

JHA SGI
015

EUROPEAN UNION
THE COUNCIL

Brussels, 19 April 1994 (05.05)
(OR. f)

4440/2/94

REV 2
RESTREINT

ASIM 15

REPORT

from: Migration Working Party

to : Steering Group I

No. prev. doc.: 4440/1/94 ASIM 15 REV 1

Subject: Draft Council Resolution on limitations on admission of third-country nationals to the Member States for employment

The Migration Working Party discussed the abovementioned draft Resolution at its meetings on 15 and 16 March and 13 April 1994, making substantial progress.

The Working Party would like Steering Group I to state its views on the problems outstanding, although the principle and the possible method of including "intercorporate transferees" in the text will require further technical examination.

The text of the draft Resolution as it stands following the Working Party's discussions is annexed hereto.

DRAFT RESOLUTION

**on limitations on admission of third-country nationals
to the Member States for employment**

– for adoption by the Council –

A. GENERAL CONSIDERATIONS ON POLICY

- (i) The Council recalls that, in the report adopted by the European Council held in Maastricht in 1991, priority was given to the harmonization of admission policies for work as an employed or self-employed person, although it was emphasized that these policies should of necessity be restrictive.

- (ii) The Council acknowledges the contribution of migrant workers to the economic development of their respective host countries. At present, however, no Member State is pursuing an active immigration policy. All States have, on the contrary, curtailed the possibility of permanent legal immigration for economic, social and thus political reasons. Admission for temporary employment may therefore be considered only as a very narrow exception.

(iii) The Council recognizes that the present high levels of unemployment in the Member States increase the need to bring Community employment preference properly into practice by making full use of the EURES system to improve the transparency of the labour markets and facilitate placement within the European Community. The Council further recognizes that the provisions of the EEC Treaty and the EEA Agreement enable job vacancies to be filled as far as possible by nationals of other Member States or of EFTA countries which are parties to the EEA Agreement.

(iv) In the light of these considerations, the Council resolves that the present restrictive measures should be continued and where necessary reinforced as regards the admission of third-country nationals for employment. To this end, the Council agrees that the national policies of Member States in respect of third-country nationals seeking admission to or permission to remain in their territories for employment should be governed by the principles set out below. It agrees to have regard to these principles in any proposals for the revision of national legislation. The Member States will further endeavour to seek to ensure by 1 January [1996] that national legislation is in conformity with them. The principles are not legally binding on the Member States, and do not afford a ground for action by individual workers or employers.

[(v) The Council declares that the present principles are minimum standards. Member States can adopt more restrictive policies but not less restrictive ones.] ⁽¹⁾

⁽¹⁾ Most delegations were in favour of deleting this paragraph.

B. PERSONS TO WHOM THIS RESOLUTION DOES NOT APPLY

The harmonization principles do not apply to:

- persons who have right of free movement under Community law, i.e. nationals of Member States, nationals of EFTA countries parties to the Agreement on the European Economic Area and members of their families;
- third-country nationals who have been allowed admission for the purpose of family reunification to join nationals of a Member State or of a third country resident in the Member State concerned;
- third-country nationals whose access to employment is covered by rights stemming from agreements governed by Community law concluded with third countries;
- third-country nationals who are lawfully resident on a permanent basis in the territory of a Member State, but who have no right of admission and residence in another Member State ⁽¹⁾;
- persons undertaking casual work in the course of youth exchange or youth mobility schemes, including "au pairs" ;
- persons entering Member States in order to pursue economic activities as self-employed persons or to set up [or] ⁽²⁾ manage a business/undertaking which they effectively control. Such persons shall be governed by the principles to be set out in a draft Resolution covering the self-employed;

⁽¹⁾ Reservations by the Greek, Spanish and Irish delegations.

The Belgian and Netherlands delegations wondered if this text should stand in view of the full achievement of free movement for workers who are Member State nationals as of 1 June 1992 and of the recent Commission communication on immigration policy.

⁽²⁾ The Irish delegation entered a scrutiny reservation on the replacement of "and" by "or".

- persons who are lawfully present in a Member State as:
 - = refugees under the terms of the Geneva Convention;
 - = applicants for asylum;
 - = third-country nationals admitted for asylum;
- displaced persons who are temporarily admitted;
- persons exceptionally allowed to stay on humanitarian grounds.

C. PRINCIPLES GOVERNING MEMBER STATES' POLICIES

(i) General criteria

- Member States will refuse entry to their territories of third-country nationals for the purpose of employment;
- Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member State cannot be filled by national and Community manpower or by non-Community manpower lawfully resident on a permanent basis in that Member State and already forming part of the Member State's regular labour market. In this context they will apply the procedure laid down in Article 15(1)(b) of Regulation No 1612/68.
- [Without prejudice to the application of the above two criteria,] ⁽¹⁾ third-country nationals may, if necessary, be admitted on a temporary basis and for a specific duration to the territory of a Member State for the purpose of employment where:
 - = such an offer is made to a named worker or named employee of a service provider and is of a special nature in view of the requirement of specialist qualifications (professional qualifications, experience, etc.); ⁽²⁾

⁽¹⁾ Subject to a thorough examination, delegations reacted favourably to this text.

⁽²⁾ The Netherlands delegation wondered whether the category of "intercorporate transferee" should not be included here.

