



**Employer Sanctions in France:  
From the Campaign Against Illegal Alien  
Employment to the Campaign  
Against Illegal Work**

**Mark J. Miller**

THE U.S. COMMISSION ON IMMIGRATION REFORM IS A BIPARTISAN COMMISSION AUTHORIZED BY THE IMMIGRATION ACT OF 1990 AND CHARGED WITH EXAMINING IMMIGRATION POLICY AND ITS IMPACT ON SOCIAL, ECONOMIC, AND COMMUNITY RELATIONS, ON POPULATION SIZE AND CHARACTERISTICS, AND ON THE ENVIRONMENT.

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MARK J. MILLER

UNIVERSITY OF DELAWARE  
1995

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U.S. COMMISSION ON IMMIGRATION REFORM

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## **EXECUTIVE SUMMARY**

French enforcement of laws penalizing illegal alien employment is of particular interest to U.S. policymakers. In France, where enforcement of employer sanctions has been less controversial than in the U.S., the major complaint has been that there is too little enforcement. While some French and American scholars have dismissed French enforcement as a serious deterrent to illegal alien employment, the French government steadily has refined and improved its capacity to punish illegal employment of aliens over the last quarter century. It possesses a substantially more credible ability to detect and punish illegal alien employment now than it did in 1968 when such employment was tacitly condoned. However, concomitantly, internal and external developments have rendered France increasingly vulnerable to illegal alien employment. Restructuring of the French economy, for instance, has expanded the role of small employers—more likely to employ aliens illegally—at the expense of large firms.

The French strategy has evolved through time. The effort to curb illegal alien employment has been subsumed under a broader campaign against illegal employment and the underground economy in general. An interagency taskforce charged

by the French government with monitoring and facilitating enforcement of laws against illegal migration proposed widening of its mandate. Its studies revealed illegal alien employment to be characteristic of certain industries and of employers typically involved in other forms of illegality in addition to their illegal employment of aliens. The broader focus has served to demystify illegal employment (what the French commonly call clandestine employment) as more French nationals than aliens break laws against illegal employment. However, a disproportionately high number of alien employers employ other aliens illegally and these employers receive more severe punishment than comparable French national offenders.

French enforcement of laws against illegal alien employment has encountered numerous obstacles, ranging from insufficient interagency cooperation in enforcement to legal system unresponsiveness, to cases brought against employers who hired aliens illegally. In many areas, barriers have been overcome incrementally; in others, they persist. Illegal alien employment continues but would be much greater in the absence of employer sanctions enforcement and related measures. More rigorous enforcement would entail greater commitment of budgetary and enforcement personnel resources, a com-

mitment that has grown incrementally over the years.

The French approach to curbing illegal employment could be emulated in the U.S. The first step would be to create an inter-agency taskforce charged with monitoring and facilitating enforcement of laws against illegal employment, most prominently illegal alien employment. Such a step would appear consistent with the commitment made by the U.S. when it signed the agreement creating the World Trade Organization. The entity should be small but endowed with a research staff and budget. It should prepare an annual report on enforcement of laws against illegal employment. Its mission should include training and education of various enforcement services and a mandate to sensitize courts and prosecutors to the harm caused by illegal employment.

Subsequent steps might include: 1) creation of regional, state, and local advisory committees designed to facilitate enforcement of laws against illegal employment; 2) enactment of voluntary agreements amongst employers in heavily-affected sectors designed to promote employment transparency and a level playing field for competition; and 3) implementation of a more secure employee eligibility verification system.

Recent progress in France includes a system in which employers notify authorities of a new employee's identity prior to the onset of employment. The system has secured a high degree of voluntary compliance from employers and promises to make legal punishment of illegal employment more certain. The most recent French enforcement statistics suggest that the effort begun more than one-quarter century ago is bearing fruit.

## **INTRODUCTION**

Continuing controversy in the United States over the wisdom of laws penalizing illegal employment of aliens is unique among Western democracies. Most Western democracies, as seen in **Table 1** [pp.30-33], have adopted and refined employer sanctions over the last twenty years. The issue of enforcement of employer sanctions has been much more controversial. There is less confidence now than there was twenty years ago concerning the efficacy and deterrent potential of employer sanctions. To the extent that they are controversial outside the U.S., the complaint usually is that enforcement is inadequate in light of mounting illegal migration.

Of the universe of Western democratic experiences with employer sanctions en-

forcement, the French case is in many respects the most pertinent to the United States. France has a long immigration tradition with substantial citizen and resident alien minority populations. In 1930, aliens constituted roughly the same percentage of the total population of France, about 7 percent, as they do today. After 1945, France actively pursued demographic goals through immigration policy, but it also massively recruited foreign labor. Technically, illegal immigration was commonplace but tolerated. By 1970, the alien population stood at more than four million. One out of every three construction workers and one out of every four auto workers were foreigners. However, mounting economic and sociopolitical difficulties contributed to a 1974 decision to stop most further foreign worker recruitment.

Since 1975, the French government has allowed family reunification for resident aliens and admission of refugees. But, despite recurrent legalization policy, it has taken an increasingly tough stand against illegal immigration. The laws and regulations summarized in the **Appendix** [p.42] testify to the incremental development of a considerable governmental capacity to punish illegal alien employment and illegal employment practices in general.

In 1992, France admitted 135,000 aliens to residence (Lebron 1993:3-4). This represented a 10 percent increase over the 1991 total, but a tiny fraction of France's total population of almost 57 million. Of the 135,000 legal admissions, some 56,000 were family members of legally resident aliens or French citizen and 11,000 were refugees. While these numbers seem small in relation to the U.S. admissions, the magnitude of legal immigration to France and the United States is roughly the same, about 0.4 percent of the total population. (This is Jonas Widgren's calculation.)

From 1975 to 1990, the characteristics of the legal resident alien population of France evolved markedly. These changes have been analyzed at length by Claude-Valentin Marie and are summarized here (Marie undated.a.). While the total resident alien population stabilized at about 3.6 million, in part due to liberal naturalization and nationality laws (95,000 aliens became French citizens in 1992), alien employment declined by 14 percent over the period while total French employment increased 8 percent. Foreign workers disproportionately were affected adversely by recession and economic restructuring. Nearly 500,000 foreign workers lost employment in industry over the period, with aliens accounting for nearly one-half of all jobs lost in the auto industry. Unem-

ployment of resident aliens in France today is roughly double that of the French national rate (10.3 percent). Some resident alien groups, such as Algerians, have unemployment rates greater than 25 percent. Many of the unemployed foreigners are older, for example, laid-off auto workers hired in the 1960s, but there is also extremely high youth unemployment. North Africans, in particular, face enormous barriers including educational problems and discrimination.

Resident aliens, like French citizens, increasingly find employment in services. Indeed, in 1975, two-thirds of alien employees worked in the manufacturing and building sectors, whereas only one-quarter were employed in services. Today, those proportions are reversed. A 1991 Ministry of Labor survey estimated that 38.9 percent of alien employees was employed in services and that this constituted the premier employment sector for aliens.

These broad trends have affected illegal immigration and illegal alien employment in France. For instance, aliens in the 1990s are much more likely to be hired by small firms with fewer than ten employees than was the case two decades ago. There was, and is, little illegal alien employment in highly-unionized auto plants. However,

most aliens now are hired by small firms that historically have been more prone to hire aliens illegally. The shift from industrial to service employment and trends toward greater labor market flexibility, declining unionization, and growing precariousness of employment all have contributed to a flourishing underground economy.

In the quarter century since the May/June events of 1968, which marked a turning point in French policies toward international migration, the government gradually subsumed its campaign against illegal alien employment under a broader campaign against illegal work. This shift reflected a learning process, as well as the influence of public strategies adopted elsewhere in the European Union, particularly in Germany.

## **SCHOLARLY DISAGREEMENTS OVER EMPLOYER SANCTIONS IN WESTERN EUROPE**

In recent years, a number of American and European students of migration have expressed viewpoints on employer sanc-

tions enforcement, but largely in passing. James F. Hollifield (1992) is skeptical of the capacity of Western governments to regulate international migration in general, principally due to the extension of rights to migrants and to the complexity and extensiveness of economic interdependence. He is dismissive of employer sanctions. In an important chapter on illegal migration in Western Europe, Catherine Wihtol de Wenden (1990) found them to be weakly enforced. George Tapinos, Jean-Pierre Garson and Yann Moulrier-Boutang similarly have scoffed at the seriousness of employer sanctions enforcement in France.

One of the most detailed and widely available examinations of French efforts to curb illegal alien employment and residency is made by Patrick Weil (1991:223-27). He holds that “. . . the application of repressive laws has revealed itself to be particularly difficult.” He regards enforcement of the panoply of French laws designed to curb illegal migration a “failure.” At one point, echoing a charge made by the French specialist on foreign seasonal agricultural workers Jean-Pierre Berlan, Weil suggests that there is an understanding between enforcement agents, various ministries, and employers not to apply employer sanctions. Such charges also have been levelled, off the record, by some

usually highly knowledgeable officials of international organizations and even by some French government officials. However, the charge also is denied heatedly by many others.

Other experts on immigration to France have been more upbeat in their assessments. Jacqueline Costa-Lascoux (1990) has taken exception to the viewpoint that such laws are merely symbolic by pointing out that laws are supposed to have an educational, symbolic function and that it is a rare law that overnight eradicates the ill that motivated its promulgation. Claude-Valentin Marie, who has been following enforcement of laws against illegal employment, including illegal alien employment, for the French government also has been more generous in his assessment (Marie 1993b, 1994). He points to significant progress in enforcement since 1987 and especially since 1990. In this respect, he echoes earlier optimistic assessments made by experts at the interministerial mission charged with monitoring and facilitating application of laws against illegal employment.

