



MEG TIL DERE DIREKTE

Ad-Hoc Query on Ratification of ILO Domestic Workers Convention concerning irregular migrant domestic workers

Requested by SE EMN NCP on 29/05/2015

Compilation produced on 08/09/2015

Responses from Austria, Belgium, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Slovak Republic, Sweden, United Kingdom plus Croatia, Norway (21 in Total)

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1. Background Information

Sweden is currently considering the possibility of ratifying the ILO Domestic Workers Convention (No. 189). In this context, Sweden has asked for guidance from the ILO Office as to whether or not the Convention grants rights to irregular migrant domestic workers. The ILO replied that, “although Convention No. 189 is silent on the issue of specific rights to be granted to irregular migrant domestic workers, [...] there is little scope to infer that the drafters intended to exclude irregular migrant domestic workers from the scope of coverage of the Convention”. I.e., all migrant domestic workers are included, regardless of their regular or irregular status.

With this in mind, the Division for Migration and Asylum Policy of the Swedish Ministry of Justice would like to know how other Member States, both those who have already ratified the Convention and those who are in the process of considering ratifying it, have approached the issue of granting rights as defined by the Convention to irregular migrant domestic workers.

Questions:

- 1.) Has your country ratified, or are you considering/in the process of ratifying, the ILO Domestic Workers Convention (No. 189)?
- 2.) If yes:
 - a.) How has your country approached, or will approach, the issue of granting rights as defined by the convention to irregular migrant domestic workers in your national legislation?
 - b.) How has your country approached, or will approach, the issue of a legal requirement regarding written job offer/contract in relation to irregular migrant domestic workers (Article 8.1)?
- 3.) If no:

On what grounds has your country decided not to ratify the Convention?

We would appreciate your responses by Friday 26th June.

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2. Responses¹

		Wider Dissemination? ²	
	Austria	Yes	<p>1.) Austria plans to ratify the ILO Domestic Workers Convention (No. 189). Negotiations of the government with the social partners on legislative adaptations are currently ongoing, as the prevailing Act governing Domestic Help and Domestic Workers does not fulfil all requirements of the Convention.</p> <p>2.)</p> <p>a.) In the view of Austria, the Convention applies in principle to regular migrants. Should the CEACR (the ILO Committee of Experts on the Application of Conventions and Recommendations) actually follow the extensive view of the International Labour Office, to which Sweden refers with this question, Austrian legislation - which equates irregular migrant workers under labour law - should be sufficient, as the Convention does not contain any provision, which grants irregular domestic workers a residence right or access to the labour market.</p> <ul style="list-style-type: none"> • For irregular migrants the general Austrian legal position applies: employers, which employ aliens illegally, can be punished. • In addition, the illegally employed foreign worker has for the period of the employment the same entitlements as on the basis of a valid contract of employment. This means that irregular migrants are equated to other employees as regards labour law, i.e. working conditions have to be met and they have to be paid the corresponding wage. However, this does not protect them from the termination of the irregular employment for lack of work permit and also not from expulsion. They are entitled to severance pay, compensation for termination and leave compensation. <p>b.) This question can only be answered in relation to regular migrant domestic workers. Austria being an EU Member State, Art. 8 only refers to third-country nationals according to Art. 8 para. 2. The Federal Ministry of Labour, Social Affairs and Consumer Protection suggests to the social partners to regulate this issue as follows: "If third-country nationals are recruited abroad, the filled out employment certificate (the so-called Dienstschein) shall be brought to their attention before entry." By way of the Act Governing the Employment of Foreign Nationals, this provision would also be applicable to irregular migrant domestic workers.</p> <p>Source: Federal Ministry of Labour, Social Affairs and Consumer Protection</p>
	Belgium	No	<i>This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.</i>
	Bulgaria	Yes	

