

Directive 2009/52/EC of the European Parliament and of the Council
of 18 June 2009 providing for minimum standards on sanctions and
measures against employers of illegally staying third-country nationals

DIRECTIVE 2009/52/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 18 June 2009

providing for minimum standards on sanctions and measures
against employers of illegally staying third-country nationals

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article
63(3)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Having regard to the opinion of the Committee of the Regions⁽²⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁽³⁾,

Whereas:

- (1) The European Council meeting of 14 and 15 December 2006 agreed that cooperation among Member States should be strengthened in the fight against illegal immigration and in particular that measures against illegal employment should be intensified at Member State and EU level.
- (2) A key pull factor for illegal immigration into the EU is the possibility of obtaining work in the EU without the required legal status. Action against illegal immigration and illegal stay should therefore include measures to counter that pull factor.
- (3) The centrepiece of such measures should be a general prohibition on the employment of third-country nationals who do not have the right to be resident in the EU, accompanied by sanctions against employers who infringe that prohibition.
- (4) As this Directive provides for minimum standards, Member States should remain free to adopt or maintain stricter sanctions and measures and impose stricter obligations on employers.
- (5) This Directive should not apply to third-country nationals staying legally in a Member State regardless of whether they are allowed to work in its territory. Furthermore, it should not apply to persons enjoying the Community right of free movement, as defined in Article 2(5) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)⁽⁴⁾. Moreover it should not apply to third-country nationals who are in a situation covered by Community

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

law, such as those who are lawfully employed in a Member State and who are posted by a service provider to another Member State in the context of the provision of services. This Directive should apply without prejudice to national law prohibiting the employment of legally staying third-country nationals who work in breach of their residence status.

- (6) For the specific purposes of this Directive, certain terms should be defined and such definitions should be used only for the purposes of this Directive.
- (7) The definition of employment should encompass its constituent elements, namely activities that are or ought to be remunerated, undertaken for or under the direction and/or supervision of an employer, irrespective of the legal relationship.
- (8) The definition of employer may include an association of persons recognised as having the capacity to perform legal acts without having legal personality.
- (9) To prevent the employment of illegally staying third-country nationals, employers should be required, before recruiting a third-country national, including in cases where the third-country national is being recruited for the purpose of posting to another Member State in the context of the provision of services, to check that the third-country national has a valid residence permit or another authorisation for stay showing that he or she is legally staying on the territory of the Member State of recruitment.
- (10) To enable Member States in particular to check for forged documents, employers should also be required to notify the competent authorities of the employment of a third-country national. In order to minimise the administrative burden, Member States should be free to provide for such notifications to be undertaken within the framework of other notification schemes. Member States should be free to decide a simplified procedure for notification by employers who are natural persons where the employment is for their private purposes.
- (11) Employers that have fulfilled the obligations set out in this Directive should not be held liable for having employed illegally staying third-country nationals, in particular if the competent authority later finds that the document presented by an employee had in fact been forged or misused, unless the employer knew that the document was a forgery.
- (12) To facilitate the fulfilment by employers of their obligations, Member States should use their best endeavours to handle requests for renewal of residence permits in a timely manner.
- (13) To enforce the general prohibition and to deter infringements, Member States should provide for appropriate sanctions. These should include financial sanctions and contributions to the costs of returning illegally staying third-country nationals, together with the possibility of reduced financial sanctions on employers who are natural persons where the employment is for their private purposes.
- (14) The employer should in any event be required to pay to the third-country nationals any outstanding remuneration for the work which they have undertaken and any outstanding taxes and social security contributions. If the level of remuneration cannot be determined, it should be presumed to be at least as high as the wage provided for by

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches. The employer should also be required to pay, where appropriate, any costs arising from the sending of outstanding remuneration to the country to which the illegally employed third-country national has, or has been, returned. In those cases where back payments are not made by the employer, Member States should not be obliged to fulfil that obligation in place of the employer.