[These viewpoints were reflected in earlier reports and congressional testimony by the author on the subject of employer sanctions enforcement in Western Europe, which is summarized and updated below.]

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## IMPLEMENTATION AND MAJOR REVISIONS IN FRANCE

By 1976, the Interministry Liaison Mission to Combat Manpower Trafficking was formally created, and a law passed in July of that year reinforced penalties against individuals who aided illegal migration and created an administrative penalty for employers of aliens not entitled to work. Employers who hired aliens illegally were required to pay the National Immigration Office a sum equivalent to 500 times the minimum hourly wage for each worker illegally employed. In 1980, the fine was approximately \$1,000 per worker. In principle, imposition of the fine was automatic and offending employers also could be imprisoned for one to two months—or longer in the case of recurrent offenders.

A major difference between French and German administration enforcement of employer sanctions was the German inclusion of enforcement of employer sanctions against illegal employment of aliens within the German Ministry for Labor and Social Affairs broad mandate to combat the underground economy in general. The French Interministry Liaison Committee to Combat Manpower Trafficking mandate was far narrower and limited to suppres-

sion of illegal alien entry, residency, and employment. This administrative contrast ended in 1989 when the French Interministry Liaison Committee to Combat Manpower Trafficking was renamed the Interministry Liaison Ministry to Combat Illegal Work, Undeclared Employment and Manpower Trafficking (Arrete Interministeriel 1989). The scope of its responsibilities was extended, as in the German case, to the entire underground economy. This expanded mandate long had been advocated by officials of the former Interministry Liaison Mission to Combat Manpower Trafficking.

One of the major functions of the Interministry Liaison Mission was to keep track of enforcement of the panoply of laws aimed against illegal immigration and employment. Employer sanctions are only part of an impressive legal arsenal that has built up. **Graph A** [p. 40] presents an overview of overall legal enforcement between 1976 and 1984 as measured by communicated legal complaints (*procès-verbaux*) made by various enforcement agencies (the top line representing the combined total). The graph reveals a 1976 upsurge in enforcement followed by a decline, precipitous in 1977, 1978, and 1981, prior to a resurgence in 1982 and 1983. The graph traces the number of legal complaints communicated by each of the four agencies involved with enforce-

ment of French laws against illegal immigration and employment.

**Graph B** [p. 41] portrays the number of infractions by employers against section L 341-6 of the Work Code that specifically penalizes employers for hiring irregular-status aliens. Strictly speaking, the level of enforcement of employer sanctions corresponded to the up and downs in overall enforcement of laws aimed against illegal immigration and employment and centrally affected those variations.

The annual report on the year 1979 by the Interministry Liaison Mission summarized the first four years of enforcement of the 1976 law reinforcing employer sanctions (Mission de Liaison 1980:2):

After four years of functioning, it is necessary to recognize that the objective was not totally attained and that irregular-status alien employment remains an important problem both with regard to the employment situation and on the social and human level of those workers themselves. On the other hand, it is difficult to evaluate the number of clandestine foreign workers thus to know whether it is more important in 1980 than it was in 1976.

Implementation of employer sanctions over the period was complicated by a number of factors. Among those was the continuation of legalization despite the intent announced during the Fontanet-Marcellin Gorse decrees period of the early 1970s to terminate the practice. A number of "exceptional" collective legalizations occurred during this period, particularly in the spring of 1980 when some 4,000 Parisian garment industry workers, primarily Turks, were granted legal status. The legalizations diverted manpower resources, as a good number of labor inspectors—always in short supply—were involved with the legalization efforts.

There was also a notable surge in deportations during this period. A 1975 law made illegal alien employment a deportable offense for aliens. A 1980 law appreciably increased the government's deportation powers. By 1980, deportation seems to have become a major sanction to illegal employment. According to Garson and Moulrier-Boutang (Unpublished:21-23), "With the law of January 10, 1980, deportation had become simultaneously a priority means of combatting clandestine immigration, but also a means to rendering precarious (the legality) of alien sojourns in France."

The French law of October 17, 1981, made employment of irregular-status aliens a

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criminal offense subject to fines of 2,000 to 20,000 francs and imprisonment from two months to a year. For repeat offenders, the prison term could reach two years and the fine 40,000 francs. The fine could be imposed as many times as there were individual aliens involved. However, a legalization program was simultaneously announced and employer sanctions were not to be enforced until after the termination of the legalization period. Contrary to expectations, the legalization period was prolonged as additional categories of aliens, such as seasonal workers, were permitted to apply for legalization. Hence, the marked drop in enforcement of employer sanctions in 1981, as indicated in **Graph B**, was linked directly to French legalization policy.

Enforcement of employer sanctions did not begin again until well into 1982. On August 31, 1983, the French government adopted a series of measures proposed by the Interministry Liaison Mission that simultaneously aimed at reinforcing the effort to curb illegal alien residency and employment while promoting the "insertion" of legally resident alien communities in France. This linkage was made explicit in the 1983 annual report of the Interministry Liaison Mission (Mission de Liaison 1984:21):

Stopping clandestine immigration, combatting employers of

irregular-status aliens and controlling migratory fluxes effectively constitute a priority objective (for the French government). Failure in this case would put in doubt the insertion of legally resident alien communities in France.

The August 31, 1983 measures increased the administrative fine for employers of irregular-status aliens from 500 to 2,000 times the minimum hourly wage for each alien illegally employed. As of January 1, 1985, the administrative fine was 26,340 francs, roughly \$3,000. The Interministry Liaison Mission staff was increased, allowing the Mission to open up a regional office in Marseille. An increase to fifty-five in the number of specialized labor inspectors was authorized. In September, the Minister of Justice addressed a memorandum to all public prosecutors which reiterated the government's viewpoint regarding the grave consequences of illegal alien employment and called upon prosecutors to step up enforcement of laws prohibiting illegal alien employment. Prosecutors also were asked to "rigorously apply" the text of the laws concerning penalties.

In June of 1984, the first of twenty-three priority departmental coordinating committees, authorized by a governmental memorandum (*circulaire*) of November 21,

1983, came into being. The objective of the coordinating committees was to facilitate the exchange of information to detect and more effectively impose sanctions for violations stemming from illegal alien employment. The Paris-area coordinating committee included representatives from the police, fiscal authorities, the Department of Labor and Employment, the Department of Sanitary and Social Affairs, the National Employment Agency, the National Immigration Office, the enforcement arm for social security and family allowance taxes [URSSAF], and the departmental authority for state finances and economic affairs. Representatives from other public organizations and the prosecutor's office also were invited. The Paris-area coordinating committee has served since as the model for coordinating committees established in other priority areas.

The termination of legalization, combined with the measures taken in 1983 and 1984, resulted in an increase, as measured by legal complaints communicated to the Interministry Liaison Committee, in enforcement of laws against illegal immigration and employment. The total of 2,245 *procès-verbaux* communicated to the Mission in 1983 was the highest ever. The number of *procès-verbaux* for infraction of article L 341-6, which prohibits employment of irregular-status aliens, rose from 549 in 1982 to 947 in 1983. The increase

in legal complaints was matched by increased court action, enforcement of the administrative fine, and penalties against employers of irregular-status aliens. About 1,300 court decisions ordering employers to pay fines of at least 2,000 francs were made during 1983. In Paris, the first six months of 1984 witnessed a 50 percent increase, relative to the 1983 period, in the number of persons found guilty of employing illegal aliens. The Director of the Interministry Liaison Mission summed up the judiciary's handling of employer sanctions over the first six months of 1984 (*Le Quotidien de Paris* 1985):

The sampling of judgements rendered during the first half of 1984 by various courts appears to us as very indicative of the current tendency toward hardening of legal counteraction vis-a-vis employers of irregular-status aliens. The great majority of fines are to be found from now on above the minimum provided by the law, which denotes a clear cut understanding by the courts of matters connected to man-power trafficking.

There was clearly an official perception that enforcement of employer sanctions was beginning to bear fruit by 1985. The 1981-1983 period was seen as a stage in which the policy instruments decided

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upon in 1981 were “broken in” and in which the policy outlined in 1981 on paper took concrete form. In March of 1985, Georgina Dufoix, Minister of Social Affairs and National Solidarity and the spokesperson for the French government, declared that the results of enforcement of laws against illegal immigration and employment had a “. . . very encouraging balance sheet” (Agence France Press 1985).

The Interministry Liaison Mission report on the 1986-1987 enforcement period included a revised summary of enforcement as measured by legal complaints. This statistical series, presented in **Tables 2** and **3** [pp. 34, 35], excludes citations for illegal housing of aliens. **Tables 2** and **3** reveal a dip in infractions communicated, particularly for employment of aliens without permits and illegal (underground) labor in 1985 and 1986. French officials and labor inspectors interviewed in 1987 and 1988 spoke of a “demobilization” over this period linked to the uncertainty created by a decision not to prosecute a large case because of the ambiguity of the law under which the citations had been made (the provision of the Labor Code prohibiting illegal or underground labor, *travail clandestine*) and to the changes in French government.

In an October 1987 address of unusual candor, the new director of the Interministry Liaison Mission maintained

(Hue 1987:4) that the level of legal complaints “. . . is of little impact and unrevealing of a mass of legal contentions which is *a priori* surprising since illegal employment is a widespread mass phenomenon.” She particularly criticized the disjuncture between statistics on condemnations of aliens for illegal entry and/or residency and the number of infractions for manpower trafficking.

