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signed by Mr Jordi AYET PUIGARNAU, Director

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PARLIAMENT AND THE COUNCIL on the application of Directive
2009/52/EC of 18 June 2009 providing for minimum standards on sanctions
and measures against employers of illegally staying third country nationals

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standards on sanctions and measures against employers of illegally staying
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In 2013, 386 230 third-country nationals were found to be irregularly present in the EU, down from 608 870 in 2008¹. This decrease can be partly attributed to the economic crisis, which made it more difficult to find work across large parts of the European Union (EU). However, this phenomenon is by nature hard to quantify, since the majority of irregular migrants remain undetected, and the possibility of finding work remains a significant incentive to irregular migration into the EU.

Employment of third-country nationals who are illegally staying is the result of migrants seeking a better life meeting demand from employers who are willing to take advantage of workers ready to undertake low-skilled, low-paid jobs in labour-intensive sectors such as construction, agriculture, cleaning and hotels/catering.

Illegal employment is damaging in many ways, causing a lack of contributions to public budgets in the form of taxes or social security payments, replacing workers or non-hiring of workers through legal channels, resulting in individuals having to work under hazardous conditions without any insurance.

Directive 2009/52/EC², adopted on 18 June 2009, seeks to counter the pull factor of finding work. It toughens sanctions for illegal employment and improves detection mechanisms, while providing for protective measures designed to redress injustices suffered by irregular migrants.

The Directive forms part of a set of measures taken by the EU to effectively tackle irregular immigration; other measures include enhanced cooperation with third countries³, integrated management of operational borders, an effective return policy⁴ and reinforced legislation to fight against human trafficking⁵. The Directive complements recent policy developments in

¹ Eurostat, 2013, data not available for NL and EL.

² Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168, 30 June 2009, p. 24 ('Employers Sanctions Directive').

³ Communication on the global approach to migration and mobility, COM(2011) 743 final, 18 November 2011.

⁴ Communication on EU return policy, COM (2014) 199 final, 28 March 2013.

⁵ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims, OJ L 101, 15 April 2011, p. 1.

the field of legal migration, with the Seasonal Workers Directive⁶ being the most recent example of the EU opening legal channels for low-skilled labour migration, typically in sectors such as agriculture or tourism.

Member States were to transpose Directive 2009/52/EC into their national legislation by 20 July 2011⁷. The Commission launched infringement proceedings⁸ against 20 Member States⁹ for not having done so in time, which have since all been closed.

Before adopting transposing legislation, Italy and Luxembourg allowed for a period during which employers could declare illegally staying migrants working for them and, while requiring payment of a fine and fulfilment of certain conditions, enabled regularisation mechanisms.

All Member States bound by the Directive¹⁰ now prohibit the employment of irregular migrants and only a few have allowed an exception for those whose removal has been postponed¹¹. Several Member States have decided to go beyond the scope of the Directive¹², applying it also to third-country nationals who are legally-staying but whose residence permit does not allow them to perform an economic activity.

This Communication¹³ responds to the Commission's obligation to report to the European Parliament and the Council on the application of the Employers' Sanctions Directive¹⁴. It provides an overview of the financial and criminal sanctions that the chain of employers may incur across the EU for illegal employment (I). It then sets out how protective measures for illegally employed migrants were enacted in the national legislations (II). It finally describes how Member States have transposed the mechanisms set out in the Directive to effectively detect and penalise illegal employment and provides an assessment of Member States' inspection reports (III).

I- SANCTIONS AGAINST THE CHAIN OF EMPLOYERS OF ILLEGALLY STAYING THIRD COUNTRY NATIONALS

I.1- Overview of the financial and criminal sanctions in force in the Member States

a- Financial sanctions (Article 5)

⁶ Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, 28 March 2014, p. 375.

⁷ Article 17 of Directive 2009/52/EC, op. cit.

⁸ Article 258 (ex-226) of the Treaty on the Functioning of the European Union.

⁹ AT, BE, BG, CZ, DE, FR, EL, IT, CY, LT, LU, HU, MT, NL, PL, PT, RO, SI, FI and SE.

