





Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Directive	2007/0229(COD) Procedure completed
Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers	
Subject	
4.15.08 Work, employment, wages and salaries: equal opportunities women and men, and for all	
4.15.12 Workers protection and rights, labour law	
7.10 Free movement and integration of third-country nationals	
7.10.04 External borders crossing and controls, visas	
7.10.08 Migration policy	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Civil Liberties, Justice and Home Affairs		11/01/2010
		PPE MATHIEU HOUILLON Véronique	
		Shadow rapporteur	
		S&D BLINKEVIČIŪTĖ Vilija	
	Former committee responsible		
	LIBE Civil Liberties, Justice and Home Affairs		11/01/2010
	PPE MATHIEU HOUILLON Véronique		
	LIBE Civil Liberties, Justice and Home Affairs		18/12/2007
	PPE-DE GAUBERT Patrick		
Former committee for opinion			
EMPL Employment and Social Affairs (Associated committee)			21/01/2010
	S&D CERCAS Alejandro		
EMPL Employment and Social Affairs (Associated committee)			20/11/2007
	PPE-DE JELEVA Rumiana		
Council of the European Union	Council configuration	Meeting	Date
	Transport, Telecommunications and Energy	3127	24/11/2011
	Justice and Home Affairs (JHA)	3121	27/10/2011
	Employment, Social Policy, Health and Consumer Affairs	3053	06/12/2010
	Justice and Home Affairs (JHA)	2936	06/04/2009
	Justice and Home Affairs (JHA)	2908	27/11/2008
	Justice and Home Affairs (JHA)	2838	06/12/2007
	Employment, Social Policy, Health and Consumer Affairs	2837	05/12/2007
	Justice and Home Affairs (JHA)	2827	08/11/2007
European Commission	Commission DG	Commissioner	
	Justice and Consumers	REDING Viviane	

Key events

22/10/2007	Legislative proposal published	COM(2007)0638	Summary
08/11/2007	Debate in Council	2827	
05/12/2007	Debate in Council	2837	
06/12/2007	Debate in Council	2838	
15/01/2008	Committee referral announced in Parliament, 1st reading		
13/03/2008	Referral to associated committees announced in Parliament		
05/11/2008	Vote in committee, 1st reading		Summary
07/11/2008	Committee report tabled for plenary, 1st reading	A6-0431/2008	
19/11/2008	Debate in Parliament		
20/11/2008	Results of vote in Parliament		
20/11/2008	Decision by Parliament, 1st reading	T6-0558/2008	Summary
27/11/2008	Debate in Council	2908	
06/04/2009	Debate in Council	2936	Summary
01/12/2009	Formal reconsultation of Parliament		
02/12/2009	Additional information		Summary
21/04/2010	Referral to associated committees announced in Parliament		
28/09/2010	Vote in committee, 1st reading		Summary
05/10/2010	Committee report tabled for plenary, reconsultation	A7-0265/2010	
06/12/2010	Debate in Council	3053	Summary
13/12/2010	Debate in Parliament		
14/12/2010	Decision by Parliament, 1st reading		Summary
24/03/2011	Decision by Parliament, 1st reading	T7-0115/2011	Summary
23/11/2011	Council position published	13036/3/2011	Summary
01/12/2011	Committee referral announced in Parliament, 2nd reading		
05/12/2011	Vote in committee, 2nd reading		
06/12/2011	Committee recommendation tabled for plenary, 2nd reading	A7-0434/2011	Summary
12/12/2011	Debate in Parliament		
13/12/2011	Decision by Parliament, 2nd reading	T7-0561/2011	Summary
13/12/2011	Final act signed		

13/12/2011	End of procedure in Parliament		
23/12/2011	Final act published in Official Journal		

Technical information

Procedure reference	2007/0229(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 079-p2
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/07685

Documentation gateway

Legislative proposal		COM(2007)0638	23/10/2007	EC	Summary
Document attached to the procedure		SEC(2007)1393	23/10/2007	EC	
Document attached to the procedure		SEC(2007)1408	23/10/2007	EC	
Economic and Social Committee: opinion, report		CES1212/2008	09/07/2008	ESC	
Committee draft report		PE409.737	24/09/2008	EP	
Amendments tabled in committee		PE414.274	15/10/2008	EP	
Committee opinion	EMPL	PE409.726	05/11/2008	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0431/2008	07/11/2008	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0558/2008	20/11/2008	EP	Summary
Commission response to text adopted in plenary		SP(2008)7295	12/12/2008	EC	
Committee draft report		PE439.363	04/03/2010	EP	
Amendments tabled in committee		PE439.963	24/03/2010	EP	
Committee opinion	EMPL	PE439.114	30/04/2010	EP	
Committee final report tabled for plenary, reconsultation		A7-0265/2010	05/10/2010	EP	
Amendments tabled in committee		PE458.660	11/02/2011	EP	
Text adopted by Parliament after reconsultation		T7-0115/2011	24/03/2011	EP	Summary
Council position		13036/3/2011	24/11/2011	CSL	Summary
Commission communication on Council's position		COM(2011)0832	25/11/2011	EC	Summary
Committee draft report		PE476.097	30/11/2011	EP	
Committee recommendation tabled for		A7-0434/2011	06/12/2011	EP	Summary

plenary, 2nd reading					
Text adopted by Parliament, 2nd reading		T7-0561/2011	13/12/2011	EP	Summary
Draft final act		00073/2011/LEX	13/12/2011	CSL	
Follow-up document		COM(2019)0160	29/03/2019	EC	Summary

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

[Directive 2011/98](#)
[OJ L 343 23.12.2011, p. 0001](#) Summary

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

PURPOSE: to establish a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and a common set of rights for third-country workers legally residing in a Member State.

PROPOSED ACT: Council Directive.

BACKGROUND: this proposal forms part of EU efforts to develop a comprehensive immigration policy, especially concerning economic immigration. In particular, the proposal meets the demands of the December 2006 European Council which agreed a series of steps to be taken in terms of legal migration, [?] in order to assist Member States to meet labour needs [?] while contributing to the sustainable development of all countries?. This proposal also responds to these requests in accordance with the Policy Plan on Legal Migration (see [INI/2006/2251](#)) which aimed at laying down admission conditions for specific categories of migrants (highly qualified workers, seasonal workers, remunerated trainees and intra-corporate transferees) in four specific legislative proposals on the one hand, and introducing a general framework for a fair and rights-based approach to labour migration on the other.

This proposal is to meet the latter objective by securing the legal status of already admitted third-country workers, without affecting the conditions of admission of third-country nationals. The proposal advises a common set of rights to all third-country workers lawfully residing in a Member State and not yet entitled to long-term residence status, and to introduce a single application procedure, along with a single residence/work permit.

The proposal aims to combat the rights gap? regarding third-country workers as opposed to own nationals (particularly in terms of working conditions including pay, access to vocational training and core social security benefits), and to act as a safeguard for migrant workers by protecting them from exploitation.

Finally, this proposal aims to encourage the integration of immigrants and their families, as part of the response needed to prepare Europe's economy and society for the onset of an ageing demographic.