	Condemnations for Illegal Entry & Residency	Infractions
1984	15,120	4,131
1985	10,404	3,608
1986	16,506	3,655

Director Hue also was critical of the geographical imbalance in enforcement, noting that more than 84 percent of the legal complaints originated in three regions. Moreover, two-thirds of the legal complaints for illegal alien employment were dismissed by provincial courts as opposed to less than 10 percent in the Paris region. Parisian area courts assessed fines of more than 10,000 francs on 53 percent of the individuals punished and condemned 56 percent of them to a prison term as opposed to only two out of every seven such individuals in the provinces (Hue 1987:4).

The speech concluded with questions on the efficacy of the effort being made to curb illegal employment, of which illegal alien employment was a significant com-

ponent: Were the means utilized appropriate and sufficient? Was an essentially social and repressive approach to the problem a wise choice? Was the oft-affirmed political will to curb illegal employment truly there? Did enforcement services possess sufficient understanding and know-how to implement policy? Overall, Hue's (1987) assessment was that the action undertaken to that date was unsatisfactory as legal complaints were insufficient and negatively perceived by enforcement services. The results were not proportional to the effort being made.

The demobilization of the 1986-1987 period seems to have marked a nadir. In 1987, a revised legal text was adopted redefining illegal employment and the period of cohabitation in French government ended. This led to a "remobilization" reflected in an upsurge in citations communicated in 1987, particularly for employment of aliens without permits. A dramatic increase in enforcement, as measured by legal complaints for illegal employment of aliens, continued in 1988 and 1989 (Hue 1990a).

Employers convicted under the panoply of laws aimed at curbing illegal alien employment and residency in France expressly were excluded from the pardons traditionally extended at the onset of a new presidential term. This exclusion was

intended by the government to underscore the gravity of the social harm caused by illegal employment of aliens and the seriousness of the government's intent to combat illegal alien employment and residency. Illegal employment of aliens in France had always been viewed as a dimension of a broader problem of illegal employment practices. However, by the late 1980s, what had begun as a campaign against illegal alien employment had been largely subsumed under a campaign against illegal employment in general. The focus was less on alienage and immigration policy and more on violation of labor laws. This shift was reflected in the reporting on enforcement of laws as statistics were changed and refined. The data reported here discretely in various tables and graphs cannot be collapsed into one series.

The most recent French governmental statistics are concerned with enforcement of laws against illegal employment practices in general. Punishment of illegal alien employment is one dimension of the broader enforcement effort.

**Table 4** [p.35] reveals that the building sector experiences the highest level of delinquency whatever the specific violation. When overall employment in this sector expands, violations of labor laws expand as well in a proportional manner.

Hence, **Table 5** [p.36] is unsurprising. Roughly one-third of all legal complaints and infractions cited concern the building sector alone. Indeed, violations of prescriptions against illegal employment are very concentrated in a few industries. The building industry, agriculture, commerce, hotels, cafes, and restaurants account for seven out of ten cases overall.

**Table 6** [p.36] suggests that the intense legislative and regulatory activity chronicled in the **Appendix** was paralleled by non-negligible net results in quantitative terms in enforcement. However, interpretation of the statistics must be guarded. For instance, is the increase in legal complaints against illegal employment of aliens from 1989 to 1990 an indication of improved enforcement or a reflection of growing illegal alien employment? Is the decrease registered from 1990 to 1991 a hopeful, or adverse, indication? One can only report that the best-informed officials felt that progress was being made. There was deterrence. There would be greater deterrence with greater resources.

The principal novelty of the most recent French reporting on enforcement of laws against illegal employment was a finding that three-quarters of all employers sanctioned were French citizens (69 percent of the total) or citizens of the European Union. This fact was widely publicized

to correct the commonplace equation of clandestine or illegal employment with immigration. Illegal alien employment, the reporting emphasized, was but one dimension of a much broader socioeconomic problem.

**Table 7** [p.37] is based on a Ministry of Justice analysis of legal proceedings for violation of laws against illegal employment in 1988 and 1989. Over those two years, more than 6,131 persons were convicted for a total of 7,244 punished infractions. Convictions for illegal alien employment constituted only one-quarter of total convictions. While three-quarters of the convictions involved French and European Union citizens, non-European Union aliens constituted 21.5 percent of all those convicted—a much higher proportion than the 6.6 percent share of aliens in the total population of France. North African-origin employers predominate among aliens convicted for illegal employment practices that disproportionately involve illegal alien employment. Three-quarters of convictions for illegal work involved French citizens, who may or may not be of immigrant origin, while 15 percent of such convictions involved aliens. However, only 52 percent of convictions for illegal alien employment involved French citizens, while 37 percent involved non-European Union aliens (Marie undated.a).

Overall, one-quarter of the convictions for illegal work resulted in incarcerations. The study concluded that the severity of punishment for illegal work was greater than for other comparable offenses. Moreover, illegal alien employment was more severely punished than other illegal work transgressions. This can be seen best by comparing average fines for illegal work and for illegal alien employment in **Table 8** [p.38], which similarly is derived from the Ministry of Justice analysis. According to Claude-Valentin Marie (undated.a:28):

Three major traits characterize the punishment of unauthorized alien employment as compared to that meted out for clandestine work: it is more severe; it is the object of more extreme views by judges; and fines for it are heavier. Incarcerations are slightly more prevalent in cases of unauthorized alien employment and sentences rarely are partially suspended as judges opt for either incarceration or total suspension of sentence. The level of fines levied for unauthorized alien employment is superior to that levied in cases of recourse to clandestine

workers. Regardless of the type of infraction, aliens from non-European Union countries are punished more severely than are French citizens.

The most recent French reporting on enforcement of laws against illegal work suggests, thus, that progress is being made in making the court system more responsive to violations of laws prohibiting illegal alien employment. Enforcement of employer sanctions in France has a deterrent effect but, in many respects, is insufficient. Nonetheless, considerable progress has been made over the last two decades. Now, the French government has a credible, if limited, capacity to prevent illegal alien employment; one-quarter century ago, it had none. Indeed, back then, illegal alien employment was tolerated and accepted. It is much less so today, although the present global migratory situation contributing to illegal alien employment in France is more alarming than several decades ago. Moreover, deregulation, liberalization, and other changes in the French economy since 1968 have made prevention of illegal alien employment more difficult.

## **PROBLEMS AND ISSUES IN ENFORCEMENT**

### **Evolution of the Administrative Fine (Special Contribution) for Illegal Employment of Aliens in France 1977-1992**

Since 1977, the Office of International Migrations [OMI], formerly the National Immigration Office, which holds a legal monopoly over recruitment and admission of foreign workers in France, has been empowered to recover an administrative fine, called the Special Contribution, from employers who illegally hire aliens. The legal rationale is to heighten punishment of an offending employer because he or she violated the OMI monopoly. Hence, the administrative fine is separate from judicial punishment for illegal employment of an alien. It is also, in principle, separate from complementary fines for nonpayment of social security taxes, etc. The Special Contribution is an automatic fine, subject to administrative appeal, that punishes an employer irrespective of the outcome of legal proceedings.

Administratively, a special contribution should result from every infraction for

illegal alien employment. However, OMI must be notified by the director of a departmental labor and employment office of an infraction in order for OMI to levy the Special Contribution. Most citations for illegal alien employment are made by labor inspectors, but police, gendarmes, agricultural inspectors, and other corps also can write up violations. The enforcement powers of the various services vary. Labor inspectors, for instance, can inspect any site without prior notification; they cannot verify identities; they call upon the judicial police to do that. The judicial police must have a justifiable motive for entering a business; they cannot conduct random verifications of identities. Enforcement, thus, usually involves inter-agency cooperation. When a labor inspector writes up a citation for illegal employment of an alien, it has the force of law unless overturned or forgiven during appeal.

According to Bernard Vachette (1990) of OMI and to other sources interviewed over the years, many citations for infractions of the law barring illegal employment of aliens, which arrive in the form of dossiers at OMI, were not transmitted by departmental directors in the late 1970s and early 1980s. Progress in transmission of dossiers was reported in the 1983-1984 period.

By 1990, a debate had developed over the Special Contribution. Many enforcement personnel and administrators felt the 32,000 franc fine was too high and was disproportionate relative to punishment for other comparable offenses. Several labor inspectors reported that they hesitated to write up illegal alien employment infractions because of the severity of the administrative fine that increasingly was accompanied by other punishments. Writing up an infraction could put small and marginal firms out of business. Sometimes only one violation would be written up when additional aliens were illegally employed and/or additional citations could be made. French labor inspectors are entitled to use their discretion in the public interest. Several inspectors cited aggravation of unemployment, already a major preoccupation in France by 1990, as a reason for not writing up infractions.

This debate contributed to the falloff in Special Contribution notifications in 1990 seen in **Table 9** [p.39]. The decree of November 8, 1990 modified the Special Contribution. Three levels of Special Contributions, tailored or modulated to the nature of the illegal alien employment offense, were instituted. The normal fine henceforth would be 1,000 times the minimum hourly wage (16,870 francs as of July 1, 1992). An augmented fine would be

due from employers who already had been subject to the Special Contribution in the five years prior to the infraction. The augmented fine was 2,000 times the minimum hourly wage (or 33,740 francs as of July 1, 1992). A reduced fine was inaugurated for illegal employment of an alien that was not accompanied by other infractions. Such a reduction was at the discretion of OMI consequent to a recommendation from a department-level director of labor and employment. This same decree instituted a 10 percent surcharge on the Special Contribution if it were not paid within two months of notification of the employer. An interagency directive made application of the November 8, 1990 decree retroactive to cover all dossiers in which there had not been notification of the fine or that were under appeal. This procedure lasted until the end of 1992. During this period, a new computer-assisted procedure for administration of the Special Contribution was put into place and became operational as of December, 1991.

