

8.1 The French approach to combating illegal employment

France adopted employer sanctions in the 1970s and has since developed a comprehensive approach to deterring illegal employment. Should other states, such as the United States, emulate the French approach?

Legal access to the French labour market is highly restricted to non-EU foreign-workers. Three types of entry visas are available to foreigners desiring to work in France: seasonal work visas, temporary authorizations initially granted for a period of a year maximum, and permanent visas. Seasonal workers are recruited mainly from Tunisia and Morocco through bilateral agreements. Such workers are employed for a maximal duration of 6 months over a period of 12 months with possibility of renewal (exceptions are made for certain sectors of agricultural production in which case visas can last up to 8 months, and for Moroccans and Tunisians, who must come for a 4-month period minimum).

In 2004, France received 15,743 seasonal workers brought in by the migration agency Agence Nationale de l'Accueil des Etrangers et des Migrations (known by the French acronym *ANAEM*), 9,950 temporary workers, and 6,740 permanent workers. Testifying to the exceptional practice of hiring foreign workers from abroad, prospective employers must follow a cumbersome procedure involving making an official demand to the public job placement agency *ANPE* to make sure that no qualified French national or authorized foreigner already present on French soil can fill the position. This requirement is designed to ensure priority to French citizens in employment and must be understood in the context of a lagging French economy and high unemployment rates, close to 10 per cent. The employer's request is then processed by the district (*département*) authorities responsible for the management of hiring and employment who decide whether the petition for foreign labour is warranted or not. The request is then transmitted to the centralized services of the *ANAEM*, which carries out medical checks and supervises the arrival (and departure) of the workers. Seasonal workers are required to sign a document upon arrival, according to which they commit themselves to return home once their work visa expires and to come to an *ANAEM* office in Casablanca or Tunis to attest to their return.

It should be noted however that a simplified and expedited procedure targeting highly-skilled professionals and their family was introduced in 2004 to make the country more attractive to such workers (hence reflecting the more selective approach to immigration recently initiated by France). Moreover, all workers admitted on permanent visas are, since 2004, required upon entry to sign a Welcome and Integration Contract, which defines the migrant and the state's mutual obligations (OECD, 2006). Foreigners already present on French soil can only work if in possession of a valid work permit. Bearing witness to the emphasis on employer liability in the French case, responsibility for documentation verification and record keeping falls upon the employer, while businesses are required since 1992 to file beforehand a declaration of intention to hire (*Déclaration Préalable à l'Embauche*) to the social security services.

In France, deterring the illegal employment of foreign workers is part of a comprehensive campaign against illegal employment, fraud, and abusive employment practices such as undeclared work or undeclared working hours; social security compensations unlawfully received; labour subcontracting and lending; illicit holding of multiple jobs and so on. Such infractions are viewed as being connected with societal ills such as exploitation and abuse of often vulnerable individuals, or organized smuggling and human trafficking. In addition to the human cost and to their effects upon national labour market and social cohesion, these violations have been estimated as reaching an average of €5 billion in yearly losses in revenues for the state.

France's regulatory taskforce designed to combat the illegal employment of undocumented foreigners reflects this all-encompassing approach. This apparatus was reorganized by the decree of March 11, 1997 to ensure better coordination and integration of the various public, social, and private actors involved, as well as of decision-making and operational structures. The new interagency structure was to focus on the dual mission of fraud prevention and punishment. At the governmental level, the *National Commission to Combat Illegal Employment (CNLTI)* determines the strategic orientation that will guide the various agencies responsible to investigate and execute worksite inspections, and fine employers in contravention of labour laws. This comprises, among others, labour inspectors, tax services, border authorities, social security services, and law enforcement personnel (police services and

gendarmérie). As a representative body headed by the Minister for Employment, the Commission reflects a wide range of interests inclusive of businesses and labour-unions.

