Section: Migration

Panel: Economic Migration and the European Union: a Blessing Within but a Threat

From Outside?

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Harmonising policies on illegal migration: a "blessing" tool within the EU?

ABSTRACT

The issue of labour migration had been waiting for some time, but is becoming more prominent in the policy debate as employers are gradually more reliant on migrant workers from third countries. The Council Directive *providing for sanctions against employers of illegally staying third-country nationals* forms an integral part of the EU's comprehensive and structural approach towards effective migration management. Although the phenomenon of undeclared work is not limited to migrants, the new legislation on sanctions against employers of such persons presupposes that the chance to obtain work in the EU without the required legal status is a key inducement behind illegal immigration. Based on the premise that employer sanctions set the moral tone for immigration policy at the workplace, this paper intends to address one of the main causes of illegal migration: the black labour market.

The paper aims to provide some reflections on the importance of having a harmonized EU framework for imposing sanctions against employers of illegal migrants. It will examine the scope of the directive and its features and will evaluate national legislation by means of the following considerations: 1) What are the national legislations as far as sanctions of employers of illegal workers are concerned? 2) What kind of sanctions do they provide? 3) Are these sanctions effective and efficient? 4) Will the directive help to remedy enforcement difficulties? 5) Which additional to preventive measures can be taken to achieve the above policy objective? 6) What consequences would the new European legislation have on national laws?

In the conclusion, the paper will assess the directive's added value towards reducing illegal migration which will, hopefully, prepare the ground for further deliberations with the national parliaments and the civil society regarding its transposition and eventually its successful implementation.

Harmonising policies on illegal migration: a "blessing" tool within the EU?

1. Introduction

Addressing illegal immigration has been a central part of the European Union's (EU) common immigration policy since its inception in 1999. The Treaty of Amsterdam established the Community's competences in this field (Title IV), with Article 63(3) of the Treaty establishing the European Community (TEC) as the explicit basis for measures on illegal immigration and illegal residence, including the repatriation of illegal residents.

The directive on providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (TCNs)¹ takes stock of the progress made in fighting illegal immigration. It also forms part of the Union's efforts to develop a comprehensive migration policy. Furthermore, it complements the policy plan on legal migration adopted by the Commission in December 2005 which states that "the admission of economic immigrants is inseparable from further measures to combat illegal immigration, in order to ensure the integrity and credibility of such a policy".²

2. Background

Since the Council Recommendation of 27 September 1996 on combating the illegal employment of TCNs,³ the sensitive issue of illegally employing third-country nationals had not been discussed again in the Council.⁴ The Commission adopted a Communication on illegal work in 1998 which intended to initiate a debate in the Member States and among social partners on the most appropriate strategy to fight undeclared work, involving both EU citizens and illegally resident TCNs. The adoption of the new legislation demonstrates that in order to address the problem of illegal immigration⁵ comprehensively, the employment of illegal residents should be put back on the political agenda.

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¹ 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, OJ L 168/24.

² COM(2005) 669 final "Policy Plan on Legal Migration", p. 4.

³ OJ C 304/1, 14.10.1996; The Recommendation takes forward the Council Recommendation of 22 December 1995 on harmonizing means of combating illegal immigration and illegal employment and improving relevant means of control (OJ C5/1, 10.1.1996.

⁴ Some reference was made, however, in 2001 with regard to combating undeclared work in general by calling upon Member States to develop entrepreneurial activities and job creation. Council Decision of 19 January 2001 on Guidelines for Member States' employment policies for the year 2001, OJ L 22/18, 24.01.2001.

⁵ The author refers to the concept of 'illegal migration' as it is already used by the Commission in the directive. However, it is a better approach to use the term of "irregular migrant" than "illegal". When a person is considered illegal, it suggests that his/her acts are unlawful and therefore he/she has to be sanctioned.