CONTENT: the proposal for the Directive has two main aims:

1. a single application procedure for third country nationals seeking to enter the territory of a Member State to work, with the aim being to simplify their admission and to facilitate the control of their status. If granted the permit to stay and work should be issued in a single act. Member States will be required to provide a "one-stop-shop" system and to comply with certain safeguards and standards when handling applications. Furthermore there is a general prohibition on additional permits (e.g. a work permit). The Directive also indicates that the single permit will take the harmonised format, as established by Regulation (EC) No 1030/2002;
2. the issue of common rights to third-country nationals legally working in a Member State: the Directive guarantees equal treatment with own nationals in employment related fields.

Chapter I ?Scope:

This Directive shall apply:

- to third-country nationals seeking to reside and work in the territory of a Member State;
- to third-country workers legally residing in a Member State.

This Directive shall not apply to third-country nationals:

- who are family members of Union citizens who have exercised, or are exercising their right to free movement within the Community;
- covered by Directive 96/71/EC (see [COD/1991/0346](#)) as long as they are posted;
- who are temporarily transferred by their employer (e.g. contractual service suppliers, and graduate trainees under the European Community's GATS commitments);
- who have been admitted to the territory of a Member State to work on a seasonal basis (not exceeding six months in any 12 month period);

- who have applied for recognition as refugees (and whose application has not yet given rise to a final decision);
- staying in a Member State as applicants for international protection or under temporary protection schemes;
- who have acquired long-term resident status in accordance with Directive 2003/109/EC (see [CNS/2001/0074](#));
- whose expulsion has been suspended for reasons of fact or law.

Chapter II ? Single application procedure and single permit: an application to reside and work in the territory of a Member State shall be submitted in a single application procedure. Member States shall be obliged to examine the application using the single procedure and, if the applicant fulfils the requirements, grant the single permit (it shall constitute one combined title encompassing both residence and work permit within one administrative act). A competent authority is designated by each Member State, responsible for receiving applications and issuing single permits. The designated authority shall process the application and adopt a decision ? involving other authorities, on the basis of conditions specified in national law, if necessary. The designated competent authority shall notify the applicant of its decision in writing.

Single permit format: the single permit is to take a uniform format for residence permits for third-country nationals in accordance with Regulation (EC) No 1030/2002 (see [CNS/2001/0082](#)). This Regulation enables the Member States to add information, in the relevant space of the uniform format, as to whether or not the person is permitted to work. This present proposal obliges Member States to indicate this information. This obligation does not only apply to the single permit, which is issued for the purpose of residence and work, but also to all the issued residence permits, irrespective of the type of the permit or the residence title (i.e. family reunification, study), if the third-country national concerned has been given access to the labour market of that Member State. Member States may request applicants to pay fees for handling applications (the level of fees must be proportionate and based on the principle of the service actually provided).

Furthermore, there is a general prohibition of issuing any additional permits.

Procedural guarantees: reasons must be given for a decision rejecting the application for a single permit so there is a clear explanation why national authorities have refused it. Provisions have been planned in terms of:

- remedies: a decision rejecting the application or not renewing the single permit (suspending or withdrawing the single permit) shall be open to challenge before the courts of the Member State concerned;
- access to information: third-country nationals and their future employers will be informed of all the documentary evidence they need in order to complete the application.

Rights granted by the single permit: the Directive states the rights granted by the single permit. These rights are of particular relevance in those Member States that do not apply the Schengen acquis in full. Therefore, during the period of its validity, the single permit shall entitle its holder to:

- enter, re-enter and stay in the territory of the Member State issuing the single permit;
- travel through other Member States;
- have free access to the entire territory of the Member State issuing the single permit, within the limits established by national legislation for reasons of security;
- exercise the activities authorised under the single permit.

Chapter III ? common rights granted by the proposal in terms of equal treatment: the Directive grants a certain number of basic rights to single permit holders. Therefore, these permit holders shall enjoy equal treatment with nationals with regard to:

- working conditions, including pay and dismissal as well as health and safety in the workplace;
- freedom of association and affiliation and membership of an organisation representing workers or employers or of any professional organisation (without prejudice to the national provisions on public policy and public security);
- education and vocational training (Member States can, however, restrict access to study grants);
- recognition of diplomas, certificates and other professional qualifications;
- branches of social security, as defined in Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, and in Regulation (EEC) No 859/2003 which aims to extend the provisions of Regulation (EEC) No 1408/71 and its implementing Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality, shall apply accordingly (the provisions relating to equal treatment in terms of social security also apply to persons coming to a Member State directly from a third country);
- payment of acquired pensions when moving to a third country;
- tax benefits;
- access to goods and services and the supply of goods and services made available to the public, including procedures for obtaining housing and the assistance offered by employment offices (e.g. data bank EURES).

Restriction of rights: Member States may, however, restrict equal treatment with nationals: i) by requiring proof of appropriate language proficiency for access to education and training, amongst others, ii) in respect to public housing, in cases where the third-country national has lived in the territory for at least three years. Finally, in some cases, Member States can restrict the right to equal treatment of third-country nationals who already are in employment.

More favourable provisions: this Directive shall apply without prejudice to more favourable provisions of Community legislation, including bilateral and multilateral agreements between the Community, or the Community and its Member States, with third countries (Community or mixed agreements that have been, or are to be, concluded with third countries to govern the legal situation of third-country workers (such as the EEA agreement) or the Association Agreement with Turkey; international instruments such as those adopted by the Council of Europe (European Social Charter-1961 and 1996- and the European Convention on the legal status of migrant workers- 1977); or even the International Covenant on Economic, Social and Cultural Rights.

Territorial provisions: in accordance with the relevant provisions of the treaties, the proposal shall not apply to the UK, Ireland or Denmark.

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

The Committee on Civil Liberties, Justice and Home Affairs adopted a report drafted by Patrick GAUBERT (EPP-ED, FR), and amended the proposal for a Council directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

The main amendments ? adopted in the framework of the consultation procedure ? are as follows :

Scope: Members stated that the proposal should not apply to workers who have been admitted to the territory of a Member State to work on a seasonal period to work on a seasonal basis, since seasonal workers should be covered by a separate directive. Nor will the Directive apply to workers who have been admitted to the territory of a Member State in order to work there for a period not exceeding six months, as regards solely the field of the single procedure. However, the Directive will apply to applicants under temporary protection schemes.

Common set of rights: the common set of rights must apply to all nationals admitted to the territory for employment purposes, and also to all those who were initially admitted for other reasons but who obtained the right to work on the basis of national or Community law, irrespective of the purposes for which they were initially admitted to the territory of a Member State. The committee clarified that, while the single permit procedure applies only to certain third-country workers, the common set of rights is equally applicable to all third-country workers. Otherwise, discrimination between third-country workers would be likely to arise on such a fundamental issue as the right to equal treatment.

Equal treatment: third-country workers must enjoy equal treatment with nationals at least with regard to: working conditions, including pay, holidays, working time and dismissal as well as health and safety at the workplace; education in the broad sense of the term (language learning and cultural familiarisation with a view to improving integration) and vocational training; portability of pensions or annuities in respect of old age, death, or invalidity; information and counselling services offered by employment offices. The Committee deleted some of the exceptions which the Commission has proposed in respect of the right to equal treatment.

