities and wealth gains. From an economic approach, the expected loss depends both on the probability of detection as well as the penalty. For example, frequent authorisation checks makes employing illegal workers a risky business and increasing sanctions will discourage employers from employing TCNs without work permits as the probability of detection becomes noticeable. Controls and penalties are likely to be augmented if political pressure and xenophobic interests, especially closer to national elections, and in the presence of high unemployment rates, leads politicians to target irregular migration.¹⁸

(d) Effectiveness

The ultimate aim, however, to curb illegal immigration to zero comes with additional costs. Preventing any migration activity would be impractical as total control of the external borders would be prohibitively costly. The optimal balance between desirable and undesirable migration depends upon governments' decisions to either allocate public resources for fighting illegal migration, or use them for foreign aid and social services in the developing countries.¹⁹

Despite Member States' consensus that combating illegal work (in general and that of illegally staying TCNs in

particular) is a governmental priority, it appears that the human resources allocated to monitoring are not sufficient and therefore few controls are actually made.

In general, it is difficult to evaluate the efficiency of measures and related sanctions. Nevertheless, if administrative fines are small and the authorities' checks are not continuously carried out, sanctions will not contribute to reducing the number of illegally employed TCNs. Undeniably, administrative fines are an efficient measure to fight illegal immigration since, on the one hand, it is a form of inhibition for employers and immigrant manpower abusers and, on the other, it is a source of compensatory financial resources to bear the costs of the actions against illegal immigration. However, these are not effective enough, if they are not accompanied by other preventive measures. Preventive actions are very important tools especially, when focused on the roots of illegal immigration (e.g. poverty in the home country) as well as on roots of preference of illegal employment by employers.

(e) Enforcement issues

The Commission's proposal for sanctions against employers of irregular migrants does not remedy existing national enforcement difficulties (e.g. lack of controls, strong incentives for illegal employment etc). It can only provide the legal framework for harmonised employer sanctions and preventive measures and help to identify best practices at the implementation stage.

The adoption of the proposed sanctions by Member States is not in and of itself enough to guarantee that the competitive and financial advantages of employing irregular migrants will cease. Enforcing legislation on immigration still remains a national responsibility, not a European one. This is quite clear if one recalls that the European Pact on

Immigration and Asylum invites Member States "to control, amongst other tasks, illegal immigration".²⁰ The draft directive on employers' sanctions should be seen as part and parcel of this call. Member States should be the standard setters who

could request employers to notify cases of irregular presence to the immigration authorities when checking documentation of migrant workers and also decide the extent to which workplace inspections could lead to repatriations.

However, there is a two-fold role for action at EU level: 1) to facilitate the exchange of good practice on the issues mentioned below, and 2) to facilitate the exchange of relevant information. Measures at EU level are also justified in order to help ensure the effectiveness of the proposed sanctions and to prevent any distortions of competition that varying levels of enforcement could entail.

Other recommended measures

To better enforce the prohibition on employing irregular TCNs, a set of additional measures should have been included in the draft Directive as follows:

- **Simplification of administrative formalities:** Complicated and bureaucratic processes in relation to immigration and employment regulation do not drive employers to act in the best interests of their migrant employees. Clear, concise legislation and guidance as well as

Administrative fines are an efficient measure to fight illegal immigration.

uncomplicated procedures are essential to aid compliance and reduce illegal working. The current Commission proposal on the establishment of a single work/residence permit²¹ which would contain biometric identifiers is a good example of such a practice.

- **Better coordination, exchange of information and surveillance:** Improvements in the resources, expertise and control capacity of law enforcement authorities (e.g. labour inspectorates, social security and tax authorities), and in their cooperation with social partners can contribute to reductions in the incentives to undeclared work.
- **Better co-operation with countries of origin and establishment of a coherent common policy on readmission and return.**
- **Mainstreaming migrant/diversity policy objectives:** provision of more and better information about migrant workers' rights and level of protection, and development of varied models of service provision to match their needs.
- **Increasing awareness of sanctions** in case of detection.
- **Identifying and exchanging good practices** with the aim to assess:
 - 1) systematic and large-scale illegal employment, 2) the application of sanctions, 3) methods for regularising or removing irregular TCNs by inspection and enforcement processes, 4) the links between illegal employment of TCNs without the right to work, 5) the right to reside and the wider informal economy.

