

CM1511 – 18 June 2015

Promoting Intra EU labour mobility of international protection beneficiaries

Summary

The Meijers Committee proposes to enhance the opportunities for employment of international protection beneficiaries across the EU by allowing them to work in another Member State after two years of legal residency and under more favourable conditions than current EU directives allow. This incentive for achieving economic independence corrects the current legal regime under which socioeconomic criteria play no role in sharing the responsibility for asylum-seekers and international protection beneficiaries. It also allows for greater personal freedom of the people concerned and gives them a better chance of building a stable future. The proposed measure draws largely from that existing framework in terms of rights and obligations of individuals and Member States.

1. Introduction

The Council of the EU is currently discussing new approaches to sharing the responsibility for asylum seekers and international protection beneficiaries among Member States. The Meijers Committee advises that these discussions should move beyond the issue of distributing asylum seekers and also explore the possibilities of enhancing intra-EU movement for persons who have been granted asylum. In this note, the Meijers Committee proposes to allow international protection beneficiaries recognised in one Member State to take up a confirmed job offer in another Member State.

Granting beneficiaries of international protection free movement within the EU on objective conditions of having work and not becoming a burden on the social assistance system of another Member State contributes to the economic dynamism of the Union and helps relieve the pressure on those Member States whose asylum systems are particularly burdened and where socioeconomic conditions are generally less than favorable. It also enhances the prospects that the beneficiaries of international protection will better integrate by increasing their economic opportunities. Finally, it stresses that these third-country nationals may be an asset to the EU rather than a burden or a problem.

To that purpose, the Meijers Committee proposes to apply elements of the free movement regime for EU workers to international protection beneficiaries and to complement these with certain conditions which have already been worked out in the regime for conditional labour mobility of international protection beneficiaries who have acquired EU long-term resident status and other relevant EU instruments. This note sets out the main features of such a measure.

2. Subject of the proposal

1. Introduce a supplementary measure to the existing system of distribution of asylum seekers and international protection beneficiaries or to a possible quota system, which permits international protection beneficiaries recognised in one Member State to take up a confirmed job offer in another Member State. This allows a distribution of beneficiaries of international protection between Member States on the basis of employer's needs and the economic activities of third-country nationals. The beneficiaries may gain a confirmed job offer in a second Member State by looking in

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EURES or by using his or her right to travel up to three months within a single period of six months in the Schengen area. Most likely the people involved will look for work in Member States where family or contacts reside.

2. Permit vacancies in other Member States be taken up by third-country nationals already lawfully in the EU, rather than introduce new third-country nationals from outside the EU.
3. Avoid or diminish long-term unemployment, dependence on social benefits or irregular employment in the Member State that granted international protection by granting the beneficiaries conditional mobility within the Union.

3. Existing framework for labour mobility within the EU

There are at present several EU regimes for labour mobility for different categories of persons:

- Free movement of EU workers and their Non-EU family members under Directive 2004/38 (Citizenship).
- Conditional labour mobility of third-country nationals who acquired the status of an EU long-term resident in one Member State by allowing them to accept a job in another Member State under Directive 2003/109 (Long Term Residents). The latter State may refuse a work permit and admission during the first year on labour market grounds. Since 2013, beneficiaries of international protection have been covered by this Directive on the basis of Directive 2011/51.
- Directive 2009/50 (Blue Card) for highly qualified workers from outside the EU.
- Directive 2014/66 (Intra Corporate Transfer) for third country nationals.
- Proposal to recast and merge the Students and Researchers Directive (COM(2013) 151 final), including a period for a third-country national to search for employment after graduation from a European education institute.

Although Directive 2011/51 has provided international protection beneficiaries with a right to reside in a second Member State to exercise an economic activity, this right is subject to strict conditions. It is only acquired after five years of lawful residence in the first Member State. Further, the second Member State may, during the first year, apply a labour market test, under which preference may be given to Union citizens and third-country nationals who are legally resident and receive unemployment benefits in the second Member State. However, there are good reasons to allow free movement of international protection beneficiaries on more favourable terms. Other third-country nationals are normally only admitted to a first Member State if they meet conditions of having work, resident family members with sufficient income, or have been admitted as a student, in short because of their socioeconomic bond with the destination country. International protection beneficiaries, on the other hand, often do not have self-evident bonds with the first Member State due to the nature of their residence (asylum) and the Dublin criteria for allocating asylum seekers. The measure proposed by the Meijers Committee would help correct this effect.

4. Growing experience with labour mobility of third-country nationals within the EU

Actual, large-scale use of the Long-term residents Directive 2003/109 started only five years after the directive had to be implemented in national law of the 25 Member States bound by it. Italy and

Spain had both issued permits to more than 1.8 million EU long-term residents by the end of 2013. Mobility to another Member State commenced only recently. Germany issued 1,500 residence permits to third-country nationals who had acquired the EU long-term resident status in 2012, and 3,000 in 2013. At the end of 2013 Germany had issued more than 5,500 residence permits to third-country nationals who had acquired the EU long-term resident status in another Member State, and at the end of 2014 almost 10,000 such permits had been issued, mainly to third-country nationals arriving from Italy, Slovenia, Spain and the Czech Republic.¹

5. Legal elements

Is there a legal basis in the Treaties?