Application for a single permit: the committee stipulated that it shall be the responsibility of Member States to determine whether the application for a single permit is to be submitted by the third-country national concerned, by his future employer or by either. Where an application for a single permit is submitted by the third-country national concerned, it must be possible for that application to be submitted and examined either when the third-country national is residing outside the territory of the Member State to which he wishes to be admitted or when he is already legally in the territory of the Member State concerned.

Other procedural rules : the committee's amendments are as follows :

- if the applicant's permit expires before a decision has been taken on his renewal application, the Member State responsible for considering the application shall authorise the person concerned and, where applicable, his family, to stay legally within its territory until a decision is taken concerning his application for renewal of the single permit;

- objective and verifiable reasons shall be given in the written notification for a decision rejecting the application not granting, not modifying or not renewing, suspending or withdrawing the single permit on the basis of criteria specified in national or community law. Those criteria shall be objective and open to the public, so that the decision can be verified. A challenge shall suspend the administrative decision until the final court decision is taken;

- a Member State may issue to a holder of a combined permit issued by another Member State a permit enabling him to perform frontier work. Such a permit shall be issued pursuant to the national law of that Member State . The period of validity of such a permit may not exceed the period of validity of the combined permit issued by the other Member State.

Payment of fees: Members agreed that Member States may request applicants to pay fees for handling applications. However, the level of fees must be proportionate and reasonable and shall not exceed the actual costs incurred by the national administration. An overall maximum amount shall be fixed in national law, including, where appropriate, the costs of subcontracting incurred by using external firms to collect the documents necessary for compiling a file with a view to obtaining a permit.

Period of validity: the period of validity of the single permit will be as determined by each Member State. The Directive does not affect the competence of the Member States with respect to the admission of third-country nationals to their labour markets.

Information: Member States shall ensure that regularly updated information concerning the conditions of third-country nationals' entry into and stay in their territory for the purpose of work is made available to the general public, in particular via their consulates. Members stipulate that notification and information be communicated in such a way that the applicant is able to comprehend their content and implications.

More favourable rules: the Directive has to be implemented without prejudice to more favourable provisions contained in EU legislation and international instruments.

Sanctions: Member States shall take the necessary measures to ensure that any infringement of the rights is subject to effective, proportionate and dissuasive measures, including the use of penalties where appropriate.

It should be noted that this proposal is closely linked to the proposal on the Blue Card.

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

The European Parliament adopted, by 442 votes to 77 with 42 abstentions, a legislative resolution, amending the proposal for a Council directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. The report had been tabled for consideration in plenary by Patrick GAUBERT (EPP-ED, FR), on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

The main amendments ? adopted in the framework of the consultation procedure ? are as follows:

Scope: Members stated that the proposal should not apply to workers who have been admitted to the territory of a Member State to work on a seasonal period to work on a seasonal basis, since seasonal workers should be covered by a separate directive. Nor will the Directive apply to workers who have been admitted to the territory of a Member State in order to work there for a period not exceeding six months, as regards solely the field of the single procedure. However, the Directive will apply to applicants under temporary protection schemes.

Common set of rights: the common set of rights must apply to all nationals admitted to the territory for employment purposes, and also to all those who were initially admitted for other reasons but who obtained the right to work on the basis of national or Community law, irrespective of the purposes for which they were initially admitted to the territory of a Member State. Parliament clarified that, while the single permit procedure applies only to certain third-country workers, the common set of rights is equally applicable to all third-country workers. Otherwise, discrimination between third-country workers would be likely to arise on such a fundamental issue as the right to equal treatment.

Equal treatment: apart from the rights that are listed in the proposal, third-country workers must enjoy equal treatment with nationals at least with regard to: working conditions, including pay, holidays, working time and dismissal as well as health and safety at the workplace; education in the broad sense of the term (language learning and cultural familiarisation with a view to improving integration) and vocational training; portability of pensions or annuities in respect of old age, death, or invalidity; information and counselling services offered by employment offices. The plenary re-inserted some of the clauses in the original proposal, which the Committee on Civil Liberties, Justice and Home Affairs had deleted with regard to the right to equal treatment. Member States may restrict equal treatment with nationals by requiring proof of appropriate language proficiency for access to education and training. Access to university may be subject to the fulfilment of specific educational prerequisites. They may also restrict equal treatment in respect of study grants.

Application for a single permit: Members stipulated that it shall be the responsibility of Member States to determine whether the application for a single permit is to be submitted by the third-country national concerned, by his future employer or by either. Where an application for a single permit is submitted by the third-country national concerned, it must be possible for that application to be submitted and examined either when the third-country national is residing outside the territory of the Member State to which he wishes to be admitted or when he is already legally in the territory of the Member State concerned.

Other procedural rules : Parliament's amendments are as follows :

- if the applicant's permit expires before a decision has been taken on his renewal application, the Member State responsible for considering the application shall authorise the person concerned and, where applicable, his family, to stay legally within its territory until a decision is taken concerning his application for renewal of the single permit;
- objective and verifiable reasons shall be given in the written notification for a decision rejecting the application not granting, not modifying or not renewing, suspending or withdrawing the single permit on the basis of criteria specified in national or community law. Those criteria shall be objective and open to the public, so that the decision can be verified. A challenge shall suspend the administrative decision until the final court decision is taken;
- a Member State may issue to a holder of a combined permit issued by another Member State a permit enabling him to perform frontier work. Such a permit shall be issued pursuant to the national law of that Member State . The period of validity of such a permit may not exceed the period of validity of the combined permit issued by the other Member State.

Payment of fees: Members agreed that Member States may request applicants to pay fees for handling applications. However, the level of fees must be proportionate and reasonable and shall not exceed the actual costs incurred by the national administration. An overall maximum amount shall be fixed in national law, including, where appropriate, the costs of subcontracting incurred by using external firms to collect the documents necessary for compiling a file with a view to obtaining a permit.

Period of validity: the period of validity of the single permit will be as determined by each Member State. The Directive does not affect the competence of the Member States with respect to the admission of third-country nationals to their labour markets.

Information: Member States shall ensure that regularly updated information concerning the conditions of third-country nationals' entry into and stay in their territory for the purpose of work is made available to the general public, in particular via their consulates. Members stipulate that notification and information be communicated in such a way that the applicant is able to comprehend their content and implications.

More favourable rules: the Directive has to be implemented without prejudice to more favourable provisions contained in EU legislation and international instruments. In addition, a new recital states that Member States should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly of the United Nations on 18 December 1990.

Penalties: Member States shall take the necessary measures to ensure that any violation of the rights enshrined in the Directive is subject to effective, proportionate and deterrent penalties.

It should be noted that this proposal is closely linked to the proposal on the [Blue Card](#).

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

The Council held a political debate on a proposal to establishing a single application procedure for a single permit for third-country nationals to reside and work in a member state and a common set of rights for third-country workers legally residing in the EU.

The exchange of views focused mainly on the scope of the directive and was conducted on the basis of a Presidency compromise text. The Council instructed its preparatory bodies to continue examination of the proposal with a view to concluding negotiations on the directive as soon as possible.

To recall, this proposal, submitted by the Commission in October 2007, was the subject of extensive debates under previous Presidencies leading to a substantial level of agreement on a large number of provisions. It requires unanimity within the Council.

The European Parliament delivered its opinion in November 2008.

