

Meijers Committee

Standing committee of experts on international immigration, refugee and criminal law

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To (by email)

Mr. Rafael FERNANDEZ-PITA
Deputy Director- General
Directorate- General D Justice and Home Affairs
Council of the European Union
B-1048 BRUSSELS

**Reference
Regarding**

CM1214

Note on the latest Presidency text on the proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (COM(210)379)

Date

25 September 2012

Dear Mr. Fernandez-Pita,

The Meijers Committee would like to draw your attention to an amendment in Council document 12186/12 of 4 July 2012 on the proposal for a Directive on seasonal employment.

In this document a new ground has been added to refuse, withdraw or not extend the authorization to work as a seasonal worker (Article 6(3), jo. Article 7(1)). On the basis of this new ground the Member State may reject an application for admission:

"if the employer within the 12 months immediately preceding the date of the application, has eliminated by means of a null or unfair dismissal, the positions he is trying to fill through the new application"

The Meijers Committee has the following objections against this additional ground:

- It is difficult, if not impossible, for the immigration services to gain knowledge of the fact that the employer has fired his former employees by means of a null or unfair dismissal. In case of a null dismissal the employees probably will be back in their position, diminishing the employers need for third country nationals;
- More importantly, the ground for refusal violates the Union law principle of legal certainty (*lex certa*). When a seasonal worker comes to the Member State to work, his or her authorization to work can be withdrawn at any time when it becomes apparent that the seasonal worker has taken up a position that was formerly held by an employee who has been fired by means of a null or unfair dismissal, leaving the seasonal worker legally in an uncertain situation

In our view this ground for refusal should be deleted. In case it is not deleted, the exception provided for in Article 7(3 a) must at least apply to this situation: if the seasonal worker has an opportunity to be employed by a different employer, the authorization to work should not be withdrawn but changed into a seasonal worker permit for this other employer. Thus, Article 7(3a) should be extended to include situations where the withdrawal or non-extension of the authorization is based on Article 6 (3 c).

Should any questions arise, the Meijers Committee is prepared to provide you with further information on this subject.

Yours sincerely,



Prof. mr. C.A. Groenendijk
chairman