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COMMISSION STAFF WORKING DOCUMENT

Accompanying document to 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**

SUMMARY OF THE IMPACT ASSESSMENT

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1. INTRODUCTION

The European Council acknowledged first in the Tampere Conclusions in 1999 the need to ensure fair treatment of third-country nationals residing lawfully in the territory of the Member States by giving them comparable rights to those of citizens of the Union. This document is a summary of an impact assessment report that examines policy options to guarantee a common set of rights to all legally residing third country worker who have not yet acquired long term resident status in order to respond to that need.

The report is based on consultations with Member States and other stakeholders. The data were mainly collected from consultation, case studies and literature review undertaken by an external study ordered by the Commission. The study and report were drafted with input from the Directorate-General Employment, Social Affairs and Equal Opportunities and from an inter-service steering group convened by the Directorate-General for Justice, Freedom and Security.

2. PROBLEM DEFINITION

2.1. The context

The Policy Plan on Legal Migration¹ defines a roadmap and a set of actions and legislative initiatives and suggests the following line: to open up specific channels of legal migration (highly skilled migrants, seasonal workers, remunerated trainees, intra-corporate transferees) and a general directive on the rights of third-country workers. The latter is to serve as a framework for the specific directives. In other words, no horizontal legislation is suggested concerning the conditions of residence for third-country nationals in employment. Instead specific directives would regulate the admission of certain categories of migrants and as a basis a horizontal community legislation would cover rights of third country workers at EU level.

2.2. The issue/problem to require action – rights gap and inefficient national admission procedures

The rights gap

Analysis of the existing Community acquis and Member States' national legislation and international agreements has shown that there is a difference in rights ("rights gap") of third-country workers and those of EU/own nationals and long-term residents.

At present, the principle of equal treatment with regard to working conditions and rights to social (security) provisions is granted to third-country workers only by national laws and for specific third-country workers through different multilateral agreement concluded by the EC. Some categories of third-country workers, either defined by their status (i.e. long-term) or by their nationality (i.e. those from countries that have signed multilateral agreements with the EU and its Member States, such as the EFTA-countries and Turkey) may claim a more privileged position on the basis of Community law. This is not the case, however, for most other third-country workers. Therefore in the absence of a general horizontal Community

¹ SEC(2005) 1680.

legislation the rights of third country workers may vary significantly depending on their nationality and on the Member States in which they stay. This creates legal uncertainty for third-country workers and puts them on an unequal footing with workers whose rights have been explicitly defined. Such a situation does not correspond to the Tampere objective which aimed at granting legally resident third-country nationals rights and obligations comparable to those of EU citizens.

Complex and inefficient admission procedures

Analysis shows that even in the absence of community legislation more than half of the Member States already have a single application procedure or envisage changing their system and a minority use separate procedures for obtaining work and residence permits respectively. Distinct procedures have shown to have longer processing time and represent more administrative burden and costs for the employer and the would be migrant worker (arising from the distinct procedures).

2.3. Who is affected in which Member States and to what extent? – the scope of the problem

Determining who is affected by the problem of rights gap and inefficient admission procedures is difficult. Third-country nationals legally working in the EU are a very heterogeneous group. At EU level there is no data on the migration flows into the Member States distinguished by the reason for migration (e.g. for employment, for family reunification)². Therefore the employment position of third-country nationals on the EU labour market has been analysed in the European Labour Force Survey (LFS) that distinguishes workers on the European labour market based on nationality.

The brief statistical analysis from 2005 proved that:

- Third-country nationals represents 3.6% of the EU population (16 million people).
- Most of them (ca. 12 million) live in 5 Member States (Germany, France, Spain, the UK, and Italy).
- Their origins in each Member State differ especially due to geographic proximity and historical ties.
- It appears that the group of third-country workers is segmented between a highly skilled group and a larger group with low and medium skills.

3. OBJECTIVES

Global policy objectives are:

- 1) Responding to the request first expressed in Tampere to grant comparable rights, establishing the principle of equal treatment for third-country workers across the EU.

² Further to the problem of data unavailability it was only Germany who had data on the targeted group of third-country workers, namely those who have not acquired long term resident status.

- 2) Improving the functioning of the EU labour market.
- 3) Protecting Union citizen workers from unfair competition in the labour market.

Specific and operational objectives are:

- 1) To have a common understanding at EU level of the group of third-country workers that legally resides in the EU but has not yet acquired long-term resident status.
- 2) To determine a set of rights for third-country workers.
- 3) To safeguard the position of EU nationals and long-term residents against the possible consequences of competition from cheap and exploited foreign labour.
- 4) To increase the transparency of the common EU labour market for third-country workers.

4. POLICY OPTIONS

The question is how far EU intervention should go. The rights gap in the Member States between third-country workers and other workers is most pronounced in access to labour market, access to social security (especially, unemployment benefits, family benefits, and social assistance) the possibility of transfer of pension savings and restitution of security benefits, access to public services (access to placement services and to other public services, including public housing). As regards complex and inefficient national admission procedures question arises how to tackle it.

