

COMMISSION DECISION

of 20 December 2012

authorising Spain to extend the temporary suspension of 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

(2012/831/EU)

THE EUROPEAN COMMISSION,

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

Having regard to the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded ⁽¹⁾, and in particular Article 23 and paragraph 7 second subparagraph of Annex VII, Part 1. 'Freedom of movement for persons', thereof,

Having regard to the request from Spain of 13 December 2012,

Whereas:

(1) Spain had 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 ⁽²⁾ to Romanian nationals since 1 January 2009 when it notified the Commission on 22 July 2011, with reference to a serious disturbance of the Spanish labour market, pursuant to paragraph 7 third subparagraph of Annex VII Part 1 to the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the Treaties on which the European Union is founded (hereinafter 'the 2005 Act of Accession'), that it had decided on that day to re-introduce restrictions on labour market access for Romanian workers. 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 ⁽³⁾, which entered into force on 16 June 2011.

(2) In response to a request by Spain on 28 July 2011 to the Commission pursuant to paragraph 7 second subparagraph of Annex VII Part 1 to the 2005 Act of Accession 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, the Commission authorised Spain by Decision 2011/503/EU ⁽⁴⁾ to limit the free access of Romanian workers to the Spanish labour market until 31 December 2012, subject to certain conditions. This Decision entered into force on 12 August 2011.

(3) Spain asked the Commission by letter of 13 December 2012 to extend the suspension of Articles 1-6 of Regulation (EU) No 492/2011 in respect of Romanian workers until 31 December 2013.

(4) Spain justifies its request by the fact that the two reasons underlying Decision 2011/503/EU remain: the serious disturbance of the Spanish labour market, affecting all regions and sectors; and the labour market situation of Romanian citizens residing in Spain as well as the risk that an unrestricted inflow of Romanian workers would increase pressure on the Spanish labour market.

(5) Spain provides statistical evidence indicating that the economic and labour market situation has further worsened since mid-2011, leading to record levels in unemployment and youth unemployment, and that the economic forecasts point to a contraction of the GDP in 2012 and 2013 and a further increase of unemployment. Moreover, Spain states that the disturbance of the Spanish labour market which seriously threatens levels of employment is of a general nature and not limited to a particular region or sector.

(6) Spain further provides statistical data indicating that the number of Romanian residents in Spain has continued to increase (despite restrictions on free access to the labour market for Romanian workers) and that they numbered 913 405 in September 2012; that the share of Romanian nationals who contribute to the social security system is decreasing; that the numbers of Romanian nationals registered as jobseekers and of those receiving unemployment benefits are relatively high, albeit decreasing, and that their unemployment rate is higher than the average. Spain concludes that the current labour market situation affects its capacity to absorb new inflows of Romanian workers.

(7) According to Paragraph 7 second subparagraph of Annex VII Part 1 to the 2005 Act of Accession a Member State may request the Commission to state within two weeks that the application of Articles 1-6 of Regulation (EU) No 492/2011 be wholly or partially suspended in a given region or occupation.

(8) Analysis in 2011 of the economic data underlying Decision 2011/503/EU showed that Spain was 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

⁽¹⁾ OJ L 157, 21.6.2005, p. 203.

⁽²⁾ OJ L 257, 19.10.1968, p. 2.

⁽³⁾ OJ L 141, 27.5.2011, p. 1.

⁽⁴⁾ OJ L 207, 12.8.2011, p. 22.

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 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 had been a general one affecting all regions and all sectors of production. Labour force survey data for the period between 2008 and 2010 also showed 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.

(9) Consequently the Commission considered that Spain provided evidence that it was undergoing a labour market disturbance in a generalised way which seriously affected the level of employment in all regions and all sectors and was liable to persist in the near future.

(10) Moreover, the analysis in 2011 by the Commission established that: Romanian nationals living in Spain were 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, remained at substantial levels, even though there was a low labour demand in Spain. The number of Romanian nationals usually resident in Spain increased from 388 000 on 1 January 2006 to 823 000 on 1 January 2010 (source: Eurostat migration statistics).

(11) The analysis of the currently available economic data show that the labour market in Spain remains seriously disturbed. The economic downturn continues to have a greater impact on employment in Spain than in other Member States and the data shows that the trend became more pronounced throughout 2011 and the first quarters of 2012. In October 2012, the unemployment rate was around 26,2 %, compared to 21,3 % in June 2011, against 10,7 % on average in the EU in October 2012 (and 9,5 % in June 2011). Moreover, the unemployment rate among young persons is dramatically high at 55,9 % in October 2012, compared to 23,4 % on average in the EU (source: Eurostat monthly unemployment data).