3. Policy Analysis

The directive for sanctioning employers of illegal workers builds on the Council Recommendation of 1996⁶ by requiring Member States to prohibit illegal employment, to provide for similar sanctions, to require employers to undertake preventive measures and other controls and to call upon the competent authorities to enforce those measures effectively. This piece of legislation is mostly concerned with immigration policy, and not with labour or social policy per se, entailing however some harmonisation at the EU level of criminal law. The directive tries to strike a balance between mobility of illegal migratory flows which regularly lead to human tragedies, raise domestic stability concerns and enforce Member States to adopt preventive measures. It takes into account that a basic tenet of how the EU manages illegal immigration is the removal of incentives in the destination countries. By tolerating the illegal employment of TCNs, Member States create the contribute to emigration and intensify situations of illegal residence. Considering also that employment is a key part of the integration process, the illegal status of migrant workers makes it more difficult for them to integrate into the local community (CBP on integration (3)). It blocks their access to services and takes away their ability to enforce their labour and social rights. Therefore, if migrant workers are employed illegally, the basis for integration policies is subsequently wrong.

Nevertheless, the potential cultural as well as economic enrichment offered by immigration can be only released by improving integration in the host society. Such an improvement not only calls for major efforts by the national, regional and local authorities but also for a greater commitment by the host community and the immigrants themselves. That is why, integration is a dynamic, two-way process of mutual accomodation by all immigrants and residents of Member States (CBP 1). In addition, mainstreaming integration policies, measures, levels of government and public services is an important contribution to immigration policy making and implementation (CBP 10). The development of clear goals, indicators, evaluation mechanisms such as inspections (Art. 14 of the directive) and reporting (Art. 16) are also necessary to adjust policy, make the exchange of information more effective and evaluate progress on integration and the prevention of illegal migration (CBP 11).

In essence, the scale of illegal migration is hard to quantify as precise figures are difficult to obtain. As regards statistical data, the Statistics Regulation (No 862/2007) provides for the collection of harmonised and comparable Community statistics on migration and asylum. The 2009 annual data, however, on illegal entry, stay and returns

⁶ See *supra* note 3.

⁷ European Commission Press Release, 2618th Council Meeting, Justice and Home Affairs, Brussels (19) November 2004), Doc. 14615/04 (Presse 321), pp. 15-25.

⁸ Regulation (EC) No 862/2007 of 11 July 2007 on Community statistics on migration and international protection, OJ L 199/23.

will only be available by the Commission in spring 2010. The most recent estimates of the number of illegal migrants in the EU range between 4.5 and 8 million, with an estimated increase by 350.000 to 500.000 per year. Between 7-16% of the Union's Gross Domestic Product (GDP) is estimated to come from the shadow economy, although this is not entirely due to illegal migrants. 11

The informal economy is the natural point of insertion into the labour force for migrants who cannot find regular employment due to a lack of appropriate documentation. The informal economy as a percentage of official GDP accounted for 28.2% in Greece, 25.7% in Italy, 22% in Spain and 21.9% in Portugal in 2003, all of them countries that have repeatedly implemented regularisation programmes.¹²

Construction, agriculture, cleaning, hotel/catering and textile industries are the main sectors which greatly involve undocumented work in general and attract illegal migrants in particular (e.g. in Italy 18.4% of illegal migrants were employed in the service and 18.3% in the agricultural sector). 13 It is not a coincidence that given the difficulties in tolerating the sustained presence of significant numbers of illegally residing TCNs in their territories, some Member States (e.g. UK and the Netherlands) have initiated regularisation programmes and others (e.g. Belgium, France, Italy, Greece, Portugal and Spain) have undertaken large-scale "fait accompli" regularisation. ¹⁴ Some of them have carried out single 'one-shot' measures (e.g. Greece) whereas others have needed to carry out such measures more frequently (e.g. Italy). The fact that such regularisations take place at all highlights the existence of a dynamic hidden economy and are both politically and economically motivated. For example, regularisations carried out in Spain and France have actually been driven by employers, in recognition of the fact that some sectors, particularly domestic services, have become dependent on illegal labour and therefore it is desirable to bring them into the formal economy. 15 Wide - scale regularisations have implications for many parts of the society since it is necessary for governments to obtain political support amongst key actors (e.g. employers and trade unions), whilst at the same time introducing further measures to tackle illegal migration in order to maintain public support. 16

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⁹ COM(2009) 266 final, "Tracking method for monitoring the implementation of the European Pact on Immigration and Asylum", p. 5.

