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THE EUROPEAN UNION**

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**NOTE**

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from: The Presidency  
to: COUNCIL (Employment, Social Policy, Health and Consumer Affairs)  
Subject: Legal immigration (labour migration)  
- Information from the Presidency  
*(Any other business item)*

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Delegations will find attached an information note by the Presidency on legal immigration (labour migration) in view of the EPSCO Council on 6 December 2010.

## Labour migration

The Stockholm Programme, adopted by the European Council of 10 and 11 December 2009, recognises that labour immigration can contribute to increased competitiveness and economic vitality and that, in the context of the important demographic challenges the EU will face in the future with an increased demand for labour, flexible immigration policies will make an important contribution to the EU's economic development and performance in the longer term.

The Presidency considers that it will be useful for the EPSCO Council to be informed on the state of play regarding the following three Directives in this field:

**1. 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 (*single permit*)**

This proposal, which was transmitted to the Council and European Parliament (EP) on 29 October 2007, establishes a single residence and work permit for third-country workers and sets out the related application procedure. It also ensures that third-country workers, who have been admitted to a Member State and are authorised to work there, enjoy equal treatment with nationals in a number of areas (working conditions, social security, access to goods and services, etc).

The Council has started the examination of the proposal in 2008 but could not reach an agreement as unanimity was required for the adoption of this text (before the entry into force of the Lisbon Treaty). Now, under the Lisbon Treaty, this proposal is subject to the ordinary legislative procedure (qualified majority within the Council). At Working Party level a modified text has received broad support from the Member States.

In 2009, the Social Questions Working Party (SQWP) discussed the provisions in Article 12 relating to equal treatment for third-country workers. This contribution was submitted by the Presidency to the proceedings of the Working Party on Migration/Admission (WP M/A) on 27 February 2009.

Concerning the work in the EP, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) adopted its position on 28 September 2010. This report also includes the opinion of the Committee on Employment and Social Affairs (EMPL). The Presidency has conducted informal contacts with the EP and reviewed its report to the Council. However, following these contacts, the Presidency had to conclude that the positions of the Council and the EP remained opposed on some essential points and that a first reading agreement was difficult to envisage.

The EP is expected to proceed to a vote on the proposal at its plenary session in December. It will then be up to the Council to revisit the amended text and decide on the follow-up.

- 2. Proposals for a Directive of the European Parliament and of the Council on**
  - a) Conditions of entry and residence of third-country nationals for the purposes of seasonal employment** (*seasonal workers, see doc. 12208/10*)
  - b) Conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer** (*ICT, see doc. 12211/10*)

The proposed directives concern non-EU citizens coming to an EU Member State for the purpose of seasonal employment (a) or in the context of an intra-corporate transfer (b). The proposals deal with the conditions of entry and residence of third-country workers, aiming to introduce special procedures and permits, and define the rights of third-country workers.

Both proposals were transmitted to the Council and the EP on 13 July 2010. The WP M/A started the examination of both texts in September and has completed a first round of discussions. A number of issues are still outstanding and require further technical examination by the WP M/A.

a) *Proposal for a Directive on seasonal workers*:

The Directive establishes a simpler admission procedure for seasonal workers, based on common definitions and criteria, in particular the existence of a work contract or a binding job offer that specifies the salary, a valid travel document, health insurance and accommodation. It fixes a maximum duration for seasonal work on EU territory (*six months per calendar year*) but also provides for a multi-seasonal work permit valid for three years or a simplified readmission procedure for the following seasons. It establishes rules governing working conditions and provisions on equal treatment with Member State nationals. It also establishes the obligation for employees to provide proof that seasonal workers will have appropriate accommodation during their stay.

b) *Proposal for a Directive on intra-corporate transfer (ICT)*:

The proposal aims to establish the conditions for entry and residence for people transferred within a single undertaking (*intra-corporate transfer*), based on common definitions and criteria. The proposal provides for a transparent and simplified procedure for the admission of third-country nationals, which is based on a common definition and harmonised criteria: the transferee must occupy a post as manager, specialist or graduate trainee and the prior employment within the same group of undertakings must have lasted at least 12 months, if required by the Member State. Intra-corporate transferees admitted would be issued with a specific residence permit allowing them to carry out their assignment in diverse entities belonging to the same transnational corporation, including, under certain conditions, entities located in other Member States. This permit would also give them favourable conditions for family reunification.

**3. Presidency approach:**

Regarding both proposals, the ICT and Seasonal Workers Directives, the Belgian Presidency requested the SQWP at its meeting on 29 November 2010 to have an exchange of views on how to deal with these proposals in the SQWP, in particular as provisions are dealing with issues such as employment, working conditions, rights of workers or social protection.

Furthermore, the SQWP had an exchange of views on a possible approach on how to deal with the proposals within the Council (EPSCO) and which of the provisions of the two directives should be discussed in more detail in the SQWP.

A large majority of Member states were in favour of the SQWP being involved in the discussions on the two proposals but wished to limit the discussions to the identified provisions specific for the employment and social policy area. The outcome of these discussions in the SQWP could be forwarded as an opinion to the WP M/A. Starting with a good coordination at national level, delegations emphasised that enhanced coordination between the preparatory bodies (WP M/A and SQWP) and Council configurations should be ensured at all time.

In the implementation of this approach, a duplication of work must be avoided. Therefore it should be clearly identified which provisions have to be discussed in the SQWP. To that end, delegations expressed the wish to address the provisions on equal treatment in both directives in the SQWP. In addition, delegations expressed their concern regarding the lack of possibility of a "labour market test" in case of "multi-seasonal work permit" and the accommodation provisions for the seasonal workers. The question of avoiding double submission to social security systems for intra-corporate transferees and the intra-European mobility should also be addressed.

The incoming Hungarian Presidency took note of the views expressed by the Member States and will consider how to deal with this subject during its term.