¹⁰ All Member States except Denmark, Ireland and the United Kingdom are bound by Directive 2009/52/EC. Croatia's implementation following its accession has still to be assessed.

¹¹ DE, EL, FI, FR, MT, RO and SE (Article 3(3) of Directive 2009/52/EC).

¹² AT, BE, CZ, DE, EE, FR, FI, HU, LT, MT, RO and SE.

¹³ The Communication is based on a study carried out for the Commission.

¹⁴ Article 16 of Directive 2009/52/EC, op. cit.

Article 5 provides that sanctions for illegal employment shall include financial sanctions, the amount of which shall proportionally increase with the number of illegally staying third-country nationals employed.

At the time of transposition, only BE, BG, LU, FI and LV, had yet to introduce financial sanctions in national legislation, as the other 19 Member States bound by the Directive already allowed for such sanctions. However, seven¹⁵ have since changed their legislation to amend the calculation method and/or increase the amount of the fine.

Only CY, FI, HU, NL and PL have used the option in Article 5(3) for reduced sanctions where the employer is a natural person (i.e. an individual), employment is for private purposes, and where no particularly exploitative working conditions are involved.

Other than SE and IT, which include the average cost of return in the financial penalty, Member States require the employer to pay the costs of return, on top of the financial sanction.

Table 1 on ‘financial sanctions’ shows that Member States fall into two categories as far as the calculation method for the fine is concerned. In 16 Member States¹⁶, the fine increases proportionally with every illegally staying third-country national employed. Among these countries, the minimum or fixed amount of the financial sanction per illegally employed irregular migrant varies from EUR 300 in BE to EUR10001 in ES. Most Member States have also set a maximum fine which varies from EUR 854 in CY to EUR100 000 in ES for a natural person. In the remaining eight Member States¹⁷, the law sets out a general amount for the fine and it is for the judge to set the precise amount depending on the number of irregular migrants involved. Among these countries, the maximum amount of the fine varies from EUR500 in LV to EUR500 000 in DE.

This shows that the amounts of the fines vary considerably among Member States and could raise concerns that the level of the financial sanctions does not always outweigh the benefits of employing irregular migrants. Since there is no comprehensive empirical information on the effect of sanctions, the comparison with a minimum wage can serve as an indication, among other factors¹⁸, to provide an initial assessment of the dissuasiveness and proportionality of the sanctions.

For instance, the maximum penalty per irregular migrant employed in LU is 1.3 times the monthly minimum wage. In LV, one of the countries that have established an overall amount for the fine, the maximum financial penalty is 1.7 times higher than the monthly minimum wage. These figures are in striking contrast to BG, for example, where the maximum fine per

¹⁵ CZ, EL, ES, FR, IT, NL and RO.

¹⁶ AT, BE, BG, CY, EE, EL, ES, FR, HU, IT, LT, LU, NL, RO, SE and SI.

¹⁷ CZ, DE, FI, LV, MT, PL, PT and SK.

¹⁸ Other factors include, for instance, the comparison with sanctions for similar types of offences as well as the precise definition of the offence in the respective national law. In order to assess the effectiveness, a collection of empirical data on actual penalties applied.

irregular migrant is 24.2 times the monthly minimum wage, and CZ, where the overall amount for the maximum fine is 584 times the monthly minimum wage¹⁹ for a natural person.

b- Criminal sanctions (Articles 9 and 10)

Article 9 provides for criminal sanctions for particularly serious cases of illegal employment, including:

- (i) persistently repeated infringements;
- (ii) involving a significant number of third-country nationals;
- (iii) employment in particularly exploitative working conditions;
- (iv) where the employer knows that the worker is a victim of human trafficking; and
- (v) the illegal employment of a minor.

Prior to the Directive's entry into force, illegal employment of irregular migrants already constituted a specific criminal offence in ten Member States²⁰. Therefore, 14 Member States²¹ had to introduce into their legislation criminal sanctions against these specific forms of illegal employment. AT, DE, EL and IT have amended their existing legislation to increase the lengths of prison sentences or, in most cases, the level of fines.