Conclusions

The draft directive on sanctions against employers of illegally staying third-country nationals is a part of a firm policy which aims to make the EU a less attractive destination. It seeks to reduce the pull factor encouraging illegal immigration into the EU by making it harder to find work. However, these efforts will have to take into account the hard reality that the employment of TCNs who are illegally staying in the EU Member States will respond to the dynamics of labour supply and demand. Consequently, the higher the tolerance of the host society, the higher the demand for irregular workers. Even though regularisation allows better population management and tackles the problem of illegal working, this article has suggested that this practice should be avoided or used as a last resort as it encourages forms of illegal migration.

The Commission's legislative proposal minimises national differences and brings added value by reducing losses to Member States' public finances, increasing labour inspections, approximating penalties and sanctions against employers in breach of legislation and decreasing exploitation. Public perception which tends to create xenophobic attitudes towards illegal immigrants was also taken into account.

Certainly, any legislation providing for sanctions and preventive measures would not of itself be sufficient to address the problem. The effectiveness of measures in place is highly dependent on the efforts and resources put in place for enforcement. In addition, there is a need for using a policy mix to crack down on irregular employment. This policy mix should not only include stronger sanctions, controls and better implementation of decisions, but also address different kinds of incentives for recruiting illegal immigrants.

NOTES

* Dr Katerina-Marina Kyrieri, Lecturer, Unit "European Policies".

¹ COM(2007) 249 final.

² COM(2005) 669 final "Policy Plan on Legal Migration", p. 4.

³ OJC 304/1, 14.10.1996; The Recommendation takes forward the Council Recommendation of 22 December 1995 on harmonizing means of combating illegal immigration and illegal employment and improving relevant means of control (OJ C5/1, 10.1.1996).

⁴ Some reference was made, however, in 2001 with regard to combating undeclared work in general by calling upon Member States to develop entrepreneurial activities and job creation. Council Decision of 19 January 2001 on Guidelines for Member States' employment policies for the year 2001, OJ L 22/18, 24.01.2001.

⁵ See *supra* note 3.

⁶ European Commission press release, "Towards a comprehensive European Migration Policy: Cracking down on employment of illegal immigrants and fostering circular migration and mobility partnerships", IP/07/678, Brussels 16

May 2007.

⁷ *Idem*.

⁸ "Fait accompli" programmes involve the regularization of illegal immigrants, usually those who are already illegally employed. Germany is an exceptional case of a country which refuses "fait accompli" reasons for regularization and only grants permits on protection grounds.

⁹ Papadopoulou, A. (2005) "Regularisation programmes: an effective instrument of immigration policy?", *Global Migration Perspectives*, Vol. 33, Global Commission on International Migration (GCIM), pp. 6 – 7.

¹⁰ *Ibid.*, pp. 14 – 15; COM(2004) 412 final "Study on the links between legal and illegal migration", p. 10.

¹¹ COM(2007) 628 final, "Stepping up the fight against undeclared work", p. 2.

¹² Council Directive 2004/81/EC of 29 April 2004 on residence permits issued to third-country nationals who are victims of trafficking or who have been the subject of an action to facilitate illegal immigration or who co-operate with the

competent authorities, OJ L261/19, 6.8.2004.

¹³ Art. 7, para. 2(a) (b) of the Proposal.

¹⁴ A legal migrant might also become vulnerable to the effect of illegal immigration on wages, and he may be crowded out of legal work at given wages, particularly when unemployment is high.

¹⁵ Case C-203/80 *Casati* [1981] ECR 2595, para. 27; Case C-226/97 *Lemmens* [1988] ECR I – 3711, para. 19; Case C-176/03 *Commission v. Council* [2005] ECR I – 7879, para. 47.