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

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	Cyprus	Yes	1. No, Cyprus has not ratified the convention.
	Czech Republic	Yes	1) The Czech Republic has decided not to ratify the ILO Domestic Workers Convention (No. 189) and currently is not considering ratifying it. 2) N/A. 3) The issue of domestic work is not a significant phenomenon in the Czech Republic. Implementing the Convention No. 189 would require applying changes to national legislation in favour of domestic workers, which would lead to unequal treatment of other groups of workers. Moreover, there are certain issues set by e.g. Article 6 (ensuring decent working conditions and respect for privacy), Article 9 (accommodation and stay in a household), Article 10 (ensuring equal treatment between domestic workers and workers generally in relation of working time and periods of rest) or Article 17 (labour inspection performance in households), that are problematic.
	Denmark	Yes	
	Estonia	Yes	1.-2. No 3. N/A
	Finland	Yes	1. Finland has ratified the convention. 2. a) In Finland, irregular migrant domestic workers are covered by the protection of our legislation for example as far as it concerns labour protection, labour law and health and safety of workers, which is the main issue in the convention. We interpret that all rights cannot be guaranteed in the same way to irregular migrants, as regular migrants, but they cannot be totally excluded either. No convention can require any special provisions stating that some or all rights cover also migrants in an irregular situation. b) Article 72 of the Finnish Aliens' Act states that the employer is obliged to present written information on principal terms of work referred to in Chapter 2, section 4 of the Employment Contracts Act (55/2001) and an assurance that the terms comply with the provisions in force and the relevant collective agreement or, if a collective agreement is not applied, that the terms correspond to those applied to employees in the labour market doing similar work.
	France	Yes	1- NO 2- n/a 3- For the moment, France has not ratified this Convention and is evaluating the possibility to do so. Indeed, the personal service sector (including domestic workers) benefits from dedicated collective bargaining agreements with specific conditions of salary and duration of work negotiated with the social partners. These agreements have been discussed in order to take into account the specificities of these jobs and to elaborate rules which allow a balance between employees' protection and individual employers' needs. These rules may differ from the French Labour code and from rules applicable to common workers. In order to adapt as quickly as necessary to the development of this sector, France considers important to maintain these agreements which would not be considered compliant with the principle of equal treatment indicated in the Convention. If the common law would apply to the personal service workers, it would upset the balance found by the social partners, it would increase the labor cost and could increase the risk of replacing jobs by concealed employment. This process could lead to the loss of social rights for these workers who are well protected today with the dedicated agreements. Moreover, France is largely implicated in

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			the fight against all forms of abuses and in the workers' protection.
	Germany	Yes	<p>1. Yes, Germany has ratified the Convention</p> <p>2.</p> <p>A) German Labour Law does not distinguish between the nationality or the status of the employees (illegal or legal employees). The legal provisions concerned are applicable to all, including domestic workers.</p> <p>Furthermore, foreigners employed illegally in Germany (including domestic workers) are protected by Section 98a of the German Residence Act (Aufenthaltsgesetz). According to this provision the employer is obliged to pay the agreed salary to a foreigner which he has employed without the necessary approval or the necessary employment permit. Concerning the salary it is assumed that the employer has employed the foreigner three months. It is further assumed that both parties have agreed on the common salary unless they have properly agreed on a higher or lower wage</p> <p>B) In Germany the obligations mentioned in Article 8.1 are implemented through the application of the commercial law and the specific protective provisions in Sections 292 and 296 forth following of Volume 3 of the German Social Insurance Code (SGB III). Further, according to Section 15c of the German Employment Regulation (Beschäftigungsverordnung) a residence permit for a full-time employment subject to compulsory social insurance for max. three years for domestic work and necessary nursing and caring daily help in households with persons in need of care can only be approved in cases where the concerned persons are placed on the basis of an agreement on the procedure and the selection between the German Federal Employment Agency and the employment agency of the country of origin. In these cases the placement by private labour recruitment services are not allowed and because of the bilateral agreements the domestic workers are protected from abuse.</p> <p>3. n/a</p>
	Greece	Yes	
	Hungary	Yes	<p>1) The ratification of the Domestic Workers Convention by Hungary is currently under consideration.</p> <p>2)</p> <p>a) We duly take into consideration the ILO's explanation on the issue of granting rights to irregular migrant domestic workers in the national law. We intend to investigate this aspect of the Convention as well in the future.</p> <p>b) We duly take into consideration the ILO's explanation on the issue of granting rights to irregular migrant domestic workers in the national law. We intend to investigate this aspect of the Convention as well in the future when examining the implementation of Article 8.1 of the Convention.</p> <p>3) N/A</p>
	Ireland	Yes	<p>1.) Has your country ratified, or are you considering/in the process of ratifying, the ILO Domestic Workers Convention (No. 189)?</p> <p>2.) If yes:</p> <p>a.) How has your country approached, or will approach, the issue of granting rights as defined by the convention to irregular migrant domestic workers in your national legislation?</p> <p>Ireland ratified Convention 189 in 2014. Ireland's existing suite of employment rights legislation is already fully compliant with the provisions of Convention 189. Legally employed domestic workers already enjoy the full protections of Ireland's robust suite of employment rights legislation by virtue of the fact that that all Irish employment rights legislation, including provisions relating to redress</p>