- (15) An illegally employed third-country national should not derive a right to entry, stay and access to the labour market from the illegal employment relationship or from the payment or back payment of remuneration, social security contributions or taxes by the employer or by a legal entity which has to pay instead of the employer.
- (16) Member States should ensure that claims are or may be lodged and that mechanisms are in place to ensure that recovered amounts of outstanding remuneration are able to be received by the third-country nationals to whom they are due. Member States should not be obliged to involve their missions or representations in third countries in those mechanisms. Member States should, in the context of establishing effective mechanisms to facilitate complaints and if not already provided for by national legislation, consider the possibility and added value of enabling a competent authority to bring proceedings against an employer for the purpose of recovering outstanding remuneration.
- (17) Member States should further provide for a presumption of an employment relationship of at least three months' duration so that the burden of proof is on the employer in respect of at least a certain period. Among others, the employee should also have the opportunity of proving the existence and duration of an employment relationship.
- (18) Member States should provide for the possibility of further sanctions against employers, inter alia, exclusions from entitlement to some or all public benefits, aids or subsidies, including agricultural subsidies, exclusions from public procurement procedures and recovery of some or all public benefits, aids or subsidies, including EU funding managed by Member States, that have already been granted. Member States should be free to decide not to apply those further sanctions against employers who are natural persons where the employment is for their private purposes.
- (19) This Directive, and in particular its Articles 7, 10 and 12, should be without prejudice to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁽⁵⁾.
- (20) In view of the prevalence of subcontracting in certain affected sectors, it is necessary to ensure that at least the contractor of which the employer is a direct subcontractor may be liable to pay financial sanctions in addition to or in place of the employer. In specific cases, other contractors may be liable to pay financial sanctions in addition to or in place of an employer of illegally staying third-country nationals. Back payments which are to be covered by the liability provisions of this Directive should also include contributions to national holiday pay funds and social funds regulated by law or collective agreements.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- (21) Experience has shown that the existing systems of sanctions have not been sufficient to achieve complete compliance with prohibitions against the employment of illegally staying third-country nationals. One of the reasons is that administrative sanctions alone are likely not to be enough to deter certain unscrupulous employers. Compliance can and should be strengthened by the application of criminal penalties.
- (22) To guarantee the full effectiveness of the general prohibition, there is therefore a particular need for more dissuasive sanctions in serious cases, such as persistently repeated infringements, the illegal employment of a significant number of third-country nationals, particularly exploitative working conditions, the employer knowing that the worker is a victim of trafficking in human beings and the illegal employment of a minor. This Directive obliges Member States to provide for criminal penalties in their national legislation in respect of those serious infringements. It creates no obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases.
- (23) In all cases deemed to be serious according to this Directive the infringement should be considered a criminal offence throughout the Community when committed intentionally. The provisions of this Directive regarding criminal offences should be without prejudice to the application of Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings⁽⁶⁾.
- (24) The criminal offence should be punishable by effective, proportionate and dissuasive criminal penalties. The obligation to ensure effective, proportionate and dissuasive criminal penalties under this Directive is without prejudice to the internal organisation of criminal law and criminal justice in the Member States.
- (25) Legal persons may also be held liable for the criminal offences referred to in this Directive, because many employers are legal persons. The provisions of this Directive do not entail an obligation for Member States to introduce criminal liability of legal persons.
- (26) To facilitate the enforcement of this Directive, there should be effective complaint mechanisms by which relevant third-country nationals may lodge complaints directly or through designated third parties such as trade unions or other associations. The designated third parties should be protected, when providing assistance to lodge complaints, against possible sanctions under rules prohibiting the facilitation of unauthorised residence.
- (27) To supplement the complaint mechanisms, Member States should be free to grant residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who have been subjected to particularly exploitative working conditions or who were illegally employed minors and who cooperate in criminal proceedings against the employer. Such permits should be granted under arrangements comparable to those applicable to third-country nationals who fall within the scope of Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities⁽⁷⁾.
- (28) To ensure a satisfactory level of enforcement of this Directive and to reduce, as far as possible, differences in the level of enforcement in the Member States, Member States should ensure that effective and adequate inspections are carried out on their territory and should communicate data on the inspections they carry out to the Commission.
- (29) Member States should be encouraged to determine every year a national target for the number of inspections in respect of the sectors of activity in which the employment of illegally staying third-country nationals is concentrated on their territory.
- (30) With a view to increasing the effectiveness of inspections for the purposes of applying this Directive, Member States should ensure that national legislation gives adequate powers to competent authorities to carry out inspections; that information about illegal employment, including the results of previous inspections, is collected and processed for the effective implementation of this Directive; and that sufficient staff are available with the skills and qualifications needed to carry out inspections effectively.
- (31) Member States should ensure that inspections for the purposes of applying this Directive do not affect, from a quantitative or qualitative point of view, inspections carried out to assess employment and working conditions.
- (32) In the case of posted workers who are third-country nationals, Member States' inspection authorities may avail themselves of the cooperation and exchange of information provided for in Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services⁽⁸⁾, in order to verify that the third-country nationals concerned are lawfully employed in the Member State of origin.
- (33) This Directive should be seen as complementary to measures to counter undeclared work and exploitation.
- (34) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽⁹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public.
- (35) Any processing of personal data undertaken in the implementation of this Directive should be in compliance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁰⁾.
- (36) Since the objective of this Directive, namely to counteract illegal immigration by acting against the employment pull factor, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- (37) This Directive respects the fundamental rights and observes the principles recognised in particular by the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union. Specifically, it should be applied with due respect for the freedom to conduct a business, equality before the law and the principle of non-discrimination, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties, in accordance with Articles 16, 20, 21, 47 and 49 of the Charter.
- (38) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Directive and are therefore not bound by it or subject to its application.
- (39) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Directive and is therefore not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