Citations for illegal alien employment increased in 1991, but they dipped again in 1992. The primary reason for the decrease was the change in legal status of Portuguese and Spanish nationals in that year. They became European Community workers.

In 1992, 2,498 Special Contributions were assessed—the highest level ever. Between 1977 and 1992, a total of 25,942 infractions for illegal employment of aliens had been transmitted to OMI. The annual average of Special Contribution fines levied between 1977 and 1989 was 1,370. Hence, French officials interviewed in 1993 and 1994 spoke of significant progress in enforcement of employer sanctions.

The severity of the Special Contribution fine, in addition to judicial punishments for illegal alien employment and punishments for related offenses like nonpayment of social security taxes, figured in the sharp drop in recovery of Special Contribution fines between 1985 and 1989. OMI received only 11.41 percent of the Special Contributions levied in 1985, 7.79 percent in 1986, 4.28 percent in 1987, and 3.24 percent in 1989. Data for 1990 and 1991 were not comparable. However, by 1992, the recovery rate had increased to 18.64 percent.

OMI reported that “the reform made in 1990 and the amelioration of management procedures regarding recovery and issues surrounding it have therefore allowed a clear redressing of the situation and even contributed to heightened efficacy of this administrative sanction” (L’Office des

Migrations Internationales 1992:77-78). Nevertheless, numerous obstacles to recovery remain. A disproportionately high number of illegal alien employment cases involve employers who themselves are aliens. They frequently repatriate and do not pay the fine. Other employers declare insolvency or are imprisoned and cannot pay.

### **Other Legal Barriers**

As already noted, the French government responded incrementally, and ultimately constructively, to the reluctance of public prosecutors to pursue charges against employers by revising legal texts. In one noteworthy case that adversely affected overall enforcement of sanctions in France in 1986, a public prosecutor found the provisions in the Labor Code prohibiting illegal employment (under which charges had been brought against an employer employing some 350 aliens) ambiguous. Therefore, all 350 charges were dropped with a resultant demoralizing effect upon those charged with enforcement. The dismissal led to redrafting of the legal provision in question and subsequent adoption of the redraft as law. The result was the remobilization suggested by the upsurge in citations made by labor inspectors beginning in 1987.

Whatever the shortcomings in the responsiveness of French courts to employer sanctions, it must be recalled that a great deal of enforcement is not recorded in statistics kept on court cases. Administrative and other sanctions, such as fines collected for nonpayment of mandatory health insurance premiums, are not recorded. And many enforcement activities have a deterrent effect even if they do not result in the writing up of complaints and successful prosecution of employers in the courts.

Laws that prohibit illegal employment of aliens seem to be adhered to by many, if not most, employers, a non-negligible deterrent to greater illegal migration. A minority of employers either ignore or consciously violate the prohibition. And there is reason to believe that this minority is growing despite enforcement efforts.

Prosecution of violations of social legislation is always difficult. Agricultural law inspectors, in particular, tell of presumably illegally employed workers running into the fields as they approach. Labor and agricultural inspectors need the cooperation of the police to apprehend the employees in such situations. Prosecution of employers under criminal law, of course, must comply to standard rules of evidence and procedure. Complaints generally are not written up unless, in the

opinion of an inspector or other enforcement agent, all the elements of a successful case are there. A number of enforcement agents pointed out that investigations and visits that did not result in the writing up of complaints and prosecution undoubtedly had a deterrent effect upon employers.

### **Insufficient Enforcement Personnel and Resources?**

An upsurge in criminality over the last several decades has fed anti-immigrant sentiment and profoundly affected politics in a number of Western European states. Court systems and law enforcement agents have been sorely tried by the resultant mass of litigation. Enforcement agents have far broader responsibilities above and beyond enforcement of laws prohibiting illegal employment of aliens. For many labor inspectors and police officers, enforcement of employer sanctions is a low priority. Labor inspectors, in particular, often do not write up complaints for infractions that they detect because there are other enforcement priorities in their eyes. This is why the Interministry Liaison Mission in France devotes most of its effort, in addition to studying illegal migration and illegal alien employment, to informing enforcement agents about the various laws penalizing

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illegal alien employment and the priority attached to their enforcement by the government. Members of the Marseille branch office of the Inter-ministry Liaison Mission have noted an upsurge in citations, particularly by the Gendarmerie or national rural police, in the wake of their visits.

Labor inspection historically has been based on inspections of factories. Most illegal alien employment is not to be found in large factories, which often have a substantial union presence. Illegal alien employment is concentrated in small businesses, in an environment that is different from the classic focus of labor inspector training and service. This disjuncture between the focus of labor inspection and the focus of illegal alien employment adversely affects enforcement of laws prohibiting illegal alien employment. By training, labor inspectors look for unsafe working conditions more than for illegal alien employment. Enforcement of laws prohibiting illegal alien employment is largely incidental to routine enforcement of social legislation by enforcement agents. Enforcement agents must have a reason to suspect illegal alien employment, for example, a letter of denunciation or a telephone tip, before launching a nonroutine investigation.

Inadequacy of enforcement personnel and resources is the factor most cited by au-

thorities in charge of enforcement of employer sanctions in Western Europe in discussing problems of enforcement. In the key agricultural department of the Vaucluse in May 1990, for example, there were five enforcement personnel with a budget of some 38,000 francs. The agricultural inspector explained that budgetary constraints greatly limited the number of inspections that could be made. While enforcement of employer sanctions was thought to have a deterrent effect, it was clear that budgetary and personnel limitations restricted enforcement. The Vaucluse example is illustrative of a limitation in employer sanctions enforcement across western Europe.

Is there a disjuncture or a gap between laws and governmental policies that call for steadily harsher punishment of illegal alien employment and the reality of limited personnel and other resources allocated to employer sanctions enforcement? To western European critics of the level of employer sanctions enforcement, the answer is clearly, "Yes." But this viewpoint tends to ignore a perceptible, if incremental, increase in personnel and other enforcement resources allocated to enforcement of employer sanctions over the past fifteen years. Director Hue of the Interministry Liaison Mission explained that the mission regularly requested greater resources. Usually most of their requests were denied, as the government

had other priorities, but always there was an incremental increase in the capacity of the French government to punish illegal employment of aliens. For example, it was difficult for the Mission to obtain additional labor inspectors specialized in enforcement of laws pertaining to aliens in a political atmosphere dominated by calls to reduce the presence of state regulation in French business activity. Enforcement of laws prohibiting illegal alien employment clearly is a function of the personnel and other resources allocated to it. It seemed obvious that the level of enforcement could be increased if there were the political will to expand the commitment of enforcement personnel and other resources.

Still, the commitment of enforcement personnel in France by 1994 was considerable. According to information supplied by C-V. Marie in March of 1995, the French corps of labor inspectors includes 2,910 agents authorized to make inspections; 32 agents specialize in illegal employment enforcement. All together, the labor inspectorate made 284,921 site inspections in 1992 and witnessed 921,856 violations. Of the 23,345 of these that were written up, 2,270 concerned illegal employment.

Within the Ministry of the Interior, a new agency, known by the acronym DICILEC, was created in late 1994, mainly out of the Air and Frontier Police. It is a spe-

cialized agency for control of immigration and illegal employment, although its mission was not entirely clear as late as November of 1994. It has 950 operational agents, of whom about 100 have administrative jobs. Additionally, Officers of the Judicial Police play an important role. Overall, there are about 4,000 police potentially competent to enforce laws against illegal employment.

The number of fiscal agents available to write up citations for infractions related to illegal employment, nonpayment of employment taxes for example, is estimated at 1,100. Agents from the Gendarmerie, customs, maritime affairs, and social security also participate in enforcement, but estimates of their numbers in enforcement of laws against illegal employment are unavailable.

### **Problems of Proportionality, Employer Adaptation, and Coordination**

An additional problem of enforcement is linked to the proportionality concern. Some enforcement agents are reluctant to write up complaints against employers because they feel that the illegal workers are more severely punished than their employers.

Historically, employer sanctions were advocated by trade unions and progressive political parties because they made employers responsible for illegal employment that previously was punished by deportation and other penalties levied against the illegally employed alien alone. Particularly in the Paris area, a number of labor inspectors interviewed in the 1985-1987 period indicated that often they did not write up complaints for fear of putting marginal firms out of business. Or, they might locate four illegal alien employees but only charge the employer with hiring one. French labor inspectors enjoy a great deal of discretion. They need not write up citations if it is not in the public interest, which they are free to interpret.

In the South of France, particularly in the department of the Var, a movement developed in the ranks of labor inspectors against enforcement of employer sanctions. A group calling itself the antiracist collective distributed tracts and essentially argued that enforcement punished alien workers with deportation while their employers escaped punishment. This movement appeared localized. One of the complaints frequently heard in the Midi is that deportation of illegal alien workers prevents them from collecting the pay and employment-related benefits due to them under French law. This, coupled with the perception that employers will not be

punished, appeared to prompt the protest. The proportionality concern, therefore, paradoxically appeared to affect enforcement in two ways: too heavy a fine against employers was seen by some French labor inspectors as a reason not to write up complaints; other inspectors claimed just the opposite as a reason for not writing up complaints.

A further problem affecting punishment of offending employers arises from their ability to adapt to enforcement strategies. Some employers have thwarted enforcement by going, as it were, deeper underground. This has been the case, for example, in the Paris area garment industry; some employers of aliens ineligible to work have relocated out of the garment industry center to more difficult to detect underground factories in the suburbs.

Another employer strategy has been to utilize subcontractors who hire illegal aliens. French authorities have revised their laws punishing illegal employment of aliens to facilitate punishment of the subcontractors and of firms that knowingly dissimulate illegal alien employment through subcontracting. The problem of subcontractors employing aliens ineligible to work is particularly significant in the construction industry. A number of recent studies of the construction industry in France have found widespread employ-

ment of illegal aliens through the subcontracting mechanism. The phenomenal growth of subcontracting in construction and service industries like cleaning and maintenance mitigates against successful enforcement of laws prohibiting illegal employment of aliens.