¹⁰ European Commission press release, "Towards a comprehensive European Migration Policy: Cracking down on employment of illegal immigrants and fostering circular migration and mobility partnerships", IP/07/678, Brussels 16 May 2007.

¹¹ *Idem*.

¹² Schneider, F. "The size of the shadow economies of 145 countries all over the world: First results over the period 1999 to 2003", IZA DP No. 1431, December, Institute for the Study of Labour, Bonn, http://ftp.iza.org/dp1431.pdf.

¹³ Italian National Institute on Statistics, ISTAT, 2006.

¹⁴ "Fait accompli" programmes involve the regularization of illegal immigrants, usually those who are already illegally employed. Germany is an exceptional case of a country which refuses "fait accompli" reasons for regularization and only grants permits on protection grounds.

¹⁵ Papadopoulou, A. (2005) "Regularisation programmes: an effective instrument of immigration policy?", *Global Migration Perspectives*, Vol. 33, Global Commission on International Migration (GCIM), pp. 6 − 7. ¹⁶ *Ibid.*, pp. 14 − 15; COM(2004) 412 final "Study on the links between legal and illegal migration", p. 10.

In reality, some level of illegal migration will always persist in the EU so long as the determinants are various (e.g. demand, the operation of informal economies, including social networks and, ultimately, the migrant-recruiting industry that services them). ¹⁷ Yet, the fight against illegal immigration must remain an essential part of migration management as the Commission has already announced whilst preparing for the Stockholm programme (2010-2014). ¹⁸ This may start with preventive measures and the suppression of its incentives such as undeclared work. The directive complements the existing policy aiming at transforming undeclared work into regular employment, which is one of the main issues of the Employment Strategy since 2001. ¹⁹ The table below on the annual flows of work permits indicates that economic migration should be better matched to the needs of the Member States' labour markets. An overall assessment of the skills needed in Europe until 2020 would help towards this direction. ²⁰

Estimated annual flows of work permit

Country	All Work Permit	Professionals with Work	Total Employment 2002
•	Holders	Permits	
DK	1600	500	2741 000
DE	165000	3300	36275000
ES	65000	-	16241000
FR	31200	12400	23 885000
Æ	16100	2000	1750000
IT	78800	500	21757000
LV	2800	-	987000
LT	500	160	1421 000
HU	40300	3800	3868000
NL	38000	10900	8176000
PL	5600	1700	13820000
SK	1000	-	2111000
FI	13100	1700	2406000
SE	6700	4300	4348000
UK	89200	15800	28338000
Total	(554900)	(57060)	168124 000
EU25	633200 (est)	74300 (est)	191841000

Source: COM(2005) 669 final

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¹⁷ IOM World Migration Report 2008, "Managing labour mobility in the evolving global economy", Volume 4, pp. 206-207.

¹⁸ COM(2009) 262/4 "An area of freedom, security and justice serving the citizen", pp. 24, 26.

¹⁹ COM(2007) 628 final, "Stepping up the fight against undeclared work", p. 2.

²⁰ See *supra* note 18, p. 25.

Although one may suggest that the principal focus is on employment and working conditions, this does not hold true. The above-mentioned legislative measure is not a *by-product* of the action taken against undeclared work but uses a form of reinforced cooperation among different policies in order to diminish the interest in promoting illegal migration. The causal link between finding undeclared work and illegal immigration, justifies the enforcement of law and the adoption of effective measures with considerable financial consequences.