- = an employer offers named workers vacancies only where the competent authorities consider, if appropriate, that the grounds adduced by the employer, including the nature of the qualifications required, are justified in view of a temporary manpower shortage on the national or Community labour market which significantly affects the operation of the undertaking or the employer himself;
- = vacancies are offered to:
 - . seasonal workers, whose numbers are strictly controlled on admission to the territory of the Member States of the European Community and who undertake well-defined jobs, normally fulfilling a traditional need in the Community country concerned. Member States will restrict the admission of these workers to cases where there is no reason to believe that the persons concerned will seek to stay within their territory on a permanent basis;
 - . frontier workers;
- = [the persons concerned are intercorporate transferees] ⁽¹⁾;

⁽¹⁾ The Working Party agreed to consider in more detail whether and how this category of persons could be included, in particular in the light of the recent agreements within GATT.

(ii) Procedure for admission for employment

A third-country national will not be admitted for employment unless prior authorization has been given for him to take up employment in the territory of the Member State concerned. Such prior authorization may be in the form of a work permit issued either to the employer or to the employee.

In addition, third-country nationals must also be in possession of any necessary visa or, if the Member State concerned so requires, of a residence permit.

(iii) Restrictions as to the scope of employment

Initial authorization for employment will normally be restricted to employment in a specific job with a specified employer.

(iv) Restrictions as to the period of admission for employment

A seasonal worker will be admitted for a maximum of six months in any twelve-month period, and must remain outside the territories of the Member States for a period of at least six months before being readmitted for employment. ⁽¹⁾

Trainees will be admitted for a maximum period of one year in the first instance. This period may be fixed at more than a year and extended exclusively for the time needed to obtain a professional qualification recognized by the Member State concerned in the sphere of their activity.

Other third-country nationals admitted to the territories of the Member States for employment will only be admitted for a period not exceeding four years in the first instance.

⁽¹⁾ Reservation from the Luxembourg delegation, which favoured the insertion of "in principle" between "admitted" and "for" in the first line.

(v) Applications to extend a stay for the purpose of employment

A person already present in the territory of a Member State as a visitor or student will not in principle be permitted to extend his stay for the purpose of taking or seeking employment. Such persons must return to their own countries on conclusion of their visit or studies.

In principle a person admitted as a trainee or service provider or employee of a service provider will not be permitted to extend his stay in authorized employment except in order to complete the training or activity under contract for which he was admitted.

A seasonal worker will not be permitted to extend his stay for the purpose of taking employment of a different type. An extension of the period of his stay may be authorized to allow him to complete the work for which the original authorization was granted. However, the total length of his stay may not exceed six months in any twelve-month period.

Other workers may be permitted to extend their period of stay in authorized employment, but only if the criteria originally applied to the decision on whether to admit them for authorized employment continue to be met, in any event when the first extension is granted.

The Member States will examine the desirability of issuing a permanent residence permit to third-country nationals who have had restrictions on their employment lifted.

[(vi) Frontier workers

Frontier workers are subject to the same employment restrictions as other third-country nationals covered by these principles. In addition, they may be subject to special residence restrictions.] ⁽¹⁾

(vii) Business visitors ⁽²⁾

Nothing in these principles prevents a Member State from admitting as workers third-country nationals not residing in the territory of a Member State who are seeking entry in particular to:

- negotiate for the supply of goods or services;
- deliver goods or assemble machinery manufactured in a third country as part of a supply contract,

provided that such persons will be dealing only with businesses in the territory of the Member State and not with the general public and that any one visit and possibly the work permit does not exceed six months.

(viii) Third countries with close links with a Member State

Nothing in these principles prevents a Member State from continuing to admit third-country nationals to its territory for the purpose of employment pursuant to arrangements concluded by that Member State by the date of adoption of this Resolution for nationals of a third country with which it has especially close links.

⁽¹⁾ The Italian delegation tabled a scrutiny reservation on the deletion of this paragraph suggested by the French delegation and favourably received by the other delegations.

⁽²⁾ The French delegation suggested reviewing the text of this paragraph following the recent agreements within GATT.

The Member States will undertake as soon as possible to renegotiate such arrangements in accordance with the terms of this Resolution ⁽¹⁾.

[(ix) Reunification of a worker's family] ⁽²⁾

⁽¹⁾ The German delegation was in favour of deleting this paragraph. If it were to stand, a special provision would have to be included on the specific status of "Entsandte Arbeitnehmer" in the framework of an inter-state agreement.

⁽²⁾ The United Kingdom delegation wondered whether a paragraph should not be included on the reunification of the family of a worker not covered by the Resolution on the harmonization of national policies on family reunification (adopted by the Council on 1 June 1993 – see WGI 1497 REV 1).

DEFINITIONS

"trainees" means workers whose presence in the territory of a Member State is strictly limited in duration and closely connected with increasing their skills and qualifications in their chosen profession before returning to their own countries to pursue their careers;

"seasonal workers" means workers who are resident in a third country but are employed in an activity dependent on the rhythm of the seasons in the territory of a Member State on the basis of a contract for a specified period and for specific employment;

"frontier workers" means workers who are employed in the frontier zone of a Member State but who return each day or at least once a week to the frontier zone of a neighbouring country in which they reside and of which they are nationals;

["service provider" means a person not resident in the territory of the Community whose services are required by a person resident or undertaking established in the Member State for the purpose of carrying out against payment specific work for a specified period.] ⁽¹⁾

⁽¹⁾ The Working Party agreed to examine in more detail this definition submitted by the United Kingdom delegation. This matter is closely connected with the solution to be found for intercorporate transferees.