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**MEASURES UNDERTAKEN TO PREVENT AND COMBAT THE
EMPLOYMENT OF FOREIGNERS IN AN IRREGULAR SITUATION IN
CERTAIN OECD MEMBER COUNTRIES**

**SEMINAR ON PREVENTING AND COMBATING THE EMPLOYMENT OF
FOREIGNERS IN AN IRREGULAR SITUATION**
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This document has been prepared by Sophie Robin and Lucile Barros (OECD Consultants). The views expressed are those of the authors and do not commit either the Organisation or the national authorities concerned.

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SUMMARY

This paper deals with preventive measures and sanctions relating to the illegal employment of foreigners. It is based on replies to a questionnaire sent out to OECD Member countries. Particular regulatory approaches and attitudes to the employment of foreigners mean that the replies were somewhat disparate, and the analysis reflects that. The first part considers measures to curb the employment of undocumented foreigners. It looks first at the statutory categories of sanctions which can be imposed on unauthorised workers and their employers. Penalties for abetting illegal employment, and the administrative structures set in place to curb illegal employment are examined. A number of agencies are involved and the specific powers available to them encourage joint action, which seems more effective. Preventive measures are relatively modest, set against the range of penalties in most countries' legislation. They are largely confined to information drives, aimed particularly at employers, to border controls and to financial incentives to employ documented workers.

The second part deals with limitations and changes in measures to curb the employment of undocumented foreigners. It points to difficulties which enforcement services encounter in field operations. In a number of Member countries enforcement agencies lack information for effective operations, due to the fact that undocumented foreign employment is, by definition, concealed. They also lack data for assessing the outcome of inspection and reporting procedures in some cases. Overall, curbs are being stepped up and in most of the countries under review measures to combat the employment of undocumented foreigners are becoming part of a broader policy to counter illegal employment. A brief review is made of international co-operation to curb the employment of undocumented foreigners; measures here are not very extensive, and are usually based on bilateral agreements.

MEASURES UNDERTAKEN TO PREVENT AND COMBAT THE EMPLOYMENT OF FOREIGNERS IN AN IRREGULAR SITUATION IN CERTAIN OECD COUNTRIES

Analysis of the responses from certain Member countries to the questionnaire prepared by the OECD Secretariat

Introduction

1. In June 1996 a questionnaire dealing with foreigners' access to employment, sanctions against their illegal employment and enforcement results was submitted to the OECD Working Party on Migration. It was then sent out to Member countries to obtain material for comparative analysis. This paper focuses on preventive measures and sanctions relating to the illegal employment of foreigners. It is based on country replies, meaning that only selected legislative frameworks are considered. Particular regulatory approaches and attitudes to the employment of foreigners further mean that the replies were somewhat disparate, and our analysis reflects that. Last, the difficulties of fully presenting and explaining the legal, political and economic systems within which illegal employment is being tackled, despite the wealth of information supplied, led us to opt for the simplest and clearest approach possible. We accordingly first analyse the ways in which efforts to curb the illegal employment of foreigners (types of sanctions, administrative organisation, preventive measures) are structured, and then highlight the practical difficulties encountered and changes in the methods being employed. The countries which we discuss are invited to supply any further information that they may think necessary to expand and update the paper and to correct any misinterpretation of their regulatory framework.

I. Framework for curbing the illegal employment of foreigners

2. The approach is two-pronged: to curb illegal immigration, and to curb non-compliance with labour law. These two facets shape the regulatory framework, the sanctions imposed and the role of enforcement bodies. They are present together in most legal systems, offering a variety of approaches to illegal employment.

1. *Categories of sanctions*

a) Sanctions on persons working without due authorisation

- Expulsion

3. Foreigners who work without due authorisation face sanctions in most OECD countries. This policy to curb illegal employment, which is in fact focused largely on illegal immigration, includes expulsion measures applicable to foreigners who breach immigration rules because they lack authorisation

to work or reside in the country. The regulatory framework in a few countries provides for further sanctions, in many cases criminal sanctions, including imprisonment or fines for persons in illegal employment.

4. Australia is one country whose legislation provides for expulsion. Foreigners who work in Australia when their visa does not allow this, or otherwise contrary to the terms of the visa, may have their visas cancelled; they will then be illegal immigrants and may be detained and expelled. They may also be barred from re-entering Australia for a period of up to three years. Obtaining a subsequent visa first requires repayment of detention and expulsion costs.

5. Regulations in Norway similarly provide that any person who breaches immigration law, including foreigners who illegally take employment, may be expelled or barred. In Japan a foreign worker who does not comply with the procedure for obtaining a work permit may also be expelled. The same applies in the United States. Foreigners working without permits in Turkey are again liable to expulsion. In Austria, the immigration legislation provides for the deportation of illegal foreign workers found to be residing illegally in the country or whose residence has become illegal as a result of their illegal employment. In the event of repeated detection as an illegally employed foreigner the person may be banned from staying in the country for up to five years.

6. In the United Kingdom, deportation is the most common sanction for foreigners in illegal employment. Dutch and Spanish regulations do not include any sanction for illegal workers, but foreigners without residence permits may be expelled. In France, foreigners without residence permits face up to one year in prison and fines of up to FF 25 000. These penalties may be combined with bans from the country for up to three years, in which case the persons concerned are automatically escorted to the frontier.

