

Position Paper

UEAPME position on the proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of seasonal employment

I. Introduction

On 13 July 2010 the European Commission published a proposal for a directive on the conditions of entry and residence of third-country nationals for the purpose of seasonal employment.

UEAPME agrees with the aim to establish a common procedure for the entry and residence of third-country nationals to the EU according to seasonal job requirements. It should facilitate matching supply and demand on the labour market and help to meet future skills shortages in view of demographic change, an ageing society and shrinking workforce. It should thereby contribute to achieving the Europe 2020 Strategy for smart, sustainable and inclusive growth.

The legal basis Article 79 (2)(a) and (b) of the Lisbon Treaty sets out a new political and legal foundation for comparable rights of immigrants in the EU. The proposal belongs to a legal migration policy package¹, which was endorsed by the Stockholm Programme² in 2009.

II. General comments

UEAPME welcomes the new proposal focusing on low-qualified immigration with some reservations regarding certain aspects which require further clarification.

UEAPME supports the sectoral approach to meet skill needs according to economic demand, which is essential for many SMEs to fill seasonal vacancies. Employers clearly still have ongoing requirements for low skilled workers in the EU, despite labour market trends requiring upskilling of the workforce and higher qualifications.

However, UEAPME is concerned about the proposed maximum duration of stay of seasonal workers, which is not sufficiently flexible to meet the workforce needs for SMEs. Therefore Member States should be able to apply more favourable provisions according to their specific situation and their labour markets.

Another critical point which needs to be reviewed is the obligation for employers to provide accommodation of seasonal workers. Creating additional burdens and complexity notably for SMEs is counterproductive and would hinder mainly small employers from hiring much needed workers.

¹ Legal Policy Migration Package 2005: includes proposals for a general framework Directive and on highly qualified workers, sanctions against employers of illegally staying third-country nationals and intra-corporate transferees.

² The Stockholm Programme adopted by the December Council in 2009 sets out the EU's agenda on justice and home affairs for 2010-2015 with a strong focus on immigration.

UEAPME emphasises that Member States should continue reforming their labour markets in order to tackle high levels of unemployment of about 10% or more in many parts of the EU, but also because immigration remains a politically sensitive subject, which can lead to concern among the population and in particular those unemployed. We now see a trend in some Member States considerably affected by the economic crisis where national citizens are accepting seasonal jobs traditionally filled by third country nationals.

On this topic subsidiarity must be respected, despite a common approach to legal immigration at EU level. Member States have diverse economic situations, as well as strong historical and cultural traditions and therefore specificities need to be integrated at national, regional and sectoral level.

UEAPME sees a need to promote good practice and cooperation regarding circular migration for the worker, host and sending country, in order to ensure a more holistic approach to immigration and reaffirm the responsibilities of all parties concerned. This equally applies to other pending immigration directives, such as in the field of Intra-Corporate Transferees.

III. Specific comments on the proposal

Article 3 - Definitions

UEAPME agrees with the definitions outlined of a “third-country national”, a “seasonal worker” and an “activity depending on the passing of the seasons”, as well as a “seasonal worker permit”, a “single application procedure” and “universally applicable collective agreements”. Further, we strongly welcome the fact that it will be up to Member States to determine which sectors fit the criteria for seasonal work.

Article 5 - Criteria for admission

Article 5.1 (d)

As one admission criteria the Commission proposal obliges employers to provide proof of accommodation for the seasonal worker.

UEAPME considers that introducing compulsory accommodation requirements would inevitably lead to higher labour costs for employers and limit economic activity. In particular SMEs in urban areas are not necessarily able to supply staff accommodation and have their own methods of compensation, such as through higher wages. Moreover, this obligation encroaches on the private sphere of seasonal workers and employers. Therefore, Article 5.1 d) “evidence of having accommodation as set out in Article 14” should be deleted.

Article 6 - Grounds for refusal

Article 6.3

According to this Article Member States can refuse an application if the employer has been sanctioned for undeclared work and/or illegal employment.

UEAPME believes this measure should not be applied so restrictively and not immediately at the first infraction, but only in repeated cases. In addition, it should apply within a certain timeframe and should be proportional according to the type of infraction. It therefore equally requires a more concrete definition of the terms “undeclared work/illegal employment”, as this could in principle include infractions of different types, including a more administrative nature, e.g. a delayed registration of an employee with a compulsory health insurance, which should not be dealt with on the same basis.