As underscored in the 1986-1987 report of the Interministry Liaison Mission to Combat Manpower Trafficking, the trend towards deregulation and greater flexibility in labor markets, as exemplified by the growth of temporary worker agencies and eased regulations concerning employment of nonper-manent workers, tends to undercut governmental policies aimed at curbing illegal alien entry and employment. Employer sanctions are only one component of broader public policies affecting illegal migration. Labor market trends and developments in the 1980s generally mitigated against successful enforcement of laws prohibiting illegal alien employment.

## **IMPLICATIONS FOR ENFORCEMENT OF IRCA AND OTHER U.S. LABOR LAWS**

The as-yet-unpublished French enforcement statistics for 1992 include 5,133 cases of illegal employment transmitted to pros-

ecutors, with a total of 11,232 infractions; 1,457 or 13 percent of these cases involved illegal employment of aliens. In all, 8,130 persons were indicted, including 5,700 business managers. In 1991, 4,742 persons were convicted for illegal work; 27 percent of the convictions involved illegal alien employment; 25 percent of those convicted in 1991 were aliens from non-European Union countries. In 1993, 100 or so investigations by fiscal agents were conducted on the basis of cases written up in 1992. These investigations recovered 223,942,000 francs (roughly \$45 million).

French officials also were upbeat about the implementation of the December 31, 1992 law obligating employers to declare their intention to hire an employee prior to the onset of employment. By January 1995, more than 176,000 firms had made 1.2 million prior declarations to social security authorities before actual employment began. From September 1993 to December 1994, there were more than 18 million such prior declarations. These figures suggest that the experiment begun in 1992 conclusively had succeeded and that firms were complying voluntarily. This should further help prosecution of offending employers in court. Already, between 1988 and 1991, convictions for illegal employment progressed 90 percent. Bearing in mind that the appropriateness of governmental regulation of labor mar-

kets and the economy is generally viewed as less problematic in France than in the United States, there would appear to be much to learn from the French experience. Perhaps the most important lesson is that it takes years, even decades, to refine employer sanctions and related laws in order to make them more effective and credible. While there have been ups and downs and setbacks and advances in French enforcement, the French government clearly is doing more to prevent illegal immigration and illegal alien employment than it was one-quarter century ago.

Employer sanctions have not stopped illegal immigration to France and are unlikely to do so in the future. But presumably they do deter some illegal alien employment. They help confine it to certain industries and types of jobs. Many labor market developments in recent years adversely affected enforcement of employer sanctions, but the French government continues to adapt its strategy to changing circumstances.

The United States would do well to adopt the French and German approach of viewing illegal alien employment as but one aspect of a broader problem of illegal employment. This would tend to defuse the intense political opposition to employer sanctions enforcement in the United States that is unique among Western de-

mocracies. French enforcement history demonstrates that employer sanctions enforcement is not a threat to civil liberties or something that aggravates employment discrimination against minorities. To the contrary, legally resident and citizen minorities in particular have a great stake in effective enforcement of laws punishing illegal employment of aliens, as well as of other related labor laws.

France does not have a mandatory national identification document. But most French citizens, probably more than 95 percent, carry a national identity card. All aliens are required to carry appropriate identification. While there is concern over falsification of identify documents and safeguards have been instituted to prevent abuse of identity documents by authorities and others, the availability of more reliable identification in France is critical to French enforcement efforts. Particularly noteworthy is the growing ability of labor inspectors and social security agents to exchange information and coordinate their enforcement efforts with the assistance of computer-based research.

The challenge of preventing illegal immigration is long-term. Viewed from the perspective of the Western democracies, there are few hopeful signs on the horizon. Initiatives like NAFTA will produce desired results only over the long term.

Over the short to medium term, there is no alternative to enforcement of laws like IRCA. Indeed, it is likely that there will be mounting pressure from electorates for governments to take more effective steps to prevent illegal migration. As Gary Freeman (1994) has suggested, a primary paradox in Western democracies in the late twentieth century is the lag and discrepancy between the average citizen's desire for immigration control and the reality of high levels of immigration, both legal and illegal.

Progress in regulation of international migration will come only incrementally and piecemeal. Employer sanctions were never viewed as a panacea for illegal immigration by French authorities but rather as a useful, indeed key and indispensable, measure in a broader strategy to control immigration.

For all the criticism of the Immigration Reform and Control Act of 1986 [IRCA] and enforcement of its employer sanctions provisions, IRCA made it illegal to hire unauthorized aliens. That was a major accomplishment, albeit one achieved at a high price given the subsequent administration of the Special Agricultural Worker [SAW] program. Now the imperative is to make employer sanctions work, to make them into a credible deterrent.

Ultimately, the battle for immigration control will be won or lost at the local level, in particular in industries and places of employment. The French model of department-level commissions bringing together concerned enforcement services, elected officials, and representatives of employers and employees is one that the United States could emulate. One of the initial effects of such statewide, countywide, or municipal commissions might be to put an end to blatant defiance and disrespect for the law by a number of municipal county and state authorities. Such commissions would tend to make local representatives more politically accountable for their immigration stands and this would serve American democracy well. Elected representatives would be less able to undermine and impede immigration control and then turn around and bill the federal government for failing to prevent illegal immigration.

More importantly, the creation of such commissions could be part of a repackaging of the immigration control issue as part of a broader problem—the growth of the underground economy and illegal employment practices in general. Opponents of immigration reform in the 1980s tended to portray enforcement of labor laws and the then hypothetical employer sanctions as a zero-sum game. The real-

ity, of course, is otherwise. Enforcement of employer sanctions complements enforcement of labor laws. Employers who violate immigration laws—whether in France or the United States—also are more prone to violate related labor law.

This reality makes improved interservice enforcement cooperation and coordination a high priority. The recent agreement between the U.S. Department of Labor and The Immigration and Naturalization Service to allow labor inspectors to check I-9 compliance was a step towards the French approach. Much more can, and should, be done in this respect at all levels of government. The French began with local and regional experiments, initially in the Paris area, and then extended the departmental commission idea around the country.

The French government also has experimented with industrywide voluntary agreements. The idea is to get employers and employees in industries heavily affected by illegal alien employment to cooperate voluntarily in levelling the playing field as it were. Uncooperative firms and entrepreneurs might be barred from bidding for public contracts while cooperative firms would be favored. Especially in light of the Clinton administration's request that the newly-created World Trade Organization concern

itself with labor conditions and standards, both France and the United States will need to take steps to ensure compliance with labor laws in order to make credible demands of others.

Democratic societies like the United States and France cannot balk before the complexities and cost of regulation of international migration. A great deal is at stake. Increasingly, the idiom of international migration—terms like "boat people," "asylum-seekers," "*non-refoulement*," and "guestworkers" once not in our vocabulary—has become the idiom of diplomacy and international relations. It no longer seems absurd to suggest that regulation of international migration looms as a principal foreign and domestic policy challenge for the twenty-first century.

The time actually is long overdue for scarce resources to be apportioned in a fashion commensurate with perceptions of threats. In the post-Cold War rethinking of foreign and national defense policies, regulation of international migration is assuming greater saliency. This bodes well for France and the United States as international migration policies for too long were not regarded as priorities. Enforcement of laws regulating international migration is contingent upon political will. The capacity is there in France and, thanks to IRCA, increasingly in the United States.

Doubts persist, however, as to the political will to prevent illegal immigration in both countries. The task at hand is to erase those doubts through effective, credible action.

The progress made in France over the last two decades stems in no small part from the charge given to an interagency taskforce to monitor and report on enforcement, to propose reforms to make it more effective, and to facilitate interagency—including local and regional—cooperation. The United States should emulate the French interagency taskforce and mandate it to coordinate enforcement of all laws pertaining to illegal employment, not just illegal alien employment. Perhaps the Commission on Immigration Reform might fulfill this function. Moreover, the charge to this interagency entity should include research on the underground economy in general in order better to curb illegal alien employment in particular.

**Table 1.**  
**Employer Sanctions in**  
**Western Democracies**

COUNTRY	LEGAL BASIS	FINE	IMPRISONMENT	CANCELLATION OF RECRUITMENT	PAYMENT OF DEPORTATION TRANSP. COSTS	CLOSURE OF BUSINESS	PENALTIES FOR VIOLATION OF SOCIAL LAWS (HEALTH, ACCIDENT, PENSION, INS.)	PENALTIES FOR ILLEGAL ALIEN EMPLOYMENT IN LEASING & TEMP. WORK	OTHER
AUSTRIA	ALIENS POLICE LAW SOCIAL INSURANCE ACT	YES		POSSIBLE			YES		
AUSTRALIA	ILLEGAL ALIEN EMPLOYMENT OFTEN VIOLATES COLLECTIVE BARGAINING AGREEMENTS-AWARDS			POSSIBLE			YES		
BELGIUM	LAW OF JULY 22, 1976	1,000 TO 2,000 BEL. FR. PER WORKER. MAX OF 150,000 BEL. FR.	POSSIBLE 8 DAYS TO 1 MO.	POSSIBLE	YES (INCLUDING FAMILY OF WORKER)	YES	YES		
CANADA	SECT. 96 OF IMMIGRANT ACT	UP TO \$5,000	UP TO 2 YRS.				YES		
DENMARK					YES				PROVISION OF FALSE INFO. TO AUTHORITIES PUNISHABLE BY FINE & IMPRISONMENT UP TO 6 MOS.