- Penalties for foreigners working without due authorisation

7. Prominent among those countries which impose penalties on illegal workers is the United Kingdom. Under the 1971 Immigration Act, it is an offence knowingly to fail to comply with any condition of residence, such as a ban on employment. The offence carries a fine of up to £5 000 or imprisonment for up to six months.

8. Other countries take similar approaches. In Finland, foreigners working without a permit are liable to fines. In Norway any person who breaches immigration law is liable to a fine and/or up to six months in prison. In Japan a foreign worker who fails to comply with the work permit procedure faces criminal sanctions (fine of up to ¥ 300 000 and/or imprisonment for up to three years). Greece provides for fines and imprisonment for any foreigner working without a permit, and illegal residents are required to pay an administrative charge, proportionate to the length of unauthorised residence, on leaving. Foreigners who work without a permit in Turkey are liable to fines.

9. France considers the employer to be the leading party in illegal employment, but illegal foreign workers face administrative fines or penalties, and criminal sanctions when fraud has been committed to secure a work permit. The same applies in Germany, where a foreigner working without a permit is liable to an administrative fine of up to DM 10 000.

b) Sanctions for employers of illegal foreign labour

10. The principle of penalties for employers is found in most of the regulatory systems considered. Sometimes designed as a counterpart to penalties for workers, those for employers reflect the concern to place liability on those who allow or promote illegal employment, taking advantage of the insecure circumstances of foreign workers. The gains from illegal employment, the exploitation of foreign workers and the resulting competitive distortions warrant penalties for employers.

- Penalties for the direct employer

11. In the Netherlands the employer alone is liable for illegal employment, facing criminal sanctions of up to six months in prison and/or a fine of f. 25 000 under the Employment of Foreigners Act. Sentencing guidelines recommend a fine of f. 2 000 per illegal worker, in the case of a first offence. For subsequent offences, and when terms and conditions of work are poor and tax and/or social charges have not been paid, the judge is recommended to order a month's imprisonment and closure of the firm. Since 1994 an employer is also liable to criminal sanctions under the Penal Code for employing a foreign worker who is illegally resident in the Netherlands. The penalties here are imprisonment for up to a year and a fine of up to f. 100 000. In addition, habitually employing illegal workers or making illegal employment a source of income is punishable by up to three years in prison and a fine of up to f. 100 000. Committing any of these offences in the course of one's occupation may further mean disbarment from that occupation. In Austria, the law on the employment of foreigners is based on the principal that only the employer of the illegal worker may be punished. If convicted, the employer and/or the personnel responsible for hiring the illegal worker must pay a fine. This varies according to the number of foreigners illegally employed and whether the person had previously been convicted. Other sanctions which may be imposed against employers include withdrawal of their trading license (in the case of repeated offences), the refusal of further permits for foreign workers, exclusion from public contracts and the payment of surcharges for unpaid taxes and social security contributions as well as unpaid wages to the foreign worker (this latter in the form of a compensatory payment).

12. In Spain employing foreigners without work permits is a very serious offence, and the firm faces an administrative fine of between Ptas 500 000 and 15 000 000, for each illegal worker. In France the penalties for illegal employment bear largely on the employer, either a physical person or, since 1993, a corporate body. Any person who hires or retains someone who lacks due authorisation to work faces a penalty of up to three years' imprisonment and/or a fine of FF 30 000, for each illegal foreign worker. The penalties are doubled for subsequent offences. Further penalties are also available: disbarment from carrying on business, ineligibility for public procurement, confiscation of items involved in the offence, publication of the ruling, closure of premises or businesses where the offence took place. In addition to criminal sanctions, administrative penalties apply to the employment of foreigners without work permits, in the form of a special penalty in respect of each illegal employee, independent of any criminal proceedings or penalties. The fixed penalty, of around FF 19 000 in 1999, is doubled for subsequent offences.

13. In Belgium any person who employs a foreigner without permission to do so is liable to a week to a year's imprisonment and a fine of between BF 170 000 and 600 000, in respect of each worker. When the worker has no authorisation to stay in Belgium for more than three months, the penalties increase (a month to a year's imprisonment, fine of between BF 600 000 and 3 000 000). The court may also order closure of part or all of the business, permanently or temporarily. Items involved in the offence or which served to commit it may be confiscated. Via further proceedings in the commercial courts, an employer convicted of employing foreign workers without a residence permit may be obliged to cease one or more

of his activities. Substantial administrative fines may also be imposed on employers, when criminal proceedings are not taken. An employer is further bound the cost of detaining and repatriating any worker who is illegally resident.

14. German regulations on illegal employment of foreigners include sanctions for foreign workers without work permits, but the focus is on employers. They first face a regulatory fine of up to DM 500 000, which may be increased if need be to cancel out the gains from illegal employment. An employer who supplies false information on wages or conditions of employment in order to secure a work permit is also liable to a regulatory fine of up to DM 50 000. Employment of foreigners without work permits may also give rise to criminal sanctions (fine or up to a year in prison), when over 5 foreign workers are involved, when they are employed for a period of 30 days or more, or when the offence is deliberate and repeated. In particularly serious cases, imprisonment of up to three years may be ordered. In order to prevent the exploitation of unauthorised workers, employers may also be fined and imprisoned for up to three years when terms of employment differ substantially from those for German workers. In serious cases, imprisonment of between six months and five years may be ordered, to protect the labour market in the public interest. Whether the offence is serious or not, the employer is further bound to pay the cost of returning the foreigner to his home country. Employers may be ineligible to bid for public procurement contracts if sentenced to more than three months' imprisonment or a fine of DM 5 000 or more. Social charges and taxes relating to illegal employment must also be paid.