4. Main features of the EU directive

This legislative measure contains a general prohibition on the employment of TCNs who are illegally staying within the EU territory. To ensure the effectiveness of this prohibition, employers would be required before recruiting a TCN to check that they have a residence permit or another authorisation for stay valid for the period of employment (Art. 4). Infringements would be sanctioned by penalties (which may be administrative in nature (Art. 7) consisting, among others, of fines (e.g. financial penalties for each illegally employed TCN and payments of return costs) (Art. 5) as well as back payments comprising outstanding remunerations, taxes, social security contributions (Art. 6).

Businesses face a range of other punitive measures, including exclusion from entitlements to public benefits, aid, subsidies or participation in a public contract up to five years, recovery of public subsidies if these were granted to the employer during the 12 months preceding the detection of illegal employment as well as temporary or permanent disqualification from practice, (Art. 12).

Criminal penalties will be available in five serious cases where: a) there has been a repetition of infringements, b) a significant number of unauthorised TCNs has been employed illegally, c) particularly exploitative working conditions have been attested, d) despite his knowledge the employer uses for his services a victim of human trafficking and e) the infringement relates to the illegal employment of a minor (Art. 9).

Furthermore, the directive allows foreign nationals to register complaints and have protection against exploitative working conditions (Art. 13). Third parties shall be protected when providing assistance to lodge complaints if they have been involved in any facilitation of unauthorised entry or residence. Additionally, those who cooperate in proceedings should be entitled - such as the victims of human trafficking who collaborate with the competent authorities²¹ - to a short-term residence permit valid for at least six months. As regards issues relating to outstanding remunerations, taxes and social security contributions presuming that a work relationship was of at least six months duration, the claiming procedures should be triggered automatically without the need for the TCN to introduce a claim.²²

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²¹ Council Directive 2004/81/EC of 29 April 2004 on residence permits issued to third-country nationals who are victims of trafficking or who have been the subject of an action to facilitate illegal immigration or who co-operate with the competent authorities, OJ L261/19, 6.8.2004.

²² Art. 6, para. 2(a) (b) of the directive.

Finally, the EU legislation on employer sanctions requires Member States to undertake inspections in identified sectors of activity where illegal employment increases (Art. 14). The selection of the companies subject to control will be based on a risk assessment analysis carried out by the competent national bodies, taking into account the sector in which a company operates. Whether inspections will be linked to those designed to detect breaches of health and safety law, breaches of tax or customs regulations and other crimes is still unknown at this stage.

Some reflections on the Directive's main features

(a) Legal basis

As already mentioned, the aim of this directive is to cut illegal immigration by stopping the illegal employment of migrants through employer sanctions. The principal focus is neither on employment nor on working conditions, which may give rise to doubt about whether Art. 63 (3) b is the appropriate legal basis.

However, even if Art. 63 (3) focuses on residence permits, there is a clear link with employment policy as in 14 Member States there is a joint residence/work permit.²³ This means that in order to have access to the labour market, migrants need to have a lawful residence in one of the Member States. In this respect, Art. 63 (3) may be interpreted in a broad sense, while encompassing the concept of lawful employment through legal residence.

(b) Irregularity of stay

The use of irregularity of stay of the TCN as the sole reason for sanctions deliberately overlooks everyone else, such as EU citizens and legal TCN migrant workers who may also be subject to labour exploitation. Illegal migrants are more vulnerable than any other category as they are willing to accept any type of work in order to survive and potential employers can exploit their precarious situation.²⁴

Channels for legal migration, particularly labour migration are defined by the policies of the countries of destination, and sometimes but not always, in cooperation with the countries of origin. They are to a large extent, a response to the demand for foreign workers coming from domestic labour markets. When the supply through established channels does not match the demand, then, illegal migration dynamics come into their own. Illegal migration is a social fact that will always characterise national markets due to the interplay between supply and demand. On the one hand, demand for illegal activity is determined by the tolerance of crime in the hosting society. On the other, the supply of

²³ Austria, Germany, Estonia, Greece, Spain, Finland, France, Italy, The Netherlands, Portugal, Sweden, Poland, Denmark and Luxembourg.

