

16 July 2008

**PUBLIC HEARING ON SANCTIONS DIRECTIVE
EP LIBE COMMITTEE, BRUSSELS**

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Thank you for inviting BUSINESSSEUROPE to take part in this hearing. I will first start with some general remarks after which I will focus on some specific provisions of the draft directive which are of key concern to business.

I. General remarks

I would like to start out by saying that European employers fully support the objective of the Commission proposal. Employment of illegally staying third-country nationals creates unfair competition for law-abiding companies. It is therefore in the interest of all decent employers to stop such practices. It also has an adverse impact on public finances while migrant workers are more vulnerable to exploitation or abuse.

Secondly, the phenomenon of illegal migration is complex. Employment is only one of many pull factors. An adequate response to address the challenge of illegal migration therefore requires measures to be taken across a broad range of policy domains, ranging from the need to tackle the key causes of undeclared work to facilitating legal migration flows.

Thirdly, the proposal has a strong employment dimension. Social partners should therefore have been properly consulted. This did not happen.

II. Specific comments

While supporting the overall objective of the proposal, BUSINESSSEUROPE does however have some strong concerns regarding some of the provisions of the directive.

- The Directive enters **into the area of national social policy/labour law**.
- It defines concepts such as “employment” and “employer”. We believe that definitions of employment, employer and employee should remain at national level. This is the case with other directives in the social field.

- The directive establishes new national procedures for back payment of remuneration, taxes and social security contributions different from those of national workers. BUSINESSEUROPE is not opposed to back payment as such. However, there should be the same procedures as for national workers (cf. amendment by Mr Castiglione from Ctee on Agriculture and Rural development).
- It introduces a presumption of a 6 month employment relationship. This is not only very difficult to prove, it is also different from “EU workers” who are illegally employed and disproportionate (e.g. in agriculture the average duration of employment contract is 40 days). Moreover, it will also stimulate the illegal immigration of third-country nationals as they can get six months pay for one day’s work.
- Some of the provisions are **disproportionate** in terms of consequences/requirements on companies etc.
 - This is the case regarding some of the proposed sanctions, in particular the temporary or permanent closure of the company. Although sanctions should be sufficiently deterrent, this is simply too much and could also result in punishing legally employed workers.
 - According to the proposal, employers should bear the costs of returning illegal immigrants. However, we believe that this should only be the case if the employer deliberately recruited/trafficked the worker. Otherwise, this is and should remain the responsibility for Member States (cf amendment Fava).
 - We also think that article 9 on subsidiary liability is unacceptable and unrealistic. Main contractors are not able to control compliance in practice. A very welcome development in this respect is the proposed amendment by Mrs Bauer, the EMPL Committee’s draftswoman, who suggests deleting the article. Mr Fava’s report also takes a step in the right direction by limiting liability to the immediate subcontractor.
- Finally, there is the issue of **subsidiarity**.

BUSINESSEUROPE agrees with the Commission that sanctions should be proportionate, effective and dissuasive. However, we believe that Member States are best placed to decide on and set sanctions for non-compliance with the provisions of the Directive.

Moreover, according to the Commission’s impact assessment, the large majority of Member States indicate that they have appropriate sanctions in place but that they are lacking enforcement capacity (financial and human resources). Therefore, the priority should be to better enforce existing legislation at national level.



Conclusion

BUSINESSEUROPE fully supports the objective of the proposal. However, important provisions fail to respect the principles of subsidiarity and proportionality.

Moreover, employers should not be turned into the watchdogs of the EU on irregular immigration (administrative checks/control procedures/subsidiary liability).

The requirements imposed on companies and disproportionate sanctions could end up in employers no longer recruiting third-country nationals. It is essential to avoid perverse effects, such as employers being afraid to hire immigrant workers which would have adverse impact on growth and employment in the long-term.