In BE, FI, FR, IT, MT, NL and SE, illegal employment constitutes a criminal offence in itself, with or without the circumstances referred to in Article 9(1). These circumstances are usually treated as aggravating factors.

The remaining Member States have in general criminalised illegal employment in all the circumstances described in Article 9. Few Member States did not specifically penalise illegal employment in cases of 'particularly exploitative working conditions'²² and in situations where 'the employer was aware that the worker was a victim of human trafficking'²³. Many of them considered that these forms of illegal employment were already covered by national legislation addressing trafficking in human beings.

Table 2 highlights considerable differences in the severity of criminal sanctions. For some Member States, this can raise doubts over the deterrent effect of penalties. For instance, LV and AT under certain circumstances described in Article 9(1) penalise illegal employment with prison terms of up to three months and six months respectively, while the remaining Member States provide for a maximum sentence of between one and five years in prison. In ten Member States, imprisonment can be coupled with or replaced by a fine which can vary from EUR 600 in BE to EUR240 000 in PT for a natural person.

¹⁹ Minimum wages from Eurostat:

http://epp.eurostat.ec.europa.eu/portal/page/portal/labour_market/earnings/main_tables.

²⁰ AT, CZ, DE, EL, ES, FI, FR, IT, MT and NL.

²¹ BE, BG, CY, EE, HU, LT, LU, LV, PL, PT, RO, SE, SI and SK.

²² RO.

²³ CZ, ES and LT.

c- Criminal sanctions for legal persons (Articles 11 and 12) and other measures (Article 7)

In accordance with Article 12(1), all Member States have provided for criminal sanctions for legal persons responsible for illegal employment under Article 9, such as a fine, liquidation, limitation of rights and the confiscation of property. All Member States (except BG, EE, FI, HU, and NL) have also included the measures set out in Article 7(1) of the Directive in their list of criminal sanctions for legal persons.

Article 7(1) provides a list of additional measures to penalise employers responsible for illegal employment which includes:

- (i) the loss of entitlement to some or all public benefits for up to five years;
- (ii) the exclusion from participation in a public contract for up to five years;
- (iii) the recovery of some or all public subsidies granted to the employer in the 12 months preceding the detection of illegal employment; and
- (iv) the temporary or permanent closure of establishments that have been used to commit the infringement.

However, these measures, which can have a strong deterrent effect, have not been fully transposed by all Member States²⁴. In addition, only AT, CY and SK have taken up the option in Article 12(2) whereby Member States may publish a list of employers that have committed the criminal offences referred to in Article 9.

I.2- The liability of the entire chain of employers (Articles 2(c), 8, 9(2) and 11)

To guarantee the effectiveness of the prohibition of illegal employment, all Member States use the wide definition of employment foreseen in Article 2(c) which covers all activities that are or ought to be remunerated, undertaken for or under the direction and/or supervision of an employer, irrespective of the legal relationship

Moreover, Article 8 requires that the entire chain of employers be liable to pay the financial sanctions provided for under Article 5, as in some sectors, especially those affected by the phenomenon of illegal employment, subcontracting is widespread.

In accordance with Article 8(1)(a), Member States' legislation (except in EE and LT) envisages that, where the employer is a direct subcontractor, the contractor should be liable to pay, in addition to or in place of the employer, any financial sanction imposed under Article 5. In accordance with Article 8(2), the majority of Member States²⁵ also ensure that, where the employer is a subcontractor, the main contractor and any intermediate subcontractor may also be liable to pay fines where they knew that the employing subcontractor employed irregular migrants.

²⁴ BE, EL, BG, FI, LU, CZ, IT and EE.

²⁵ Except EE and LT.

To facilitate enforcement of these provisions and to provide legal certainty to the contractors, Article 8(3) requires that a contractor that has carried out due diligence obligations will not be liable under Article 8(1) and (2). However, many Member States²⁶ have not defined such due diligence in their national legislation, but they often refer to general provision of contract/civil law.