(12) The adverse economic situation and the resulting labour market disturbances are likely to persist. According to the European Commission economic forecasts, the Spanish GDP is expected to contract in 2012 and 2013 (– 1,4 % for both years) before recovering slightly in 2014 (+ 0,8 %) and the unemployment rate is foreseen to continue to increase and reach 26,6 % in 2013 (and decrease to 26,1 % in 2014). The decline in employment has continued to affect all economic sectors. Between the second quarter 2011 and the third quarter 2012, employment in Spain has contracted by around

980 000 (or – 5,4 %) (source: Eurostat Labour Force Survey). While the construction sector displayed the largest drop (– 293 000 or – 20,5 %), employment in agriculture, manufacturing and the services sector have also decreased. Moreover, all regions are affected by high levels of unemployment (from 12,0 % in Basque country to 30,4 % in Andalusia in 2011, source: Eurostat Labour Force Survey data) and the labour market disturbance is therefore not limited to a particular region.

(13) Consequently, the Commission considers that Spain has provided evidence that it is still 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.

(14) Moreover, the analysis by the Commission shows that, since Spain re-introduced restrictions on labour market access for Romanian workers, the number of Romanian nationals in Spain has continued to increase, albeit at a slower pace than before: according to Spanish migration statistics, it increased by 11 970 (or + 1,3 %) between 30 September 2011 (901 435) and 30 September 2012 (913 405) whereas it had increased by 83 975 (or + 10,3 %) between 30 September 2010 (817 460) and 30 September 2011 (901 435). Romanian nationals in Spain still experience very high levels of unemployment: 36,4 % in the third quarter 2012 (source: Eurostat Labour Force Survey data).

(15) It is therefore likely that the full application of EU law on free movement of workers would still be a factor in increasing pressure on the Spanish labour market as it allows for the unrestricted inflow of Romanian workers.

(16) Therefore, in order to restore the situation of the Spanish labour market to normal, it is appropriate to authorise Spain to continue to temporarily limit the free access of Romanian workers to that labour market. As the transitional arrangements in the 2005 Act of Accession that allow for restrictions on labour market access of Romanian nationals, of which the safeguard clause forms part, are limited in time until 31 December 2013, the authorisation cannot extend beyond that date.

(17) 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.

(18) It is at this time appropriate that restrictions should continue to apply for employed activities in the entire territory of Spain and to all sectors in view of the specific current situation in the Spanish labour market and the displacement and other potential spill-over effects between regions and sectors caused by a selective restriction. However, the scope of the derogation can

be reduced, should the Commission ascertain that the relevant particulars underlying such derogation have changed or that its effects prove to be more restrictive than its purpose requires, in particular for employed activities requiring a university degree or equivalent qualifications.

- (19) 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 the end of the transitional period on 31 December 2013, this time-frame 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.
- (20) To that effect, Spain is 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 March 2013.
- (21) The Decision to authorise Spain to continue its restrictions on the free access of Romanian nationals to the Spanish labour market is subject to certain conditions to ensure that those restrictions are strictly limited to what is necessary to the envisaged purpose.
- (22) It is therefore not appropriate to authorise the re-introduction of restrictions in respect of Romanian nationals and their family members who were already employed in the Spanish labour market or who were already registered as jobseekers by the Public Employment Services in Spain on 22 July 2011, that is on the date of notification by Spain of the measures referred to in recital 1.
- (23) The principles governing restrictions on access to the labour market, as laid down in Annex VII Part 1 to the 2005 Act of Accession, such as the standstill clause and the principle of Union preference mentioned in paragraph 14 of Part 1 of that Annex, should also be respected.
- (24) 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 to the 2005 Act of Accession.
- (25) 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.
- (26) For monitoring purposes, an obligation to provide the Commission with details of the measures that Spain has taken on the basis of this Decision should be laid down,

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 2013.

Article 2

Without prejudice to the measures introduced by Spain on 22 July 2011 pursuant to paragraph 7 third subparagraph of Annex VII Part 1 to the 2005 Act of Accession, this Decision shall not affect the Romanian nationals and their family members:

who were employed in Spain on 12 August 2011, or

who were registered as jobseekers by the Public Employment Services in Spain on 12 August 2011.

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 to the 2005 Act of Accession.

Article 4

Spain shall take all necessary measures to continue to closely monitor the development of the labour market. It shall provide the Commission with quarterly statistical data evidencing the evolution of the labour market per sector of activity and occupation. The first quarterly report shall be presented before 31 March 2013.

In case of any significant change in the labour market, Spain shall provide the Commission and the Member States without delay 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 adopted.

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 two 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, 20 December 2012.

For the Commission

The President

José Manuel BARROSO