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REPORT

from : Permanent Representatives Committee

to : COUNCIL

No. prev. doc.: 6439/96 ASIM 57

Subject: **Draft Council Recommendation on combating the illegal employment of third-country nationals**

Attached hereto is the latest version of the text on combating the illegal employment of third-country nationals, following the meeting of the Permanent Representatives Committee on 29 May 1996.

The only outstanding problem concerns Section III.4 and is explained in a footnote on page 5.

The Council could record its agreement in principle on this Recommendation once the problem has been resolved.

**DRAFT COUNCIL RECOMMENDATION
ON COMBATING THE ILLEGAL EMPLOYMENT OF THIRD-COUNTRY NATIONALS**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Articles K.1 and K.2 of the Treaty on European Union,

Having regard to the Council Recommendation of 22 December 1995 on harmonizing means of combating illegal immigration and illegal employment and improving the relevant means of control ⁽¹⁾,

Having regard to the Resolution adopted by the Council on 20 June 1994 on limitations on admission of non-EC nationals to Member States for employment,

Whereas Article K.1(3)(c) of the Treaty on European Union lays down that combating unauthorized immigration, residence and work by nationals of third countries on the territory of Member States constitutes a matter of common interest;

Whereas measures to combat the illegal employment and exploitation of third-country nationals should be complemented by measures to promote the integration of foreign workers lawfully established and legally employed in the territory of the Member States, guaranteeing them appropriate conditions of access to vocational training;

Whereas illegal employment may distort the conditions of free competition in the internal market by reducing social costs or giving employers other advantages and by lowering levels of social protection;

Whereas this Recommendation is aimed at strengthening cooperation between Member States on immigration policies in relation to third countries;

⁽¹⁾ OJ No C 5, 10.1.1996, p. 1.

RECOMMENDS THAT THE GOVERNMENTS OF THE MEMBER STATES apply the principles set out below with a view to combating illegal employment of third-country nationals:

I. Scope

This Recommendation applies to third-country nationals, with the exception of:

- members of the families of citizens of the European Union exercising their right to free movement;
- nationals of Member States of the European Free Trade Association party to the Agreement on the European Economic Area and members of their families exercising their right to free movement.

This Recommendation does not apply to third-country nationals to the extent that they are in a situation covered by Community law.

This Recommendation is without prejudice to the rights of third-country nationals whose status is covered by agreements concluded with third countries by the European Community, by the European Community and its Member States or by one or more Member States, where such agreements contain more favourable provisions relating to employment.

II. Authorization to work

1. Third-country nationals wishing to work in the territory of a Member State must be in possession of the authorizations to reside and to work required by the law of the Member State concerned.
2. The activity carried out, the post and its location and duration must, in accordance with the law in force, effectively correspond to the content of the authorization granted by the Member State concerned.

III. Penalties for employing persons without authorization ⁽¹⁾

1. The employment of third-country nationals who do not possess the necessary authorization is prohibited and should give rise to the imposition of criminal and/or administrative penalties in accordance with the provisions of the law of the Member State concerned.
2. Such penalties should be imposed upon those who employ illegal workers and those who encourage, facilitate or promote illegal employment, in accordance with the provisions of the law of the Member State concerned.
3. Illegal trafficking in labour organized by persons acting on their own or in networks should constitute a criminal offence and incur criminal and/or administrative penalties in accordance with the provisions of the law of the Member State concerned.

(¹) The following statement will be included in the Council minutes:
"Recalling the position in its national law, the United Kingdom reserves its rights in regard to the application of Section III."

4. The procedures for punishing the employment of workers without the necessary authorization could:
- allow the application of penalties which are effective, dissuasive, appropriate and proportionate to the seriousness of the offences committed;
 - permit the elimination of added profits or other advantages obtained by employers as a result of the offences committed [in particular as regards the wages and charges imposed by the relevant provisions in each Member State] ⁽¹⁾.

The said procedures must provide for appropriate mechanisms and procedures for judicial control.

IV. Coordination of enforcement agencies

Member States should adopt the measures necessary to coordinate the activities of the competent services or authorities with the aim of combating the illegal employment and the exploitation of third-country nationals, given that the specialization in separate areas of control should be supplemented by the necessary collaboration and coordination in the activities of the services concerned.

This could be put into practice through the preparation of joint operations to be defined by sectors of productive activity, geographical areas and periods of time in which non-compliance with the rules on the employment of third-country nationals appears to be concentrated.

⁽¹⁾ The words in square brackets were inserted at the request of the French delegation and are not acceptable to the German delegation.

Such collaboration might take the form of:

- support, at the request of one of the competent services, for preventive action, such as inspection visits to places of work where there is hard evidence that the activities of those services could be obstructed or nullified or could involve any type of risk;
- support during inspections where the work of the competent services is seriously impeded in their investigations into the hidden economy;
- prompt support where assistance is requested by the competent services in emergency situations.

V. Exchange of information

Member States should exchange information, both bilaterally and within the Council, regarding the fight against the illegal employment of third-country nationals and organized networks trafficking in labour.

VI. Monitoring of compliance with the Recommendation

The Council will examine the progress of compliance with the principles of this Recommendation periodically, and for the first time one year after its adoption.