Finally, on the basis of Article 9(2), all Member States ensure that inciting, aiding and abetting the intentional employment of illegally staying migrants is also punishable as a criminal offence. In accordance with Article 11, they have also ensured the liability of legal persons for the criminal offences referred to in Article 9, when the offence has been committed for their benefit by any person with a leading position within the legal person, acting either individually or as part of an organ of the legal person or if there is lack of supervision²⁷.

As a result of the transposition of the Directive, all actors benefiting from illegal employment can be adequately penalised in the majority of the Member States. This is not only essential to effectively tackle this phenomenon, but is also critical to facilitate the exercise of the rights that the Directive grants to irregular migrants.

II- PROTECTIVE MEASURES IN FAVOUR OF ILLEGALLY EMPLOYED THIRD-COUNTRY NATIONALS

II.1- Back-payment of salaries and taxes (Articles 6(1) and 8)

Member States have correctly transposed Article 6(1)(a), which provides for irregular migrants' right to be remunerated for the work performed and Article 6(1)(b), which obliges the employer to pay all taxes and social security contributions that should have been paid, had the third-country national been legally employed.

To calculate the amounts due, Article 6(3) assumes that the employment relationship lasted at least three months, unless the employer or the employee can prove otherwise. All Member States except EE, ES and RO have introduced this assumption in their legislation and NL even provides for an assumption of six months.

In all Member States, employers are, in principle, obliged, in accordance with Article 6(1)(c), to pay any cost arising from sending back-payments to the country to which the third-country national has returned or has been returned.

In accordance with Article 8, Member States²⁸ have usually provided that, in addition to employers, direct contractors and any intermediate subcontractor may also be required to pay any outstanding remuneration and taxes.

²⁶ BG, CZ, DE, EE, EL, ES, HU, IT, LT, MT, PT, RO, SE, SI and SK.

²⁷ The transposition of the liability of legal persons (companies) where there was a lack of supervision or checks was found to be problematic only in LU.

²⁸ Except EE and LT.

II.2- Access to justice and facilitation of complaints (Articles 6(2) to (5) and 13)

To enforce these rules, access to justice and facilitation of complaints constitute the core of the Directive's protective measures designed to redress injustices suffered by irregular migrants. Yet it is this part of the Directive that could raise concerns because Member States' transposition efforts have often resulted in weak or non-existing mechanisms to facilitate the enforcement of the irregular migrants' rights.

Very few Member States²⁹ explicitly transposed the right of illegally employed migrants to make a claim against their employer for any outstanding remuneration, including in cases in which they have, or have been, returned³⁰. Most Member States merely refer to general provisions concerning the right to bring a case before civil or labour courts. A limited number of Member States³¹ have made use of the option in Article 6(2)§1(b) of establishing procedures to recover outstanding remuneration without the need for the third-country national to introduce a claim.

Article 13(1) requires Member States to put in place effective mechanisms through which irregular migrants may lodge complaints against their employers, including through third parties. Article 13(2) obliges Member States to ensure that third parties with a legitimate interest in ensuring compliance with the Directive may act on behalf of or in support of the third-country national in any administrative or civil proceedings to defend their rights. In several Member States, trade unions are entitled to lodge complaints on behalf of irregular migrants and to represent them in national proceedings³². More rarely, organisations of migrant workers³³ and public authorities³⁴ with powers of inspection have this role. LU, MT and NL have not yet designated such third parties in legislation.

Only four Member States³⁵ have put in place specific mechanisms so that irregular migrants can receive any payments owed, including after they have, or have been, returned (Article 6(4)). For instance, the French Office of Immigration and Integration can issue enforcement orders to receive the money due on behalf of illegally employed migrants, and then transfer the money to them. Other countries rely on general provisions relating to enforcement of judgments.

The Directive requires that irregular migrants be 'systematically and objectively' informed about their rights. A number of Member States³⁶ have not made provision for this in their legislation and other Member States³⁷ are relying on general administrative guidelines and on the rules relating to information for those who are subject to administrative proceedings. In practice, this can mean that Member States rely on information on particular websites which irregular migrants are unlikely to be aware of or may not have access to.

²⁹ BG, CY, EL and SI.

³⁰ CY, EL, PL and SE.