15. In Finland an employer or employer's representative who recruits or retains a foreign worker without a work permit is liable to a fine or up to one year's imprisonment under the Aliens Act. Fines can be imposed on people who supply the authorities with false information about wages, terms of employment and the functions performed by foreign workers. If the offence is repeated, the employment services can refuse a work permit to a person supplying false information, even prior to a court ruling. In Norway anybody who employs a foreigner without a work permit or procures employment for him, deliberately or through gross negligence, is liable to a fine or up to two years in prison. The authority concerned may decide on an administrative sanction (fine or confiscation) rather than bring proceedings in court.

16. Greece imposes prison terms or fines (Dr 30 000) on anybody employing a foreigner without a work permit. The employer must pay an administrative fine within 15 days of the offence being reported, at the order of the labour inspectorate or the local police, depending on which authority determines the offence.

17. In Japan a person employing a foreign worker who has not complied with the procedures for obtaining a work permit may incur a criminal sanction (a fine of up to ¥ 2 000 000 and/or up to three years' imprisonment). A fine may also be imposed on the firm where the illegal employment occurred. The United States has since 1986 imposed penalties on people who knowingly employ an ineligible foreigner. For each worker, the employer has to complete an employment eligibility verification form setting out the worker's identity and eligibility for employment, under penalty of an administrative fine or, in more serious cases, criminal proceedings. Penalties also apply to employers who require workers to provide financial safeguards against fines or proceedings. Intentional use or attempted use of forged papers regarding a foreign worker's status is also an offence.

18. In the United Kingdom employers were liable to prosecution, until recently, only for assisting entry or residence by an illegal worker. Direct penalties were introduced in the Asylum and Immigration Act, which came into force on 27 January 1997, making it a criminal offence to employ any person subject to immigration controls who is not authorised to reside or work in the United Kingdom.

Employers are liable to fines of up to £5 000. Unlike in other regulatory systems, the penalty is less than can be imposed on workers.

- Sanctions for indirect employment

19. In some countries indirect employment (i.e. via an intermediary) of a foreign worker without a work permit is a criminal offence. This means that the actual offender can be prosecuted, in such cases as staff swapping or lending. French regulations are one example of this. Since 1997 French law provides that the final recipient of a service, the customer or main contractor, may be held liable for the financial consequences of illegal employment by suppliers or sub-contractors. He can thus be required to pay the payroll costs, including social charges and tax, left unpaid by the direct employer, under the rule of “financial solidarity” between co-contractors. The customer or main contractor may escape liability, however, if he can prove that he monitored the co-contractor’s compliance with rules on the employment of foreigners.

20. In Austria, the sanctions which may be imposed on employers may be extended to apply to the managing contractor of a project, in so far as he can reasonably be expected to have knowledge of the legal status of his subcontractors’ employees. In the Netherlands the main contractor whose co-contractor employs people without work permits may be held liable in those sectors where illegal employment is common, such as the construction industry and the garment trade. In Germany indirect employment, deliberate or through negligence, of foreigners without work permits can incur substantial regulatory fines, which can be imposed on individuals or on corporate bodies or groups of individuals. In Finland a firm whose foreign sub-contractor employs foreigners without work permits faces the same penalties as an actual employer. In the United States any person who knowingly makes use of an undocumented foreigner under a sub-contracting agreement is regarded as the employer and hence faces the same penalties.

- Civil liability of employers

21. In some systems the criminal or administrative sanctions on an employer are combined with civil sanctions to protect the worker and ensure that illegal employment does not generate improper benefit for the employer. In France an illegally employed foreigner is on the same footing as a properly hired worker with regard to the employer’s obligations under labour regulations. For the period of illegal employment, for instance, he is entitled to payment of proper wages and related benefits, together with a month’s wages for termination of employment. In order to assist civil sanctions against employers, employees’ organisations can conduct proceedings arising out of the illegal employment of a foreigner, without having to show that he authorised them to do so.

22. In the Netherlands labour regulations apply to illegally employed foreigners, and they can thus seek enforcement of their rights. In addition, since September 1995 an illegally employed worker is deemed to have been employed for six months, and can bring a civil action for payment of sums due for that period; the onus is on the employer to prove that employment was for a shorter period and/or that wages were actually paid. There is also an administrative sanction in that authorisation to hire may be withdrawn if the information on which it was based is not correct, which would seem to cover the employer’s non-compliance with labour legislation.

23. In Finland the fact that employment is illegal is no bar to enforcement of regulations covering remuneration and other terms of employment. The same is true in the United States. Employment

services ensure that illegal workers who have received insufficient wages are paid the balance, and not just the minimum wage, to which they are entitled, even when they have returned home. In Spain an employment contract is considered null if the employee has no work permit. Under labour regulations, however, the corresponding wages can in some cases be claimed, to ensure that an employer does not improperly benefit from the work performed by an illegal foreigner.

