

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(76) 331 final.

Brussels, 3 November 1976.

## PROPOSAL FOR A COUNCIL DIRECTIVE

on the harmonization of laws in the Member States to combat  
illegal migration and illegal employment

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(submitted to the Council by the Commission)

COM(76) 331 final.

## EXPLANATORY MEMORANDUM

1. The Commission has given much thought to the scale of migration for the purpose of illegal employment, assessed by the ILO<sup>1</sup> for the main countries of immigration in Europe at 10% of the total number of registered migrant workers, and the problems raised by such migration.

Illegal immigration has greatly increased in recent years and while of its very nature accurate statistics are not available, there are grounds for believing that there are some 600 000 illegal immigrant workers in the Community (not including families) or one-tenth of the number of legally admitted migrants.

Clandestine migrants, with the constant threat of discovery and deportation, are vulnerable to exploitation and intimidation. The activities of 'manpower traffickers' and certain employment agencies operating across national frontiers, the severity of the economic pressures on people to migrate, and the freedom of movement for tourists within the Community, all contribute to the present size of this problem.

In the chapter on this subject in its Action Programme for Migrant Workers<sup>2</sup>, the Commission concludes: "if illegal immigration is allowed to go unchecked, there is a serious risk of failure in the efforts to improve the social situation of the rest of the immigrant population".

2. The Commission considers that alongside actions undertaken or planned in other international organisations to which the Member States belong, such as the International Labour Organisation and the Council of Europe, it is the duty of the Community - where the vast majority of workers employed in Europe live - to help to formulate measures capable of solving the problem of the illegal employment of foreign labour in the Member States.

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<sup>1</sup>"Employment, Growth and basic needs", p. 128, ILO, Geneva, 1976.

<sup>2</sup>Doc. COM (74) 2250, 18 December, 1974.

Moreover, the Community context in which these measures will be adopted will facilitate the application of international standards, in particular those adopted in 1975 by the Sixtieth International Labour Conference.

3. In their respective Resolution and Opinion on the Commission's programme on behalf of migrants, the European Parliament and the Economic and Social Committee stressed the importance which they attach to Community action against illegal immigration. The Standing Committee on Employment also expressed a similar view.

4. In its Resolution of 9 February 1976<sup>1</sup> on an Action Programme for migrant workers and members of their families, the Council stated that the action taken should aim at:

- collaboration between the Member States to combat illegal immigration;
- the adoption of appropriate penalties;
- the fulfilment of employers' obligations and the protection of the rights of workers relating to the work they have carried out.

5. This proposal for a Directive takes into account these basic guidelines and the observations put forward by the European Parliament, the Economic and Social Committee and the Standing Committee on Employment, insofar as the Treaty of Rome gives a basis for the actions envisaged.

The Commission has also noted the studies carried out by the Council of Europe, particularly its recommendation that the measures adopted to combat illegal immigration be coordinated at international level, and the provisions of Convention 143 of the International Labour Organisation, the first part of which deals with migration abuses.

6. The legal basis for Community action to implement the Council Resolution on illegal migration is provided by Article 100 of the Treaty.

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<sup>1</sup>OJ No C 34, 14 February 1976, p. 2.

It is necessary, through the harmonization of national legislation in this field, to ensure that the illegal employment of non-Community labour does not jeopardize one of the fundamental purposes of the Community, by hampering the constant improvement of living and working conditions for workers.

7. The proposal for a Directive is cast in terms which take into account the main aim of any illegal immigration, that is, the unlawful engagement in paid employment: it defines "illegal employment" and "illegal migration" (Article 1).

8. The objectives of the proposal for a Directive (Article 1) form part of the guidelines laid down by the Council, but, pursuant to the legal basis of the Directive, they are essentially limited to the harmonization of national legislation which aims at:

- preventing and penalizing the illegal migration and illegal employment as defined,
- mitigating the wrongs suffered by illegal migrant workers as a result of their situation,
- the strengthening of collaboration between the Member States.

9. Preventive action (Article 2) involves the following:

- information services for migrants, and the countering of misleading information,
- the organisation of effective controls.

As regards the organisation of such controls, the Commission is of the opinion that effective control at the internal frontiers of the Community is becoming more and more unreliable. This will become increasingly the case when the Community achieves a Passport Union and the subsequent easing or removal of all internal control on Community territory. It therefore proposes not to limit the checks on non-Community labour (as defined in the Directive, Art. 2) to points of entry, but to provide, as necessary, at places of work.

Moreover, abuses in the matter of temporary employment which have, in some Member States, led to more stringent controls in this sector, also prompt the Commission to call for closer checks on the activities of temporary employment agencies, and in particular those which send workers to take up jobs in other countries.

10. As regards punitive sanctions, the proposal for a Directive adopts the promise that severe penalties with deterrent effect are indispensable (Article 3).