³¹ BE, FR, HU, MT and PL.

³² AT, CY, DE, EE, EL, FI, FR, HU, IT, LT, RO, SI and SK.

³³ CZ, FI, HU, LV, and SE.

³⁴ EL, ES, FI, IT and LT.

³⁵ BE, EL and FR.

³⁶ BG, ES, IT, LV, MT, NL, SI and SK.

³⁷ BE, FI, HU and RO.

Finally, only a limited number of Member States³⁸ have explicitly transposed Articles 6(5) and 13(4), which oblige them to grant permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals involved in criminal proceedings for the offences referred to under Article 9(1)(c) and (e), and to define the conditions under which the duration of this permit may be extended until the irregular migrant has received any back payment.

In general, the lack of specific mechanisms in many Member States to remedy the difficulties that irregular migrants may face in having access to justice and enforcing their rights may be counterproductive to the fight against illegal employment. Encouraging complaints against employers can play an important role in Member States' strategies to detect illegal employment.

III- DETECTION OF ILLEGAL EMPLOYMENT AND ENFORCEMENT OF ITS PROHIBITION

III.1- Preventive measures: obligation on the employers (Article 4)

To raise employers' awareness and facilitate inspections, all Member States transposed the preventive measures provided for in Article 4. Third-country nationals have to hold and present a valid residence permit or other authorisation to stay prior to beginning employment. Employers have to keep, for at least the duration of the employment, a copy or record of these documents in case of inspection, and they also have to notify the relevant authorities within a specific period when they start employing a third-country national.

In most Member States³⁹, this process has to be completed a few days before the start of employment or before the conclusion of the contract⁴⁰ and at the latest on the first day of work⁴¹. In others, this notification has to be lodged within a period of a few days⁴² to several weeks⁴³ after the start of employment. If they complete this process, employers are exempt from liability, unless they knew that the document presented was forged⁴⁴.

Member States made only limited use of the option to introduce a simplified notification procedure when the employer is a natural person and employment is for their private purposes (DE, IT, LU) and/or to relieve employers of their obligation to notify where they employ third-country nationals who hold long-term residence status (AT, CY and EE).

III.2- Inspections (Article 14)

³⁸ AT, DE, EL, ES, HU, IT, LU, SE, SI and SK.

³⁹ Except FI.

⁴⁰ BG, CY, ES, FR, LT, NL and RO.

⁴¹ BE, CZ, EL, IT, LV, MT and PT.

⁴² AT, EE, HU, LU, PL and SK.

⁴³ DE, SE and SI.

⁴⁴ Except BG and IT.

In accordance with Article 14, national laws require relevant national authorities to conduct inspections based on an assessment to identify sectors most at risk, so as to help enforce the prohibition on employing illegally staying third-country nationals.

Effective and adequate inspections are indispensable for tackling illegal employment and ensuring that irregular migrants can exercise their rights. Without proper inspections, any sanction may remain a theoretical threat.

However, delays in transmitting inspection reports to the Commission and issues with the quality of some reports give rise to concern. In 2012, only four Member States (DE, FR, LV and SK) reported on the inspections carried out in 2011. In 2013, only nine Member States (FI, FR, HU, LT, LV, PL, RO, SK and SI) submitted their reports on time. On 10 October 2013, the Commission therefore sent pre-infringement letters to the remaining 15 Member States to remind them of their obligation. All Member States have since communicated a report.

Overall there is scope to improve the reporting. The information reported is partly incomplete, based on different calculation methods and definitions and/or simply not in line with the Directive's reporting requirements. Consequently, the information from the results of the inspections is limited and it is difficult to give a comprehensive EU-wide overview of the inspections carried out and their results. To facilitate the reporting, already in 2010 the Commission had circulated a reporting template to Member States. This has recently been updated in order to ensure that Member States provide comparable data and information which should allow the Commission to assess the effective enforcement of the Directive.

Identifying the sectors most at risk is important so that inspections can be a useful instrument to combat illegal employment. While several Member States (CZ, EE, LT, MT and RO) do not make it clear whether and how sectors at greater risk have been identified, the reports from other Member States show that the sectors most affected by illegal employment are the same in most Member States: construction, agriculture and horticulture, housework/cleaning, catering and hospitality services.