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 that prohibition.

Article 2

Definitions

For the specific purposes of this Directive, the following definitions shall apply:

- (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;
- (b) ‘illegally staying third-country national’ means a third-country national present on the territory of a Member State, who does not fulfil, or no longer fulfils, the conditions for stay or residence in that Member State;
- (c) ‘employment’ means the exercise of activities covering whatever form of labour or work regulated under national law or in accordance with established practice for or under the direction and/or supervision of an employer;
- (d) ‘illegal employment’ means the employment of an illegally staying third-country national;

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- (e) ‘employer’ means any natural person or any legal entity, including temporary work agencies, for or under the direction and/or supervision of whom the employment is undertaken;
- (f) ‘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;
- (g) ‘legal person’ means any legal entity having such status under applicable national law, except for States or public bodies exercising State authority and for public international organisations;
- (h) ‘temporary work agency’ means any natural or legal person who, in compliance with national law, concludes contracts of employment or employment relationships with temporary agency workers in order to assign them to user undertakings to work there temporarily under their supervision and direction;
- (i) ‘particularly exploitative working conditions’ means working conditions, including those resulting from gender based or other discrimination, where there is a striking disproportion compared with the terms of employment of legally employed workers which, for example, affects workers’ health and safety, and which offends against human dignity;
- (j) ‘remuneration of illegally staying third-country national’ means the wage or salary and any other consideration, whether in cash or in kind, which a worker receives directly or indirectly in respect of his employment from his employer and which is equivalent to that which would have been enjoyed by comparable workers in a legal employment relationship.

Article 3

Prohibition of illegal employment

- 1 Member States shall prohibit the employment of illegally staying third-country nationals.
- 2 Infringements of this prohibition shall be subject to the sanctions and measures laid down in this Directive.
- 3 A Member State may decide not to apply the prohibition referred to 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.

Article 4

Obligations on employers

- 1 Member States shall oblige employers to:
 - a require that a third-country national before taking up the employment holds and presents to the employer a valid residence permit or other authorisation for his or her stay;
 - b keep for at least the duration of the employment a copy or record of the residence permit or other authorisation for stay available for possible inspection by the competent authorities of the Member States;
 - 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.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

2 Member States may provide for a simplified procedure for notification under paragraph 1(c) where the employers are natural persons and the employment is for their private purposes.

Member States may provide that notification under paragraph 1(c) is not required where the employee has been granted long-term residence status under Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents⁽¹⁾.

3 Member States shall ensure that employers who have fulfilled their obligations set out in paragraph 1 shall not be held liable for an infringement of the prohibition referred to in Article 3 unless the employers knew that the document presented as a valid residence permit or another authorisation for stay was a forgery.

Article 5

Financial sanctions

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.

2 Sanctions in respect of infringements of the prohibition referred to in Article 3 shall include:

- a financial sanctions which shall increase in amount according to the number of illegally employed third-country nationals; and
- b payments of the costs of return of illegally employed third-country nationals in those cases where return procedures are carried out. Member States may instead decide to reflect at least the average costs of return in the financial sanctions under point (a).