When shaping policy-orientation, *CNLTI* takes into account the recommendations and statistics provided by the Interagency Delegation to Combat Illegal Employment (*DILTI*) and the various departmental commissions. As a cornerstone of the restructuring of the late 1990s, *DILTI* performs a variety of missions. The delegation ensures liaison and coordination between the various agencies and stakeholders involved at the national and local level; monitors and provides statistical analyses on the evolution of illegal employment (because of its expertise, the delegation plays a consultative role on governmental policies touching upon this issue); supplies legal advice to magistrates and other competent enforcement personnel leading investigations or worksite inspections; implements preventive activities; and develops cooperation initiatives and agreements at the international level. *DILTI* is assisted by a secretariat in its coordinating task. At the departmental level, commissions presided by prefects, the chief national government official in a district, are comprised of local stakeholders and public officials. These boards serve to adjust the national guidelines to local needs and particularities. At the same echelon, operational committees placed under the authority of the Chief-Prosecutor bring together the competent authorities in charge of prohibiting the circumvention of employment laws. In each unit, permanent secretaries ensure follow-up on planned inspections, and monitor and record all operations. In 2005, this integrated structure was supplemented by a Central Office to Combat Illegal Employment placed under the responsibility of the Minister of Defence and was charged with coordinating the action of the various law-enforcement branches involved in the most important matters pertaining to illegal employment.

Sanctions for illegal employment of aliens have been increased and reinforced many times. As of June 2007, employers risked criminal penalties up to €15,000 and a 5-year jail sentence as well as potential litigation in civil court for a maximum of €100,000. Other potential sanctions included the official publication of the sentence, the confiscation of any goods involved, a ban on professional activity, and exclusion from public contracts for 5 years. A 2005 law envisioned the suppression of tax exoneration and subventions for employers in infraction of the labour code. French nationals can also be stripped of their civic rights, and foreign employers expelled and

banned from entry for 5 years. Other provisions specify that naturalized employers can be stripped off of their French citizenship. Violators additionally face administrative charges including a special contribution to *ANAEM* (€3,110 as of July 1, 2005) and a flat fee covering deportation costs. The November 2003 Law related to the control of immigration flows reinforced criminal penalties up to €750,000 and a 10-year jail sentence and prescribed civil penalties for up to €3,750,000 for organized smugglers, or when conditions of entry and employment expose migrants to danger or degrading conditions incompatible with human dignity. Aliens convicted of employment without appropriate documents also face legal action and potential deportation. French law nevertheless primarily views such migrants as victims and extends certain rights to them. These include the possibility to sue employers for abusive working conditions as well as for unpaid wages following conventions entitling the alien to receive the minimum wage for any past work performed; and the possibility to collect unemployment compensation equivalent to a month's salary for breach of contract. In like manner, injured undocumented workers see their medical expenses covered by existing social welfare conventions. Social security services generally later sue the defaulting employer for reimbursement.

Due to the perception of widespread illegal alien employment in the construction and agricultural sectors, combating such employment became a priority in the 2004-5 and 2006-7 governmental plans to deter and punish illegal employment. Concrete assessment of overall enforcement against illegal employment includes statistics kept on fines for illegal employment and worksite-enforcement activities. DILTI reported a large increase in unpaid taxes recovered since 2003 reaching €17.6 million in 2005. This total doubled in 2006, with €40 million collected. In 2005, 59,256 businesses underwent worksite inspection, nearly half in the construction sector. In 2006, 67,135 sites were inspected leading to 6,977 fines. The intensification of enforcement activities revealed a growing proportion of aliens among those cited for illegal employment. In 2006, aliens comprised 14.8 percent of all detected illegal workers, a figure similar to those in the early 1990s.

Source: Mainly based on annual reports by the Interagency Delegation to Combat Illegal Employment (Délégation interministérielle à la lutte contre le travail illegal).

References

OECD (2006) *International Migration Outlook: Annual Report 2006* (Paris: Organisation for Economic Co-operation and Development).