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

The Lisbon Treaty, which entered into force on 1 December 2009, amended the EU's two core treaties, the Treaty on European Union (TEU) and the Treaty establishing the European Community (EC Treaty). The latter was renamed the Treaty on the Functioning of the European Union (TFEU).

These changes had various consequences for many ongoing procedures. First of all, the articles of the TEU and of the old EC Treaty that constitute the legal basis of all the proposals founded on those Treaties were renumbered in accordance with the table of equivalences mentioned in Article 5 of the Lisbon Treaty.

In addition, some proposals underwent a change to their legal basis going beyond a mere change to their numbering, and this resulted in changes to the type of procedure.

The Lisbon Treaty also introduced new concepts of decision-making procedure. The old "codecision procedure" was extended to new areas and renamed the "ordinary legislative procedure". A new "consent procedure" replaced the old "assent procedure". New interinstitutional procedures were also set up for the adoption of certain non-legislative acts, for example the conclusion of some international agreements.

The ongoing proposals concerned by these changes were formally modified by the Commission in a Communication published on 2 December 2009 ([COM\(2009\)0665](#)).

In the case of the proposal for Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, the entry into force of the Lisbon Treaty had the following impacts:

- the old legal basis ? Treaty/EC/Art.63 (3)(a) ? became Art 79 2(a) and (b) of the TFEU. Please note that the numbering of the old legal basis corresponds to the consolidated version of the Treaty that was applicable immediately before the entry into force of the Lisbon Treaty, and may differ from the references in the original Commission proposal;
- the proposal, which had previously fallen under the old consultation procedure (CNS), was classified as an ordinary legislative procedure (COD).

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

The Committee on Civil Liberties, Justice and Home Affairs adopted the report drawn up by Véronique MATHIEU (EPP, FR) on the proposal for a regulation of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. This proposal is again being considered by the European Parliament, following the entry into force of the Lisbon Treaty.

It recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal as follows:

Purpose: Members stress that the Directive aims to establish a common set of rights to third country workers legally residing in a Member State, irrespective of the purposes for which they were initially admitted to the territory of that Member State, based on equal treatment with nationals of that Member State.

The Directive is without prejudice to the Member States' powers concerning the admission of third-country nationals to their labour markets.

Definitions: the committee amended several definitions, amongst them, that of "third-country worker" means, without prejudice to the interpretation of the concept of employment relationship in other Union legislation, any third-country national who has been admitted to the territory of a Member State, who is legally resident and who is allowed to work under national law or in accordance with national practice in that Member State. Members wish to clarify that the definition of "third country worker" should not influence the interpretation of the concept of employment relationship in any other EU legislative instrument because there is no uniform definition of the concept of "an employment relationship" in the field of EU labour law.

In addition, they specify that "single permit" means a residence permit (rather than "any authorisation as proposed by the Commission) issued by the authorities of a Member State allowing a third-country national to stay legally in its territory in order to work there.

Scope: the directive will apply not only to third-country nationals seeking to reside in the territory of a Member State in order to work there, but also to third-country nationals who have been admitted for purposes other than work under national or Union rules, are allowed to work and are issued a residence permit in accordance with Regulation (EC) No 1030/2002, and to third-country workers who have been admitted for the purpose of work under national or Union rules.

The committee clarified the list of exclusions from the scope and stated that Member States may decide that Chapter II of the Directive (Single application procedure and Single permit) does not apply to third-country nationals who have been either authorised to work on the territory of a Member State for a period not exceeding six months or admitted for the purpose of study.

Chapter II shall not apply to third-country nationals who are authorised to work on the basis of a visa.

Application by employer: the report specifies that Member States shall determine whether applications for a single permit are to be made by the third-country national or by his or her employer. If the application is to be submitted by the third-country national, Member States shall allow the application to be introduced from a third country or, if provided for by national law, on the territory of the Member State in which he or she is already legally present.

The single application procedure shall be without prejudice to the visa procedure which may be required for initial entry.

Information supporting the application: Members add that if the information or documents supporting the application are incomplete according

to the criteria specified in national law, the competent authority shall notify the applicant in writing of the additional information or documents required.

Additional document: the provisions on the single permit and on the residence permit issued for purposes other than work should not prevent Member States from issuing additional documents, in particular to give more precise information on the right to work. Such additional documents should, however, be optional for Member States and should not serve as a substitute for a work permit and thereby compromise the concept of the single permit.

Reasons for rejecting an application: reasons shall be given in the written notification for a decision rejecting the application for a single permit, not modifying or not renewing the single permit, or withdrawing the single permit on the basis of criteria provided for by national or Union law. The notification and information shall be provided in such a way that the applicant is able to comprehend their content and implications.

Inadmissible application: an application may be considered inadmissible for reasons connected with the number of third-country nationals admitted to the territory of a Member State in order to work there. In such a situation, the application need not be processed.

Scope of equality of treatment: the committee extends this, specifying that third-country workers shall enjoy equal treatment with regard to working conditions, including pay and dismissal as well as health and safety at the workplace, working time, leave and disciplinary procedures, taking into account general collective agreements in force; and branches of social security, as defined in Regulation (EC) No 883/2004.

In addition, a new clause states that third-country workers moving to a third-country, or the survivors of such a worker residing in third-countries as they derive their rights from the worker, shall receive, in relation to old-age, invalidity and death, statutory pensions based on the worker's previous employment and acquired in accordance with the legislation set out in Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third-country. Member States may make the application of this provision conditional to the existence of bilateral agreements in which the reciprocal export of pensions is acknowledged and a technical cooperation established.

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

The Belgian Presidency provided the Council with information the draft directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State.

Concerning the work in the European Parliament, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) and the Committee on Employment and Social Affairs (EMPL) both adopted opinions on this issue.

The Presidency has conducted informal contacts with the European Parliament and reviewed its report to the Council. However, following these contacts, the Presidency had to conclude that the positions of the Council and the EP remained opposed on some essential points and that a first reading agreement was difficult to envisage. The Parliament is expected to proceed to a vote on the proposal at its plenary session in December 2010. It will then be up to the Council to revisit the amended text and decide on the follow-up.

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

After adopting a series of amendments to the Commission proposal for a directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, the European Parliament rejected the amended proposal in its final vote (306 votes in favour of the amended proposal, 350 votes against and 25 abstentions).

The key points of discussion among the political groups were the scope of the legislation, equal treatment of third country nationals and EU citizens and whether Member States should be enabled to issue or require other documents, in addition to the permit.

Having established that the Commission would not be withdrawing its proposal, the President of Parliament confirmed that the matter would be referred back to the committee responsible under Rule 56(3) of the Rules of Procedure.

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

The European Parliament adopted by 311 votes to 216, with 81 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

Parliament adopted its position at first reading under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the Commission proposal as follows:

Purpose: the purpose of this Directive is to determine :

- single application procedure for issuing a single permit for third-country nationals to reside for the purpose of work in the territory of a Member State, in order to simplify the procedures for their admission and to facilitate the control of their status; and
- a common set of rights to third-country workers legally residing in a Member State, irrespective of the purposes for which they were initially admitted to the territory of that Member State, based on equal treatment with nationals of that Member State.

The provisions of this Directive are without prejudice to the Member States' powers concerning the admission of third-country nationals to their

labour markets.