Thus the proposal should be amended to read that “Member States may reject an application if the employer has been sanctioned repeatedly within 12 months prior to application in conformity with national law for undeclared work and/or illegal employment.”

Article 6.4

UEAPME agrees with the principle of volumes of admission set at national level, which can be a reason for refusal. Nevertheless, establishing precise numbers of admission often requires a longer timeframe and should therefore be determined more speedily in the interest of the sectors concerned together with social partners.

Article 9 - Applications for admission

Article 9.3

We welcome common admission procedures in terms of residence and employment rights, which should contribute to lighten the administrative load.

Article 11 - Duration of stay

Article 11.1

This requirement foresees that seasonal workers must not reside longer than 6 months in any calendar year in a Member State.

UEAPME considers the 6 months as too restrictive because some Member States have two seasons covering winter and summer. More favourable provisions exist already in some countries by law, such as in Spain. Equally, the restriction to a calendar year is not feasible because seasons are not so clear cut in practice and this limitation should thus be removed.

Consequently the text should be amended allowing Member States to apply more favourable provisions for seasonal workers in specific cases.

Article 11.2

It is stipulated that seasonal workers – provided they meet certain criteria – should be able to prolong their contract or change employer as seasonal worker within the period set out in paragraph 1.

This issue requires further clarification as it is unclear whether it concerns the 6 months’ maximum employment period or the calculation period of a calendar year.

UEAPME takes a critical stance on the possibility to change employer. On the one hand this type of condition would allow circumventions. On the other hand it would pose the danger of seasonal workers being poached by other employers which would affect the management and planning of seasonal activities negatively. Thus Article 11.2 should be modified limiting extensions to the same employer.

Article 12 - Facilitation of re-entry

UEAPME sees the facilitation of re-entry in a positive light because it permits and promotes circular migration of seasonal third-country workers. SMEs should be able to benefit from a seasonal workforce that has demonstrated its competences, thereby allowing a certain continuity for employer and worker.

Article 12.2b

Member States are being obliged to sanction those employers who have not met their contractual obligations, by exempting them from the application for seasonal workers for one or subsequent years.

UEAPME believes this is a rather harsh measure, given the fact that employment and social legislation for non-EU workers requires a certain level of compliance from employers. In practice this formulation could already lead to the exemption of employers for minor administrative infractions.

Article 13 - Procedural safeguards

UEAPME supports a 30 days time limit for the admission process, as it should contribute to facilitating administrative procedures. It should also help to provide certainty to the employer and worker.

Article 14 – Accommodation

See also Article 5. UEAPME disagrees that employers are to be held responsible for providing proof of adequate accommodation for the seasonal worker during his/her stay. Whilst it is necessary to ensure an appropriate living standard, the obligation as such cannot be expected from employers. It would in fact discourage employers applying for much needed foreign workers and intervene considerably in the autonomy of seasonal workers and employers. It would also most likely create considerable administrative burdens for the responsible managing authorities and should thus only be applied on a voluntary basis.

Article 16 - Rights

UEAPME fully respects that employees should not be discriminated against on the grounds of nationality and be therefore given certain socio-economic rights according to subsidiarity.

Conclusions:

- UEAPME agrees with the scope and objective of the proposal to establish a common procedure for the entry and residence of third-country nationals to the EU, including a fast-track application, according to seasonal job requirements and to leave to Member States to determine which sectors meet the criteria for seasonal work.
- However, more flexibility is needed concerning the application of the duration of stay. Member States should be allowed to apply more favourable provisions for seasonal workers in specific cases. We also disagree with the obligation for employers to provide “appropriate” accommodation for seasonal employees. This encroaches on the private sphere of both companies and workers and would lead to higher labour costs.
- UEAPME takes a critical stance on the possibility to change employer and asks for a modification of the proposal to limit extensions to the same employer.
- Regarding grounds for refusal and facilitation of re-entry, sanctioning of employers in case of contractual infringements should be proportionate and therefore a differentiation should be made between administrative infractions and those of another nature. Member States should only reject an application if the employer has been sanctioned repeatedly within 12 months prior to application.
- Despite a necessary common approach on immigration at EU level, subsidiarity needs to be strictly respected, in particular regarding volumes of admission and for integrating specificities at national, regional and sectoral level.
- There is a need to promote good practice and cooperation regarding circular migration between host and sending country.

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