¹⁶ Entorf, H. "Rational Migration Policy should tolerate non-zero illegal migration flows: Lessons from modeling the market for illegal migration", *University of Würzburg Paper*, August 2000,

pp. 11-12.

¹⁷ *Ibid.*, pp. 8, 13, 15.

¹⁸ *Ibid.*, p. 4.

¹⁹ See *supra* note 16, p. 17.

²⁰ Council document 12626/08 of 16 October 2008, section II "Control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a transit country", p. 6.

²¹ COM(2007) 638 final "Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State".

RELATED ACTIVITIES AT EIPA

Maastricht, 23-25 March 2009

National Policies on the Legal Status of Immigrants

Maastricht (NL), 21-23 September 2009

The Effects of Immigration and Demographic Trends on the Internal Market

Maastricht (NL), 7-9 December 2009

The Economic Growth, Employment and Immigration

For more information and/or registration, please contact

Ms Nicolette Brouwers, Programme Organiser

Tel.: +31 43 3296 245

Fax: +31 43 329 629

E-mail: n.brouwers@eipa.eu

Website: <http://www.eipa.eu>

Appendix: Table of national measures to combat illegal employment of migrant workers

Legislation	Administrative Sanctions	Penal Sanctions	Preventive measures
<p>1. Austria</p> <p>Employment of Aliens Law No. 218/1975 Work contract right adjustment law No. 459/1983 General social security law No. 189/1955 Unemployment insurance law No. 609/1977 Trade and Industrial Regulations No. 194/1994 Income tax act No. 400/1988</p>	<p>Min. €1,000 per worker; Max. €50.000 p/w; the amount depends on the number of workers and previous conviction.</p>	<p>Fine amounts depend on the seriousness of crime and repeat crime Min. €1,000 Max: €50,00 Penal sanctions apply when organising illegal employment of 10 persons Min. 6 months; Max: 5 year imprisonment.</p>	<p>Some regions (e.g. Kernten) have an explicit requirement to verify status of workers.</p>
<p>2. Belgium</p> <p>Law of 15 December 1980 concerning aliens Draft Law of 27 December 2006 on employer sanctions (arts. 312-324)</p>	<p>€3,750 p/w; Employers hiring illegal workers can be administratively fined.</p>	<p>Min. €15,000 p/w; Fines btw €12,500-62,500 and/or imprisonment: 8 days-1 year.</p>	<p>Since 2003, employers must declare employees to the social security administration.</p>
<p>3. Denmark</p> <p>Aliens Act 2001</p>	<p>— Some possibility to expel an alien not having a work permit.</p>	<p>Criminal fine: €1,341 p/w per month; €2,681 p/w per month (aggravating circumstances) Max. imprisonment illegal employee: 1 year Max. imprisonment employer: 2 years.</p>	<p>Compulsory registration of all employees with the competent authorities from their first working day.</p>
<p>4. Estonia</p> <p>Aliens Act 1993</p>	<p>Max: €1,150 for individuals; Max: €3,195 for enterprises.</p>	<p>—</p>	<p>In case of short-term employment, the employer has to register the worker with the Citizenship and Migration Board; Registration of short-term employment is free of charge and takes only 10 days.</p>
