



Sanction those who exploit, not those who are exploited

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Sanctioning employers who exploit illegally-staying third-country nationals must not result in sanction of those who are exploited; yet, this is the outcome under the proposal for a directive¹ currently being discussed by Parliament and the Council.

We can only applaud the European Union's use of legislative means to combat illegal employment and sanction employers who exploit their workers with no regard for their social or salary rights. Employers use illegal employment in an attempt to avoid paying taxes and social security contributions. This not only weakens the budgets of public authorities and social organisations, but also reduces society's ability to ensure social welfare and cohesion. Nevertheless, sanctions against these employers must be accompanied by recognition of the salary and social rights of workers illegally employed, including their right to continued employment.

The proposal for a directive "providing for sanctions against employers of illegally staying third-country nationals", which takes as a basis Article 63(3) of the EC Treaty (related to illegal immigration), in actual fact limits the application of sanctions to employers of third-country nationals only. Labour exploitation must be consistently condemned, regardless of who the victims are. This half-measure is not in itself acceptable. By targeting this category of employers, the unseen objective of this directive amounts to obliging illegally-staying employees to return to their country of origin, either voluntarily or by force, which renders this directive all the more unacceptable in terms of both wording and content.

For Parliament and the Council to approve it as is would be for them to assume huge liabilities. They would be accountable not only for a measure that discriminates against illegally-working authorised residents (both EU and legally-staying third-country nationals) victimised by employers, but also for the sanctioning of workers more susceptible to exploitation due to not having a residence permit and so, in most cases, being unable to defend their rights. These employees, despite contributing to the creation of wealth like all other workers, would lose their job, have their rights ignored and, in the event of forced return, find themselves potentially subject to recent provisions of the Return directive² (threat of administrative detention of up to 18 months while awaiting actual return, 5-year

¹ Proposal for a directive providing sanctions against employers of illegally staying third-country nationals (to read full-length text, see [here](#))

² Directive on common standards and procedures in Member States for returning illegally staying third-country nationals (for more details, see [here](#))

re-entry ban). The cumulative sanctions of job-loss, administrative detention and re-entry ban are disproportionate to the simple fact of illegally staying and working on European territory.

Employer sanctions would be too weak by comparison. Payment of outstanding social security contributions and salaries, equivalent to minimum wage in the country concerned, is not only justified but the least that should be expected. Criminal penalties would only be possible in the most serious cases or in the event of repeated infringements, meaning very few employers would be affected by them. The principal sanction would involve payment of the costs of return, voluntary or forced, of any illegally-employed worker. The logic behind this sanction is questionable, as it amounts to making exploiters of illegal work cover the costs incurred in sanctioning their own victims.

If, as stated during the parliamentary hearings, this directive aims to protect the rights of those who are exploited at work and to crack down on the delinquent employers that exploit them, and if, as affirmed in a parliamentary resolution, it calls for "firm steps to combat the illegal employment of immigrants, activating a range of penalties [...] and promoting measures to protect immigrants"³, then the draft text is not meeting its objectives. Those victimised by the underground economy should not be the first to suffer under measures implemented to fight it. More often than not, illegal workers fill positions necessary to economic activity and the creation of wealth in all Member States. If illegally-staying immigrants are forced to return to their country of origin, who will replace them, and how? Will it be other illegally-staying immigrants? Will labour trafficking become tougher and the underground economy more opaque, with fewer possibilities for victims of trafficking and exploitation to defend themselves?

The European Union must arm itself with instruments of a bona fide common migration policy, one that would meet both immigrants' needs and those of migration in the EU. Since migration has become a global and social phenomenon, it would be futile to try to place certain categories of the population under house arrest while encouraging greater mobility of other groups. In such a situation, proposing repressive half-measures that discriminate against immigrants, as in this directive, is a misguided solution to a much larger, more global challenge; acknowledgement of fundamental rights must be the rule rather than the exception.

We call on the European members of parliament to avoid the trap that has been set for them, in which, under the pretext of sanctioning employers who unlawfully hire illegally-staying immigrants, they are asked to vote for a text that would effectively lead to sanctioning the immigrants themselves, whose only fault is being illegally employed and without stay authorisations. Already the victims of exploitation by their employers, these people would be the primary sufferers if this directive was brought into force. The sole purpose of the directive must be to sanction employers who practice illegal hiring, regardless of the residency status of the illegal workers, and to recognise the rights of these workers, including that of continued employment.

The European association for the defence of human rights (AEDH) calls for sanction against those who exploit, not those who are exploited. All workers must benefit from the same rights, regardless of their nationality or their origins. Equality of rights, a tenet of international, European and national laws, does not tolerate discrimination against those who are both victimised and defenceless.

³ European Parliament resolution of 26 September 2007 on the policy plan on legal migration (to read full-length text, see [here](#))

Contact :

Pierre Barge, Président

AEDH, Association Européenne pour la défense des Droits de l'Homme

33, rue de la Caserne. B-1000 Bruxelles

Tél : +32(0)25112100 Fax : +32(0)25113200 Email : aedh@aedh.eu

L'Association Européenne pour la Défense des Droits de l'Homme (AEDH) regroupe des ligues et associations de défense des droits de l'Homme des pays de l'Union Européenne. Elle est membre associé de la Fédération internationale pour la défense des droits de l'Homme (FIDH). Pour en savoir plus, consultez le site www.aedh.eu