

Social Affairs

SANCTIONS AGAINST EMPLOYERS

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

Objective

To lay down common sanctions and measures to be applied in the Member States against employers of illegally staying third-country nationals (TCN).

Relevance for the hospitality industry

As the hotel, restaurant and café sector employs a large number of third-country nationals, this Directive is of particular relevance. Employers in the hospitality sector will be subject to more administrative requirements when recruiting a third-country national.

State of progress

The Directive was adopted on 18 June 2009. Member States must transpose the Directive by 20 July 2011 at the latest. The Directive is not binding on the following Member States: Denmark, Ireland and United Kingdom.

Content

The Directive prohibits the employment of illegally staying third-country nationals in order to fight illegal immigration. To this end it lays down common sanctions and measures to be applied by the Member States against employers who infringe the prohibition.

Under this legislation, employers hiring illegally staying TCN could face:

Financial sanctions: including fines, payments of costs of return of illegally employed third-country nationals and others.

Criminal sanctions: Member States shall ensure that the infringement of the prohibition of hiring illegally staying TCN will constitute a criminal offence when committed intentionally in each of the following cases:

- Employers persistently hiring illegally staying TCN;
- Employers recruiting a large number of illegally staying TCN;
- Employers who subject illegally-staying TCN to particular exploitative working-conditions;
- Employers recruiting illegally staying TCN-minors;
- Employers recruiting illegally staying TCN with the knowledge that he or she is a victim of human traffic.

Reduced financial sanctions: are foreseen in cases where the employer is a natural person who employs an illegally staying TCN for his/her private purposes and where no exploitative working conditions are involved.

To ensure the effectiveness of the prohibition of hiring illegally staying TCN, the Directive introduces the following obligations for employers in the EU:

- To require that the TCN presents a valid resident permit or similar authorisation for his/her stay;
- To keep for at least the duration of the employment a copy or record of the valid residence permit or similar authorisation for stay; and
- To notify the competent authorities of the Member State of the start of the TCN employment within a period laid down by each Member State.

Members States are also required to undertake a certain number of inspections.

HOTREC position

HOTREC does not see the need for additional legislation at Community level on top of existing national rules. It fears that the new Directive impose disproportionate sanctions and adds costs as well as red tape for employers, especially for SMEs. The verification that a TCN is legally staying in the EU should not be a responsibility of the employer but of the public authorities.

Official reference

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, O. L. 168, 30.06.2009.