- Sanctions for assisting illegal employment

24. In a number of countries proceedings can be taken not simply against the employer of an undocumented foreigner but, more broadly, against any person who assists or abets illegal employment. Until recently the United Kingdom imposed no special penalties on employers, but had a general offence of assisting or abetting entry or residence by an illegal worker. In Belgium any person who brings in a foreign worker without a proper work permit, for purposes of employment, faces the same penalties as an employer who, without authorisation, employs a worker without a residence permit. These penalties extend to any person who receives or seeks compensation for bringing foreign workers into Belgium, for finding or procuring employment for them or for carrying out the formalities required to obtain permission to work, or for behaving as an intermediary in acts calculated to deceive the worker, the employer or the authorities. Such persons are bound, like the employer and possibility jointly with him, to pay for the upkeep and repatriation of any illegally resident worker.

25. In Turkey the rules are similar to those pertaining in the United Kingdom before the recent reforms. There is no specific penalty for employers: any person who assists the illegal employment of a foreigner is liable to one year in prison and heavy fines. People who bring in foreign workers are liable to imprisonment for up to three years and heavy fines. It is an offence to promise employment, a visa or a residence permit, punishable by two to five years' imprisonment and fines of up to twice the gains from the offence. Carriers who bring in illegal workers may have their licences cancelled.

26. In Spain, abetting or assisting illegal employment of foreigners is a very serious offence, punishable by an administrative fine of between Ptas 500 000 and Ptas 15 000 000. In Norway, people who abet the employment of foreigners without work permits face the same penalties as the employers of such foreigners. Japan has penalties for people who assist illegal employment, keep foreigners under their control in order to have them work illegally, or act as professional middlemen. Here the police concentrate on offences related to illegal employment, such as prostitution, which involve organised gangs, middlemen and employers. Middlemen face up to three years in prison and fines of up to ¥2 million. A middleman's actions abroad are also punishable in Japan. In the case of illegal provision or dispatching of workers, the penalties can be combined with sanctions under the Employment Security and Worker Dispatching Laws.

27. In Germany too it is an offence for firms without a recruitment licence to supply foreign workers without work permits, punishable by fines or imprisonment for up to three years. In more serious cases, prison terms of between six months and five years can be imposed. The illegal placement of foreign workers and the unauthorised recruitment of workers abroad are offences punishable by up to three years in prison or a fine. Again, in more serious cases the penalties are higher. In addition, the workers concerned may not subsequently be issued with work permits.

28. Alongside those which prohibit assisting or abetting illegal employment, some systems prohibit assisting illegal entry and residence. In Finland, for instance, the Aliens Act prohibits abetting illegal entry. Any person who, to obtain financial benefit for themselves or others, brings or seeks to bring an

undocumented foreigner into Finland, arranges or provides transport, or issues a forged document for entry, is liable to a fine or up two years' imprisonment.

29. In France penalties for "abetting illegal immigration" can be imposed on any person who assists the entry, movement or residence of undocumented foreigners. Middlemen who take money to supply employers with labour that they have illegally brought in face the same penalties, a maximum of five years' imprisonment and fines of up to FF 200 000 for individuals and up to FF 1 000 000 for corporate bodies. Additional penalties can also apply: disbarment from an occupation for up to five years, a ten-year ban on entry if the person convicted is a foreigner, or ineligibility for public procurement contracts in the case of corporate bodies. The Act of 11 May 1998, dealing with entry, residence and asylum, introduced an aggravating circumstance, for offences committed by organised gangs. The maximum penalties in such cases were raised to ten years in prison and fines of FF 5 000 000.

30. Similarly, people who bring unauthorised foreigners into Greece, transport them within the country, assist their movements or provide them with housing face prison terms and fines. The involvement of carriers is an aggravating circumstance, and courts can order the confiscation of vehicles. People convicted of these offences can also be required to pay the upkeep and repatriation costs of the foreigners involved.

2. Administrative framework for curbing illegal employment

31. Most countries assign a central role to the police and the immigration service. Agencies enforcing labour and employment regulations also have prominent powers in some countries. In many cases a number of departments are involved in curbing illegal employment, and the separate powers that they hold encourage joint action which appears more effective.

- Police and immigration service only

32. The police and the immigration service are the sole agencies concerned in some countries. This is so in Norway where the immigration service, involving the police, the immigration department and the Justice Ministry, checks work permits for foreigners. Similarly, in the United Kingdom the police and the immigration service enforce asylum and immigration regulations. Since employers have become liable, the police and the immigration authorities have been considering joint proceedings against offending employers. In Turkey the police (General Directorate of Security in the Interior Ministry) investigate illegal employment and start legal proceedings. In addition, the police or the gendarmerie must be notified within 15 days of a foreigner being hired; failure to do so is punishable by withdrawal of the work permit, fines and expulsion. When the labour inspectorate, which monitors compliance with regulations on working conditions, finds evidence of illegal employment, this must be reported to the Interior Ministry. In such cases, when the foreigners concerned are eligible for work permits the employment authorities (the Public Employment Institution) set the permit procedure in motion.

33. In Australia the Department of Immigration and Multicultural Affairs enforces immigration rules. It operates via inspection services in all the States and territories. The police, customs and protection services also have powers to enforce immigration rules. In Japan the regional immigration offices have immigration control officers who are responsible for expulsion procedures. For investigations authorised by a magistrate, they can make inspections, investigations and seizures. They may place a foreigner in detention, prior to expulsion, with a written order from the supervising

immigration inspector. The police may also arrest undocumented foreign workers, and middlemen, and conduct investigations.