Table 3 presents the information communicated by Member States on the inspections carried out in sectors at risk, complemented where necessary with official figures from Eurostat on the number of employers and employees. It shows that the number of inspections carried out in some Member States is unlikely to dissuade an employer from hiring irregular migrants. In BG, EE, PL, RO and SE, fewer than 1% of all employers were inspected in 2012, as compared with 16.98% in AT, 17.33% in IT and 28.93% in SI, for example⁴⁵. This suggests that there are big differences in enforcement efforts between Member States and may mean that employers who break the law will avoid detection or prosecution more likely in certain Member States than in others.

IV. CONCLUSION AND NEXT STEPS

Following transposition of Directive 2009/52/EC, all Member States prohibit the employment of irregular migrants and impose financial, administrative or criminal sanctions on their

⁴⁵ Some Member States provided information on inspections in risk sectors, while others provided information on inspections in all sectors; see table 3 for more information.

employers. However, the severity of the sanctions as determined by law varies considerably between Member States. This raises concerns whether sanctions can always be effective, proportionate or dissuasive and will therefore have to be further assessed.

Some Member States have yet to implement the protective elements of the Directive in a satisfactory manner. There remains room for improvement in all areas offering protection to irregular migrants, be it the right to make a claim against an employer, effective mechanisms for doing so or something as basic as providing systematic and objective information on their rights.

Some Member States are likely to need to make substantial efforts to improve not only their reporting on inspections, but also the inspections themselves and their prioritisation efforts through systematic identification of sectors at risk. On the basis of the data collected for 2012, it seems that much still needs to be done to ensure that an adequate and effective inspections system is in place. The lack of such a system calls into serious doubt the effective enforcement of the prohibition of illegal employment and the efforts of the Member States to reduce differences in enforcement of the Directive.

As Member States are obliged to report on inspections each year before 1 July, the Commission will continue to monitor closely the measures taken by Member States in this area and take action if necessary. In order to raise Member States' awareness of these and other potential problems identified in the transposition of the Directive, the Commission is engaged in bilateral exchanges with each Member State and will launch EU pilot procedures where necessary.

The Commission will provide support to Member States to ensure a satisfactory level of implementation of the Directive across the EU. As it has been doing on a continuous basis since the adoption of the Directive in 2009, the Commission will invite Member States to discuss the legal transposition and implementation of several key provisions of the Directive at upcoming meetings. If necessary, guidelines on the practical implementation of the Directive could also be drawn up including on the enforcement of the rights of migrants.

For the time being, the Commission is not proposing any amendments to the Directive. It will assess, over time, whether the transposing legislation proves sufficient to reduce illegal employment and constitutes an incentive to use legal immigration channels for the benefits of migrants, employers and Member States.

Table 1: Financial sanctions

MS	N/L person (1)	Amount of the financial sanctions			Article 5(3) ⁽²⁾	Comparison with the law in force before the transposition
		Minimum	Fixed	Maximum		
Penalty applied to every illegally employed irregular migrant						
AT	L/N	€1 000/ €4 000		€10 000/ €50 000	N	→
BE	L/N	€300		€3 000	N	No previous legislation
BG	N	BGN 750/1 500 (€383/ €767)		BGN 7 500/15 000 (€3 834 / €7 669)	N	No previous legislation
	L	BGN 3 000/6 000 (€1 534/ €3 068)		BGN 30 000/60 000 (€15 338/ €30 677)		
CY	L/N			CYP 500/ 2 000 (€854/ €3 417)	Y	→
EE	N			€1 200	N	→
	L			€3 200		
EL	L/N		€5 000/ €10 000		N	↑
ES	L/N	€10 001		€100 000	N	↑
FR	L/N	€6 980		€52 350	N	↑
HU	L/N		HUF 500 000 (€ 1 630)		Y	→
IT	N	€1 950		€15 600	N	↑
LT	L/N		LTL 3 000/10 000 (€869/ €2 896)	LTL 10 000/ 20 000 (€2 896/ €5 792)	N	→
LU	L/N		€2 500		N	No previous legislation
NL	N			€11 250	Y	↑
	L			€45 000		
RO	L/N	RON 3 000 (€662)		RON 4 000 (€883)	N	↑
SE	L/N			SEK 22 200/ 44 400 (€2 477 / €4 954)	N	→
SI	N	€2 000		€5 000	N	→
	L	€4 000		€12 000		

