



The intervention of the Spanish representative will take place in the **SESSION 6: International Cooperation to Promote Legal Labour Migration and Reduce Irregular Migration.**

The discussion will focus on the latest international cooperation mechanisms on labour migration related to the Mediterranean region. Experience will be exchanged on the effectiveness and practical implementation of bilateral labour agreements, enhanced channels for labour circulation, visa policies, and sanctions regarding irregular migration and international cooperation to tackle irregular labour migration. Global level agreements such as UN and ILO conventions on migrant workers will also be highlighted.

## **TO PROMOTE LEGAL LABOUR SYSTEM: THE SPANISH EXPERIENCE, THE ANNUAL QUOTA SYSTEM.**

### **1. Introduction.**

Immigration is an economic issue linked to job opportunities. The best way to foster legal immigration in countries of origin is through orderly management of labour immigration, which varies among countries. Thus different admission procedures have been laid down like quota or point selection based systems.

Spain has become in a short period of time a net immigration country. The legal framework to manage labour migration is quite recent and can be found in year 2000 Act named **Constitutional law on Rights and Liberties of Foreigners in Spain and their Social Integration.**

Articles 39 and 40 establish that a yearly quota, "*Contingente*" in Spanish, may be set by the Government, subject to **national employment assessment**. This enables to sign bilateral agreements on orderly management of migratory flows between Spain and countries of origin.

*The first one was signed with Colombia on 21<sup>st</sup> May 2001 and entered into force on 11<sup>th</sup> March 2002. Agreements have been concluded with Ecuador (translated by the World Bank and featured in the Handbook) Morocco, the Dominican Republic, Romania, Poland and Bulgaria. A bilateral Agreement with Ukraine is being negotiated and last June a Memorandum of Understanding with the Philippines was signed between the Ministries of Labour from both countries in order to hire at origin workers from the health sector. A pilot project has already started and upon assessment and results it is planned to set a stable cooperation scheme for migratory flows management.*



*More recently a Declaration of Intent has been signed between the Spanish Ministry of Labour and the Secretary of State of Mexico.*

## **2. Main Features of this labour immigration modality**

- This provision caters for a more flexible and quick response to tackle regular economic migration, including temporary immigration.
- It is a **flexible quota that can be modified throughout the year**
- It targets prospective labour immigrants in country of origin, that is to say, **NOT** residing in Spain.
- **Sector based**, following national employment assessment from the State Public Employment Services and data gathered at regional level
- **Employer led**: employers or their organisations, present job offers in bulk, to prospective workers unknown to them (“*Oferta genérica*”).
- The stock for this year exceeds 17.000 offers, split by sectors of economy and at province level. Two categories of offers (or schemes) can be found, with different regimes:
  - a) **Stable offers**, offering one year **minimum** contract, which in fact is a one year (minimum) residence and work permit, involving sectors such as building, manufacturing, transport, textile industry, catering, commerce, domestic service..., which differ from one province to another (geographical criterion). The worker can renew his residence permit if he finds another job, or his contract is expanded.
  - b) **Seasonal offers**, or **temporary** offers, with a maximum 9 month contract per year. The stock is also set by employers or trade unions, at sector and geographical level.
    - ✓ Seasonal offers can be presented by more than one employer, indicating the length and activity of the campaign, the housing and boarding conditions. Sectors involved include infrastructures, building, catering and hotel trade, retail sector and agriculture. These offers are strongly participated by Trade Unions.
    - ✓ Return to country of origin is monitored by the Police



and the consular services.

- ✓ Activity and contract can be expanded, as long as the need to carry out the same activity specified in the contract can be assessed.
- ✓ Residence and work permit are limited geographically and at sector of activity level.
- Several Departments involved: Directorate General for Immigration at the Ministry of Labour, Ministry of Foreign Affairs, Police Alien Affairs Department, within the Ministry of the Interior or Home Affairs. Partnership building between the State Administration bodies, the regional and local administrations and the social agents.
- Travelling costs borne by employers
- If the worker loses his job for any reason not chargeable to him, he may remain in the country until the end of the permit and he can be offered another job in the same sector of activity and in the geographical authorized sector. He can also apply for unemployment benefits until the end of his stay.

### **3. Processing.**

- a. The Directorate General for Immigration submits the job vacancies requests (with accompanying documents) to the corresponding Consular Missions in each country of origin, which will submit the documents to the official body nominated by the sending country and responsible for the selection of applicants.
- b. Employers may participate in this selection process, carried out in country of origin. Further training at origin (or in Spain) may be agreed beforehand between employers, the Directorate General for Immigration and the referred official body of the sending country.
- c. If needed, the Directorate General for Immigration may ask countries of origin to establish databases with job seekers to improve the selection process.
- d. The selection committee reports to the Directorate General for Immigration on the results and submits a list with the selected applicants, which, in turn, is submitted to the Police Alien Unit, who, after examination, issues the corresponding Foreign Identification Number (número de identificación de extranjeros - NIE) card. DG for Immigration notifies at the same time the employer(s), the corresponding consular services and the



corresponding Unit at the Ministry of Foreign Affairs

- e. The whole process cannot exceed one month.
- f. The worker, within a month in Spain has to collect his identification card at the corresponding Police station. This does not apply to workers coming through less-than-six-month (temporary scheme).
- g. Special provisions concerning training at origin or in Spain can be stated in the contracting conditions.
- h. Preferential treatment is given to countries with agreements for orderly management of migratory flows

#### 4. Circular Migration

*In year 2003 a new reading of the above mentioned Law 4/2000 on Rights and Liberties of Foreigners in Social Integration exempts from the national employment law those foreign nationals **who have been granted work permits for seasonal (temporary) activities during 4 natural years and returned to their countries.***

*Regulation 2393/2004, published in the Official Gazette of 2005, implementing the abovementioned Law, Articles 77 to 83 sets the procedures to rule this mode of immigration.*

- i. Temporary offers give way to circular migration.
- j. The foreign worker commits himself to return to his country when the work ties expire.
- k. He may apply for next year stable or seasonal work permits
- l. Employers can submit individual job offers to recruit workers both under the stable and the temporary scheme. Under the temporary scheme may be offered a contract for a stable scheme.
- m. No tie concerning activity; e.g. an employer can hire a worker in a different sector
- n. Firms operating in third countries may select workers to be sent to Spain to another firm belonging to the same group or branch
- o. As mentioned before, an employer can submit a job offer for seasonal workers who have come to Spain (and other countries) 4 years, with no submission to national employment assessment



- p. According to Police records, temporary (and stable) workers come back to their country that is they do not abscond and become irregularly staying immigrants in Spain.

### **Outcomes of Scheme:**

- Very popular among employers and trade unions
- Well managed, though it may sound complicated because of the many stakeholders involved
- Sensible to natives' employment situation
- Respectful of immigrant workers' rights who are well accepted
- Successful circular migration. Many return and make social ties in host country
- Drawbacks: number is still insufficient to the country's needs. Problems still encountered in sending countries because of still insufficient capacity building. More consular posts are needed.

Madrid, 5 de diciembre de 2007.