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17/11/2010**EUROCADRES opinion of the Proposal for a directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer [COM(2010) 378 final]**

The proposal is one of five legislative proposals on labour immigration that were planned to be adopted between 2007 and 2009. It is meant for “movements of managerial and technical employees of branches and subsidiaries of multinational corporations, temporarily relocated for short assignments to other units of the company.” The aim is to set binding minimum standards. There is a high degree of flexibility for Member States in implementation. The transfers should be for more than three months to a maximum of three years for managers and specialists, and one year for graduate trainees.

The directive does not apply to third-country nationals that are researchers or third country nationals posted by undertakings established in a Member State in the framework of a provision of services. Persons entering a Member State under commitments made in an international agreement facilitating the entry and temporary stay of certain categories of trade- and investment-related natural persons are also excluded. These categories are also excluded from the scope of EU Blue Card directive.

Competence requirements and categories

According to the proposal, the transferee must possess the professional qualifications needed in the Member State and fulfil the conditions of regulated professions laid down under national legislation. Competence requirements for the three categories are the same as under GATS commitments of EU-25 including:

- managers: senior position, directs the host entity, supervised by the board of directors or equivalent;
- specialists: possessing uncommon knowledge essential and specific to the host entity, taking account not only of knowledge specific to the host entity, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge;
- graduate trainee: higher education qualification and transferred to broaden

his/her knowledge of and experience in a company in preparation for a managerial position within the company;

- 'higher education qualification' means a formal qualification of the successful completion of a post-secondary higher education programme of at least three years.

The difference is that the scope of the directive includes *all* above-mentioned groups, not just the services sector and the context of provision of services.

Criteria for admission

Evidence of employment within the same company for at least 12 months immediately preceding the date of the intra-corporate transfer may only be required if the requirement is in the legislation of the Member States. However, evidence is required that the transferee will be able to transfer back to an entity belonging to that group of undertakings and established in a third country at the end of the assignment. The proposal only requires that laws, regulations, provisions or universally applicable collective agreements applicable to *posted* workers are met with regard to remuneration. If the transfer from first Member State to a second Member State is for *more* than 12 months, the second Member State has the possibility of requiring a new application for the transfer.

Other rules

The proposal requires applications to be refused for instance if the employer has been sanctioned for illegal employment. Host company *may* be penalized in case of failure to comply with the conditions of admission. Member States *must* decide whether an application is to be made by the company or by the transferee. Simplified procedures *may* be granted for three years for companies on the basis of specified information. The applications *must* be handled in 30 days or in complicated cases in 60 days. The handling of applications for family reunification in the first State of residence *must* be within two months.

EUROCADRES opinion

EUROCADRES supports the mobility of knowledge and skills yet at the same time equal treatment must be guaranteed. *EUROCADRES* also supports the stated aims of laying down minimum standards for intra-corporate transfers, simplifying the rules across Member States, and quickening the procedure are good in principle. In practice however, the labour immigration legislation at the EU level is becoming so complicated that it is more and more difficult even for experts to manage. The legislation encompasses the general framework directive, several sectoral proposals, the directives on posted workers and researchers, and commitments under international

agreements, among others. As simplification of rules remains a declared goal of the Commission, *EUROCADRES* would like the Commission to seriously consider whether the sectoral proposals are heading towards the right direction.

The proposal on intra-corporate transfers has potentially an enormous impact on labour markets in the EU and Member States, especially for the professional and managerial staff. However, the labour market parties were not properly consulted during the preparation process of the proposal. The consultation was organised at a very general level on the Green Paper on an EU approach to managing economic migration in 2005, which is simply not enough. A proper directive-specific consultation with labour market parties should have followed. *EUROCADRES* strongly recommends the Commission to engage in consultations with the European social partners without further delay.

The proposal allows for transferees to work for a considerable time (up to 3 yrs) with different terms of employment and remuneration than those applicable to the host country workers. The period of three years is much longer than currently allowed in many Member States. The conditions of employment including remuneration would not be governed by host country laws and collective agreements applicable to host country workers but instead of those applicable to posted works. *EUROCADRES* demands a detailed discussion in why this approach should be chosen and what would be the consequences for the labour markets and for the position of professional and managerial staff in the EU and Member States.

According to the proposal, the added-value for Member States is to make the movement of intra-corporate transfers easier from one Member State to another. The added value must be specified. Third-country nationals who have been granted an intra-corporate transferee permit in a first Member State shall be allowed to work in any other entity established in another Member State of the duration of this transfer does not exceed twelve months. It is not specified which terms of employment would apply in these cases. Would the proposal allow companies to shop for the cheapest option in terms of remuneration and other terms of employment? *EUROCADRES* is of the opinion that same terms of employment and remuneration must apply than in the host country.

EUROCADRES supports the requirement for graduate trainees to present a training agreement and programme to ensure the proper use of the system. However, *EUROCADRES* finds it very problematic in terms of equal treatment that there is no requirement for graduate trainees to be treated along the same standards as similar trainees in the host country with regard to conditions of employment and remuneration.

EUROCADRES is of the view that in the absence of a system for declaring collective agreements to be of universal application, Member States *should* always base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory. No "opt-out" for Member States with regard to their application should be allowed as in the current proposal. Trade unions must also be allowed to negotiate the rights of the intra-corporate transfers.

The proposal does not allow for labour market tests, but Member States *may* refuse an application on the grounds of volumes of admission of third-country nationals so the proposal does not give a right for admission. *EUROCADRES* would like to know how this relates to the commitments the EU and Member States have made in GATS and bilateral free trade agreements. Is there a real possibility for Member States to determine the volume of admissions?

From *EUROCADRES* point of view, the persons entering under the category of specialists should fulfil the requirement of having at least a high level of qualification *mostly acquired through a post-secondary higher education*. Competences corresponding to higher education skills, acquired through certified systems of life-long learning, could be considered in presence of a recognized certificates.

The current definition for the category of specialists in the proposal is too vague. Similarly, the persons entering under the category of managers must be better defined as the stated aim is to target managers working in senior positions. The current definition of a manager as "directing the host entity or a department or sub-division of the host Entity, supervising and controlling the work of other supervisory, professional or managerial employees" could be applied to every manager. *EUROCADRES* is of the opinion that the definition is too general and must be reduced to senior managers that "will direct the host entity".

As the directive concerns transnational companies, *EUROCADRES* considers it necessary that the European Works Councils get informed and consulted.