**Table 1. cont.**

COUNTRY	LEGAL BASIS	FINE	IMPRISONMENT	CANCELLATION OF RECRUITMENT	PAYMENT OF DEPORTATION TRANSP. COSTS	CLOSURE OF BUSINESS	PENALTIES FOR VIOLATION OF SOCIAL LAWS (HEALTH, ACCIDENT, PENSION, INS.)	PENALTIES FOR ILLEGAL ALIEN EMPLOYMENT IN LEASING & TEMP. WORK	OTHER
FRANCE	LABOR CODE LAW OF 10/17/81	2,000-20,000 WORKER COURT FINE 40,000 FR. FOR REPEAT 16,870 FR. ADMIN. FINE PER WORKER , CAN BE DOUBLED OR REDUCED	2 MOS.-1 YR., 3 YRS. FOR REPEAT	POSSIBLE		MATERIALS & GOODS MAY BE SEIZED. CONVICTED ALIEN EMPLOYERS MAY BE BARRED FROM RESIDENCY UP TO 5 YRS.	YES	FINES OF 4,000 TO 20,000 FR. 8,000 TO 40,000 FOR REPEAT OFFENDERS AND/OR 2-6 MOS. IMPRISONMENT FOR HIRING ILLEGAL ALIEN TEMP. WORKER OR FOR LEASING	2 MOS.-1YR. IMPRISONMENT & 2,000-20,000 FR. FINE FOR VIOLATION OF OMI RECRUITMENT MONOPOLY. UP TO 3 YRS. IN PRISON 40,000 FOR REPEAT OFFENSE. 4,000-20,000 FR. FINE FOR REIMBURSEMENT OF RECRUITMENT COSTS, 8,000-40,000 FR. & UP TO 6 MOS. FOR REPEAT
GERMANY	EMPLOYMENT PROMOTION ACT, TEMPORARY EMPLOY. ACT, ACT TO COMBAT ILLEGAL EMPLOYMENT OF 1981	100,000 MARKS/ WORKER FINE MAY BE INCREASED TO DETER EMPLOYERS	FOR EMPLOYMENT IN CONDITIONS WORSE THAN GERMAN, 3-5 YRS. (+FINE)	YES			YES	UP TO 3 YRS. & 100,000 FINE, UP TO 5 YRS. IN SERIOUS CASES FOR LEASING ILLEGAL ALIENS. MAX. FINE MAY BE INCREASED	
GREECE	BASIC LAW 1346183	MIN. 30,000 DRACHMAS PER WORKER	MIN. 3 MOS.	YES					

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**Table 1. cont.**

COUNTRY	LEGAL BASIS	FINE	IMPRISONMENT	CANCELLATION OF RECRUITMENT	PAYMENT OF DEPORTATION TRANSP. COSTS	CLOSURE OF BUSINESS		PENALTIES FOR ILLEGAL ALIEN EMPLOYMENT IN LEASING & TEMP. WORK	OTHER
ITALY	LAW 243 OF 1986 AND 39 OF 1990	732 TO 3,000 US\$	3 MOS.-1 YR.					ILLEGAL SUBCONTRACTING OF ALIEN SUBJECT TO FINE OF 3,000-15,000 US\$ AND UP TO 5 YRS.	VIOLATION OF EMPLOYMENT OFFICE MONOPOLY FINE 100,000 TO 1,000,000 LIRA AND IMPRISONMENT FOR 15 DAYS TO 1 YR.
JAPAN	1989 REVISION OF IMMIGRATION ACT (ART. 73, SECT. 2)	UP TO 19,500 US\$	3 YRS. MAX.						
LIECHTENSTEIN		UP TO 10,000 SW. FR.	UP TO 6 MOS.	YES	YES				
LUXEMBURG	REGULATION OF 5/12/72	2,501 TO 50,00 FL.	8 DAYS TO 1 MO.						
NETHERLANDS	FOREIGN WORKERS EMPLOYMENT ACT OF 1984 & THE ECONOMIC OFFENSES ACT	UP TO 2,000 FL. PER ALIEN	UP TO 6 MOS.			YES			
NORWAY	SEC. 47 OF IMMIGRATION LAW	UP TO 500 US\$	UP TO 2 YRS.						
SPAIN		7,000-18,000 US\$				YES			
SWEDEN	ALIENS ACT	UP TO 20,000 SEK	YES						

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**Table 1. cont.**

COUNTRY	LEGAL BASIS	FINE	MPRISON- MENT	CANCELLA- TION OF RECRUITMENT	PAYMENT OF DEPORTA- TION TRANSP. COSTS	CLOSURE OF BUSINESS	PENALTIES FOR VIOLA- TION OF SOCIAL LAWS (HEALTH, ACCIDENT, PENSION, INS.)	PENALTIES FOR ILLEGAL ALIEN EMPLOYMENT IN LEASING & TEMP. WORK	OTHER
SWITZERLAND	LAW ON THE SOJURN & ESTABLISH- MENT OF ALIENS OF 1988	UP TO 5,000 SW. FR. FOR INTENTIONAL VIOLATION, UP TO 3,000 SW. FR. FOR NEGLIGENT HIRING, UP TO 10,000 SW. FR. FOR HOUSING ILLEGAL EMPLOYEE	UP TO 6 MOS. FOR HOUSING ILLEGAL EMPLOYEE OR FOR RECIDIVISM WITHIN 5 YRS.	POSSIBLE				YES	
UNITED KINGDOM		NO	NO				YES		EMPLOYER MIGHT BE PROSECUTED FOR HARBORING ALIENS
Sources: Council of Europe; OECD; U.S. Department of State Unclassified Cables.									

**Table 2.**  
**Infractions Communicated to**  
**Interministry Liaison Mission to**  
**Combat Manpower Trafficking**

DATE	EMPLOY- MENT OF ALIENS WITHOUT PERMITS	VIOLATION OF ONO RECRUITMENT MONOPOLY	AGAINST REIMBURSE- MENT OF VIOLATION BAN	UNDER- GROUND LABOR	TRAVEL COST FRAUD TO OBTAIN WORK PERMIT	NON- MAINTENANCE OF EMPLOYER REGISTER	LACK OF COLLECTIVE HOUSING DECLARA- TION	ABETTING ILLEGAL IMMIGRA- TION	TOTAL
1981	1,366	25	20	NA	19	205	31	469	2,135
1982	513	NA	NA	NA	69	259	14	253	1,108
1983	1,255	9	4	135	14	207	9	604	2,237
1984	1,538	94	24	214	274	358	128	686	2,953
1985	963	36	4	533	16	185	19	700	2,456
1986	1,397	67	1	141	11	232	100	529	2,478
1987*	1,716	103	5	328	37	290*	9	727	3,215
<p>*Incomplete Source: Mission de Liaison Interministerielle pour la Lutte contre les Trafics de Main-d'oeuvre 1988:21.</p>									

**Table 3.**  
**Citations for Infractions Against Panoply of  
French Laws Against Illegal Alien Employment and  
Residency 1982-1987 by Enforcement Service**

YEAR	POLICE	GENDARMERIE NATIONAL POLICE	LABOR	AG	TRANSPORTATION	TOTAL
1982	199	217	109	62	1	586
1983	398	370	395	104	2	1,266
1984	447	321	649	49	2	1,468
1985	434	166	462	52	1	1,115
1986	409	246	499	55	1	1,213
1987*	432	231	572	64	2	1,301

\*Incomplete  
Source: Mission de Liaison Interministerielle pour la Lutte contre les Trafics de Main-d'oeuvre 1988:20.

**Table 4.**  
**Total Infractions by Sector and by  
Principal Offenses, 1989-1991  
(Percentage)**

	TOTAL	UNAUTHORIZED ALIEN EMPLOYMENT	CLANDESTINE WORK	ILLICIT LENDING OF WORKERS ON LABOR TRAFFICKING
AGRICULTURE	11.16	11.9	10.9	1.4
BUILDING	36.2	42.8	29.1	78.5
GARMET	7.9	10.8	7.2	5.4
COMMERCE	9.5	4.0	15.3	1.7
HOTELS, CAFES, RESTAURANTS	9.1	10.6	10.1	0.1
AUTOMOBILE	3.0	0.7	5.4	—

Source: Marie 1993a.

**Table 5.**  
**Evolution of Legal Complaints and Infractions**  
**for Illegal Work by Economic Sector, 1989-1991**  
**(Percentage of Annual Total)**

SECTOR	LEGAL COMPLAINTS			INFRACTIONS		
	1989	1990	1991	1989	1990	1991
AGRICULTURE	9.0	9.0	9.5	10.7	11.5	12.5
BUILDING	31.8	34.5	31.7	31.6	39.8	38.5
COMMERCE	11.2	13.3	14.4	8.6	10.2	10.3
HOTELS, CAFES, RESTAURANTS	11.2	11.9	11.7	9.1	9.2	9.7
AUTOMOBILE	4.8	4.4	4.9	3.2	2.8	3.0

Source: Marie 1993a.

**Table 6.**  
**Legal Complaints by Type of Infraction, 1989-1991**

TYPE OF INFRACTION	1989	1990	1991	1989-1991
CLANDESTINE WORK	4,426	4,983	5,283	14,692
UNAUTHORIZED ALIEN EMPLOYMENT	3,107	3,858	3,808	10,773
LABOR TRAFFICKING AND ILLICIT LENDING OF WORKERS	292	763	768	1,823
OTHER INFRACTIONS	1,412	2,083	2,699	6,194
TOTAL	9,237	11,687	12,558	33,482

Source: Marie 1993a.