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			<p>for violations of employment rights, apply to domestic workers in the same way as they apply to other categories of employees in Ireland. Domestic work is currently an ineligible category of employment for employment permits, so this issue has not yet arisen, but should this category of work be opened to non-EEA workers, all the provisions of Irish employment law would apply to such workers.</p> <p>b.) How has your country approached, or will approach, the issue of a legal requirement regarding written job offer/contract in relation to irregular migrant domestic workers (Article 8.1)?</p> <p>Domestic work is currently an ineligible category of employment for employment permits, as a consequence this issue has not arisen. However, under Ireland's existing employment rights legislation, the requirement for a written contract to be provided within two months of commencing employment applies to all employments, and would apply to migrant domestic workers if this category of work was opened to non-EEA nationals.</p> <p>3.) If no: On what grounds has your country decided not to ratify the Convention?</p>
	<p>Italy</p>	<p>Yes</p>	<p>1) Italy ratified the ILO Domestic Workers Convention (No. 189) on 22 January 2013.</p> <p>The regulation in force in our country does not provide for the possibility to hire a worker who is in Italy illegally. As a general rule, domestic work is regulated by Law 2 April 1958 No 339 on <i>The Protection of domestic work</i> and by the National Agreement on Domestic Work.</p> <p>Such National Agreement was renewed on 16 July 2013; it will expire on 31 December 2016. It governs the domestic work relationship and defines workers' duties and rights, including job classification and pay, working hours and days off, overtime and night shifts, festivities and holidays, leaves and absences, sickness and accidents at work, and many other aspects related to the employment relationship between the parties. The National Agreement on Domestic Work applies to foreign workers who have a valid residence permit for work reasons.</p> <p>As regards irregular TCN workers, without prejudice to what has been stated above, Legislative Decree of 16 July 2012 No 109 applies. This Legislative Decree sets out the rules implementing Directive 2009/52/EC on <i>Providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals</i>. Such Legislative Decree made penalties more severe against employers of illegally staying third-country nationals. Moreover, it included a transitional provision, Article 5, under which employers could submit an application from 15 September to 15 October 2012 to correct illegal employment relationships.</p> <p>The terms to submit the application were specified in the following: circulars of the Ministry of the Interior of 27 July 2012 (No 6410) and of 31 July 2012 (No 5090), Decision of the Revenue Agency No 85/E of 31 August 2012, joint circular of the Ministry of the Interior and the Ministry of Labour and Social Policies of 07 September 2012 (No 5638), circular of the Ministry of the Interior of 12 September 2012 (No 7569) and National Social Security Institute (INPS) circular of 14 September 2012 (No 113). According to these documents, an application could be submitted by Italian and EU employers and by TCN employers with a long-term resident's EU residence permit who had been illegally employed foreign workers for at least three months at the date of entry into force of the above-mentioned Decree (09 August 2012, that is to say at least since 09 May 2012).</p> <p>Such applications could be made only for the illegally staying foreign workers who were living in Italy as at 31 December 2011. The Single Desk for Immigration examined each application after receiving an opinion from the <i>Questura</i> (provincial police headquarters)</p>