- Police and immigration services together with labour and employment services

34. In some countries power does not lie solely with the police and the immigration service. Employment and labour services have a role to play – either complementary, identical or predominant – in curbing the employment of undocumented foreigners. In the United States the Immigration and Naturalisation Service in the Department of Justice has inspectors who visit firms to check compliance with immigration rules. The inspectors can impose penalties, and in particular fines, for non-compliance. Some jurisdictions have recently empowered local police officers to assist the federal authorities in immigration matters. Only a very small number of officers are involved, however. The Employment Standards Administration (ESA) in the Department of Labor monitors compliance with rules on wages and working hours, and at the same time inspects registers of papers authorising the employment of foreigners. ESA inspectors have no powers to impose penalties.

35. In the Netherlands the police and the labour inspectorate are responsible for curbing illegal employment. They have powers to inspect (requesting information, obtaining documents and information regarding a business, checking identity papers, entering premises except private residences) and to conduct investigations (seizing items, inspecting documents, entering premises apart from private residences, stopping vehicles, etc.). The law on the employment of foreigners requires people to cooperate with the police and the labour inspectorate. The latter intervenes on its own initiative, at the request of other services and the police in particular, or following complaints. But its powers are insufficient in some cases, because it cannot check the identity of people who run away from identity checks or enter private homes.

36. In Finland the immigration department, the police, passport officers at entry points and the employment authorities have responsibility for monitoring the employment of foreigners, in other words enforcing the Aliens Act, and in particular monitoring compliance with the rules on the employment of foreigners in Finland. The employment authorities can enter places of work to check that foreign employees have work permits. In addition, the labour protection district offices in Finland monitor the application of social regulations to foreigners, under the Act on the Supervision of Labour Protection and Appeal in Labour Protection Matters.

37. In Spain the labour and social security inspectorate has sole powers to enforce the rules on employing foreigners. It has administrative sections in every province. Via employment inspectors, it can conduct checks in firms or summon employers to the labour inspectorate or require them to produce documents or reports to clarify employment matters. It draws up reports on offences, which go to the appropriate body for settlement or proceedings. Since 1994 the “State security forces” act in support of the labour inspectorate with regard to immigration and the illegal employment of foreigners. The administrative structure is similar in Austria. Under the leadership of the Central Labour Inspectorate, specialised groups have been set up in each of the nine federal states. These groups are charged with the task of investigating the illegal employment of foreigners. They carry out inspections in factories, on construction sites and other outside workplaces, for example on farms. The police have a duty to assist the officers of the Labour Inspectorate if requested. Such assistance may be necessary when there is an accumulation of offences (both employment and residence are illegal) and also when the site to be inspected is too large to be properly covered by the small number of personnel at the disposal of the Labour Inspectorate

38. In Belgium, curbing the illegal employment of foreigners is the responsibility of the social legislation inspectorate. These inspectors have substantial powers. They investigate illegal employment and make reports on the basis of which criminal proceedings may be launched. At the same time the Employment and Labour Ministry has powers to impose administrative fines on employers who hire foreigners without authorisation. Likewise, in France the labour inspectorate is the main agency enforcing the work permit procedure. It has powers to enter places of work and inspect work permits of employees and the relevant information held in the staff register. When an offence has been committed, inspectors draw up reports which are the starting point for criminal proceedings against employers. French police, gendarmerie and customs officers are empowered to check that foreigners are employed legally. Police operations are backed by a central directorate in the Interior Ministry, dealing with immigration and illegal employment.

- Co-operation among services

39. In most countries where a number of departments share responsibility for curbing illegal foreign employment, the services co-operate, formally or less formally and in various ways. The Netherlands has particularly extensive co-operation among services. Concerted action by police and labour inspectors is needed for inspectors to enter certain places and overcome some restrictions on their powers. The aim of co-operation here is greater efficiency, as shown by a drive in 1995 to ensure compliance with rules on the employment of foreigners, co-ordinated by the Public Prosecutions Department of the Ministry of Justice: before it started, efforts were made to clarify the services involved, and the ways they can act, and policy guidelines were established. In 1996 the labour inspectorate reached agreement with the tax and social security agencies on exchanging information, to enable information to be passed on without prior permission from the Public Prosecutions Department. Meetings are regularly held between the Ministry of Justice, the Ministry of Social Affairs and Employment and the employment authorities on matters concerning the employment of foreigners. Public prosecutors also convene regional committees bringing together labour inspectors, immigration services and law officers concerned with proceedings.

40. Co-operation among the various agencies responsible for curbing the illegal employment of foreigners is also a major concern in France. The labour inspectorate and the police and gendarmerie to combine their efforts. The police do not have the same powers as labour inspectors to enter workplaces and check work permits. At local level, co-ordination rests with departmental boards to curb illegal employment (CODELTIs), with the prefect as chairman and the area chief prosecutor as vice-chairman. The boards bring together the relevant government services and agencies, chambers of commerce and the social partners. They consider the situation in the area and set guidelines for action. An operational committee for curbing illegal employment (COLTI) is set up from among its members, chaired by the prosecutor. It is made up of local officers in the services concerned, and their respective powers and duties can thus be pooled. Consultations take place and information can be exchanged to prepare the ground for joint action. At national level, co-ordination rests with an interministerial delegation for curbing illegal employment (DILTI); it assists services, provides training for their staff and gives impetus to co-ordinated action.

41. In Finland the employment authorities work closely with the police in identifying cases of illegal employment. When the employment authorities find that foreigners lack work permits, they request the police to make enquiries as necessary. They also report to the labour protection and tax departments, when action on their part would be appropriate. The Interior and Labour Ministries work together in framing legislation and supervising operations and decisions by the employment authorities and the police. But there is no special body co-ordinating government action at national or regional level.