**Table 7.**  
**Totality of Single and Multiple Infractions Sanctioned**  
**by Tribunals, by Type of Infraction, 1988-1989**  
**(Absolute Number and Percentage)**

	NUMBER OF INFRACTIONS	PERCENTAGE
<b>ILLEGAL WORK</b>		
CLANDESTINE WORK	4,131	57.0
EMPLOYMENT OF ALIENS (OF WHICH UNAUTHROIZED ALIEN EMPLOYMENT)	1,814 (1,754)	25.0
LABOR TRAFFICKING AND ILLICIT WORKER LENDING	471	6.5
ABSENCE OF REQUIRED PROFESSIONAL PAPERS FOR ALIENS	52	0.7
INFRACTION OF EMPLOYMENT RELATIONS	10	0.1
<b>SUBTOTAL</b>	<b>6,478</b>	<b>89.3</b>
<b>ASSOCIATED INFRACTIONS</b>		
ALIENS POLICE RELATED TO IMMIGRATION	293	4.0
OTHER ENDANGERMENT OF SOCIOECONOMIC ORDER	230	3.2
FALSE DOCUMENTS	55	
FRAUD	58	3.4
OTHER INFRACTIONS	130	--
<b>SUBTOTAL</b>	<b>766</b>	<b>10.6</b>
<b>TOTAL</b>	<b>7,244</b>	<b>100.0</b>
Source: Brizard & Marie 1993.		

**Table 8.**  
**Convictions and Punishments for Illegal**  
**Work in France 1988-1989**

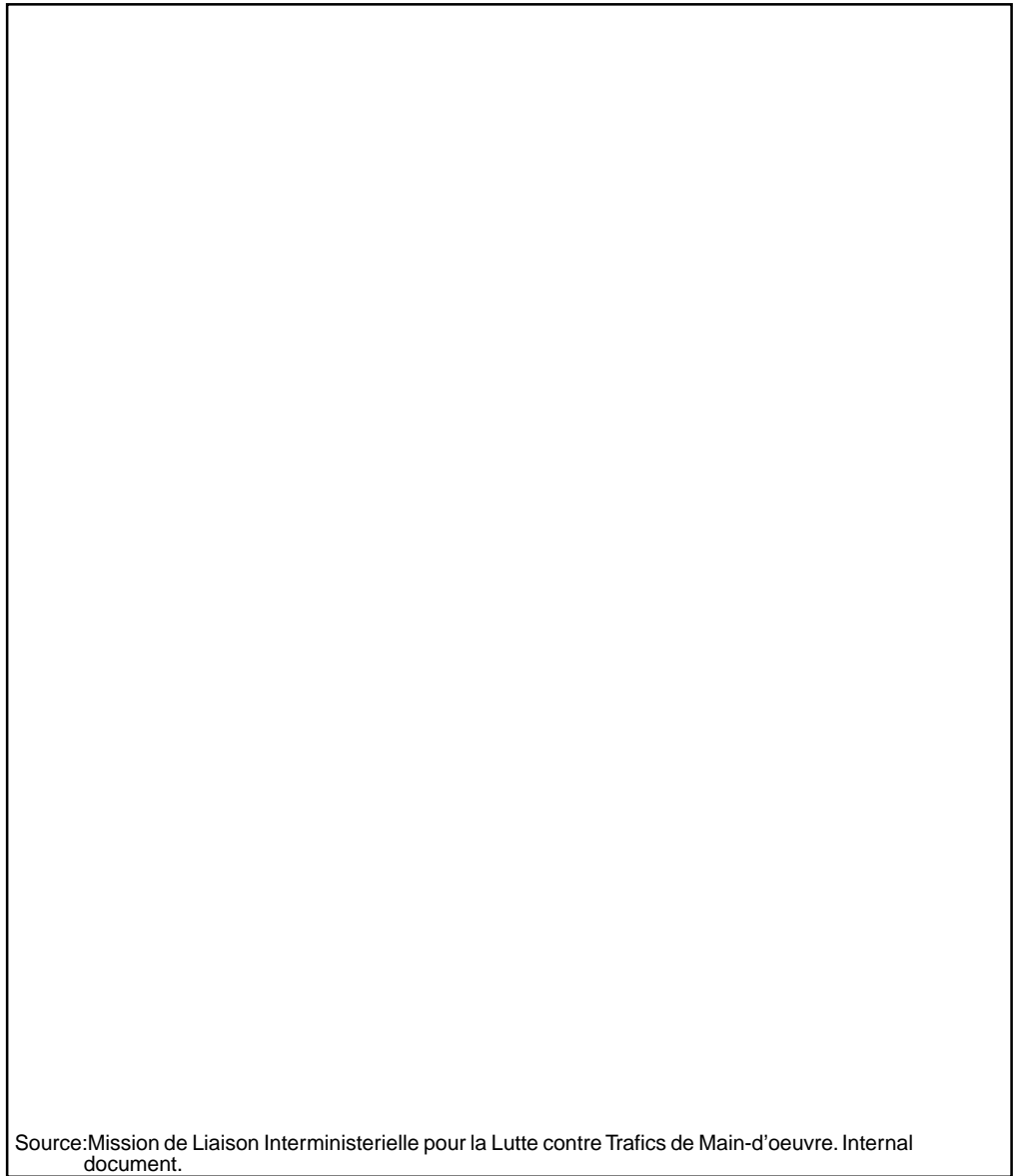
NATURE OF CONVICTION (NATIONALITY OF CONVICTED)	TOTAL	IMPRISONMENT			FINES		
		TOTAL	CONFIRMED	AVG. TERM (MOS.)	TOTAL	CONF IRMED	AVG. LEVY (FR. FR.)
<b>DOING ILLEGAL WORK</b>							
<b>TOTAL</b>	<b>2,3456</b>	<b>544</b>	<b>122</b>	<b>4.0</b>	<b>1,710</b>	<b>1,417</b>	<b>3,900</b>
(FRENCH)	1,769	369	71	3.5	1,221	1,086	3,913
(EC)	131	31	8	--	94	82	3,961
(NON-EC)	363	133	41	4.9	216	189	3,867
(N. AFRICAN)	199	63	19	4.6	127	113	4,180
(TURK)	32				24	20	3,675
<b>RECOURSE TO ILLEGAL WORK</b>							
<b>TOTAL</b>	<b>993</b>	<b>153</b>	<b>20</b>	<b>3.2</b>	<b>808</b>	<b>708</b>	<b>4,000</b>
(FRENCH)	819	121	15	3.0	669	584	4,030
(EC)	41	6	1	--	35	33	3,557
(NON-EC)	90	21	3	--	66	55	4,213
(N. AFRICAN)	58	12	2	--	44	37	4,054
(TURK)	15				10	6	5,333
<b>REGULATIONS CONCERNING ALIEN EMPLOYEES</b>							
<b>TOTAL</b>	<b>1,329</b>	<b>346</b>	<b>74</b>	<b>4.3</b>	<b>954</b>	<b>886</b>	<b>5,000</b>
(FRENCH)	713	117	20	4.6	572	526	4,878
(EC)	99	9	1	--	89	83	5,031
(NON-EC)	462	207	51	4.3	252	241	5,333
(N. AFRICAN)	220	77	20	3.1	143	137	5,025
(TURK)	78	47	17	5.7	30	30	4,493
Source: <i>Infostate Justice</i> 1992.							

**Table 9.**  
**Evolution of Citations for Illegal Employment**  
**of Aliens Communicated to OMI and**  
**Notifications of the Special Contribution Fine**

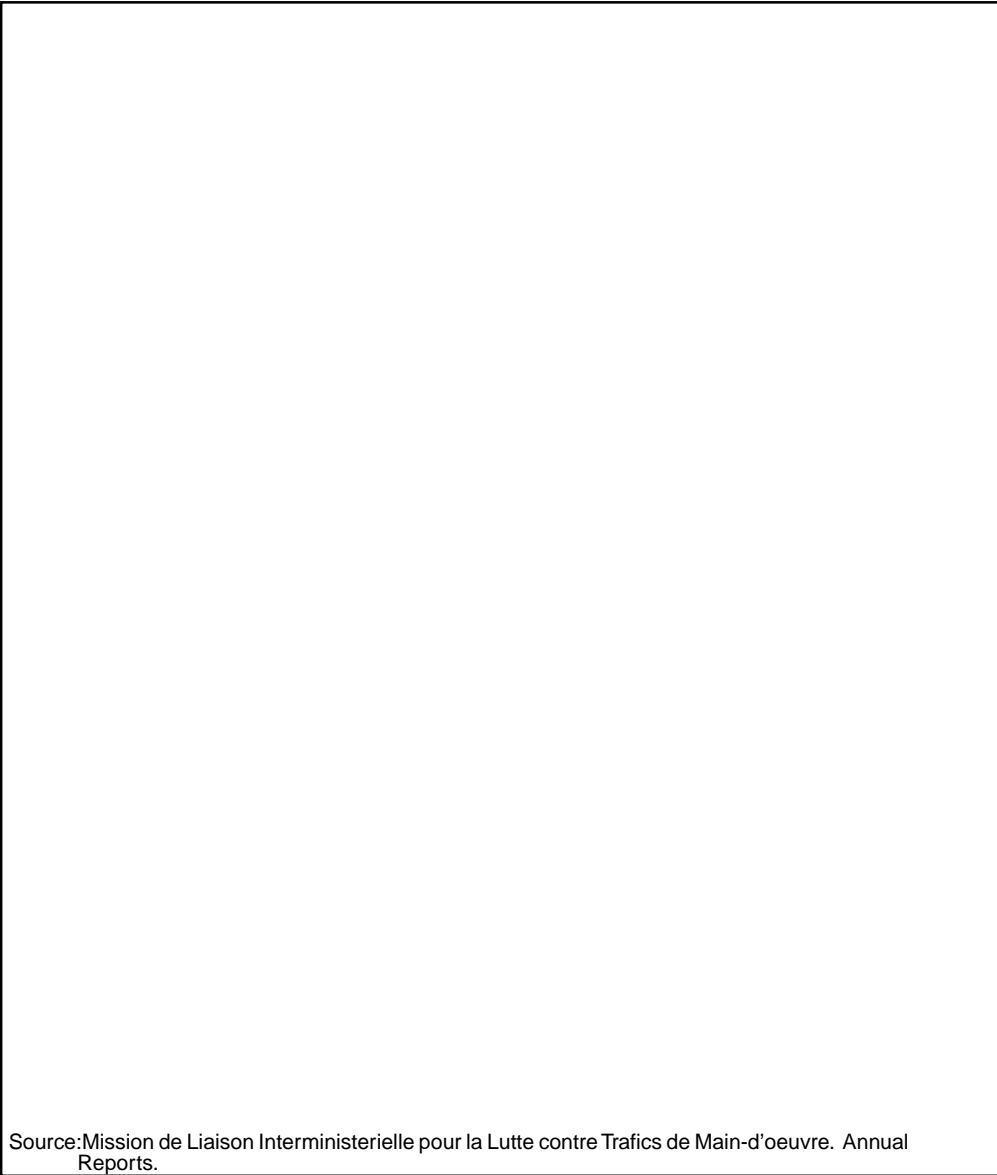
Year	Citations	Notifications
1977/1978	1,899	1,899
1979	2,151	2,151
1980	1,313	1,313
1981	1,844	1,844
1982	684	684
1983	1,143	1,143
1984	1,268	1,268
1985	1,316	1,316
1986	1,188	1,188
1987	1,547	1,547
1988	1,702	1,702
1989	1,773	1,773
1990	2,508	607
1991	3,250	1,220
1992	2,356	2,498