Definitions: among the amended definitions, there is that of the 'third-country worker' which means any third-country national who has been admitted to the territory of a Member State, is legally resident and is allowed to work under national law and/or in accordance with national practice in that Member State.

'Working conditions' in this Directive are to be understood to cover at least pay and dismissal, health and safety at the workplace, working time and leave taking into account collective agreements in force.

'Single permit' means a residence permit issued by the authorities of a Member State allowing a third-country national to stay legally in its territory in order to work there.

Scope of application: the Directive would apply to:

- third-country nationals seeking to reside in the territory of a Member State in order to work there
- third-country nationals who have been admitted for purposes other than work under national or Union law, are allowed to work and are issued a residence permit in accordance with [Regulation \(EC\) No 1030/2002](#);
- third-country nationals who have been admitted for the purpose of work under national or Union law.

This Directive shall not apply to the following groups of third-country nationals:

- posted workers (this should not prevent third-country nationals who are legally resident and lawfully employed in a Member State and posted to another Member State from continuing to enjoy equal treatment with respect to nationals of the Member State of origin for the duration of their posting);
- who have applied for admission or have been admitted to the territory of a Member State to work as intra-corporate transferees;
- who have applied for admission or have been admitted to the territory of a Member State to work on a seasonal basis or as au pairs;
- who are authorised to reside in a Member State on the basis of temporary protection, or who have applied for authorisation to reside there on that basis and are awaiting a decision on their status or who are beneficiaries of international protection or have applied for international protection and whose application has not yet given rise to a final decision;
- who have applied for admission or have been admitted to the territory of a Member State as self-employed workers or as seafarers.

It is also specified that the Member States may decide whether or not this Directive should apply to third-country nationals who have been either authorised to work on its territory for a period not exceeding six months or admitted for the purpose of study. In any event, the provisions of this Directive shall not apply to third-country nationals who are authorised to work on the basis of a visa.

Application by employer: Member States would determine whether applications for a single permit are to be made by the third-country national or by his or her employer. If the application is to be submitted by the third-country national, Member States shall allow the application to be introduced from a third country or, if provided for by national law, on the territory of the Member State in which he or she is already legally present.

The single application procedure shall be without prejudice to the visa procedure which may be required for initial entry. Where the conditions provided for are met, Member States shall issue a single permit to third-country nationals who apply for admission and to third-country nationals already admitted who apply to renew or modify their residence permit after the entry into force of the national implementing provisions.

Information supporting the application for a single permit: Member States shall provide, upon request, adequate information to the third-country national and the future employer on the documents required to make a complete application. If the information or documents supporting the application are incomplete according to the criteria specified in national law, the competent authority shall notify the applicant in writing of the additional information or documents required and may set a reasonable deadline to provide them. If additional information or documents have not been provided within the deadline, the application may be rejected.

Single permit: when issuing the single permit, Member States shall not issue any additional permits as proof of the access given to the labour market.

Reasons for rejecting an application: reasons shall be given in the written notification for a decision rejecting the application for a single permit, not modifying or not renewing the single permit, or withdrawing the single permit on the basis of criteria provided for by national or Union law. Any such decision shall be open to a legal challenge in the Member State concerned.

Inadmissibility of an application: an application may be considered as inadmissible on the grounds of volumes of admission of third-country nationals coming for employment and therefore has not to be processed.

Right to equal treatment: in accordance with the principles underlying the Directive, third-country workers shall enjoy equal treatment with nationals of the Member State where they reside with regard to working conditions, including pay and dismissal as well as health and safety at the workplace, working time, holidays, in accordance with the relevant national procedures. Branches of social security such as those defined by [Regulation \(EC\) No 883/2004](#) also apply.

Restrictions with respect to the principle of equal treatment: the Directive provides for a number of derogations to the principle of equal treatment. Nevertheless, this Directive should not confer on third-country workers more rights than those already provided in the existing Union legislation in the field of social security for third-country nationals who have cross-border elements between Member States. Equal treatment of third-country workers does not cover measures in the field of vocational training which are financed under social assistance schemes.

This Directive, furthermore, should not grant rights in relation to situations which lie outside the scope of Union legislation, for example family members residing in a third country. This Directive grants rights only in relation to those family members who join the third-country worker to reside in any Member State on the basis of family reunification or to those family members who already reside legally in the given Member State. Because Union law does not limit the power of the Member States to organise their social security schemes, it is for each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted.

Derogations also exist to restrict equal treatment in certain fields, e.g. access to social housing and advice services or certain tax benefits. Member States may decide that only those third-country nationals authorised to work on their territory for more than six months may benefit from family allowances.

Member States should at least give equal treatment to those third-country nationals who are in employment or who after a period of employment are registered as unemployed after a minimum employment period of six months.

More favourable provisions: this Directive should be applied without prejudice to more favourable provisions contained in Union law and international instruments.

It should be noted that this position follows on from the rejection in plenary of a previous position by 350 against to 306 for and 25 abstentions.

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

The Council reached an agreement on the Position at first reading adopted by the Council with a view to the adoption of a Directive of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

Representatives of the Council, the Parliament and the Commission have engaged in contacts with a view to concluding an agreement at the stage of the Council's position at first reading. With a view to reconciling the position of both institutions and taking account of the agreement reached in those contacts, the Council adopts on the proposal for a Directive on the single permit its position at first reading introducing the following key modifications to the Commission proposal:

Scope (Article 3): the Council amends the Commission proposal with a view to specifying the scope of the Directive. For the sake of clarity, the Council distinguishes between two types of third-country workers:

- those third-country nationals who hold a residence permit in accordance with Regulation (EC) No 1030/2002 and have been admitted for purposes other than work but are allowed to work;
- those who have been admitted for the purpose of work.

While under this Directive, the former category is entitled to the right to equal treatment but is not subject to the single application procedure. A subsequent reference to both categories has been made in the introductory sentence of Article 12 concerning the right to equal treatment.

In comparison with the Commission proposal, the Council adds categories of third-country nationals who are excluded from the scope of the Directive. Since the rights of those benefiting from international protection, temporary protection or protection under national law are regulated by other Union instruments, they should, for the sake of legal clarity, be explicitly excluded from the scope of this Directive. For similar reasons, the Council excludes seafarers from the scope of the Directive. Although it also follows from the definition of a third-country worker in this Directive, the Council prefers to explicitly exclude the self-employed from the scope of the Directive.

The Council also sees the need to give Member States the option of not issuing a single permit to students and to those third-country nationals who are authorised to work in a Member State for a period shorter than six months as well as to those who are allowed to work on the basis of a visa. The right to equal treatment shall nevertheless apply to these categories of third-country nationals.

Application procedure (Articles 4, 5, 8 and 10): with regard to the submission of an application for a single permit, the outcome of the informal contacts between the Council and the European Parliament has been to set out in greater detail who the application should be submitted by and where. As a general rule, Member States are obliged to determine whether the application should be made by a third-country national or by his or her employer. However, by way of an exception there may be certain situations where the other party is allowed to submit the application. In order to cater for those third-country workers who have been admitted to the territory of the Member State prior to the entry into force of the Directive, the Council position provides that these workers shall also be issued a single permit if they apply for a renewal or modification of their residence permit and if they fulfil the conditions set out in the Directive.

