

New Sanctions for European Employers

As part of the EU's battle to crack down on the problem of illegal immigration, the Commission has drawn up a proposal for a directive which targets European employers who provide work for third country nationals staying illegally within the EU. The aim of the draft EU Directive, presented by the Commission in May 2007, is to address the problem of illegal immigration by cutting illegal employment, which is aggravating the situation.

The Directive starts off by laying down a general prohibition on the employment of illegal immigrants who do not have a right to reside in the EU. Whilst this prohibition should not come as a surprise given that most EU states, including Malta, already impose similar bans, a variety of new obligations have been imposed upon employers.

The European employer, rather than the illegal immigrant, is under the limelight in this proposed Directive. Employers, whether multinational companies or private individuals, are required to take preventive measures prior to recruiting third country nationals by checking their status to ascertain whether they are residing in the host country legally or otherwise. In addition, businesses and companies are required to notify the relevant national authority of any such employment.

Employers who request identity documents from prospective employees and then take reasonable steps to check that the employee is the rightful holder of the documents presented will not be liable under the proposed measures. If employers are presented with forged documents, they will not be penalized for failing to detect them unless the forged documents are manifestly incorrect.

Employers that fail to comply with the obligations imposed by the outlined Directive may face various sanctions including fines which may consist in the cost of returning illegal workers back to their home countries, and in some cases, loss of subsidies and even disqualification from public contracts. In addition to these administrative sanctions, criminal penalties are envisaged in the proposed Directive but are reserved for the more serious offences, such as repeated infringement or the employment of a significant number of illegal workers.

Subject to these sanctions are employers who have a direct employment relationship with the illegal third country national as well as those who engage sub-contractors who in turn hire illegal third country nationals.

Although the proposed Directive is beneficial for targeting the problem of illegal immigration, concerns have been voiced from various quarters about the administrative burdens that employers, especially small businesses and private individuals, have to bear as a result of the varied obligations imposed upon them.

The proposal is currently awaiting approval by the EU ministers. If adopted, member states would be allowed a transitory period to transpose the Directive into their domestic laws.