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of Building
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**EFBWW-FIEC position paper on the proposal for a Directive on
“Conditions of entry and residence of third-country nationals
for the purposes of seasonal employment”
COM(2010)379**

1. General remarks

This proposal forms part of the EU's efforts to develop a comprehensive immigration policy and is based on the assumption that EU economies face a structural need for seasonal work for which labor from within the EU is expected to become less and less available.

The Commission also points out that there is a more permanent need for unskilled labour within the EU and that it is expected to be increasingly difficult to fill these gaps with EU national workers, primarily owing to the fact that these workers consider seasonal work unattractive. In this respect the Commission explicitly mentions agriculture, horticulture and tourism as sectors mostly concerned.

Furthermore, according to the Commission, there is significant evidence that certain third-country seasonal workers face exploitation and sub-standard working conditions which may threaten their health and safety.

Finally, the Commission clearly underlines that proposal does not apply to third-country nationals posted by undertakings established in a Member State in the framework of a provision of services in accordance with Directive 96/71/EC.

2. EFBWW-FIEC concerns

a) Construction is not a “seasonal” activity

In the proposal adopted by the Commission, the notion of seasonal work is distinguished from regular, permanent work in particular by higher workforce requirements linked to an event or pattern of events, such as the planting or harvesting period in agriculture, or the holiday period in tourism including events, festivals, biennales or long term exhibitions in culture.

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Art. 3 §c defines a seasonal activity as an “*activity that is tied to a certain time of the year by an event or pattern during which labor levels are required that are far above those necessary for usually ongoing operations.*”

Although some construction activities, such as for example road construction, roofing works or paving works, depend on climatic factors (heat, frost, rain, cold, etc.), such weather dependence is completely different from a fixed seasonal pattern.. It can therefore be stated that construction is not a seasonal activity and it should therefore be explicitly excluded from the scope of the Directive.

b) *The application of principle of subsidiarity in the definition of a “seasonal activity” should be clearly stated*

The EFBWW and FIEC favour a clear exclusion of construction activities from the scope of the Directive, they also also recognise the importance of the principle of subsidiarity.

In this respect the detailed explanation of the proposal for a Directive indicates that each Member State may determine specific sectors of the economy that meet the criteria for seasonal work. However this principle is not explicitly recognised neither in the Recitals nor in the core of the proposed Directive.

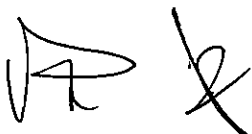
EFBWW and FIEC therefore consider important that the right of each Member State to determine which activities at their national level could be considered as “seasonal” be mentioned in a specific article.

Furthermore, as this could have a significant impact also on sectors which are not seasonal according to the definition foreseen by the proposed Directive, EFBWW and FIEC consider necessary that the national social partners of the sectors concerned be consulted in such a decision.

c) *The validity of the permit should be limited to the territory of the Member State that has issued it and to the authorised activity*

In order to be able to apply the principle of EU preference as regards access to Member States’ labour market and the right of each Member State to determine the volumes of admission of third-country nationals coming from third countries to their territory, the provisions of the proposed Directive should explicitly ensure that a Member State’s decision on the rights of third-country nationals does not affect other Member States and possibly cause distortions of migratory flows between countries or between industries.

Therefore, Art. 15 of the proposed Directive must specify that a seasonal worker permit entitles its holder to enter and reside only on the territory of the Member State which has issued the permit and to exercise only the employment activity authorised by the permit.