Number of irregular migrants taken into account in the determination of the fine						
CZ	N			CZK 5 000 000 (€182 305)	N	↑
	L	CZK 250 000 (€9 115)		CZK 10 000 000 (€364 606)		
DE	L/N			€500 000	N	→
FI	L/N	€1 000		€30 000	Y	no previous legislation
LV	N	€210		€500	N	no previous legislation
MT	L/N			€11 646,87	N	→
PL	L/N	PLN 3 000 (€720)			Y	→
PT	L/N	€2 000		€90 000	N	→
SK	L/N	€2 000		€200 000	N	→

*L/N = Legal person/Natural person

** Article 5(3) of Directive 2009/52/CE: "*Member States may provide for reduced financial sanctions where the employer is a natural person who employs an illegally staying third-country national for his or her private purposes and where no particularly exploitative working conditions are involved*"

(Exchange rates (04/04/2014) : 1BGN = €0.511281; 1CYP = €1.70860; 1CZK = €0.0364632; 1HUF= €0.00326012; 1 LTL = €0.289620; 1 PLN = €0.240083; 1ROL = €0.224388; 1 SEK = €0.111573)

Table 2: Criminal sanctions

	Sanctions (duration of imprisonment and fine where applicable)					Comparison with the law in force before the transposition
	9(1)a	9(1)b	9(1)c	9(1)d	9(1)e	
MS						
AT	imprisonment of up to 6 months	imprisonment of up to 6 months or fine	imprisonment of up to 2 years	imprisonment of up to 2 years	imprisonment of up to 6 months or fine	↓
BE		imprisonment of 6 months to 3 years and/or fine of €600 to €6 000				No previous legislation
BG	Imprisonment of 1 to 5 years and fine of BGN 5 000 (€2 554) to BGN 50 000 (€25 564)	Imprisonment of up to 4 years and fine of BGN 2 000 (€1 022) to BGN 20 000 (€10 225)	Imprisonment of 1 to 5 years and fine of BGN 5 000 (€2 554) to BGN 50 000 (€25 564)	Imprisonment of up to 4 years and fine of BGN 2 000 (€1 022) to BGN 20 000 (€10 225)	Imprisonment of 1 to 5 years and fine of BGN 5 000 (€2 554) to BGN 50 000 (€25 564)	No previous legislation
CY		imprisonment of up to 5 years and/or a fine not exceeding €20 000				No previous legislation
CZ		imprisonment of six months to five years		-	imprisonment of six months to five years	→
DE	imprisonment of up to 1 year or a fine	imprisonment of up to 1 year or a fine	imprisonment of up to 3 years or a fine (serious cases: 6 months to 5 years)	imprisonment of up to 3 years or a fine	imprisonment of up to 1 year or a fine	↑
EE		fine of 30 to 500 daily rates (€96 to €1 600) or imprisonment of up to 3 years				No previous legislation
EL		imprisonment of at least 5 months		imprisonment of at least 6 months	imprisonment of at least 6 months	↑