Contrary to certain suggestions for harmonizing penalties at Community level and defining equivalent penalties in the Community instrument for all the Member States, the Commission has simply proposed the adoption of severe penalties. The penal systems of the Member States under which the penalties against the persons referred to in the proposal are - or will be - administered, are so different that such harmonization will be extremely difficult. The information which the Member States will supply to the Commission for the purpose of drawing up a report for the Council on the application of this Directive (Article 7) will show whether it will subsequently be possible to make progress in this direction.

11. Measures to penalize illegal employment should, in the opinion of the Commission, take into account the social and human consequences which they may have for the illegal migrant worker who is caught, especially if good faith can be shown, that is to say, if he is convinced that he has acted within the law (Art. 4).

Since the legal basis for this proposal for a Directive also allows for the harmonization of national provisions in this area, the Commission proposes that the cost of repatriation should not be borne

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by the illegal migrant worker and that an appeal procedure against deportation be introduced, with suspension of the administrative decision pending the outcome of the appeal (Articles 3 and 4).

It goes without saying that illegal migrant workers will have to prove their good faith, since the law will have been broken by the very fact that they have been found working without the necessary authorizations.

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The Council of the European Communities,  
Having regard to the Treaty establishing the European  
Economic Community, and in particular Article 100 thereof;  
Having regard to the proposal from the Commission,  
Having regard to the Opinion of the European Parliament,  
Having regard to the Opinion of the Economic and Social  
Committee,

Whereas, as stated in the preamble to the Treaty, the social advancement and constant improvement in the living and working conditions of the people of Europe constitutes one of the aims of the Community; whereas these social aims involve the full employment of the workers of the Member States under the best conditions;

Whereas the illegal employment of non-Community workers on the territory of the Community generally occurs under abusive conditions such as discrimination in remuneration, misuse of social security laws, ignoring the provisions in labour laws on the protection of workers; whereas this is prejudicial to the employment of all workers, and whereas it therefore constitutes an obstacle to the achievement of the social aims of the Community and, in particular, the improvement of the living and working conditions which the Member States have recognized the need to promote as provided for in Article 117 of the Treaty;

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Whereas, moreover, in view of the growing interdependence and integration of the national labour markets, the measures taken by the Member States individually against migration for the purpose of illegal employment, or the absence of such measures, inevitably impinge on the effectiveness of the measures taken by the other Member States; whereas, in addition to the measures within the sphere of competence of the Member States themselves, Community action is needed to combat the illegal employment of non-Community workers;

Whereas, in the absence of any express and direct reference to Community action in this sphere in the Treaty, the general system of the Treaty and the means set up therein must be invoked, in this case, the harmonization of provisions laid down by law, regulation or administrative action in the Member States concerning the prevention and suppression of migration for the purpose of illegal employment;

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. The aim of this Directive shall be to harmonize the legislation of the Member States:

- (a) in regard to the prevention and suppression of the migration and the employment of workers, who do not enjoy the rights granted by Article 48 of the Treaty and the legislation derived therefrom, who enter a Member State and seek or take employment, in violation of the national legislation regulating such matters;
- (b) to mitigate the harmful effects which such workers suffer, through no fault of their own, as a result of their illegal migration or illegal employment.

2. For the purposes of this Directive the migration as defined in para. 1, (a) of this Article shall be termed 'illegal migration' and any employment arising as a result shall be termed 'illegal employment'.



## Article 2

The Member States shall take the measures necessary to ensure that:

- (a) workers subject to the provisions of the present Directive are duly and accurately informed of the employment, living and working conditions and of the conditions and procedures laid down by their national regulations governing the entry, residence and employment of such workers;
- (b) for the purposes of preventing and identifying illegal migration and illegal employment there shall be an adequate control:
  - at places of entry to their territory or at places of employment;
  - of temporary employment agencies which make manpower available to third parties in another Member State.

## Article 3

The Member States shall take the measures necessary to ensure that:

- (a) sanctions shall be applied to natural or legal persons who knowingly either organise or participate in activities which either are intended to lead or lead to illegal migration and illegal employment, as defined in Art. 1 of this Directive.
- (b) the sanctions foreseen against the persons referred to in paragraph (a) of this Article shall include the possibility of imprisonment in serious cases of violation of the national legislation concerning entry, residence and employment, and liability in respect of repatriation costs of the workers concerned.

Article 4

The Member States shall take the necessary measures to ensure that workers sentenced for taking up illegal employment may appeal against such sentence. Where the sentence is of deportation, appeal shall involve a stay of execution.

Article 5

The Member States shall collaborate with one another in order to achieve the aims of this Directive, and the Commission shall assist in this collaboration.

Article 6

1. The Member States shall institute the necessary provisions in laws, regulations, and administrative acts to comply with this Directive within twenty-four months of the date of its notification and shall inform the Commission thereof.
2. Once notification of this Directive has been effected, the Member States shall, in sufficient time to enable it to submit its comments, inform the Commission of all draft laws, regulations or administrative provisions which they intend to adopt in the field covered by this Directive.

Article 7

Within two years from the expiry of the period of twenty-four months provided for in Article 6(1), the Member States shall forward to the Commission all relevant information which will enable it to submit to the Council a report on the application of this Directive.

Article 8

This Directive is addressed to the Member States.