The Council considers it necessary to specify that the visa procedure which Member States may have in place for initial entry remains unaffected by the single application procedure as set out in this Directive. It is also specifically set out that Member States have the possibility to declare an application inadmissible on the grounds of volumes of admission in which case the application does not have to be processed.

With the aim of ensuring a clear and transparent procedure, the Council position adds a requirement for Member States to set out in their national law the consequences of a decision not having been taken within the time-limit set out in this Directive. Similarly, more detailed procedural rules have been added for situations where the information or documents supporting the application are incomplete. Member States are required to inform the applicant in writing of the additional information or documents he/she needs to submit and they may set a reasonable deadline for the applicant to do so.

In order to avoid possible abuses of the system, Member States are given a possibility to reject an application in case the necessary information has not been given within the set deadline. At the same time, in order to ensure a possibility for a legal challenge, the Council position obliges Member States to specify the court or administrative authority where the applicant concerned may lodge an appeal against a negative decision.

When it comes to the fees applicants may be requested to pay for the handling of the application, the Council position, while adhering to the principle of proportionality, allows Member States to base the level of such fees on the various services actually provided when processing applications and issuing permits.

Single permit and residence permit issued for purposes other than work (Articles 6 and 7): as a result of the informal contacts between the Council and the Parliament, the Council's position provides for a possibility for Member States to complement the single permit and the residence permit issued for purposes other than work with additional information for which the card format of the residence permit leaves insufficient space. The information related to the employment relationship of the third-country national concerned can be issued either separately in paper format or stored electronically on the permit. Such information serves the purpose of preventing the exploitation of third-country nationals and combating illegal employment.

The right to equal treatment (Article 12): considering the wide definition of a third-country worker in this Directive and following the main purpose of the Directive which is to grant equal treatment to third-country workers who are in actual employment and not necessarily to those who are allowed to work but may have never done so, the Council amends the Commission proposal by further extending the possibilities for Member States to limit the right of third-country workers to equal treatment with nationals.

At the same time, the Council position amends the Commission proposal by granting equal treatment to third-country workers, irrespective of whether they are in employment or not, with respect to working conditions, freedom of association and tax benefits (as long as the third-country worker is deemed to be resident for tax purposes in the Member State concerned). The Council deems it important to clarify, by way of a general principle, that the right of a third-country national to equal treatment in itself does not affect the right of Member States to withdraw or refuse to renew the residence permit issued under this Directive.

- **Education and vocational training:** the Council and the European Parliament agreed that Member States are allowed to restrict access to education and training to those third-country workers who are in employment and to those who have been employed and are registered as unemployed. The Council position also enables Member States to exclude those third-country workers who have been admitted under the Directive 2004/114/EC since that directive deals specifically with third-country nationals who have been admitted for the purposes of studies. In addition to the exclusion made for study grants in the Commission proposal, the Council position enables Member States, for budgetary reasons, to exclude maintenance grants and loans or other grants and loans. Member States are also allowed to require the fulfilment of specific prerequisites before a third-country worker is granted access to university and post-secondary education or to vocational training. These prerequisites are not only educational in nature and can include language proficiency and the payment of tuition fees. These prerequisites cannot, however, be applied to vocational training that is linked to a concrete employment activity.
- **Branches of social security:** the Council amends the Commission proposal by obliging Member States to grant equal treatment in the field of social security not only to those who are in employment but also to those who have been employed for a minimum period of six months and who are registered as unemployed. Member States have, however, been given a possibility to deny family benefits to those third-country nationals who are authorised to work in a Member State for a period not exceeding six months, who have been admitted for the purpose of study and who are allowed to work on the basis of a visa. This limitation stems from the fact that several Member States regard family benefits as a measure with long-term demographic impact directed at those residing in a country over a longer period of time.
- **Goods and services, and advice services afforded by employment offices:** the Council amends the Commission proposal by enabling Member States to grant access to goods and services only to those third-country workers who are in employment. In addition, the Council position provides, for budgetary reasons, that Member States may apply a general restriction on access to housing. At the same time, all third-country workers must be granted equal treatment with nationals with regard to advice services afforded by employment offices.
- **Tax benefits:** the Council position specifies that equal treatment is granted with regard to tax benefits as long as the third-country worker is deemed to be resident for tax purposes in the Member State concerned. With regard to the tax benefits claimed for family members, Member States may require that the registered or usual place of residence of the family members is in the Member State concerned.
- **Statutory pensions:** the Council position adds further clarification to the Commission's proposal on equal treatment in respect of statutory pensions of third-country workers moving to a third country or their survivors residing in a third country.

Transposition (Recital 32 and Article 16): following the approval of the Joint Political Declarations on explanatory documents by the European Parliament, the Commission and the Council, the Commission sent a letter to the Council justifying the need for providing explanatory documents in the case of the Single Permit Directive. The Council, subsequently, inserted a new Recital 32 and amended the relevant Article of the Directive.

Conclusion: the Council's Position at first reading reflects the compromise reached in negotiations between the Council and the European Parliament, facilitated by the Commission. The Chair of the European Parliament's LIBE Committee in a letter dated 15 July 2011 to the Chairman of COREPER had indicated that if the compromise text is transmitted to Parliament as Council's position at first reading, he will recommend to the members of LIBE, and subsequently to the plenary, that the Council's position be accepted without amendments in Parliament's second reading, subject to verification by the lawyer-linguists of both institutions.

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

The Commission states that the Common Position satisfies the Commission's original objective to simplify procedures and to have a single permit and to protect migrant workers, to provide them with a series of work-related socio-economic rights on the basis - as far as possible - of equal treatment with EU workers, thereby creating a level playing field throughout the EU. The substance of the Council's Position is, therefore broadly in line with the Commission's proposal and can therefore be supported.

To recall: the Council's position is the result of a long negotiation process. Following the first reading position of the European Parliament on 24 March 2011, an agreement was finally reached between the co-legislators' on the outstanding issues in a Trilogue of 22 June 2011. The only open point was the question of correlation tables, on which a horizontal solution has been found in the meantime. On 15 July 2011 the Chairman of the LIBE Committee sent a letter to the Council Presidency confirming the agreement of the rapporteurs (the LIBE, the EMPL and the Shadow-rapporteurs) on the text approved by Coreper and on the Interinstitutional statement annexed to it, and stating that if these texts were formally transmitted to the European Parliament as the Council's position, he would recommend that the Members of the LIBE committee and subsequently the plenary accept them without amendments.

Coreper reached a political agreement on this basis on 20 July 2011.

Analysis of the Council Position: the main differences between the Common Position and the original Commission proposal are set out below.

Precision and some limitations to the scope (Article 3): the Common Position on the one hand specifies and on the other further limits the scope of the proposal. First, it gives a precision to the scope of the equal treatment provisions (Article 3(1)(b) and (ba) new) by referring to the two categories of possible beneficiaries; those third-country nationals who have been admitted to work and those with other admission purpose but allowed to work. This change confirms the Commission's intention to have a wide scope including also those who are allowed to work but came with a different initial purpose of admission. However these Amendments specify that the latter category should have a residence permit.

Second, it excludes from the scope sea-farers and those third-country nationals benefiting from international protection, temporary protection

or protection under national law recalling that their rights are regulated in other instruments.

