

## COMMISSION DECISION

of 11 August 2011

**authorising Spain to temporarily suspend the application of Articles 1 to 6 of Regulation (EU) No 492/2011 of the European Parliament and of the Council on freedom of movement for workers within the Union with regard to Romanian workers**

(2011/503/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Act of Accession of Bulgaria and Romania <sup>(1)</sup>, and in particular Article 23 paragraph 7 second subparagraph of Annex VII, Part 1 'Freedom of movement for persons', thereof,

Having regard to the request from Spain of 28 July 2011,

Whereas:

(1) Spain has been fully applying Articles 1 to 6 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community <sup>(2)</sup> to Romanian nationals since 1 January 2009. Regulation (EEC) No 1612/68 was codified and replaced by Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union <sup>(3)</sup>, which entered into force on 16 June 2011.

(2) With reference to a serious disturbance of the Spanish labour market, Spain notified the Commission on 22 July 2011, pursuant to paragraph 7 third subparagraph of Annex VII Part 1 of the 2005 Act of Accession, that it had decided on that day to re-introduce restrictions on labour market access for Romanian workers, notably because of the need to take immediate action in view of the seasonal situation in the agricultural sector in the summer; otherwise the danger of an increase in the number of arrivals of Romanian workers while awaiting a Commission Decision, pursuant to paragraph 7 second subparagraph of that Annex VII, would endanger the very effectiveness of the re-introduced restrictions. At the same time, the Spanish government submitted a reasoned *ex-post* notification with supporting information as to the labour market disturbance.

(3) By letter of 28 July 2011, pursuant to paragraph 7 second subparagraph of Annex VII to the 2005 Act of Accession, Spain followed up the notification of 22 July 2011, requesting the Commission to state that Articles 1 to 6 of Regulation (EU) No 492/2011 be wholly suspended in respect of Romanian workers throughout Spain and in all sectors of the labour market and that the Decision to be taken should be reviewed by 31 December 2012.

(4) Spain justifies its request by reference to the current serious disturbance in the labour market in Spain, in particular the unprecedented fall in the level of employment following the economic recession that started in 2008 which has resulted in a large increase in the level of unemployment with the unemployment rate currently exceeding 20 % and the difficulty to re-create a substantial number of jobs in the short-term.

(5) Spain states that the disturbance in the Spanish labour market, which seriously threatens the level of employment, is of a general nature and not limited to a particular region or sector.

(6) Spain also justifies its request with the following elements: the decrease in the employment rate of Romanian nationals in Spain; the steady rise of unemployment and the high increase in the number of Romanian nationals resident in Spain which occurred despite the adverse evolution of the labour market in Spain and which had an impact on the capacity of Spain to absorb new inflows of workers.

(7) Paragraph 7 of Annex VII Part 1 of the 2005 Act of Accession constitutes a safeguard clause, the purpose of which is to allow a Member State that already fully applies Articles 1 to 6 of Regulation (EU) No 492/2011 to workers, who are concerned by the transitional arrangements of that Annex, and that undergoes or foresees a serious labour market disturbance to re-impose restrictions on the free movement of workers in order to restore to normal the disturbed labour market situation in a given region or occupation.

(8) Paragraph 7 of Annex VII Part 1 of the 2005 Act of Accession provides for two connected procedures: the normal procedure under paragraph 7 second subparagraph and the urgent procedure under paragraph 7 third subparagraph. While the procedure

<sup>(1)</sup> OJ L 157, 21.6.2005, p. 203.

<sup>(2)</sup> OJ L 257, 19.10.1968, p. 2. English Special Edition Series I Chapter 1968(II) p. 475.

<sup>(3)</sup> OJ L 141, 27.5.2011, p. 1.

