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UNICE POSITION ON THE COMMISSION POLICY PLAN ON LEGAL MIGRATION

Executive summary

Significant progress has been achieved in implementation of the Tampere agenda with respect to fighting illegal immigration, border controls and asylum. European employers are pleased to see that progress is also being sought in the area of legal migration by the publication of the Commission policy plan. In UNICE's view, it is in the interest of European societies as a whole and of migrants themselves that immigration is managed in a properly organised framework.

UNICE insists that any EU initiative should respect the principle of subsidiarity. The decision on the number of economic migrants to be admitted in order to seek work, the types of their qualifications and skills as well as their country of origin lie within the competence of Member States. Moreover, any EU initiative should not prevent Member States from applying more favourable provisions for the admission of economic migrants from third countries.

European employers are opposed to a general framework directive dealing with the rights of third-country national workers. Such a directive is not necessary since workers' rights are already adequately covered by existing national and/or EU legislation. Regarding the specific directives, UNICE agrees that the admission of the workers from the four categories should be facilitated. However, given on the one hand changing economic needs over time and on the other the difference labour market needs, companies' requirements and skills gaps across Europe, a horizontal framework dealing with admission of all categories of economic migrants would be preferable.

Furthermore, the proposed initiatives should promote unbureaucratic, rapid and transparent procedures at national level and simplify administrative procedures, notably by introducing a one-stop-shop procedure for granting entry, residence and work permits to third-country nationals. In this context, employers support the idea of a single application for a joint work/residence permit.

The EU level should also seek to facilitate cross-border mobility of third-country nationals already legally residing and working in a Member State by promoting a system whereby procedures for admission of third-country nationals already legally residing and working in another Member State are carried out in that Member State without the need for the worker to return to his/her country of origin. With respect to Commission's intentions to propose measures to promote intra-EU mobility for highly skilled workers, UNICE wonders how this will be achieved through an EU work permit or EU green card. Finally, there is a need to clarify the term "green card" so as to avoid confusion and misinterpretation.

UNICE POSITION ON THE COMMISSION POLICY PLAN FOR LEGAL MIGRATION

I. Introduction

1. On 21 December 2005, the European Commission published a policy plan for legal migration listing the legislative initiatives and the actions that the Commission intends to take over the period 2006-2009 in this field.
2. The policy plan foresees the publication of a general framework directive dealing with rights of third-country national workers and four specific directives on conditions of entry and residence of highly skilled workers, seasonal workers, intra-corporate transferees and remunerated trainees. The Commission explains that this package is not exhaustive and that, if appropriate, additional proposals may be presented in areas where further examination is needed.
3. The policy plan also announces non-legislative initiatives in the field of knowledge building and information, integration and cooperation with countries of origin.

II. General comments

4. UNICE agrees with the Commission's analysis according to which "in the short to mid-term, labour immigration can – as part of Lisbon Strategy's comprehensive package of measures aimed at increasing the competitiveness of the EU economy – positively contribute to tackling the effects of this demographic evolution, and will prove crucial to satisfying current and future labour market needs and thus ensure economic sustainability and growth".
5. Significant progress has been achieved in implementation of the Tampere agenda with respect to fighting illegal immigration, border controls and asylum, but progress is lagging behind regarding legal migration. European employers are pleased to see that progress is being sought in this area by the publication of this policy plan. In UNICE's view, it is in the interest of European societies as a whole and of migrants themselves that immigration is managed in a properly organised framework. This can also help to combat illegal immigration and deal with migration pressures from job-seekers from third countries.
6. Nevertheless, any EU initiative should respect the principle of subsidiarity. The decisions on the number of economic migrants to be admitted in order to seek work, the types of their qualifications and skills as well as their country of origin are a responsibility of the Member States. Given the differences between labour market needs, companies' requirements and skills gaps across Europe, the EU should refrain from any attempt to quantify needs at EU level. This is neither feasible nor desirable. Labour market needs should be assessed in Member States at the appropriate level as close to the ground as possible. Moreover, any EU initiative should not prevent Member States from applying more favourable provisions for the admission of economic migrants from third countries.