Summary of EFBWW and FIEC requests :

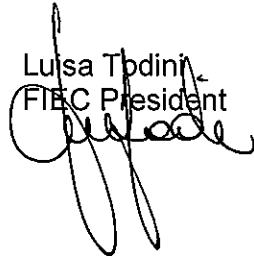
- 1. Construction activities should be explicitly excluded from the scope of the Directive.**
- 2. If it is up to each Member State to decide which activities are or are not seasonal, then such decision should be taken in consultation with the concerned sectoral social partners.**
- 3. The validity of the permit should be limited to the territory of the Member State that has issued it and to the authorised activity only.**

Brussels, 21st February 2011

Domenico Pesenti
EFBWW President



Luisa Todini
FIEC President :



3. EFBWW and FIEC requests for amendments

a) Construction is not a "seasonal" activity (Art.3 (c))

Proposal of the EC	Amendment proposed by EFBWW-FIEC
<p>Article 3 : Definitions</p> <p>(c) 'activity dependent on the passing of the seasons' means an activity that is tied to a certain time of the year by an event or pattern during which labour levels are required that are far above those necessary for usually ongoing operations;</p>	<p>Article 3 : Definitions</p> <p>(c) 'activity dependent on the passing of the seasons' means an activity that is tied to a certain time of the year by an event or pattern during which labour levels are required that are far above those necessary for usually ongoing operations, with the exclusion of activities in the field of building work listed in the Annex 3 of Directive 96/71/EC¹.;</p>

Justification :

Although some construction activities, such as for example road construction, roofing works or paving works, depend on climatic factors (heat, frost, rain, cold, etc.), such weather dependence is different from a fixed seasonal pattern and does not automatically imply labor levels that are far above those necessary. It can therefore be stated that construction is not a seasonal activity and it should therefore be explicitly excluded from the scope of the Directive.

¹ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (Official Journal L 018 , 21/01/1997 P. 0001 – 0006)

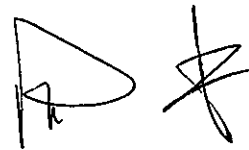
b) The application of principle of subsidiarity in the definition of a "seasonal activity" should be clearly stated

Proposal of the EC	Amendment proposed by EFBWW-FIEC
	<p>Article 2 : Scope</p> <p>(New paragraph)</p> <p>3. Each Member State, in consultation with the concerned sectoral social partners, shall determine which specific sectors of the economy meet the criteria for seasonal activity according to the definition of Art.3 (c).</p>

Justification :

According to the principle of subsidiarity and in order to take into account the specific situations of each country, the right for each Member State to determine which activities can or cannot be considered as seasonal should be explicitly stated.

Furthermore, as this could have a significant impact also on sectors which are not seasonal according to the definition foreseen by the proposed Directive, it is necessary that the national social partners of the sectors concerned be consulted in such a decision.

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c) The validity of the permit should be limited to the territory of the Member State that has issued it and to the authorised activity (Art. 15)

Proposal of the EC	Amendment proposed by EFBWW-FIEC
<p>Article 15 : Rights on the basis of the seasonal worker permit/visa</p> <p>During the period of validity of a seasonal worker permit, the holder shall enjoy at least the following rights:</p> <p>(a) the right to enter and stay in the territory of the Member State issuing the permit;</p> <p>(b) free access to the entire territory of the Member State issuing the permit within the limits provided for by national law;</p> <p>(c) the right to exercise the concrete employment activity authorised under the permit in accordance with national law.</p>	<p>Article 15 : Rights on the basis of the seasonal worker permit/visa</p> <p>During the period of validity of a seasonal worker permit, the holder shall enjoy at least the following rights:</p> <p>(a) the right to enter and stay only in the territory of the Member State issuing the permit;</p> <p>(b) free access to the entire territory of the Member State issuing the permit within the limits provided for by national law;</p> <p>(c) the right to exercise only the concrete employment activity authorised under the permit in accordance with national law.</p>

Justification :

In order to be able to apply the principle of EU preference as regards access to Member States' labour market and the right of each Member State to determine the volumes of admission of third-country nationals coming from third countries to their territory, the proposed amendment aims at explicitly ensuring that a Member State's decision on the rights of third-country nationals does not affect other Member States and possibly cause distortions of migratory flows between countries or between industries.