- in paragraph 7 second subparagraph requires a Member State to request the Commission to state within 2 weeks the whole or partial suspension of Union law on free access to the labour market in a given region or occupation, the procedure in paragraph 7 third subparagraph provides that, in urgent and exceptional cases where the Member State cannot await the outcome of a Commission Decision under paragraph 7 second subparagraph, it can already unilaterally suspend EU law on free movement of workers.
- (9) The analysis of the available economic data shows that Spain is indeed facing a serious labour market disturbance, characterised by the by far highest unemployment rate in the EU (Eurostat monthly unemployment data show 21,0 %, against 9,4 % on average in the EU and 9,9 % in the Euro area in June 2011), a particularly dramatic unemployment among youth (45,7 % in June 2011) and a slow economic recovery (Eurostat figures show GDP growth first quarter 2011 compared with the previous quarter was only 0,3 %, against 0,8 % for the EU and the Euro area), hampered in addition by the current international financial turbulence requiring Spain to introduce further budget cuts aiming at fiscal consolidation, which could have further short-term negative effects on its scope for economic growth. The impact of the employment decline has been a general one affecting all regions and all sectors of production. Labour force survey data for the period between 2008 and 2010 also shows a general fall in the employment level of 9 %, in the construction sector even of 33 %, affecting all regions, varying between 6 % in the Basque country to 13 % in the Valenciana Autonomous Community.
- (10) Consequently the Commission considers that Spain has provided evidence that it is undergoing a labour market disturbance in a generalised way which seriously affects the level of employment in all regions and all sectors and is liable to persist in the near future.
- (11) Moreover, the analysis by the Commission has established that: Romanian nationals living in Spain are strongly affected by unemployment at a rate of more than 30 % (source: Eurostat Labour force survey data, first quarter 2011). The inflows of Romanian nationals arriving in Spain, despite a certain decrease due to the economic recession, remain at substantial levels, even though there is a low labour demand in Spain. The number of Romanian nationals usually resident in Spain has increased from 388 000 on 1 January 2006 to 823 000 on 1 January 2010 (source: Eurostat migration statistics).
- (12) It is likely that a continuing unrestricted inflow of Romanian workers would be a factor in increasing pressure on the Spanish labour market.
- (13) Therefore, in order to restore to normal the situation of the Spanish labour market, it is appropriate to authorise Spain to limit temporarily the free access of Romanian workers to that labour market.
- (14) Restrictions on access to the labour market constitute a derogation from a fundamental principle of the Treaty on the Functioning of the European Union, namely the free movement of workers. In accordance with the well-established case-law of the Court of Justice, such measures should be restrictively interpreted and applied.
- (15) Therefore, although with a view to the specific current situation in the Spanish labour market and considering displacement and other potential spill-over effects between regions and sectors caused by a selective restriction, it is at this time appropriate that restrictions should apply for employed activities in the entire territory of Spain and to all sectors, the scope of the derogation can be reduced, should the Commission ascertain that the relevant particulars which led to its acceptance have changed or that its effects prove to be more restrictive than its purpose requires, in particular for employed activities requiring university degree and equivalent qualifications.
- (16) Equally, though in order for the restrictions authorised by this Decision to have the envisaged effect on the Spanish labour market, it is now considered appropriate that these restrictions remain in place until 31 December 2012. This timeframe may be shortened if the Commission determines that the relevant particulars which led to the adoption of this Decision have changed or that its effects prove to be more restrictive than its purpose requires.
- (17) To this effect, Spain will be required to provide quarterly to the Commission such statistical data, as will be required to ascertain the evolution of the labour market per sector of activity and occupation. The first quarterly report is to be presented before 31 December 2011.
- (18) The Decision to authorise Spain to re-introduce restrictions on the free access of Romanian nationals to the Spanish labour market is further made under certain conditions to ensure that these restrictions are strictly limited to what is necessary to meet the envisaged purpose.
- (19) It is therefore not appropriate to authorise the re-introduction of restrictions in respect of Romanian nationals and their family members who are already employed in the Spanish labour market and in respect of those Romanian nationals and their family members already registered as jobseekers by the Public Employment Services in Spain.

- (20) The principles governing restrictions on access to the labour market, as laid down in Annex VII Part 1 of the 2005 Act of Accession, such as the standstill clause and the principle of Union preference in paragraph 14, should also be respected.
- (21) The right of family members of Romanian workers to take up employment in Spain should be governed *mutatis mutandis* by paragraph 8 of Annex VII Part 1 of the 2005 Act of Accession.
- (22) The restrictions on the rights of Romanian nationals and their family members to access the Spanish labour market authorised by this Decision are strictly limited to the scope of this Decision and can in no way affect any other rights that Romanian nationals and their family members enjoy under Union law.
- (23) A quarterly monitoring and information process on the development of the Spanish labour market has to be ensured.
- (24) For monitoring purposes, an obligation to provide the Commission with details of the measures that Spain has taken on the basis of this Decision has to be ensured,

HAS ADOPTED THIS DECISION:

*Article 1*

Spain is hereby authorised under the conditions specified in Articles 2 to 4 of this Decision to suspend Articles 1 to 6 of Regulation (EU) No 492/2011 with regard to Romanian nationals until 31 December 2012.

*Article 2*

This Decision shall not affect the Romanian nationals and their family members:

1. who are employed in Spain on the day of entry into force of this Decision;
2. who are registered as jobseekers by the Public Employment Services in Spain on the day of entry into force of this Decision.

*Article 3*

The application of this Decision shall be subject *mutatis mutandis* to the conditions on transitional arrangements as laid down in Annex VII Part 1 of the 2005 Act of Accession.

*Article 4*

Spain shall take all necessary measures to continue to monitor closely the development of the labour market. It shall provide to the Commission quarterly statistical data evidencing the evolution of the labour market per sector of activity and occupation. The first quarterly report is to be presented before 31 December 2011.

Spain shall provide the Commission and the Member States without delay in case of any significant change with an update of the relevant particulars it has supplied in respect of its request for a Commission decision and in respect of which this Decision is taken.

*Article 5*

This Decision may be amended or repealed in particular if the relevant particulars referred to in Article 4 and which led to its adoption have changed or that its effects prove to be more restrictive than its purpose requires.

*Article 6*

Spain shall provide the Commission with details of the measures it has taken on the basis of this Decision within 2 months of receipt thereof.

*Article 7*

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 11 August 2011.

*For the Commission*

*The President*

José Manuel BARROSO