7. Regarding the approach chosen, i.e. proposing one general directive and four specific ones, UNICE has the following comments:
 - UNICE is opposed to a general framework directive dealing with the rights of third-country national workers. Such directive is not necessary since workers' rights are already adequately covered by existing national and/or EU legislation.
 - Regarding the specific directives, UNICE agrees that the admission of the workers from the four categories should be facilitated. However, given on the one hand changing economic needs over time and on the other the difference labour market needs, companies' requirements and skills gaps across Europe, a horizontal framework dealing with admission of all categories of economic migrants would be the right approach and should be without prejudice to existing flexible national entry procedures.
8. European employers insist that the proposed initiatives should promote the establishment of unbureaucratic, rapid and transparent procedures at national level and simplify administrative procedures. In this context, they strongly support the idea of a single work/residence permit.
9. The EU level should also seek to facilitate cross-border mobility of third-country nationals already legally residing and working in a Member State. UNICE therefore welcomes the Commission's intentions to propose measures in that direction. Nevertheless, with respect to highly skilled workers, it wonders how this will be achieved through a EU work permit or an EU green card.
10. The Commission proposes that, as a general principle for the four specific directives, admission should be conditional on the existence of a work contract and on the economic needs test and that exceptions may be necessary for declared structural/temporary needs in certain sectors/occupations/regions. In UNICE's view, the economic needs test is only one admission tool. Member States should also be able to use other admission mechanisms to establish the need for economic migration and for regulating it. European employers agree that the existence of a work contract should be, in general, the rule, but recall that the condition of the existence of a work contract does not always make sense, for example in the case of remunerated trainees.
11. Should the Commission pursue its plan to present four separate initiatives, they should be prioritised so that to facilitate recruitment and admission of the identified categories of economic migrants according to the need on labour markets for each category as follows:
 - intra-corporate transferees: they are third-country nationals working within a legal entity and are being temporarily transferred to an establishment of that legal entity on the territory of a Member State. Currently, due to administrative delays, EU companies spent a lot of time and money in clearing admission procedures for these people. Facilitating quick admission procedures for this

category would improve business opportunities and access to workers with the highest qualifications.

- highly skilled workers: despite high unemployment, EU Member States are confronted with shortages of highly skilled labour which constitute bottlenecks for economic growth. Therefore, they find themselves competing on a global scale to attract such workers. If the EU wants to be successful in this competition, it must provide the necessary conditions to make Europe an attractive destination for a highly skilled workforce. This is also important for achieving the Lisbon goal of making the EU the most competitive knowledge-based economy.
- seasonal workers: the more traditional sectors such as agriculture, tourism or construction are also faced with difficulties in recruiting less skilled workers, notably to cope with the seasonal variation of activities. This can also act as a brake on GDP growth and deserves to be addressed.
- remunerated trainees: in its efforts to build a knowledge-based economy, the EU can also benefit from attracting young talented graduates who come to undertake a remunerated traineeship directly linked to increasing their skills and qualifications.

III. Legislative measures on labour immigration

3.1. General framework directive

12. Except for the single application for a joint residence/work permit, the envisaged general framework directive will not address admission conditions and procedures for economic migrants. Its aim will be to guarantee a common framework of rights to all third-country nationals in legal employment already admitted in a Member State, but not yet entitled to long-term residence status. It could deal with issues such as the recognition of diplomas and other qualifications and the financial responsibility of the employer as in the researchers' directive¹.
13. This directive could also foresee a single application for a joint work/residence permit. The validity of such a document should be inextricably linked to the existence of a legal work contract. Exceptions to this principle could be foreseen under specific conditions of national labour markets, and will be addressed in the specific directives.
14. UNICE has strong reservations regarding a general framework directive dealing with rights of third-country national workers. Such a directive is not necessary since workers' rights are already adequately covered by existing national and/or

¹ The researchers directive foresees that Member States may require a written declaration by the research organisation stating that in cases where a researcher remains illegally in the territory of the Member State concerned, the research organisation is responsible for reimbursing the costs related to his/her stay and return incurred by public funds.