42. In Japan the national police force and the Justice and Labour Ministries co-ordinate action in the Illegal Employment Prevention Council, for national or international information campaigns and joint operations covering various aspects of illegal employment. There is also a Liaison Conference for Ministries Concerning Foreign Employment Issues. It runs monthly campaigns on illegal employment issues. Exchanges of information among government services have been stepped up to curb forging and overstays, and to secure the information needed to take steps against undocumented foreign workers. Efforts are also being made to simplify the exchange of information between border control services and those which issue visas in embassies and consulates abroad, to combat the forging of papers.

43. In the United States, INS and ESA signed an agreement in 1992 to co-ordinate information and inspections and sanction procedures, but it has not been brought fully into effect. Both services have close relations in high immigration areas such as New York and Southern California. In Australia the immigration, tax and employment services regularly compare their records on undocumented foreigners, to identify those who are working and those improperly receiving social benefits and services. The United Kingdom has local co-operation between the police and immigration services, often leading to joint operations. Nationally, there is co-operation between the Overseas Labour Service of the Department for Education and Employment and the Home Office on work permit arrangements and exemptions thereto.

3. Preventive measures

44. Preventive measures are relatively modest, set against the range of penalties in most countries' legislation. In most places they are confined to information, sometimes targeted at the victims of illegal employment or those responsible for it. Some countries attach great importance to border controls, whereas others, taking a very different approach, offer financial incentives for legal employment.

- Information drives

45. In the Netherlands information drives about employers' obligations under the law on the employment of foreigners have targeted a number of sectoral bodies. Agreements have been reached with the sectors concerned on the issue of work permits and training for new employees. This policy covers inland shipping, the garment trade, market gardening and oriental restaurants. Information brochures dealing with labour regulations in the Netherlands are also passed out to employers and foreign workers.

46. Preventive action in Finland has largely consisted of informing employers about procedures and rules to be observed, and informing foreign workers about their rights and obligations. The Norwegian immigration authorities produce information brochures on immigration rules and the conditions for obtaining work permits, which are sent out to organisations involved in international exchange programmes and to Norwegian embassies and consulates. Articles on illegal employment in the national press are also regarded as preventive steps. In December 1996 employers in the United Kingdom were fully informed about the provisions of the new Asylum and Immigration Act.

47. Australia runs an employer awareness campaign to encourage them not to employ undocumented foreigners. A community campaign for the general public stresses the importance of voluntary compliance with the Immigration Act. The United States runs information drives, chiefly for employers. After the bill introducing sanctions for employers was passed, a detailed paper set out the new obligations of employers.

48. In Spain the provisions on the status of foreigners which took effect in 1996 were widely publicised. More generally, the provincial directorates for labour and social security and the corresponding information bureaux are responsible for informing and advising foreign workers about their rights and obligations.

49. In Japan the police liaise with employers to prevent illegal employment. The government also runs an annual information campaign. In that connection the regional immigration offices provide detailed information, through the media and by leafleting, to make the general public aware of the adverse effects of illegal employment. The Ministry of Labour holds information sessions for employers, and distributes leaflets and documents. The Immigration Office periodically issues statistics on illegal employment to foster greater understanding among the general public. Interviews in the press in sending countries help to provide information there. Japanese missions abroad also provide information on immigration rules in Japan. In France preventing the illegal employment of foreigners is one of the concerns of the departmental boards to curb illegal employment (CODELTIs), bringing together the relevant government services and agencies, chambers of commerce and the social partners. Partnership agreements are also concluded between central government and representatives of the sectors where illegal employment is most prevalent, one aim being to prevent the use of undocumented foreign labour.

- Border controls

50. In the United States dissuasion is very largely via border controls. Similarly, Japanese policy to curb illegal employment is focused on restricting the entry and settlement of foreigners likely to take up illegal employment. There are intensive controls on persons entering and leaving the country for this purpose, at ports and airports.

- Financial incentives to employ documented workers

51. Dutch provisions which took effect in March 1997 provide that employers may be exempted from social charges in cases of temporary employment for up to six weeks. The purpose was to encourage the employment of documented workers for seasonal jobs. In France the possibility for private employers to obtain tax rebates and reductions in social charges for certain domestic jobs (gardening, child care, household help, etc.) promotes the employment of documented persons, as does the simplified payment of wages and employer's charges via the *chèque emploi-services*.

52. In Germany jobs which are classed as "minor" (less than 15 hours a week, remuneration not exceeding one-seventh of the monthly minimum) or short-time (18 hours a week maximum) do not incur payments in respect of compulsory insurance, and statutory health, pension and unemployment contributions, to ensure that the work is not done undeclared.

II. Limitations and changes in measures to curb the employment of undocumented foreigners

53. Governments encounter many difficulties in implementing steps to curb the employment of undocumented foreigners, due to under-staffing and scrupulously framed regulations and to a lack of information and data. Paradoxically, the need to respect the fundamental rights of undocumented foreign workers or other persons under investigation may restrict the scope of action to curb illegal employment. These difficulties, coupled with the development of new and more sophisticated forms of illegal work, have shaped changes in methods to curb the employment of undocumented foreigners. Some OECD countries have strengthened existing curbs, or have introduced fresh ones, and have incorporated their

operations against illegal foreign workers in the broader framework of curbing illegal employment. Other countries are seeking to develop forms of international co-operation to curb the employment of undocumented foreigners.