3 Member States may provide for reduced financial sanctions where the employer is a natural person who employs an illegally staying third-country national for his or her private purposes and where no particularly exploitative working conditions are involved.

Article 6

Back payments to be made by employers

1 In respect of each infringement of the prohibition referred to in Article 3, Member States shall ensure that the employer shall be liable to pay:

- a any outstanding remuneration to the illegally employed third-country national. The agreed level of remuneration shall be presumed to have been at least as high as the wage provided for by the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless either the employer or the employee can prove otherwise, while respecting, where appropriate, the mandatory national provisions on wages;
- b an amount equal to any taxes and social security contributions that the employer would have paid had the third-country national been legally employed, including penalty payments for delays and relevant administrative fines;
- c where appropriate, any cost arising from sending back payments to the country to which the third-country national has returned or has been returned.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

2 In order to ensure the availability of effective procedures to apply paragraph 1(a) and (c), and having due regard to Article 13, Member States shall enact mechanisms to ensure that illegally employed third-country nationals:

- a may introduce a claim, subject to a limitation period defined in national law, against their employer and eventually enforce a judgment against the employer for any outstanding remuneration, including in cases in which they have, or have been, returned; or
- b when provided for by national legislation, may call on the competent authority of the Member State to start procedures to recover outstanding remuneration without the need for them to introduce a claim in that case.

Illegally employed third-country nationals shall be systematically and objectively informed about their rights under this paragraph and under Article 13 before the enforcement of any return decision.

3 In order to apply paragraph 1(a) and (b), Member States shall provide that an employment relationship of at least three months duration be presumed unless, among others, the employer or the employee can prove otherwise.

4 Member States shall ensure that the necessary mechanisms are in place to ensure that illegally employed third-country nationals are able to receive any back payment of remuneration referred to in paragraph 1(a) which is recovered as part of the claims referred to in paragraph 2, including in cases in which they have, or have been, returned.

5 In respect of cases where residence permits of limited duration have been granted under Article 13(4), Member States shall define under national law the conditions under which the duration of these permits may be extended until the third-country national has received any back payment of his or her remuneration recovered under paragraph 1 of this Article.

Article 7

Other measures

1 Member States shall take the necessary measures to ensure that employers shall also, if appropriate, be subject to the following measures:

- a exclusion from entitlement to some or all public benefits, aid or subsidies, including EU funding managed by Member States, for up to five years;
- b exclusion from participation in a public contract as defined in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts⁽¹²⁾ for up to five years;
- 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;
- 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, if justified by the gravity of the infringement.

2 Member States may decide not to apply paragraph 1 where the employers are natural persons and the employment is for their private purposes.

Article 8

Subcontracting

1 Where the employer is a subcontractor and without prejudice to the provisions of national law concerning the rights of contribution or recourse or to the provisions of national law in the field of social security, Member States shall ensure that the contractor of which the employer is a direct subcontractor may, in addition to or in place of the employer, be liable to pay:

- a any financial sanction imposed under Article 5; and
- b any back payments due under Article 6(1)(a) and (c) and Article 6(2) and(3).

2 Where the employer is a subcontractor, Member States shall ensure that the main contractor and any intermediate subcontractor, where they knew that the employing subcontractor employed illegally staying third-country nationals, may be liable to make the payments referred to in paragraph 1 in addition to or in place of the employing subcontractor or the contractor of which the employer is a direct subcontractor.

3 A contractor that has undertaken due diligence obligations as defined by national law shall not be liable under paragraphs 1 and 2.

4 Member States may provide for more stringent liability rules under national law.

Article 9

Criminal offence

1 Member States shall ensure that the infringement of the prohibition referred to in Article 3 constitutes a criminal offence when committed intentionally, in each of the following circumstances as defined by national law:

- a the infringement continues or is persistently repeated;
- b the infringement is in respect of the simultaneous employment of a significant number of illegally staying third-country nationals;
- c the infringement is accompanied by particularly exploitative working conditions;
- d the infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings;
- e the infringement relates to the illegal employment of a minor.

2 Member States shall ensure that inciting, aiding and abetting the intentional conduct referred to in paragraph 1 is punishable as a criminal offence.