ES	-	imprisonment of 6 months to 6 years and fine of 6 months to 12 months	imprisonment of 2 to 5 years and fine of 6 to 12 months	-	-	→	
FI		fine or imprisonment of up to 1 year					→
FR		imprisonment of up to 5 years and fine of up to €15 000					→
HU	imprisonment of up to 2 years	imprisonment of up to 2 years	imprisonment of 1 to 5 years	imprisonment of 1 to 5 years	imprisonment of 1 to 5 years	No previous legislation	
MS	Sanctions (duration of imprisonment and fine where applicable)						
	9(1)a	9(1)b	9(1)c	9(1)d	9(1)e	Comparison with the law in force before the transposition	
IT	imprisonment of 6 months to 3 years and fine of €5 000						
	Increase of one third to an half of the sanction				Increase of one third to an half of the sanction	↑	
LT	fine or imprisonment of up to 2 years						
LU	imprisonment of 8 days to 1 year and /or fine of €2 501 to €20 000						
LV	Imprisonment of up to 3 months, or fine of up to 100 min. monthly salaries (€32 000)	Imprisonment of up to 3 months, or community service, or fine of up to 100 min. monthly salaries (€32 000)			Imprisonment of up to 3 months or fine of up to 100 min. monthly salaries (€32 000)	No previous legislation	
MT	Fine of up to 11,646.87 and/or imprisonment of up to 2 years.						
NL	imprisonment of up to 3 years or fine of up to €78 000	imprisonment of up to 1 year or fine of up to €78 000					→

PL	imprisonment of up to 12 months and fine	imprisonment of up to 3 years		imprisonment of up to 12 months and fine	No previous legislation
PT	imprisonment of up to 1 year or fine up to 240 days (max. € 120 000)	imprisonment of up to 2 years or fine up to 480 days (max. € 240 000)	imprisonment of 1 to 5 years	imprisonment of up to 2 years or fine up to 480 days (max. € 240 000)	No previous legislation
RO	-	imprisonment of 1 to 2 years or fine	-	imprisonment of 1 and 2 years or fine	No previous legislation
SE	a fine or imprisonment of up to 1 year				
SI	imprisonment of up to 2 years	imprisonment of up to 3 years			No previous legislation
SK	imprisonment of up to 2 years	imprisonment of 6 months to 3 years			No previous legislation

Table 3: Inspections carried out in 2012

MS	DIRECTIVE 2009/52/EC					Observations
	Inspections		Results			
	Absolute number	As percentage of the employers in all sectors (in %)	Number of inspections which detected ISTCN*	Number of ISTCN detected	Share of detected ISTCN in total number of employees in all sectors (in %)	
AT	32 765	16.98	2 948	4 490	0.11	All sectors covered.
BE	14 127	7.86	1 538	1 826	0.41	All sectors covered.
BG	119	0.12	1	1	0.00003	All sectors covered.
CY	5 736	38.5	/	1 340	0.35	Risk sectors covered.
CZ	27 914	17.45	27	46	0.00095	All sectors covered.
DE	122 577	6,91	/	/	/	Risk sectors covered.
EE	79	0.36	0	0	0	Risk sectors covered.
EL	8 704	3.35	30	49	0.00138	Risk sectors covered; Data for 01/08/2012 - 31/12/2012.
ES	53 671	6.12	5 386	5 386	0.03145	All sectors covered.
FI	1 800	1.9	/	/	/	All sectors covered.
FR	1 331	/	/	621	/	Risk sectors covered. Data related to migrants working without work permit, no information on their residence status.
HU	19 080	9.72	/	/	/	All sectors covered.
IT	243 847	17.33	/	11 499	0.05115	All sectors covered.
LT	1 453	5.38	/	0	0	All sectors covered. Data for the period from 01/08/2012 - 31/12/2012.
LV	2 648	/	/	1	0.00012	All sectors covered. Data for 01/01/2012 -01/05/2013.
LU	3 097	43.62	/	/	/	All sectors covered.
MT	3 831	53.07	70	88	0.05167	Data related to migrants working without work permit. No information on their residence status.
NL	11 181	/	776	1 123	/	All sectors covered. Eurostat data for the total number of employers and employees is not available.
PL	2 776	0.44	61	133	0.00306	All sectors covered.
PT	2 305	1.09	/	10 828	0.25	Risk sectors covered.
RO	916	0.82	/	22	0.00025	All sectors covered.
SE	414	0.25	/	/	/	All sectors covered.
SI	9 027	28.93	/	8	0.00088	Risk sectors covered.
SK	39 801	57.77	/	22	0.00095	All sectors covered. Part of the data does not specify the residence status.

ISTCN: Illegally-staying third-country national