Third, it excludes self-employed workers from the scope as well. This exclusion is however only of a declarative nature, since the definition of third-country workers of the proposal (Article 2 (b)) makes it clear that only those in a paid relationship are targeted.

Finally there is a possible derogation - but only as regards the rules on the single procedure/permit - for students and those who are authorised to work for shorter than 6 months. These latter two categories remain subject to the equal treatment provisions in Article 12.

Parallel existence of a national long-term visa scheme (Article 2(c) and Article 3(4)): by replacing the reference to "any authorisation" with "a residence permit" in Article 2(c) the Common Position allows Member States to keep their long-term visa system. The Commission's objective was to have the single permit as the exclusive authorisation to work, but given the developments in that field (Regulation 265/2010 Article 1(1)(2) limits the duration of long-term visas to a year and recognises such documents for travel purposes within the Schengen area in the EU), the Commission can agree to allow Member States to issue long-term visas parallel to single permits, provided the existence of long-term visas would not result in a difference of rights for migrant workers holding such a paper.

Precisions to the application procedure (Articles 4, 5, 8 and 10): procedural rules are further specified in the Common Position. Upon the request of the European Parliament reference is made to the possible applicants (the third-country national, his/her future employer or either of the two). As regards the rules on fees, the principle of proportionality is maintained, but provisions on the possible calculation on the basis of the actual service are added. Finally as part of the final agreement at the request of Council the procedural deadline was extended to four months as opposed to the original three months proposed by the Commission.

Allowing to store the additional information electronically or in a paper format (Articles 6 and 7): as a part of the overall agreement, at the request of Council the possibility is given for Member States to store the information - which does not fit into the harmonised format - electronically or in an additional paper document. Such a possibility can serve the purpose of better control of migration, but it is in the interest of the migrant worker as well to possess all the information related to his/her employment which can prevent his/her exploitation (eg.: working hours). However it should be ensured that the possibility of such papers will not lead to the re-introduction of work permits.

The right to equal treatment (Article 12): the Common Position has taken a more limitative approach as regards access to goods and services by allowing Member States to apply the equal treatment provisions only to those who are in actual employment. As regards access to education, equal treatment is guaranteed to registered unemployed migrant workers as well however other limitations are possible as regards fees and other prerequisites, but as a minimum guarantee equal treatment in the area of vocational training linked to the concrete employment activity needs to be ensured. At the same time at the request of the European Parliament, equal treatment provisions became more ambitious than the Commission proposal for social security by including not only those who are currently employed but also those who have been employed for a minimum of 6 months and registered as unemployed. Further, the co-legislators agreed to extend the equal treatment rights for working conditions, and freedom of association also to those who are currently not employed. The right to export acquired pensions under the same conditions and at the same rates were maintained by the co-legislators with some legitimate technical precision.

There is one specific limitation in the area of social security; family benefits does not have to be granted to those who work on the basis of a visa or have been authorised to work for six months or less or were admitted as students. The Commission underlines its preference to apply the principle of equal treatment without any regard to the format of papers (visa or single permit) which the migrant workers possess. Taking into account however that the long-term visa holder workers will benefit from equal treatment as regards all rights except for this specific benefit and will benefit from full equal treatment as regards family benefits in a cross-border situation, the Commission does not object to this new provision.

Transposition (Recital 32 and Article 16): the only open point upon the last Trilogue between the co-legislators was the issue of correlation tables, on which a horizontal solution has been found in the meantime. Therefore - upon the justified request of the Commission - recital 32 of the Common Position states that Member States will undertake to accompany the notification of their transposition measures with one or more documents explaining the relationship between the components of this directive and the corresponding parts of national transposition instruments.

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

The Committee on Civil Liberties, Justice and Home Affairs adopted the recommendation for a second reading contained in the report by Véronique MATHIEU (EPP, FR), recommending that the European Parliament approve without amendment the Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

The European Parliament adopted a legislative resolution on the Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

Parliament approved without amendment the Council position on first reading.

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

PURPOSE: to establish a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and a common set of rights for third-country workers legally residing in a Member State.

LEGISLATIVE ACT: Directive 2011/98/EU of the European Parliament and of the Council on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

BACKGROUND: in 1999 the European Council at its special meeting in Tampere, acknowledged the need for harmonisation of national law governing the conditions for admission and residence of third-country nationals. In this context, it stated that the European Union should ensure fair treatment of third-country nationals who are legally residing in the territory of the Member States and that a more vigorous integration policy should aim to grant them rights and obligations comparable to those of citizens of the Union. The Council asked the Commission for a proposal on a single application procedure leading to a combined title encompassing both residence and work permits within a single administrative act.

At the same time, with a view to developing further a coherent immigration policy and narrowing the rights gap between citizens of the Union and third-country nationals legally working in a Member State, a set of rights should be laid down in order to specify the fields in which equal treatment between a Member States own nationals and such third-country nationals who are not yet long-term residents is provided. Such provisions are intended to:

- establish a minimum level playing field within the Union ;
- recognise that such third-country nationals contribute to the Union economy through their work and tax payments and
- serve as a safeguard to reduce unfair competition between a Member States own nationals and third-country nationals resulting from the possible exploitation of the latter.

CONTENT: following agreement in second reading between European Parliament and Council, this Directive lays down:

- a single application procedure for issuing a single permit for third-country nationals to reside for the purpose of work in the territory of a Member State, in order to simplify the procedures for their admission and to facilitate the control of their status; and
- a common set of rights to third-country workers legally residing in a Member State, irrespective of the purposes for which they were initially admitted to the territory of that Member State, based on equal treatment with nationals of that Member State.

The Directive is without prejudice to the Member States powers concerning the admission of third-country nationals to their labour markets.

Scope: the Directive applies to:

- third-country nationals who apply to reside in a Member State for the purpose of work;
- third-country nationals who have been admitted to a Member State for purposes other than work in accordance with Union or national law, who are allowed to work and who hold a residence permit in accordance with Regulation (EC) No 1030/2002; and
- third-country nationals who have been admitted to a Member State for the purpose of work in accordance with Union or national law.

The Directive does not apply to third-country nationals: (i) who are family members of citizens of the Union who exercise their right to free movement within the Union in accordance with Directive 2004/38/EC; (ii) who with their family members, and irrespective of their nationality, enjoy rights of free movement equivalent to those of citizens of the Union under bilateral agreements with the Union; (iii) who are posted for as long as they are posted; (iv) who work as intra-corporate transferees; (v) seasonal workers or au pairs; (vi) who are authorised to reside in a Member State on the basis of temporary protection; (vii) who are beneficiaries of international protection under Council Directive 2004/83/EC ; (viii) who are beneficiaries of protection in accordance with national law, international obligations or the practice of a Member State ; (ix) who are long-term residents in accordance with Directive 2003/109/EC; (x) whose removal has been suspended on the basis of fact or law; (xi) self-employed workers; (xii) seafarers.

Furthermore, Member States may decide that the application procedure for a single permit does not apply to third-country nationals who have been either authorised to work in the territory of a Member State for a period not exceeding six months or who have been admitted to a Member State for the purpose of study.

In any event, the single application procedure and single permit will not apply to third-country nationals who are allowed to work on the basis of a visa.