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			on the absence of impediments and the opinion of the relevant Work Territorial Directorate on the employer's economic capacity and the suitability of the relevant working conditions. In case of a positive outcome, the Single Desk for Immigration called the parties to sign a residence contract and to apply for a residence permit for the purposes of employed work.
	Latvia	Yes	<p>1.) Has your country ratified, or are you considering/in the process of ratifying, the ILO Domestic Workers Convention (No. 189)? No</p> <p>2.) If yes:</p> <p>a.) How has your country approached, or will approach, the issue of granting rights as defined by the convention to irregular migrant domestic workers in your national legislation?</p> <p>b.) How has your country approached, or will approach, the issue of a legal requirement regarding written job offer/contract in relation to irregular migrant domestic workers (Article 8.1)?</p> <p>3.) If no: On what grounds has your country decided not to ratify the Convention? On January, 28, 2014, European Council took a decision (2014/51/EU) authorizing Member States to ratify, in the interest of the European Union, the Convention concerning decent work for domestic workers, 2011, of the International Labour Organisation (Convention No 189). When the country ratifies the Convention, its government formally makes a commitment to implement all the obligations provided by the Convention. The Convention may be implemented by extending or adapting existing laws and regulations or other measures, or by developing new and specific measures required by the Convention. We would like to inform You that Latvia has implemented into its legal enactment system all the provisions on legal labour relationship provided by binding legal documents of European Union. Thus Labour Law, Labour Protection Law and consequent regulative enactments contain provisions concerning labour protection, principle of equal rights, maternity protection, prohibition of differential treatment, obligations of employee and employer, principle of equal work remuneration and minimum pay, provision on work and rest periods etc. and other requirements which are also covered by Convention No.189. The requirements of the above mentioned legal enactments of Latvia are binding to all persons who have entered into legal labour relationship by concluding the labour agreement, including domestic workers. Thus we can provide that domestic workers who have concluded the work agreement can enjoy the same legal benefits and have the same legal rights and duties as any other employee in Latvia and accordingly it could be provided the requirements of Convention No. 189 are already implemented into the legal system of Latvia. The question on formal ratification of Convention No.189 might be considered in the nearest future.</p>
	Lithuania	Yes	<p>1. No, Lithuania has not ratified the convention.</p> <p>3. Lithuania endorses the aims of the International Labour Organization (ILO).</p> <p>Taking into consideration that ILO Domestic Workers Convention is relatively new (adopted in 2011), and only 18 countries out of 185 member states of ILO have ratified it (only 4 of them are members of the EU), the Ministry of Social Security and Labour of the Republic of Lithuania believes that a wider discussion of stakeholders on national level is needed; the social partners should also present their position. It is worth noticing that domestic work is not common in Lithuania.</p>