Source: L'Office des Migrations Internationales 1992:70.  
Note: Between 1977 and 1989 OMI statistics kept only for notifications.

**Graph A.**



**Graph B.**



## **APPENDIX**

### **Principal Steps in the Evolution of French Policy to Curb Illegal Alien Employment and the Underground Economy**

<b>DATE</b>	<b>MEASURE</b>
July 11, 1972	Made illegal employment an indictable offense.
1972	Promulgated initial <i>ordonnances</i> concerning temporary work, trafficking of labor, and manpower leasing.
July, 1974	Suspended nonseasonal alien worker recruitment.
December 31, 1975	Adopted civil law regulating subcontracting in public and private markets.
1974-1976	Adopted laws that provide for the hiring of labor inspectors specializing in control of foreign labor in twenty-three “priority” departments.
July 10, 1976	Instituted a “special contribution” civil fine payable to the National Immigration Office for illegal employment of alien workers.
August 10, 1976	Created Interministry Mission to Combat Manpower Trafficking.
1980-1983	Completed four governmental studies of illegal work and the underground economy.
October 17/29, 1981	Passed new laws making illegal employment of aliens a more serious offense—a misdemeanor subject to police courts—and increased fines.

- February 2, 1982      Instituted new *ordonnances* that reinforce regulation of manpower leasing.
- August 31, 1983      Cabinet acted to reinforce policy against illegal alien migration and employment by:
- Creation of fifty-five new positions for labor inspectors specializing in control of foreign labor;
  - Creation of department-level interagency committees to combat illegal alien migration and employment in twenty-three “priority” departments;
  - Creation of a branch office of the Interministry Liaison Mission to Combat Manpower Trafficking in Marseille;
  - Augmentation of the “special contribution” civil fine from 500 to 2,000 times the minimum hourly wage (30,200 francs as of January 1, 1990);
- July 25, 1985      Made illegal work a misdemeanor.
- January 16, 1986      Extended laws pertaining to illegal alien migration and employment to overseas departments.
- March 14, 1986      Replaced by decree department-level interagency committees created August 31, 1983 with similar committees with a broader mandate to combat illegal work (the underground economy) in addition to illegal alien migration and employment
- January 27, 1987      Legally redefined illegal employment infraction. Simplified the definition of illegal work and broadened applicability.
- July 21, 1988      Passed amnesty law that expressly excluded those punished for illegal work, illegal alien employment, and manpower trafficking and leasing.

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- January 13, 1989 Legally redefined an illegal employment infraction.
- January 16, 1989 Extended by Interministerial decree the competency of the Interministry Liaison Mission to the underground economy.
- July 10, 1989 Adopted new labor law that:
- Newly incriminated illegal alien employment through intermediaries;
  - Redefined and more severely punished violation of the prohibition against reimbursement of fees paid to the International Migrations Office for foreign worker recruitment.
- January 2, 1990 Amended Labor law that enabled officers of the Judiciary police, after court authorization, to enter workplaces on the presumption of illegal employment or illegal alien employment.
- July 12, 1990 Modified labor code articles pertaining to subcontracting and leasing of labor: doubled fines for infractions to 8,000 to 40,000 francs; authorized unions to act on behalf of the workers involved.
- July 25, 1990 Redefined by decree the role of department-level commissions.
- November 8, 1990 Modulated by decree special contribution administrative fine for illegal alien employment: set the routine fine at 16,870 francs; doubled fine for employers who have been fined previously within the last five years; reduced fine for illegal alien employment without complementary violations if recommended by departmental authorities.
- January 3, 1991 Legally extended authority to bring charges for illegal work infractions to social security and other enforcement agents.
- April 18/22, 1991 Government granted employment authorization to Poles contingent on no adverse labor market effect.

- September 26, 1991      Removed automatic work authorization for asylum seekers (as of October 1, 1991).
- October 1, 1991        Facilitated by decree abrogation of short-term visas for aliens who work without authorization.
- October 3/4, 1991      Government acted to facilitate recovery of social security payments due in illegal work cases.
- October 30, 1991      Reinforced by decree the role of judicial authorities within departmental commissions and more fully associated socioprofessional representatives in department-level campaigns against illegal work.
- December 31, 1991     Passed major new law overhauling and bringing together legislation concerning illegal employment.
- January 24, 1992      Prime minister authorized departmental prefects (the chief governmental authority) to sign partnership agreements with unions and employer organizations to reduce illegal employment.
- December 31, 1992     Instituted experimental requirement obligating all employers to declare their employment intentions prior to actual employment of an employee.
- March 29, 1993        Authorized by decree social security organisms to use a national identification system to verify whether employers have complied with the obligation to declare all employees prior to the start of employment.

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Sources: Hue 1990b:4-7; Marie Undated.b.

## REFERENCES

Agence France Presse. 1985. Dispatch (March 25).

Arrete Interministeriel du 16 Janvier 1989.

Brizard, A.; Marie, C-V. 1993. *Travail Illegal et Suites Judiciaires*. Paris: Ministry of Labor and Ministry of Justice.

Costa-Lascoux, J. 1990. Personal interview.

de Wenden, C.W. 1990. In *The Political Rights of Migrant Workers in Western Europe* (Z. Layton-Henry, ed.). London, Newbury Park, New Delhi: Sage Pub.

Freeman, G. 1994. The Capacity of Democratic States to Control Unwanted Migration: An Overview. *The Annals*. (July).

Garson, J.P.; Moulier-Boutang, Y. Unpublished paper. *Les Clandestins et la Regularisation de 1981-1982 en France*. Prepared for GRAMI, Paris.

Hollified, J.F. 1992. *Immigrants, Markets and States*. Cambridge, MA; London: HUP.

Hue, G. 1987. Travail Illegal, Emploi Atypique. Presented at the Journees INRWFP-ENM (13-15 October).

\_\_\_\_\_ 1990a. Personal interview.

\_\_\_\_\_ 1990b. *Legalité, Efficacité et Travail Clandestine*. Unpublished paper (March).

*Infostate Justice*. 1992. 29:5 (September).

Lebron, A. 1993. *Immigration et Presence Etrangere en France: Le Bilan d'une Annee 1992-1993*. Paris: Ministere des Affaires Sociales, de la Sante et de la Ville.

Marie, C-V. Undated.a. Restructuration du Systeme Productif, Emploi des Etrangers et Travail Illegal: L'experience Francaise. Manuscript [an abridged, translated version appears in *The Annals*, July 1994].

\_\_\_\_\_ Undated.b. Evolution de la Reglementation en Matiere de Lutte contre le Travail Clandestine et les Trafics de Main-d'oeuvre et L'emploi Non-declare. Unpublished paper.

\_\_\_\_\_ 1993a. *La Verbalisation du Travail Illegal et sa Condemnation par les Tribunaux*. Paris: Mission de Liaison Interministerielle pour la Lutte contre les Trafics de Main-d'oeuvre.

\_\_\_\_\_ 1993b. Personal conversation

\_\_\_\_\_ 1994. Personal conversation.

Mission de Liaison Interministerielle pour la Lutte contre les Trafics de Main-d'oeuvre. 1980. *Bilan de la lutte contre les trafics de main-d'oeuvre étrangère pour l'année 1979.*

\_\_\_\_\_ 1984. *Bilan de la lutte contre les trafics de main-d'oeuvre étrangère pour l'année 1983.*

\_\_\_\_\_ 1988. *La Lutte contre les Trafics de Main-d'oeuvre en 1986-87.*

L'Office des Migrations Internationales. 1992. *1992 Numéro Spécial d'Actualités Migratons.*

*Le Quotidien de Paris.* 1985 (March 26).

Vachette, B. 1990. Personal interview.

Weil, P. 1991. *La France et ses Etrangers.* Paris: Calmann-Levy.



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**2430 E STREET NW, SOUTH BUILDING**  
**WASHINGTON, DC 20037**  
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