<p>5. Luxembourg</p> <p>Law of 28 March 1972 on the employment of foreign workers The Law of 3 August 1977 on penal sanctions</p>	<p>—</p>	<p>Criminal fine; In case of re-offending within within 5 years, imprisonment: 8 days – 6 months/ twice the max. fine.</p>	<p>The Grand-Ducal regulation of 4 November 1994 foresees the communication of a certificate to the Labour Inspectorate before the work begins*.</p>
<p>6. Germany</p> <p>Foreigners Act – 1990 (reforms in 1994, 1997, 2005) Law on black work and other accompanying measures in 2004 Immigration Act – 2005 (replaced Foreigners Act and introduced additional offences for smuggling of human beings) German tax code</p>	<p>Max: €500,000 for the offence; German law does not foresee sanctions against individuals; The amount of the fine depends on the seriousness of the crime whereas personal and financial status of the person are taken into account.</p>	<p>Max. imprisonment for hiring 5 illegal migrants: 1 year; Max. imprisonment in aggravating circumstances: 3 years.</p>	<p>Implicit so far requirement for the employers to check residence and work permit status of foreigners; In further amendments of the legislation, it will become an explicit obligation.</p>
<p>7. Greece</p> <p>Law No. 3386/2005 on entry, residence and integration of TCNs</p>	<p>€3,000-15,000 per worker; it is forbidden to engage workers illegally; responsibility to inform the competent authority.</p>	<p>Min. imprisonment: 3 months; Max. imprisonment: 6 months (aggravating circumstances apply).</p>	<p>Employers must pay their own and the employees social security contributions and check that the documentation is submitted to the social insurance organisations; Since 2005, every foreign worker has to declare to the regional authorities every change of the employment status.</p>
<p>8. Hungary</p> <p>Act XXXIX of 2001 on the Entry and Stay of Foreigners</p>	<p>€1,940 p/TCN; Administrative fine: approximately €390; The costs of expulsion are born by the employer; Responsibility to report to the competent authority before the work permits expires (at least 5 working days).</p>	<p>Max. 2 years of imprisonment depending on tax revenue losses; Increased criminal sanctions if there is trafficking, enslaving or minors trafficking.</p>	<p>Since 2004, all employers must register new employees with the new Unified Labour Register (so-called EMMA); Internet access to the register is available.</p>
<p>9. Italy</p> <p>Law No. 189 of 30 July 2002, known as the "Bossi-Fini law" amended 40/98, known as "Turco-Napolitano law"</p>	<p>€5,000 p/TCN;</p>	<p>Violation by employment agent: Max. imprisonment: 6 months; Min. fine: €1,500; Max. fine: €7,500 Imprisonment: min. 3 months; max.: 1 year; Fine: €5,000 p/w; Criminal sanctions are increased in case of human trafficking.</p>	<p>The employer who hires a TCN must verify that this person holds a regular residence permit qualifying him/her to work; The system does not provide for a work permit.</p>