EU legislation. For example there are several EU legislative initiatives which already provides for a number of rights for third-country nationals legally resident in the EU such as the regulation extending Community coordination of social security schemes to third-country nationals, the directive on family reunification, the directive on the status of long-term residents.

15. Moreover, the use of the terms « recognition of diplomas and other qualifications » should be clarified. A clear distinction should be made between regulated and non-regulated professions. For the regulated professions, the EU directive on the recognition of professional qualifications lies down a system of recognition of qualifications and diplomas enabling EU nationals to gain access in host Member States to the professions in which they are qualified, and to practice under the same conditions as nationals of that Member State in cases where these professions are regulated. Would the word “recognition” refer to such a system for third-country nationals? Furthermore, for the vast majority of the workforce, there exists no system of recognition, i.e. an automatic equivalence of qualifications and diplomas. The qualifications of candidates are assessed by the potential employers on the basis of their competences and taking into account the requirements of the job to be performed. Any introduction of a different system for third-country nationals would result in a difference of treatment of these workers compared with EU workers and would be detrimental to the functioning of labour markets.
16. UNICE also has strong reservations regarding the issue of the financial responsibility of the employers. This would put additional burden on companies and could make it difficult especially for SMEs to recruit workers from outside the EU.
17. European employers welcome the proposal for a single application for a joint work/residence permit. This is key element for administrative simplification. Nevertheless, it is difficult to see how such a provision in a general directive will be applied in relation to each specific directive. Would this not result in a complicated system with a general rule in the horizontal directive and specific requirements and derogations in the specific directives?

3.2. Directive on conditions of entry and residence of highly skilled workers

18. The directive would seek to devise attractive admission conditions for highly skilled workers. It could foresee a common special procedure to quickly select and admit such workers. The Commission also states that it will be further evaluated whether to include intra-EU mobility or to opt for a more ambitious proposal, i.e. an EU work permit (EU green card), issued by one Member State but valid throughout the EU, on the understanding that rules regulating access to the national labour markets will be fully respected.
19. In the Commission’s view, fluctuating demands for migrant labour can only be met by flexible facilitated procedures. The proposal could then provide for an opening clause, applicable when there is a need for certain categories of workers other than highly skilled (i.e. qualified workers) or a lack of manpower in certain regions.

The only obligation would be to report through the mutual information system on immigration and asylum.

20. UNICE fully supports quick and flexible admission procedures for highly skilled third-country nationals workers. It strongly supports the objective of facilitating the intra-EU mobility of this category of workers. Nevertheless, it wonders how this will be achieved through an EU work permit or an EU green card. How will these function in practice and how will they be devised? If the EU work permit will be valid throughout the EU how would the responsibility of Member States to regulate access to their labour market be respected? Moreover, the concept of “green card” should be clarified since it could lead to confusion as to its meaning.
21. Clarification is also needed with respect to the introduction and the functioning of the opening clause. UNICE hopes that such clause will go in the direction of leaving enough room for Member States to apply a wide range of admission mechanisms in order to respond quickly to the labour market needs of companies.

3.3. Directive on the conditions of entry and residence of seasonal workers

22. The Commission explains that seasonal workers are regularly needed in certain sectors, mainly agriculture, building and tourism. Such a directive would foresee a residence/work permit allowing the third-country national to work for a certain number of months per year for 4-5 years. Entry and exit stamps should prevent abuses.
23. In UNICE’s view, specific provisions for seasonal workers are welcome provided that they promote unbureaucratic, rapid and transparent procedures at national level and simplify administrative procedures. Nevertheless, given the diversity of seasonal activities across the EU and the different timing during the year, the EU level should neither seek to determine an exhaustive list of sectors concerned nor impose one-size-fits-all solutions as to the duration of the validity of the residence/work permit.