Yes, Article 78(2)(a) TFEU obliges the Union to provide a uniform status of asylum for nationals of third countries, *valid throughout the Union*. The exception of Article 79(5) TFEU (“Member States may determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work”) does not apply, since the third-country nationals are already lawfully resident in the EU.

Does the proposal satisfy the subsidiary requirements?

The legal position of international protection beneficiaries regarding labour mobility is already regulated by Directive 2011/51, provided they are long term residents pursuant to Directive 2003/109. The proposed mobility between Member States requires a common action. The EU is currently looking for a common solution to the question of responsibility for asylum seekers and international protection beneficiaries. This measure would address part of that question.

Is this proposal proportionate?

The proposed measure is simple and relatively easy to achieve: it requires a limited amendment of the existing legal framework, which consists primarily of directives or a short new directive. The competence to check whether the proposed employment conditions are in conformity with national law remains with Member States.

What should the personal scope be?

Given the similarity of their status, both refugees and subsidiary protection beneficiaries should be covered. Beneficiaries of forms of national protection cannot be covered by an instrument under EU law as there is no legal basis for such in the TFEU. But they could be covered on the basis of national law of the second Member States.

What should the personal scope be? (II)

For workers only. The right to move arises only if a labour agency of the second Member State confirms the existence and conditions of the job offer and that job provides sufficient resources for the third-country national to sustain himself, without recourse to social assistance in the second Member State.

¹ See Bundesministerium des Innern, Migrationsbericht 2013, p. 100ff and reply of the German government of April 2015 (no. 4/132) to a written parliamentary question in the Bundestag.

When can an international protection beneficiary apply for a job in another Member State?

After a minimum of two years of lawful residence in the first Member State, rather than the five years under the revised Directive 2003/109. In those two years the beneficiaries will have an opportunity to settle in a Member State and, if necessary, supplement their professional qualifications. Moreover, this waiting period reduces the chances that the protection status is granted primarily to allow onward mobility within the EU.

Is transfer of international protection status necessary?

The proposal requires no rules on automatic transfer of international protection between Member States, similar to Directive 2011/51 revising Directive 2003/109.

What terms regarding health insurance apply?

Health insurance coverage maybe be required by the second Member State, similar to Article 15(2)(b) of Directive 2003/109.

Are integration requirements allowed?

No integration conditions before admission to the second Member State. Such conditions are also absent from the Qualification Directive 2011/95.

6. Rights in the second member state

Protection against refoulement

Protection status is granted on the basis of similar rules as in Directive 2011/51. Similarly, the rules of Directive 2011/51 on protection against expulsion to third countries, the right to return to the first Member State until long-term resident status in the second Member State is obtained, and the concomitant obligation of the first Member State to take the third-country national back will apply.

Equal treatment

The equal treatment clause of Article 11 of Directive 2011/98 (Single Permit) will apply automatically to these third-country nationals admitted to employment.

Family reunification

Family reunification should take place on the basis of the same rules as Article 16 of Directive 2003/109, i.e. if already reunited in the first Member State, admitted family members may accompany or join; if not yet reunited in the first Member States, the rules of Directive 2003/86 apply, such as a residence permit for at least one year and sufficient income.

Public assistance

No right to public assistance during the first three years, and after that transitional period access to public assistance as provided in Article 11 of Directive 2003/109.

Recognition of professional qualifications

Recognition of professional qualifications acquired in another Member State by the second Member State should take place on the basis of a regime similar to Directive 2005/36.

Consequences of dismissal or unemployment

The worker will be permitted to look for another job and is entitled to equal treatment on the basis of national law concerning unemployment benefits in accordance with the Single Permit Directive 2011/98. In case the worker complies with the conditions of Directive 2009/50 on entry and residence of third-country nationals for the purposes of highly qualified employment he may, in accordance with Article 10(2) of that directive, apply for a Blue Card in his Member State of residence or in another Member State. Before the worker has acquired the long-term residence status in the second Member State, the first Member State will be obliged to take the third-country national back if entitlement to unemployment benefits ends and no new job is found.

7. Risk that Member States grant asylum more often

The Meijers Committee has no reason to expect that increased possibilities of free movement will encourage Member States to grant asylum more often, because i) the right to move to another Member State is conditioned on two years of lawful residence in the first Member State, ii) the right only accrues to international protection beneficiaries who find work in another Member State, and iii) the first Member State remains responsible for taking the person back if the conditions for residence in the second Member State are no longer fulfilled until long-term resident status in the second Member State is obtained.

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About

The Meijers Committee is an independent group of legal scholars, judges and lawyers that advises on European and International Migration, Refugee, Criminal, Privacy, Anti-discrimination and Institutional Law. The Committee aims to promote the protection of fundamental rights, access to judicial remedies and democratic decision-making in EU legislation.

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