

Resolution of the Bundesrat

Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment

COM(2010) 379 final; Council document 12208/10

At its 874th sitting on 24 September 2010 the Bundesrat adopted the following position pursuant to Sections 3 and 5 EUZBLG (Act on cooperation between the Federal State and the Länder in matters relating to the European Union):

1. The Bundesrat welcomes the fact that the Commission, in implementation of the Europe 2020 Strategy and the Stockholm Programme, has now presented a proposal on the efficient control of entry and residence of third-country nationals as seasonal workers. It regards the introduction of a uniform procedure and the application of common criteria for the admission of this group of people to be a suitable means of controlled and demand-driven immigration in the light of economic and demographic trends. It is important to maintain the jurisdiction of the Member States for regulating access to national labour markets. In this context it should be noted that the right of the Member States to set an admission quota for third-country nationals is not affected by the proposal.
2. The Bundesrat would point out that the current legal arrangements governing the seasonal employment of third-country nationals is considered to be well balanced, with the appropriate degree of flexibility. At most, a small adjustment is required. During the substantive negotiations at European level on the proposed Directive, therefore, the Federal Government should take care that the degree of regulation of the proposed Directive does not go further than is necessary to achieve its purpose and that the rules do not contradict the existing German legal framework.
3. The Bundesrat takes the view that the proposed Directive needs amending in

some places so that the objective can be attained more clearly and internally consistent rules can be adopted. The Bundesrat therefore calls on the Federal Government to make the following points during the negotiations at European level:

4. For the sake of clarification, the statement in the Explanatory Memorandum that no binding legal right to the issue of a residence permit is created for third-country nationals should be included in the legislative part of the proposed Directive. In this regard, it could be underlined at an appropriate place that discretion will be used to decide on the issue of a residence permit.
5. The Bundesrat feels that there is a need to make clear that the provisions on obtaining a visa are unaffected by the issue of a residence permit for seasonal workers.
6. The Bundesrat takes the view that Article 9(4), whereby the Member State concerned grants the third-country national whose application for admission has been accepted every facility to obtain the requisite visa, is not only too vague but rather excessive in terms of its objective.
7. The Bundesrat believes that an amendment is needed to ensure the uniform description of the permit to be issued. In Article 3(d) the term '*Erlaubnis für Saisonarbeitnehmer*' is used, whereas in Articles 10, 11 and 15, for example, the term '*Saisonarbeitserlaubnis*' is used. In order to prevent misunderstandings, the term '*Aufenthaltserlaubnis*' should be used throughout.*

* Note from translator: the term 'seasonal worker permit' is used in the English version of the proposal for a Directive.

This formulation is suggested too because in the proposal for a Directive the Commission deliberately avoids using the additional requirement of a work permit. The suggested term would correspond to German law, under which '*Aufenthaltstitel zur Ausübung einer Beschäftigung*' (residence permits for the purpose of employment) are issued rather than '*Arbeitserlaubnisse*' (work permits).

8. The Bundesrat takes the view that the requirement set out in Article 13 (Procedural Safeguards) for the competent authorities of the Member State to adopt a decision on the application within 30 days of the complete application being lodged is a short processing time that cannot be objectively justified. A period of 90 days within which the decision must be taken reflects practice more closely and would also be consistent with Directive 2009/50/EC ('EU Blue Card'). The proposed tight processing deadline would therefore also lead to unjustifiable differences in treatment of applications from other third-country nationals seeking entry.
9. In addition, the Bundesrat favours a clarification to the effect that the application for a seasonal worker permit does not give rise to constructive approval or a claim for compensation if the deadline is not met. It calls on the Federal Government to work towards supplementing the proposal for a Directive in the discussions at European level so that the consequences of a decision on an application not being taken within the deadline would be assessed under national law.
10. The Bundesrat would also suggest that the Procedural Safeguards in relation to the reasons for a negative decision and redress procedures set out in Article 13(3) of the proposal for a Directive be adapted to the corresponding formulations in Directive 2009/50/EC ('EU Blue Card', Article 11(3)) in order to ensure consistency.
11. In order to be able to prevent possible abuses, but also to be able to take account of developments on the national labour market, the Bundesrat regards a commitment by the Member States to issue seasonal worker permits valid for two years as sufficient. The Bundesrat takes a critical view of introduction of a simplified re-entry procedure from the perspective of preventing abuses.

12. Given the general consensus among the Member States that uncontrolled migration should be avoided, the Bundesrat believes that it is necessary to include in the normative part of the Directive a rule that the residence permit would apply only to the Member State in which it is issued. The comments on Article 15 in the Explanatory Memorandum are therefore regarded as unsatisfactory.
13. The Bundesrat favours the express exclusion of family reunification in the normative part of the proposal.
14. The Bundesrat would point out that the requirement for the Member States to keep statistics must be kept within the scope of a reasonable level of expenditure. The data required by the current version of Article 18 are excessive, in particular with regard to the required disaggregation. The Bundesrat therefore suggests that the requirement to provide statistics be limited to the number of residence permits issued and citizenship.
15. The Bundesrat is sending this opinion directly to the Commission.