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(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on the harmonization of laws in the Member States to combat illegal migration and illegal employment*(Submitted by the Commission to the Council on 4 November 1976)*

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 and ignoring the provisions in labour laws on the protection of workers; whereas this is prejudicial to the employment of all workers; 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;

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 subparagraph (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 organize or participate in activities which either are intended to lead or lead to illegal migration and illegal employment, as defined in Article 1 of this Directive.

- (b) the sanctions foreseen against the persons referred to in subparagraph (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 24 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 24 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.
