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UEAPME position paper on the proposal for a directive on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment

Introduction

The European Commission published on 24 October 2007 its proposal for a directive *on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment*. At the same time the Commission published its proposal for a directive *on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third country workers legally residing in a Member State*. UEAPME addresses the latter in a separate position paper.

General comments

First of all UEAPME would like to restate its support to this new Commission proposal. Together with the proposal for a framework directive and the earlier published proposal on sanctioning employers employing illegal immigrants the Commission has taken some important steps in addressing at the same time the fostering of legal immigration and the combating of illegal immigration which are two different sides of the same coin. This overall strategy of the European Commission shows a real improvement compared to previous initiatives as it outlines a general vision of the management of economic immigration, including addressing the entry, combating illegal immigration and defining rights and ways of integration, which already had been requested by UEAPME previously.¹

For UEAPME, a step-by-step harmonisation of criteria and procedures at European level is the correct strategy in such a sensitive policy area, while respecting the sovereignty of Member States to decide on the number of immigrants to be admitted from third countries.

UEAPME fully agrees with the objective of making Europe a more attractive destination for highly qualified third country nationals currently looking more towards the USA, Canada or Australia because of better opportunities.

¹ http://www.ueapme.com/docs/pos_papers/2005/EconomicMigration.doc

While UEAPME welcomes attracting “highly qualified immigrants”, it is also crucial to ensure that Europe can benefit more from different types of legal migrants in the coming years in order to help tackling bottlenecks in certain sectors. Small and micro companies in particular are facing serious challenges of recruiting not only “highly qualified” but simply well qualified skilled workers.

But at the same time this initiative should also consider the new situation in the EU once the transition periods for the EU10 run out.

Specific comments

Scope

UEAPME favours and has several times requested a sector-by-sector approach.² The European Commission rightly decided to tackle the issue of legal migration focusing on certain categories of employees.

Nevertheless, UEAPME insists that this cannot be taken as a pretext for reducing the efforts to tackle the labour market challenges and the still too high unemployment rates which exist in many regions of the European Union. Member States must continue at the same time and with the same energy to improve the integration in the labour market of the unemployed and the less qualified, which are an untapped source of talent.

Criteria for admission

Definition of highly qualified workers:

UEAPME strongly supports the idea of a demand driven process, whereby immigrants only receive the blue card if they have a valid work contract or at least a binding job offer.. Furthermore in the case of a regulated profession it is important that the conditions specified under national legislation for exercising this profession are fully respected.

Pay criteria:

In principle UEAPME agrees with the notion of ensuring that the immigrant is not being paid less than an European citizen, who possesses the same qualifications or competences avoiding a discriminatory treatment, unfair competition and social dumping.

However, UEAPME disagrees with the decision of the European Commission to set a minimum wage for the third country worker at three times the national gross monthly minimum wage. Any wage threshold should be defined nationally.

UEAPME is of the opinion that it is not the role of the European level to specify the wage level. This decision must be made at national level in full respect of the role of domestic social partners. In many Member States it lies within the strict competence of employers and workers’ representatives to negotiate and determine the wage levels, including minimum wages.

² http://www.ueapme.com/docs/pos_papers/2005/EconomicMigration.doc

Concerning a specific derogation for younger employees, the principle is acceptable as it is often much more difficult for this age group to get an adequate job. Once again the format needs to be decided at national level respecting the role of social partners.

Blue card

UEAPME agrees with the proposal of the initial validity of an EU Blue Card of two years and a renewal for at least the same duration.

Grounds for refusal

In addition to the obvious reasons for refusing an application, such as non-fulfilment of the conditions or falsification of documents, it is important to give Member States the possibility to examine the situation of their labour market and apply their national procedures regarding the requirements for filling a vacancy and having the possibility for reasons regarding labour market policy to give preference to Union citizens.

Labour market access

UEAPME welcomes the fact that for the first two years access to the labour market for the person concerned shall be restricted to paid employment and that the modifications of the terms of the work contract that affect the conditions for admission or changes in the work relationship shall be subject to the prior written authorisation of the competent authorities. Granting holders of the EU Blue Card once they have been given EC long-term resident status equal treatment with nationals as regards access to employment and self-employed activities is welcome. However, the fact that the family members of the holder of the blue card are from day one allowed to carry out self-employed activities is inconsistent.