3.4. Directive of on the procedures regulating the entry into the temporary stay and residence of intra-corporate transferees (ICT)

24. Such a directive will set out common procedures to regulate the entry into, temporary stay and residence in the EU of ICT. These procedures will be without prejudice to international commitments entered into by the EC or by the EC and its Member States. In order to enable the reallocation of international companies’ key personnel and specialists within Europe, intra-EU mobility of ICT should also be addressed, as it would be a clear added value of the EU intervention.
25. Specific provisions for this category of workers as well as measures to encourage their intra-EU mobility are welcome. In UNICE’s view, besides the ICT, this category should also include business visitors and contract service suppliers. Furthermore, access to work by the spouses of intra-corporate transferees should be facilitated, as it is difficult convincing staff to take assignments of a longer duration if spouses are not allowed to seek employment in the receiving country.

3.5. Directive on the conditions of entry and residence of remunerated trainees

26. The Commission explains that allowing third-country nationals to acquire skills and knowledge through a period of training in Europe can be a way to encourage brain circulation, beneficial for both the sending and receiving country. Safeguards will be necessary to avoid abuses, i.e. trainees who are in reality underpaid temporary workers.
27. In UNICE's view, specific provisions for this category of third-country nationals are welcome. Nevertheless, the issue of safeguards has to be clarified and should under no circumstances lead either to unnecessary burdens or to legal uncertainty for companies taking up such remunerated trainees.

IV. Non-legislative measures

4.1. Knowledge building and information

28. UNICE believes that improving information on various aspects of immigration and policy debates can help to promote the understanding of society and generate a more positive attitude towards legal immigrants. It therefore welcomes moves towards a better access, exchange and dissemination of information in this area.
29. With respect to the role of EURES, this could contribute to promoting mobility of third-country nationals legally working in an EU Member State across the EU notably by providing information regarding admission of third-country nationals to the employment market of various Member States.

4.2. Integration

30. European employers would like to stress the importance of developing support for effective integration policies of third-country nationals resident in EU Member States. While integration into the labour market and the workplace is important, it has to be borne in mind that coherent and efficient public policies which cut across a wide range of areas (education, language training, etc.) are crucial.

4.3. Cooperation with countries of origin

31. UNICE agrees that cooperation with countries of origin is important. Nevertheless, it will like to point out that there could be a potential contradiction between the strong emphasis put simultaneously on both circular and return migration on the one hand and the efforts to foster integration of third country nationals on the other hand.

V. Conclusions

32. Any EU initiative in the area of legal economic migration should:
 - respect the principle of subsidiarity: admission of economic migrants lies within the competence of Member States. Given the differences between labour

- market needs, companies' requirements and skills gaps across Europe, the EU should refrain from any attempt to quantify needs at EU level.
- be flexible enough to allow national administrations to apply a wide range of admission mechanisms in order to respond quickly to the needs of companies and especially SMEs;
 - seek to facilitate cross-border mobility of third-country nationals already legally residing and working in another Member State within the EU by promoting a system whereby procedures for admission of third-country nationals already legally residing and working in another Member State be carried out in that Member State without the need that the worker to return to his/her country of origin;
 - promote the establishment of unbureaucratic, rapid and transparent procedures at national level and simplify administrative procedures, notably by introducing a one-stop-shop procedure for granting entry, residence and work permits to third-country nationals;
33. UNICE is opposed to a general framework directive dealing with rights of third-country national workers. Such directive is not necessary since workers' rights are already adequately covered by existing national and/or EU legislation.
34. Regarding the specific directives, UNICE agrees that the admission of the workers from the four categories should be facilitated. However, given on the one hand the changing economic needs over time and on the other the difference labour market needs, companies' requirements and skills gaps across Europe, a horizontal framework dealing with admission of all categories of economic migrants would be preferable.
35. The policy plan also raises a number of questions which need to be clarified so as to avoid confusion and misinterpretation, for example with regard to the EU work permit/EU green card, the opening clause envisaged in the highly skilled workers directive, the safeguards in the remunerated trainees' directive.