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			In addition, following the order established by national laws of the Republic of Lithuania, any actions related to signing an international treaty are possible only if the Ministry of Foreign Affairs takes a positive decision on necessity of the international treaty.
	Luxembourg	Yes	
	Malta	Yes	
	Netherlands	Yes	<p>1. The Netherlands will not ratify the ILO Domestic Workers Convention (No. 189)</p> <p>3. The Dutch regulations on domestic workers are not in accordance with the ILO Domestic Workers Convention (No. 189). The Dutch government finds the legal position of domestic workers in principle undesirable. For that reason the scope of the regulations on domestic workers should be restricted. At the same time the Dutch government ascertains that there is no good alternative for the market of domestic workers. Therefore the Dutch government wants to preserve the regulation on domestic workers. As a result ratification of the ILO Domestic Workers Convention (No. 189) is not possible. However, the government wants to prevent improper use of publicly financed alfa aids (domestic workers providing home care to the sick and elderly paid out of personal care budgets), by adjusting the relevant law and/or rules and regulations and by reinforced supervision en enforcement. Also, the government wants to improve the information on the status of the domestic workers. These changes are a first step towards improving the status of domestic workers.</p>
	Poland	Yes	<p>1. No</p> <p>2. a) - b) -</p> <p>3. Polish legislation is not compatible with the provisions of the Domestic Workers Convention, 2011 (No. 189) with regard to the the following :</p> <ul style="list-style-type: none"> - In accordance with the Convention, the term <i>domestic worker</i> means any person engaged in domestic work within an employment relationship; which means that it would not apply, inter alia, to workers employed on the basis of the <i>Act of 4 February 2011 on care for children under the age of 3</i> – especially nannies employed on the basis of “activating contract” – a service employment agreement (task-specific contract), and some other groups of workers engaged on the basis of <i>Act of 9 June 2011 on family support and foster care system</i>, e.g. workers engaged to help with childcare and house-work in foster care and family children’s homes (there is also possibility of employment on the basis of service employment agreement). This means that the protection under the Convention will be subject only to a part of the domestic workers. Extending the provisions to all groups of domestic workers (also workers employed on the basis of civil-law contracts) would require amendments and specific provisions in Polish law. - In Polish legal system there’s a lack of regulations concerning living conditions of domestic workers residing in the household (Articles 6 and 9 of Convention). - The implementation of Art. 10 par. 1 concerning equal treatment between domestic workers and workers generally, especially in relation to wages, may rise some problems, taking into consideration the varied type and nature of the tasks in the household. - Polish laws and regulations on health and safety at work impose on employers a wider range of obligations with regard to domestic workers than it is required by the provisions of Convention. However, taking into account the specific nature of

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			<p>work in households, it should be noted that a number of obligations concerning health and safety at work arising from the provisions of the Polish Labour Code is impossible to meet by employers of domestic workers (Art. 13 of Convention).</p> <ul style="list-style-type: none"> - Also the regulations on working time require adapting to the Convention provisions, in particular as regards the workers remaining at the disposal of the household in order to respond to possible calls, which may be difficult, taking into account the nature of their work. - The possibility to implement the provisions concerning receiving a written job offer or contract of employment by the migrant worker prior to crossing the national border (Art. 8 of Convention), is also questionable. - Difficulties may also arise in relation to implementation of provisions concerning freedom of association of domestic workers, due to the “factory/workplace” nature of this provisions (Art. 3 of Convention). - The current Polish legislative and regulatory context exclude possibility for labour inspectors to undertake the inspections in private houses, because unauthorized entering on the private premises can be qualified as criminal offence according to Art. 198 of Polish Penalty Code. Therefore, in practice, it would not be possible to undertake an inspection of domestic workers working conditions by the National Labour Inspection. <p>Moreover, the procedure envisaged for the review of unratified ILO Conventions, adopted by the Tripartite Commission Team, stipulates that the analysis of the compatibility of Polish law and practice with provisions of the ILO Convention should be submitted to the Team. Taking into consideration the fact that the trade unions suspended their participation in the Tripartite Commission in June 2013, the Team cannot take any further steps with regard to the Convention No 189.</p>
	Portugal	Yes	1. Yes. Portugal has ratified the ILO Domestic Workers Convention (No. 189). The irregular migrant domestic workers cases are consider under the articles n.ºs 8º and 15º.
	Romania	Yes	
	Slovak Republic	Yes	Slovak Republic has not ratified the ILO Domestic Workers Convention. Due to the low number of this group of migrants, currently it neither considers its ratification, nor has this been demanded by social partners.
	Slovenia	Yes	
	Spain	Yes	
	Sweden	Yes	<p>1.) Yes (considering)</p> <p>2.)</p> <p>a.) Currently under investigation.</p> <p>b.) Currently under investigation.</p> <p>3.) N/A</p>
	United Kingdom	Yes	<p>1.) No, the UK has not ratified the convention.</p> <p>2.) N/A</p> <p>3.) We do not believe that ratifying this convention would strengthen the extensive measures we already have in the UK to prevent</p>