²⁴ A legal migrant might also become vulnerable to the effect of illegal immigration on wages, and he may be crowded out of legal work at given wages, particularly when unemployment is high.

illegal migrants per citizen depends on the expected profit per illegal migrant (e.g. low wages, no payment of taxes and social security contributions, competitive products etc). Consequently, when expected returns from illegal migration increase, the number of illegal migrants will also increase. In this context, the directive may reduce the social costs of illegal migration by approximating the form and range of sanctions across Member States.

(c) Financial sanctions and criminal offences

The activation of a range of effective, proportionate and dissuasive penalties against employers of illegally staying third-country nationals for all Member States should only be seen as a legal alternative to reducing illegal migration. As the ECJ in many cases has affirmed, the Commission does not have competence to decide on the amount of fines or types of penalties and therefore it does not aim to harmonise substantive criminal law or rules of criminal procedure.²⁵

Within the EU, at least 26 of the 27 Member States already have employer sanctions and preventive measures in place and in 19 States there are national provisions for criminal sanctions. One may notice, however, that not only does the scope and scale of these measures vary greatly, but also the enforcement. For example, 4 Member States (Denmark, Luxembourg, Cyprus and Ireland) do not have administrative fines in place; 10 Member States (Estonia, Portugal, Czech Republic, Slovakia, Bulgaria, Cyprus, Malta, Lithuania, Slovenia and Sweden) do not foresee criminal sanctions, whereas in Denmark, Poland, Czech Republic and Sweden the illegal employee can also be fined. Administrative and criminal fines do not apply together in Spain, whilst in Poland and Sweden fines can be imposed per illegal worker or for the offence. Apart from the Netherlands, differences in fines depend on the type of the crime, the number of illegally employed workers and the existence of aggravating circumstances. Aside from Slovenia and Cyprus, preventive measures exist in all other Member States. These may be summarised as

- a) placing the responsibility on the employer to declare new employees and verify their status;
- b) encouraging employment of documented workers;
- c) linking social security with written employment contracts;
- d) raising awareness;
- e) providing financial incentives for employers.

The existence of a common minimum level of sanctions on employers will guarantee that all Member States apply 'high' sanctions and consequently that there would not be a rise in illegal immigrants' movements to Member States with lower levels of sanctions.

Indeed, the higher the income difference between receiving and sending countries, and the smaller the probability of being detected and the severity of punishment, the higher

²⁵ Case C-203/80 *Casati* [1981] ECR 2595, para. 27; Case C-226/97 *Lemmens* [1988] ECR I – 3711, para. 19; Case C-176/03 *Commission v. Council* [2005] ECR I – 7879, para. 47.

the number of illegal migrants tends to be.²⁶ In contrast, a higher degree of probability of detection in combination with a lower degree of tolerance, negatively affects the expected net gain from moving.²⁷ If a company runs a greater risk of being detected due to the increase in inspections and uniform sanctions applying to the whole EU, then the potential utility losses will have to be subtracted from potential opportunities and wealth gains. From an economic approach, the expected loss depends both on the probability of detection as well as the penalty. For example, frequent authorisation checks makes employing illegal workers a risky business and increasing sanctions will discourage employers from employing TCNs without work permits as the probability of detection becomes noticeable. Controls and penalties are likely to be augmented if political pressure and xenophobic interests, especially closer to national elections, and in the presence of high unemployment rates, leads politicians to target illegal migration.²⁸

(d) Effectiveness

The ultimate aim, however, to curb illegal immigration to *zero* comes with additional costs. Preventing any migration activity would be impractical as total control of the external borders would be prohibitively costly. The optimal balance between desirable and undesirable migration depends upon governments' decisions to either allocate their public resources for fighting illegal migration, or use them for foreign aid and social services in the developing countries.²⁹

Despite Member States' consensus that combatting illegal work (in general and that of illegally staying TCNs in particular) is a governmental priority, it appears that the human resources allocated to monitoring are not sufficient and therefore few controls are actually made. Human resource limitations and differences in enforcement priorities among the relevant agencies can also become hurdles that have to be overcome. Additionally, such inspections are not easy to be carried out in areas of employment where migrants are scattered, for instance in the agricultural sector, or where controls can be carried out only indirectly, as in domestic employment.