1. Difficulties encountered in implementing measures to curb the employment of undocumented foreigners

54. Several OECD countries referred to the difficulties which their enforcement services face in conducting operations in the field. In Austria, staff shortages in the inspection services compel them to select sites for investigations. They are unable to inspect all the firms under suspicion, to make systematic and comprehensive inspections, and to visit the remoter locations regularly. As a corollary of selection, the inspections which are carried out generally yield results. In France the main difficulties are with pooling the powers and procedures assigned to individual enforcement services. Police officers report that their powers of investigation are in some cases unsuited to inspection procedures under labour law.

55. In the Netherlands the powers of labour inspectors are not always adequate, which has led to co-operation among the various agencies involved. In addition, legislation protecting privacy and the home substantially restricts the powers of labour inspectors, given that garment workshops, for instance, are often in people's houses. The free movement of persons promoted by the Schengen Agreements further complicates controls on foreign workers. For instance, lack of controls at internal borders makes it impossible to check that a Polish worker has taken up a job in the Netherlands while he has legal employment in Germany under the quota system. The United Kingdom reports that, once detained, undocumented workers apply for asylum, thereby suspending expulsion while the application is processed. Inspection services in the United States report a mass of forged papers and refer to the need to check that a permit has been renewed on expiry, and discriminatory practices by employers when they themselves conduct these checks.

56. In a number of OECD countries the enforcement services lack information to conduct operations. The lack of information is inherent in the employment of undocumented foreigners, which by definition is concealed. The Finnish authorities consider that the lack of data on the employment of undocumented foreigners demonstrates that illegal employment of this kind is not a major problem. Only a few such cases have been reported. Norway also lacks data on the employment of undocumented foreigners.

57. Some control services also lack data to assess the effectiveness of inspection and reporting procedures. In Germany, for instance, there are no data on illegal employment by sector or by worker nationality. But countries including France, the Netherlands, Japan, Spain, the United Kingdom and the United States do record the number of offences reported, by sector and nationality, and the levels of fines imposed. France has established two special computer programs for enforcement data, one national and the other departmental (TADEES system, COLTI application). While they do not gauge the full scope of illegal work and employment, they provide a set of indicators describing the wide range of offences, the characteristics of the employers and workers concerned, and the sectors where it is most frequently detected.

2. Stricter enforcement

58. A number of countries are tackling the persistent employment of undocumented foreigners and the development of new forms of trafficking in manpower. Japan, the Netherlands and the United

Kingdom report organised networks which bring in, house and place foreigners in illegal employment, as well as middlemen specialising in the placement of undocumented foreigners. As a result, most Member countries have decided to step up enforcement against illegal employment of foreigners, and to bring in penalties for traffickers and middlemen.

59. In Austria the bill on curbing illegal employment under discussion in Parliament, and likely to be passed by July 1999, provides for more effective enforcement to curb organised illegal employment. The Belgian Act of 13 April 1995 contains provisions which, during proceedings for offences under social legislation, allow penalties for trafficking in human beings to be imposed as well. Particular targets are undercover garment workshops where foreign workers are permanently confined.

60. In France it is now an offence to compel a person, by abusing his vulnerability or dependence, to work or live in conditions that are incompatible with human dignity. At the same time, curbs on the employment of undocumented foreigners have recently been extended. Penalties have been stiffened considerably, corporate bodies can now be charged, and the scope for charging middlemen involved in labour trafficking has been widened. The numbers of officers engaged in curbing the employment of undocumented foreigners has been increased, and their enforcement powers extended. Since 1997, for instance, police officers have been empowered to enter a firm's premises to check that the business conducted there and the employment of workers complies with provisions on concealed employment and the employment of undocumented foreigners. Customs officers also now have such powers.

61. In recent years the German Parliament has increased penalties against employers. Regulatory fines on direct or indirect employers have been raised, and now apply to corporate bodies or associations as well. Fines on offending foreign workers have been increased tenfold. In Japan the May 1997 amendments to the Immigration Control Act included a new offence of arranging for collective stowaways. Provisions in the 1997 Asylum and Immigration Act in the United Kingdom made it an offence to employ a foreigner without a residence and/or work permit.

62. In March 1999 the United States Immigration and Naturalisation Service (INS) announced changes in its approach to curbing the employment of undocumented foreigners. It had found that the system in force since 1995 for inspecting and monitoring firms and penalising employers was not yielding the expected results. INS consequently decided to focus on networks trafficking in foreign labour and on the forging of papers, as well as the expulsion of offending foreigners. It thus hopes to dismantle the recruiting and trafficking networks which assist the entry and employment of illegal workers, rather than penalise employers who, through oversight, hire undocumented workers. INS also hopes to cut the cost to government, and reduce the disruption for business, of detaining and expelling undocumented workers charged during inspections. Production is frequently disrupted, leading to counter-proceedings by employers and their legal advisers.

3. Incorporating curbs on the employment of undocumented foreigners in the broader illegal employment framework

63. In a number of countries curbs on the employment of undocumented foreigners are becoming part of a broader policy covering all forms of illegal employment. This includes both illegal lending or seconding of staff and concealment to avoid paying social charges and taxes. It is becoming clear that employing undocumented foreigners is only one way in which firms can obtain cheap, flexible labour. When local workers or foreigners with permits will accept employment on the same terms as undocumented foreigners, employers have no need to risk hiring the latter. When jobs are scarce, local workers or foreigners with permits are readier to accept poor conditions. To combat the damaging effects

of illegal employment – exploitation, tax and social insurance fraud, distorted competition – operations have to be extended to cases which do not involve foreign workers.