<p>10. The Netherlands</p> <p>The Aliens Employment Act 2000 (WAV)</p>	<p>€4,000 p/ TCN for individuals; €8,000 p/TCN for legal entities; Since January 2005, there is also a possibility for imposing an administrative penalty.</p>	<p>Minimum sanctions are not applied; Max. fine: €67,000; Max. imprisonment: 1 year; Aggravated circumstances: Max. 3 years imprisonment; Refusal of profession or public service.</p>	<p>Employer obligation by law to verify in advance the labour market status of the employee.</p>
<p>11. Poland</p> <p>Regulation issued by the Minister of Labour and Social Policy (19 December 2001) on the performance of work by foreign persons with no need to obtain work permit; Aliens Act of 13 June 2003 Regulation issued by the Minister of Labour and Social Policy (21 July 2006) on the mode and conditions of issuing work permits for foreigners</p>	<p>Unclear if fine is imposed per illegal worker or for the offence; Obligation to incur the costs of expulsion.</p>	<p>Min. fine: €937; Max. fine: €1,561; Aggravating circumstances apply; Recklessness and negligence are sufficient to establish criminal behaviour; Undeclared workers are also fined: €156; Irregular workers are sentenced too: €312.</p>	<p>With some exceptions, work permit is granted on the basis of legal employment.</p>
<p>12. Portugal</p> <p>Decree Law No 244/98 modified by Dec.-law No 34/2003</p>	<p>€2,000-27,500 p/ TCN; The third contracting party is also liable; Public Administrations are liable of disciplinary procedures; Fine is reduced to half if the infraction was pursued with mere negligence; the attempt is not punishable.</p>	<p>—</p>	<p>The employer has to check if the foreign citizen he/she wants to hire holds residence, permanence permits or working visa.</p>
<p>13. Spain</p> <p>Ley Orgánica 10/1995 modified by Ley Orgánica 4/2000 on the rights, liberties and social integration of foreigners</p>	<p>Min: €6,000 p/w; Max: €60,000 p/w.</p>	<p>Administrative and penal fines do not apply together; Min. Fine: 6 months Max.: 1 year Min. imprisonment: 2 years Max.: 5 years.</p>	<p>Companies should communicate information on new employees with the Public Employment Office; No evaluation if this works or not.</p>
<p>14. United Kingdom</p> <p>Immigration Act 1971 Nationality, Immigration and Asylum Act 1996 Asylum and Immigration Act 2002 Asylum and Immigration Act 2006 (came into force in 2008)</p>	<p>A civil penalty system for employers was introduced on 29 February 2008) Min: £1,250 p/ TCN; Max: £10,000 p/TCN; Prosecutions are dealt with in the local magistrates' court.</p>	<p>Statutory max. fine £5,000 p/w in a Magistrates/Sheriff Court; Unlimited fine in a Crown Court; In a Magistrates Court for England & Wales, min. imprisonment: hours-1 day; Max: 6 months; For Scotland & N. Ireland, min. imprisonment: hours-1 day; Max. 3 months.</p>	<p>There is some verification service for employers where an applicant may have difficulty in demonstrating his right to work in the UK.</p>
<p>15. Czech Republic</p> <p>Act No. 435/2004 Coll., on Employment (Act on Employment)</p>	<p>Max: €85,000 for the offence; The illegal employee is also fined – max: €422.</p>	<p>—</p>	<p>Employers have to announce the day when TCN starts work and all other relevant changes to activity to the local Labour Office in written form; They have to keep a record of all foreign employees.</p>
<p>16. France</p> <p>1974: Creation of an interministerial institution for the fight against human trafficking (MILUTMO) 1997: Replaced by an interministerial delegation for the fight against illegal work (DILTI) Law 2006-911 (24 June 2006 on immigration and integration)</p>	<p>As of July 2006 min. 1000 times minimum hourly wage for the offence; Max: 5000 times minimum hourly wage for the offence; Max: €150,000 for legal entities as a single fine.</p>	<p>For violation by employer: Max. 5 years of imprisonment and/or €15,000 p/w; For violation by organised gangs: Max. 10 years of imprisonment and/or €100,000 p/w; Confiscation of employers' goods.</p>	<p>Since 1993, compulsory declaration of the employee to the social security body before work starts.</p>
<p>17. Latvia</p> <p>Labour Law (December 2002 as amended in January and April 2004) Cabinet Regulation No. 44 (20 January 2004) regarding work permits for aliens</p>	<p>€140-700 for the offence for individuals; €700-14,000 for enterprises.</p>	<p>Fine: 50-100 min. wages; Community service; Confiscation of employers' goods; Imprisonment: 1-5 years; Negligence is sufficient to establish criminal behaviour.</p>	<p>There is no obligation for immediate declaration; yet, there has to be a declared vacancy; The employer has to submit to the State Employment Agency for approval a work invitation for TCN.</p>
<p>18. Slovakia</p> <p>Act No. 95/2000 Coll. on Labour Inspection replaced by Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and on amendment of certain acts as amended by the Act No. 125/2006 Coll. on Labour Inspection</p>	<p>Max: €33,000 for the offence on legal entity or a natural person.</p>	<p>—</p>	<p>The employer is obliged to report immediately the employee to the register of insured persons of Social Insurance Company; It has not been realised.</p>