The rules for employment applying to family members of the highly qualified worker should be the ones defined in the framework directive.

Residence and access to labour market in second Member State

The current proposal states in Article 19 that:

1. After two years of legal residence in the first Member State as holder of an EU Blue Card, the person concerned and his/her family members shall be allowed to move to a Member State other than the first Member State for the purpose of highly qualified employment under the conditions set out in this Article.

2. No later than one month after entering the territory of the second Member State, the holder of the EU Blue Card shall notify his/her presence to the competent authorities of that Member State and present all the documents proving that he/she fulfils the conditions set out in Articles 5 and 6 for the second Member State.

3. In accordance with the procedures set out in Article 12, the second Member State shall process the notification and inform the applicant and the first Member State of its decision to:

(a) issue an EU Blue Card and allow the applicant to reside on its territory for highly qualified employment if the conditions set in this Article are fulfilled and under the conditions set out in Articles 8-15;

(b) refuse to issue an EU Blue Card and oblige the applicant and his/her family members, in accordance with the procedures provided for by national law, including

removal procedures, to leave its territory if the conditions set out in this Article are not fulfilled.

5. In application of this Article, Member States may continue to determine the numbers of admission as specified in Article 7.”

UEAPME considers that the above mentioned conditions to move from a Member State to another for work purposes are too complicated and consequently do not help to make Europe an attractive place to work for this category of third country nationals.

The process should be simplified in the sense that at least the same procedure as for the admission to the first country shall apply.

Right to equal treatment

UEAPME fully backs the European Commission’s aims to guarantee basic socio-economic rights on an equal footing with Member States’ own nationals. European craft, small and medium sized enterprises consider that employees cannot and should not be discriminated on the grounds of nationality when it comes to issues such as working conditions, salary and social security.

As regards equal treatment in the field of social security we suggest to use the same sentence as in Dir. 2005/71 regarding rights of researchers

“branches of social security as defined in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community [8]. The special provisions in the Annex to Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality shall apply accordingly;”

As regards exemptions from the principle of equal treatment in access to public goods and services (Art. 12 (2) lit.c.), the relation between this proposal and directive 2000/43 (equal treatment race and ethnical origin) needs to be clarified.

Family members

UEAPME welcomes the facilitation of family members’ access and entry to the labour market and the proposed exemptions from Dir. 2003/86.

The rights granted to family members moving to a second Member State stay far behind the directive on family reunification: if the family was already constituted in the first Member State, the provisions regarding entry and stay, but not regarding labour market apply. If the family was not constituted in the first Member State, the directive on family reunification is applicable, granting immediate access to the labour market. UEAPME suggests that family members are granted immediate access to the labour market of the second Member State.

Conclusions

- UEAPME welcomes the European Commission's efforts to address and foster legal immigration while at the same time combating illegal immigration
- This overall strategy of the European Commission constitutes an improvement compared to previous initiatives as it outlines a general vision of the management of economic immigration, including addressing the entry, combating illegal immigration and defining rights and ways of integration
- A step-by-step harmonisation of criteria and procedures at European level is the correct strategy in such a sensitive policy area, while respecting the sovereignty of Member States to decide on the number of immigrants to be admitted from third countries
- A sector-by-sector approach is the right approach
- Attracting highly qualified employees from third-countries should not lead to the reduction of the efforts on tackling the high unemployment rates in the EU
- European craft, small and medium sized enterprises strongly support the idea of a demand driven process, where immigrants receive the blue card only if they have a valid work contract or at least a binding job offer
- If employers have to carry out the application procedure, these must be simple and not burdensome for SME
- UEAPME insists that the decision to specify the level and conditions of a minimum wage for the third country worker must be decided at national level fully respecting the role of social partners
- European craft, small and medium sized enterprises consider that employees cannot and should not be discriminated on the grounds of nationality when it comes to issues such as working conditions, salary and social security.

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