Article 10

Criminal penalties

1 Member States shall take the necessary measures to ensure that natural persons who commit the criminal offence referred to in Article 9 are punishable by effective, proportionate and dissuasive criminal penalties.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

2 Unless prohibited by general principles of law, the criminal penalties provided for in this Article may be applied under national law without prejudice to other sanctions or measures of a non-criminal nature, and they may be accompanied by the publication of the judicial decision relevant to the case.

Article 11

Liability of legal persons

1 Member States shall ensure that legal persons may be held liable for the offence referred to in Article 9 where such an offence has been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, on the basis of:

- a a power of representation of the legal person;
- b an authority to take decisions on behalf of the legal person; or
- c an authority to exercise control within the legal person.

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 9 for the benefit of that legal person by a person under its authority.

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 9.

Article 12

Penalties for legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 11 is punishable by effective, proportionate and dissuasive penalties, which may include measures such as those referred to in Article 7.

Member States may decide that a list of employers who are legal persons and who have been held liable for the criminal offence referred to in Article 9 is made public.

Article 13

Facilitation of complaints

1 Member States shall ensure that there are effective mechanisms through which third-country nationals in illegal employment may lodge complaints against their employers, directly or through third parties designated by Member States such as trade unions or other associations or a competent authority of the Member State when provided for by national legislation.

2 Member States shall ensure that third parties which have, in accordance with the criteria laid down in their national law, a legitimate interest in ensuring compliance with this Directive, may engage either on behalf of or in support of an illegally employed third-country national, with his or her approval, in any administrative or civil proceedings provided for with the objective of implementing this Directive.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

3 Providing assistance to third-country nationals to lodge complaints shall not be considered as facilitation of unauthorised residence under Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence⁽¹³⁾.

4 In respect of criminal offences covered by Article 9(1)(c) or (e), Member States shall define in national law the conditions under which they may grant, on a case-by-case basis, permits of limited duration, linked to the length of the relevant national proceedings, to the third-country nationals involved, under arrangements comparable to those applicable to third-country nationals who fall within the scope of Directive 2004/81/EC.

Article 14

Inspections

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.

2 With a view to increasing the effectiveness of inspections, 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 is concentrated on their territory.

In respect of each of those sectors, Member States shall, before 1 July of each year, communicate to the Commission the inspections, both in absolute numbers and as a percentage of the employers for each sector, carried out in the previous year as well as their results.

Article 15

More favourable provisions

This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to third-country nationals to whom it applies in relation with Articles 6 and 13, provided that such provisions are compatible with this Directive.

Article 16

Reporting

1 By 20 July 2014, and every three years thereafter, the Commission shall submit a report to the European Parliament and the Council including, where appropriate, proposals for amending Articles 6, 7, 8, 13 and 14. The Commission shall in particular examine in its report the implementation by Member States of Article 6(2) and (5).

2 Member States shall send the Commission all the information that is appropriate for drawing up the report referred to in paragraph 1. The information shall include the number and results of inspections carried out pursuant to Article 14(1), measures applied under Article 13 and, as far as possible, measures applied under Articles 6 and 7.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Article 17

Transposition

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 20 July 2011. They shall forthwith inform the Commission thereof.

When they are adopted by Member States, those measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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.

Article 18

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 19

Addressees

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 18 June 2009.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

Š. FÜLE

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- (1) [OJ C 204, 9.8.2008, p. 70.](#)
- (2) [OJ C 257, 9.10.2008, p. 20.](#)
- (3) Opinion of the European Parliament of 4 February 2009 (not yet published in the Official Journal) and Council Decision of 25 May 2009.
- (4) [OJ L 105, 13.4.2006, p. 1.](#)
- (5) [OJ L 248, 16.9.2002, p. 1.](#)
- (6) [OJ L 203, 1.8.2002, p. 1.](#)
- (7) [OJ L 261, 6.8.2004, p. 19.](#)
- (8) [OJ L 18, 21.1.1997, p. 1.](#)
- (9) [OJ C 321, 31.12.2003, p. 1.](#)
- (10) [OJ L 281, 23.11.1995, p. 31.](#)
- (11) [OJ L 16, 23.1.2004, p. 44.](#)
- (12) [OJ L 134, 30.4.2004, p. 114.](#)
- (13) [OJ L 328, 5.12.2002, p. 17.](#)