In general, it is difficult to evaluate the efficiency of measures and sanctions available in the area. Furthermore, if administrative fines are small and the authorities' checks are not continuously carried out, sanctions will not contribute to reducing the number of illegally employed TCNs. Undeniably, administrative fines are an efficient measure to fight illegal immigration since, on the one hand, it is a form of inhibition for employers and immigrant manpower abusers and, on the other, it is a source of compensatory financial resources to bear the costs of the actions against illegal immigration. However, these are not effective enough, if they are not accompanied by other preventive measures. Preventive actions are very important tools especially, when focused on roots of illegal

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²⁶ Entorf, H. "Rational Migration Policy should tolerate non-zero illegal migration flows: Lessons from modeling the market for illegal migration", *University of Würzburg Paper*, August 2000, pp. 11-12.

²⁷ *Ibid.*, pp. 8, 13, 15.

²⁸ See *supra* note 26, p. 4.

²⁹ *Ibid.*, p. 17.

immigration (e.g. on a concrete territory, push factors, informational level of would-be migrants) as well as on roots of preference of illegal employment by employers.

(e) Enforcement issues

The directive on sanctions against employers of illegal migrants does not remedy existing national enforcement difficulties (e.g. lack of controls, strong incentives for illegal employment etc). It can only provide the legal framework for harmonised employer sanctions and preventive measures and help to identify best practices at the implementation stage.

The adoption of the proposed sanctions by Member States is not in and of itself enough to guarantee that the competitive and financial advantages of employing illegal migrants will cease. Enforcing legislation on immigration still remains a national responsibility, not a European one. This is quite clear if one recalls that the European Pact on Immigration and Asylum invites Member States "to control (–amongst other tasks) – illegal immigration". The directive on employers' sanctions should be seen as part and parcel of this call. Member States should be the standard setters who could request employers to notify cases of irregular presence to the immigration authorities when checking documentation of migrant workers and also decide the extent to which workplace inspections could lead to repatriations. Inspections of labour sites constitute an important deterrent, and indeed there are indications that many governments are moving in that direction. For example, the UK Border Agency carried out in 2006 over 5,200 operations to detect unauthorised employment and removed more than 22,000 people from the country. The direction is a state of the property of the country of the country.

However, there is a two-fold role for action at EU level: 1) to facilitate the exchange of good practice on the issues mentioned below, and 2) to facilitate the exchange of relevant information. Measures at EU level are also justified in order to help ensure the effectiveness of the proposed sanctions and to prevent any distortions of competition that varying levels of enforcement could entail.

Other recommended measures

Additional measures to better enforce the prohibition on employing unauthorised TCNs include:

 Simplification of administrative formalities: complicated and bureaucratic processes in relation to immigration and employment regulation do not drive employers to act in the best interests of their migrant employees. Clear, concise

³⁰ Council document 12626/08 of 16 October 2008, section II "Control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a transit country", p. 6.

United Kindgom, Home Office, Border Agency, "New Advertising Campaign Launched to stop businesses employing illegal workers", 14 January 2008, Home Office press release, http://press.homeoffice.gov.uk/perss-releases/Campaign-To-Stop-Illegal-Workers?version=1.

legislation and guidance as well as uncomplicated procedures are essential to aid compliance and reduce illegal working. The Commission proposal on the establishment of a single work/residence permit³² which would contain biometric identifiers is a good example of such a practice.