A single application for a single permit: the Directive provides for a simplified, one-stop-shop system of admission and work of third-country nationals. The application can be made by the third-country national or by his/her employer. Member States may indicate additional information related to the employment relationship of the third-country national (such as the name and address of the employer, place of work, type of work, working hours, remuneration). The single permit will be issued using the uniform format as laid down in Regulation (EC) No 1030/2002 and shall indicate the information relating to the permission to work in accordance with the text.

Procedural guarantees: reasons shall be given in the written notification of a decision rejecting a single permit, and that decision shall be open to legal challenge in the Member State concerned. An application may be considered as inadmissible on the grounds of volume of admission of third-country nationals coming for employment and, on that basis, need not to be processed.

Residence permits issued for purposes other than work: when issuing residence permits in accordance with Regulation (EC) No 1030/2002 Member States shall indicate the information relating to the permission to work irrespective of the type of the permit, and may indicate additional information relating to employment as above. When issuing such residence permits, Member States shall not issue additional permits as proof of authorisation to access the labour market.

Rights on the basis of the single permit: the permit will allow its holder at least to:

- enter and reside in the territory of the Member State issuing the single permit ;
- have free access to the entire territory of the Member State
- exercise the specific employment activity authorised under the single permit in accordance with national law.

Right to equal treatment: holders of a single permit will enjoy, subject to possible limited restrictions as detailed in the Regulation, equal treatment with nationals with regard to:

- working conditions, including pay and dismissal as well as health and safety at the workplace;
- freedom of association, affiliation and membership of an organization representing workers or employers, including the benefits conferred by such organizations;
- education and vocational training. However, Member States may limit the application of this right to those third-country workers who are in employment or who have been employed and who are registered as unemployed; excluding those third-country workers who have been admitted to their territory in conformity with Directive 2004/114/EC; excluding study and grants and loans, and laying down specific prerequisites including language proficiency and the payment of tuition fees;
- recognition of diplomas, certificates and other professional qualifications;
- branches of social security, as defined in Regulation (EC) No 883/2004. Member States may limit these rights, but shall not restrict such rights for third-country workers who are in employment or who have been employed for a minimum period of six months and who are registered as unemployed. In addition, Member States may decide that with regard to family benefits, this right shall not apply to third-country nationals who have been authorised to work in the territory of a Member State for a period not exceeding six months, to third-country nationals who have been admitted for the purpose of study, or to third-country nationals who are allowed to work on the basis of a visa;
- tax benefits, in so far as the worker is deemed to be resident for tax purposes in the Member State concerned. Application of this right shall be limited to cases where the registered or usual place of residence of the family members of the third-country worker for whom he/she claims benefits, lies in the territory of the Member State concerned.
- access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing. However, Member States may limit the application of this right to those third-country workers who are in employment, and they may restrict access to housing;
- advice services afforded by employment offices;
- in relation to old age, invalidity and death, statutory pensions based on those workers previous employment and acquired in accordance with the legislation referred to in Article 3 of Regulation (EC) No 883/2004.

More favourable provisions: the Directive will be applied without prejudice to more favourable provisions contained in Union law and applicable international instruments (such as bilateral instruments).

Reports: periodically, and for the first time by 25 December 2016, the Commission shall present a report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose amendments it deems necessary. Annually, and for the first time by 25 December 2014, Member States shall communicate to the Commission statistics on the volumes of third-country nationals who have been granted a single permit during the previous calendar year.

ENTRY INTO FORCE: 24.12.2011.

TRANSPOSITION: 25.12.2013.

Migration policy: single application procedure for a single permit to reside and work, common set of rights for third-country workers

The Commission presents a report on Directive 2011/98/EU on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

The report gives an overview of the transposition and implementation of the Directive by 24 Member States and identifies possible problematic issues. The report, initially envisaged to be presented by 25 December 2016, was postponed to coincide with the adoption of the Commission's comprehensive evaluation of the legal migration regulatory framework (fitness check).

The main findings were as follows:

Subject matter

The report noted that, overall, the Directive's subject matter has been correctly reflected in the national legislation of all Member States. In general terms, 23 Member States transposed the Directive through amendments to their existing national legislation, that is to say mainly by altering the acts regulating the entry and residence of third country nationals. In Malta, a special self-standing law was adopted to transpose the Directive.

Fees

Member States require applicants to pay fees, where appropriate, for handling applications in accordance with the Directive. Such fees are levied by all Member States for processing the application. In some cases, the Commission takes the view that the fees are excessively high.

Export of pensions

Thirteen Member States allow for the transfer of pensions (covering old age, invalidity and survivors benefits) to third countries. Nationals and third country nationals are treated equally in this regard. Problems were identified in Slovenia, France, the Netherlands and Bulgaria.

Single application procedure

An application to issue, amend or renew a single permit shall be submitted through a single application procedure. In the majority of Member States the relevant application may be submitted only by the third country national, in two Member States only by the employer (BG and IT) and in several others by either the third country national or the employer.

In some Member States permits are not issued through a single administrative act. Instead, the applicable national procedures involve duplication of submission of documentation and/or long procedures. In some Member States an employment clearance is a first step before the third country national can apply for a visa. The employment clearance is generally requested by the employer (FR, RO, ES, BG, PT). For other Member States (e.g. LV and LT), the registration of the vacancy by the employer is required before the issuance of the visa for the third country national to enter the country.

These multiple step procedures could hamper compliance with the Directive if such procedures, and the time needed to complete them, were considered to be outside the single application procedure and therefore the four-month deadline established by the Directive. In particular, employment authorisations should be considered part of the single application procedure when the required clearance relates to a specific third country national and for a concrete position.

One stop shop

A key aspect of the Directive is the establishment of a one-stop-shop mechanism at national level. This is particularly important when dealing with the organisational structure of governmental institutions where the issue of work and residence permits for third country nationals is under the responsibility of different authorities. All Member States have stepped up their efforts to set up this type of mechanism. However, there are still problematic issues with the procedure. The remaining problems mainly relate to the multiple administrative steps required, the time needed to obtain the entry visas and labour market clearance and the respect of certain procedural safeguards.

Extended rights

The Directive also guarantees to third country nationals who are holders of a single permit an extended set of rights and promotes the principle of non-discrimination. Equal treatment provisions are a key element of the EU legal migration framework. Most Member States have complied with the provisions on equal treatment and a limited use has been made of the provisions allowing certain rights to be restricted. This report reveals, however, certain deficiencies in the transposition of the Directive (for example, restrictive interpretation of equal treatment provisions in a few Member States) which should lead to further steps being taken at EU and national levels. Finally, the fitness check on legal migration showed a lack of information among third country nationals about the possibility of obtaining a single permit and the rights attached to it.

Conclusions

The report concluded that the Commission will continue its efforts to ensure that the Directive is correctly transposed and implemented across the EU. In order to achieve this result, the Commission will make full use of its powers under the Treaty, including by launching infringement procedures, where necessary.

At the same time, the Commission will continue working with the Member States at the technical level. Some legal and technical issues could be further discussed and clarified, such as visa and labour market test requirements, equal treatment coverage and issues related to the format of the permits and the information it should contain. Moreover, single permit holders should be better informed about their rights under the Directive.

The Commission will make the best use of existing websites, mainly via the updated Immigration Portal and will encourage and support Member States in launching awareness-raising campaigns to inform potential applicants of rights and procedures to obtain the single permit.