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			<p>slavery and human trafficking. It is important to strike the right balance between protecting vulnerable workers and ensuring that aspects of employment law which can carry criminal sanction are not extended to private households. Ratifying the convention would require changes to health and safety legislation and impose unnecessarily onerous obligations on, for example, people employing home helps or personal carers, and would be neither practical nor proportionate.</p> <p>In line with Government policy, social care is increasingly being delivered in the recipient's own home and there are currently over 150,000 people working as Social Care Personal Assistants in private households. Article 13 of the Convention requires each member state to take "in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers". The requirement to take "effective measures" would for the UK mean extending the Health and Safety at Work Act to private households employing domestic workers (currently EU law allows us to exempt employers of domestic workers from this Act). This undermines the Governments policy to support independent living as these 'employers' would be required to ensure the health, safety and welfare of domestic workers and non-compliance would be regarded as a criminal offence where an unlimited fine or imprisonment could be enforced.</p>
	<p>Croatia</p>	<p align="center">Yes</p>	<p>1) Croatia is currently in the process of analysing the implications of ratification of the ILO Convention No. 189.</p> <p>2) a&b - Both issues are currently under investigation and subject of inter-institutional consultations and no decision on the approach – if any – has been made yet.</p> <p>3) N/A</p>
	<p>Norway</p>	<p align="center">Yes</p>	<p>1) Yes (considering)</p> <p>2 a) We note the view expressed by the ILO Office that irregular migrants are not excluded from the scope of coverage of The Domestic Workers Convention. In this context we do not consider whether or not this understanding is correct, but focus on how such a scope will affect the possible implementation of the convention into Norwegian law.</p> <p>The purpose of the Domestic Worker Convention is in our view first and foremost to improve the working conditions, and to some extent also the living conditions, of domestic workers. It is on the other hand not a convention that entitles workers to live and work in other countries.</p> <p>The Norwegian workers protection legislation, i.e. The Working Environment Law and The Regulation on Work performed for a private employer in a household, applies to all employment relationships regardless of the worker's regular or irregular migration status. (Application of the provision does not however in itself make the employment relationship legal.)</p> <p>As regards rights generally secured through benefits and services provided by the state, e.g article 14 on social security protection, according to the convention, domestic workers must enjoy these rights under conditions that are not less favourable than those applicable to workers generally (or similar phrases)(i.e. conditions should be similarly favourable). Thus, <i>we understand</i> that if <i>workers in general</i> do not have the rights laid down by the convention unless they have a valid residence permit for work, than <i>neither do domestic workers</i>.</p> <p>Consequently, in our opinion, implementing the Domestic Workers Convention into Norwegian law does not require special measures as regards irregular migrants. As a result of this we will probably not avail ourselves of the possibility afforded in article 2 to exclude</p>

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			<p>irregular migrant domestic workers from the scope of the convention.</p> <p>2 b) According to article 8.1, national laws and regulations shall require that migrant domestic workers recruited in one country for domestic work in another, shall receive a written job offer or contract of employment addressing the terms and conditions of employment referred to in article 7 prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies. The potential Norwegian implementation will focus on regular migrants relating to this prior to crossing the Norwegian border. According to the current immigration legislation one requirement to obtain a residence permit for the purpose of work is submitting a written job offer to the Norwegian Directorate of Immigration by the employer along with the employee's application. Furthermore, this application must be submitted prior to crossing the Norwegian border. Ratification will probably require that more information is included in this job offer.</p> <p>It is difficult to see how the states can ensure that irregular/ illegal migrants receive such written information, given that irregular migrants are not likely to apply for a residence permit. It may be that article 8.1. can be implemented solely by requiring that the employer, who recruits the worker, provide such information before the worker crosses the border. However laying down such an obligation for an employer who knows that he is hiring an irregular migrant is probably not likely to produce the desired results. Furthermore, it would imply adopting special provisions for cases where both the employer and the employee violate the immigration legislation.</p> <p>The question of the application of the convention article 8 to irregular migrants was, to our knowledge, not specifically discussed by the drafters. In this situation article 8 in our opinion must be interpreted as a requirement only for regular recruitment/ migration. If article 8 must and can be implemented by requiring employers who recruit irregular migrants to provide a written job offer etc, this is unfortunate, but it will probably not create an obstacle to ratification.</p>
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