- Better coordination, exchange of information and surveillance: improvements in the resources, expertise and control capacity of law enforcement authorities (e.g. labour inspectorates, social security and tax authorities), and in their cooperation with social partners can contribute to reductions in the incentives to undeclared work.
- **Better co-operation with countries of origin** assuming that prevention of illegal migration should begin with socio economic development in countries of origin.³³
- Establishing a coherent common policy on readmission and return: return interventions to take place through the provision of timely and accurate information about options and consequences; counselling by authoritative and credible interlocutors; effective communication between countries of origin and destination; carefully designed reintegration programmes taking into account the needs of local residents as well as of returnees.
- Mainstreaming migrant/diversity policy objectives: provision of more and better information about migrant workers' rights and level of protection, and development of varied models of service provision to match their needs.
- Signing and ratifying international conventions on the protection of the rights of migrant workers.³⁴
- **Increasing awareness of sanctions** in case of detection.
- **Identifying and exchanging good practices** with the aim to assess:
- 1) systematic and large-scale illegal employment, 2) the application of sanctions, 3) methods for regularising or removing irregular TCNs by inspection and enforcement processes, 4) the links between illegal employment of TCNs without the right to work, 5) the right to reside and the wider informal economy.

Conclusions

The paper has demonstrated that the directive on sanctions against employers of illegally staying third-country nationals can become a 'blessing' tool for harmonisation.. It is a

³² COM(2007) 638 final "Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State"; Press release 2963th Council Meeting, Justice and Home Affairs, Luxembourg 6 April 2009, p. 11.

³³ See *supra* note 17, p. 223.

^{34 1) 1990} International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW); 2) ILO Migration for Employment Convention, 1949 (C-97); 3) ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (C-143).

part of a firm policy which aims to strengthen the credibility of legal migration channels and to make the EU an attractive destination. It aims to reduce the pull factor encouraging illegal immigration into the EU through the possibility of finding work. The employment of third-country nationals who are illegally staying in the EU Member States is hard to quantify so long as mobility flows respond to the dynamics of labour supply and demand. In this case, a complete 'market model' of illegal immigrants is offered by adding a demand for illegal immigration which is based on the tolerance of the society. Even though regularisation allows better population management and tackles the problem of illegal working, the paper has suggested that this practice should be avoided or used as a last resort as it encourages forms of illegal migration.

The Council directive bridges national differences and can bring added value by reducing losses to Member States' public finances, increasing labour inspections, approximating penalties and sanctions against employers in breach of legislation and decreasing exploitation. Public perception which tends to create xenophobic attitudes towards illegal immigrants was also taken into account.

Certainly, any legislation providing for sanctions and preventive measures would not of itself be sufficient to address the problem. The effectiveness of measures in place is highly dependent on the efforts and resources put in place for enforcement. Concerning the level of resources that the EU could mobilise, we have to consider the particular nature of its social policy compared to the national ones. Traditionally, the European social policy has had a regulative rather than redistributive approach, due to the limit of budget resources collected at the supranational level. Because of this and as it is evident in the area of migration policy, the EU is more likely to impose restrictions within legal means than to utilise resources to implement comprehensive policies. As a consequence, addressing migration issues at the European level means having at our disposal a limited number of policy tools.

Furthermore, the paper has suggested that there is a need for using a policy mix to crack down on illegal employment. This policy mix should not only include stronger sanctions, controls and better implementation of decisions, but also address different kinds of incentives for recruiting illegal immigrants. In effect, it is not possible to either generalise or simplify the causes, or, the outcomes of illegal employment of migrant workers, as they reflect different migration contexts and labour market conditions of each Member State. Different countries use different methods to combat illegal employment and regularly with little coordination between relevant authorities such as police, tax authorities and migration officials. However, it is possible to establish some proactive policy for legal migration, if Member States intensify administrative cooperation and exchange of information not only on methods to prevent illegal employment of migrant workers but also on promoting legal employment opportunities.

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³⁵ Leibfried, S. and P. Pierson, (eds.) (1995) European *Social Policy, Between Fragmentation and Integration*, Washington, D.C.: Brookings Institution Press.