64. This approach has been taken in Germany, where curbs on illegal employment extend to unlawful lending of staff, social insurance fraud and undeclared work. In Belgium the main problem is to see that employees are properly reported, and it is now compulsory to report hiring immediately. Unlawful employment of foreign workers is only one form of illegal work. A comprehensive approach is also taken in France, as the ongoing extension of regulations covering illegal or concealed employment demonstrates. The regulations make any form of concealment an offence, whether or not it involves undocumented foreigners. In Austria, concern to reduce the budgetary cost of illegal employment has taken the debate beyond the issue of undocumented foreigners to focus on measures that may ensure that tax and social charges are paid on all employment. A bill likely to be passed by July 1999 defines illegal employment not simply as employment of undocumented foreigners but also as non-payment of tax or social security charges, and conducting business without due authorisation.

4. International co-operation to curb the employment of undocumented foreigners

65. International co-operation with regard to the employment of undocumented foreigners is by no means extensive at present. Norway sees no immediate need for it, as illegal employment is very marginal there. But it would be ready to take part in international co-operation if it were established. Australia has no form of international co-operation on these matters. Turkey would be ready to co-operate with other countries in exchanging data on foreign employment, but has not yet established co-operation.

66. Other countries have become aware of the need for co-operation, and are seeking to establish it in various ways, mostly via bilateral agreements. There are a number of reasons for governments to co-operate in curbing the employment of undocumented foreigners. The many offences related to such employment, including assisting illegal immigration and residence, forging papers and trafficking in labour, take advantage of the limitations on government powers, differences in regulations from one country to another, lack of co-ordination between government services, and difficulties in monitoring international operations, particularly cross-border services. Co-operation among Member countries would enable such offences to be tackled more effectively. In addition, lack of co-ordinated policy to curb employment of undocumented foreigners may result in distorted competition among firms in different countries.

67. Last, in any regional system allowing free movement for goods, capital and services, and freedom of movement for individuals and freedom of establishment for firms, one country's policy on curbing the employment of undocumented foreigners may have repercussions on employment in the other countries in the system. This could well be the case, for instance, for the European Union countries, and in recent years they have decided to consult on this matter and to draw up joint resolutions and recommendations.

68. An EU Council Recommendation of December 1995, on harmonising means of combating illegal immigration and illegal employment and improving the relevant means of control, places emphasis on the need to check that a foreigner is qualified for residence and employment on entering the country, when he applies for benefits, or when he is hired. The Council further encourages Member countries to introduce penalties against persons employing unauthorised foreigners, to establish a register of foreign nationals, and to secure the residence documents issued to foreign nationals against forgery and fraudulent use.

69. The Council Recommendation of September 1996 sets out common principles for residence and employment authorisations, penalties for employing persons without authorisation, co-ordination and collaboration between enforcement agencies, and exchange of information. A resolution was adopted in March 1999 to establish a code of conduct designed to promote co-operation among authorities in Member States to curb benefit fraud, avoidance of social security charges, and undeclared work with regard to cross-border secondment of workers. The European Commission has advocated co-ordinated operations across the European Union to combat undeclared work.

70. A number of OECD Member countries have entered into bilateral agreements with a bearing on the employment of undocumented foreigners. Some are preventive, such as Germany's agreements with various Central and Eastern European countries. They compel CEEC firms carrying out projects or providing services with their own employees in Germany to observe the minimum general conditions set in collective wage agreements.

71. The Dutch employment service has concluded a special agreement with the Chinese Ministry for Social Affairs on the temporary employment of Chinese catering staff. This measure may help prevent illegal employment of foreigners in catering. Japan has procedures for bilateral consultation with neighbouring countries, and hopes to extend co-operation of this kind. For a number of years the Immigration Office has arranged joint seminars dealing with immigration controls and checking of entry, residence and employment papers.

72. Spain seeks co-operation with neighbouring countries on both prevention and enforcement. Like many Member countries, it has concluded agreements on the readmission of undocumented foreigners, with Morocco on 1992 and with Portugal in 1993. France and Germany decided in 1995 to pool their experience regarding illegal cross-border employment and to examine ways and means of co-operating. The United Kingdom and France have exchanged liaison officers dealing with illegal employment. The arrangement enhances the exchange of information and also assists joint operations, in particular against networks of immigrant smugglers.

73. The United States focuses its bilateral co-operation with Mexico on curbing illegal immigration and extending border controls. Since 1995 the United States has refused to renew the guest worker programmes with Mexico, because many temporary workers stayed on illegally in the United States after their contract had ended. This preventive measure against illegal immigration is a matter of disagreement between the United States and Mexico, the latter wishing the programmes to be reinstated.

Conclusion

74. This analysis of preventive and enforcement measures in OECD countries highlights both the disparity in regulations and their shared concern to curb the employment of undocumented foreigners. Policies share a number of thrusts: more extensive enforcement and penalties, greater co-ordination among services, and in some cases awareness of the need to work more broadly against all forms of illegal employment. These lines of policy indicate that Member States are alive to the issue of illegal employment, but paradoxically the steps to tackle it disregard measures which could make them more effective, such as preventive measures and forms of international co-operation.