<p>19. Bulgaria</p> <p>Law on Foreigners (as amended in 2002)</p>	<p>€250-2,500 approximately p/w for individuals; €10,000 p/w for legal entities; In case of recommitment €5,000 approximately for individuals and €20,000 for legal entities.</p>	<p>—</p>	<p>Submission of notice within 3 days from the conclusion of the contract to the National Agency on Revenues.</p>
<p>20. Romania</p> <p>Romanian Law No. 203/99 on work permits; Ordinance (GEO) No. 194/2002 on the regime of aliens; Romanian Law No. 53/2003 (the Labour Code); Government Emergency Ordinance (GEO) No. 55/2006</p>	<p>Not special sanctions in the GEO No. 194/2002; €590-880 for the offence; Employer, individual or legal entity, shall be bound to bear the expenses for the removal of the illegal alien; The facilitation of illegal stay is considered a minor offence and shall be sanctioned with fine; No contract: Min: €440-590; Max: €29,410; No work permit: Fine: €1,470-2,940.</p>	<p>Major offence is the facilitation of illegal stay of aliens implies a social risk; Min. imprisonment: 6 months; Max. 5 years; In aggravating circumstances: imprisonment ranges btw 2-8 years; In case of provoking the death of the alien: imprisonment ranges btw 3-15 years; In case of organised gangs, max. imprisonment 18 years; Criminal fines also apply for legal entities.</p>	<p>In case of bilateral agreements with TCs, the employers must inform the Authority for Aliens within 5 days from the entry of those aliens; Aliens not having a work permit must register themselves to the Labour Force Migration Office (OLFM) within 30 days from the date they begun their activity; OLFM and the Authority of Aliens carries out for the period 2007-2010 a raising awareness campaign about the legal provisions on aliens regime.</p>
<p>21. Cyprus</p> <p>N/A</p>	<p>—</p>	<p>—</p>	<p>—</p>
<p>22. Malta</p> <p>Employment and Training Services Act (1990)</p>	<p>Min: €117 Max: €1,164 On payment of the fine, the employer is compelled to complete the ECT engagement form.</p>	<p>—</p>	<p>Employers are obliged to submit engagement and termination forms to the ECT** when recruiting or releasing employees.</p>
<p>23. Lithuania</p> <p>Code of Administrative Violations of Law (2004)</p>	<p>First time offence: Min: €870 p/TCN Max: €2,900 p/ TCN Repeated offence: Min: €2,900 p/TCN Max: €5,800 p/ TCN.</p>	<p>—</p>	<p>Employer's duty to inform the social security body in 1 day period about every new employee;</p>
<p>24. Slovenia</p> <p>Law on the Prevention of Black Work and Employment (LPBWE- 2000)</p>	<p>Min: €212 for the offence Max: €21,200.</p>	<p>—</p>	<p>—</p>
<p>25. Sweden</p> <p>Aliens Act (1990 as amended in 1997)</p>	<p>Unclear if fine is imposed per illegal worker or for the offence; Fine can also be imposed on the employee.</p>	<p>—</p>	<p>Concerted efforts to raise social awareness of undeclared work taken by the tax authorities, branch organisations and trade unions.</p>
<p>26. Finland</p> <p>Aliens Act 1991</p>	<p>Min: €1,500 for the offence; Max: €15,000 for the offence according to its seriousness; Violation of the Collective Agreement Act is also sanctioned.</p>	<p>Criminal fine or imprisonment; Max.: 1 or 4 years imprisonment if offence is aggravated; Employer may also be sentenced to forfeit the proceeds of the crime and compensate damage.</p>	<p>Compulsory registration with the Employment Office and provision of information of the applicable collective agreement.</p>
<p>27. Ireland</p> <p>Employment Permits Act 2003 (as amended in 2006)</p>	<p>—</p>	<p>Min. fine: unclear Max. €3,000/€250,000 depending on contravention/conviction on indictment; Min. imprisonment: 12 months Max.: 10 years.</p>	<p>New employees must be in possession of a valid work permit issued by the D.E.T.E***; status and terms of employment are mentioned.</p>

Source: Table compiled by the author supplementing the table produced by the European Commission in its "Accompanying document to the Proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying-third country nationals" SEC(2007) 603

* This obligation applies to where the presumed duration of the works is longer than 30 working days and more than 20 workers are employed, or where the number of workers is more than 500 per day;

** European Training Corporation;

*** Department of Enterprise, Trade and Employment.