- **Option 1 – No change**
- **Option 2 – The non-legislative option: communication, coordination, and cooperation:** No new legislation is introduced on the rights of migrant workers in general. The rights of some third-country workers will be further specified by national legislation and only be covered at EU level by the specific Directives (e.g. on highly-skilled workers) Instead attention would be given to complementary and supporting activities in order to bring the legislative practices of Member States closer through the gathering and exchange of knowledge and information.
- **Option 3a – Legislative option in the form of a Directive focusing on the commonalities:** This option would grant equal treatment to third-country nationals who are already admitted to the labour market in all the employment-related fields excluding social security, the transfer of social security contributions and pensions and access to public services.
- **Option 3b – The equal treatment legislative option in the form of a Directive:** This option would grant equal treatment to third country nationals who are already admitted to the labour market in all the employment-related fields including social security, the transfer of social security contributions and pensions and access to public services.
- **Option 4 - A complementary legislative option in the form of a Directive; single application procedure and single residence/work permit:** The Directive would focus on a single application procedure simplifying the procedure both for immigrants and for

public authorities and a single document enabling a third country national to reside and work in a Member States. These provisions could build on Regulation (EC) No 1030/2002 on a uniform residence permit which already enables Member States to add national remarks as regards the access to the labour market. This option could encompass – following the rights based approach - procedural safeguards and guarantees in relation to the application for a single permit.

- **Option 5 - The fully-fledged legislative option in the form of a Directive regulating access to labour market and also granting equal treatment for third-country workers:** The Directive would regulate the labour market access of third-country workers to a Member State in order to grant comparable treatment as regards access to employment and mobility within that Member State. In order to grant access to the labour market for third-country nationals, conditions for admission to work (economic needs test etc.) need to be harmonised. This option would further provide for equal treatment with own nationals – in all the areas listed in Option 3b.

5. COMPARING THE OPTIONS

The 6 policy options (as 3a and 3b are different sub-options) were compared on the basis of the achievement of global objectives, the level of administrative burden and on their social and the economic impacts.

The analysis whether the policy options achieve the global objectives showed that three options are clearly prominent, namely the legislative options 3b, 4 and 5.

As for their impacts in economic terms, option 4 performs best, which is especially due to the potential for cost savings made possible by the simplification and standardisation of the application procedure. Options 3b, 4 and 5 produce a number of economic benefits, but they do impose financial and administrative costs on business and public authorities. On the other hand options 3b, 4 and 5 produce substantial positive social impacts, notably with respect to social inclusion, equality of treatment, and access to social protection and public services. Option 4 produces benefits associated mainly with the breakdown of the vicious circle of delays in separate procedures for residence and work permits and with the simplification, streamlining and standardisation of procedures and legislation.

When ranking the policy options according to their performance vis-à-vis achieving the global objectives, economic and social impacts options 3b, 5 and 4 emerge as the most favourable options. Option 3b has some disadvantages, such as the likely increase in costs associated with the rights of third country workers.

Option 4 has been compared with the other options as a distinct choice, but it is in fact complementary to the remaining options and can be combined with one of the legislative options.

As regards adoption chances, option 5 is presently regarded as politically not feasible given the experience with the 2001 Commission proposal³ which has been withdrawn in 2006.

³ Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed activities - COM(2001) 388.

6. THE PREFERRED OPTION

Given the outcome of the comparison of policy options, the preferred option should have the following features:

- The *broad scope* of option 3b granting equal treatment covering all employment related fields - including access to social security, export of pensions once paid, access to education, vocational training, the recognition of diplomas, access to public service in particular assistance afforded by employment offices⁴

combined with

- Option 4 foreseeing the introduction of a single application procedure for a single work/residence permit thereby linking equal treatment to a successful application for such a permit (being admitted to the labour market of a Member State).

This approach appears to offer the highest potential for significant benefits in practical and policy terms.

The two options can be combined easily into one preferred option as they tackle different issues but they are complementary in their nature contributing to more legal certainty and a better integrated work force. As far as the links between these options - between migrant rights on the one hand and the single application procedure/single permit on the other - are concerned they both target better migration management through a fair approach. Their objectives are complementary: both contribute to improve the functioning of the labour market. A second link between the rights and the single permit is that rights are only granted to those who reside and work legally. The possession of a single permit proves the lawfulness of both residence and work. Finally not only option 3b but also the single application procedure in option 4 grants rights and protects migrants by ensuring a more efficient and transparent admission procedure laying down procedural guarantees for them.

Options 3b and 4 also have some diverging impacts in the labour market. Option 3b can lower demand for legal third country labour and can give rise to undeclared work whereas option 4 reduces illegal and undeclared work, mainly by breaking through the vicious circle of delays in separate procedures for residence and work permits by creating a quicker and more efficient procedure.

6.1. Advantages and disadvantages of the preferred option

Option 3b would ensure to achieve all the global objectives and would protect and integrate third country workers in the most optimal and flexible way. At the same time the pitfall of the equal treatment approach is that - given the lack of Community competence for harmonisation - the actual rights granted in each Member State would continue to be different from one Member State to another (e.g. with regard to the duration of social benefits). A further disadvantage - as far as access to social security benefits is concerned - is the cost of broadening the personal scope of national social security schemes in those Member States where certain social security benefits are not yet granted to third-country workers.

⁴ But not granting rights with regard to access to the labour market and intra-EU mobility.

Option 4 provides for a single application procedure issued in a single permit. This would ensure quicker and more simplified procedures (shorter processing time, less "red tape") for the third country workers and for their employers, leading to more transparency and legal certainty. Furthermore, one procedure instead of two distinct ones could result in reducing administrative burden and cost for the national administration in the long run, one "client contact office" instead of two. Moreover a single permit avoids the risk of creating discrepancies between two separate permits and allows a clearer overview of the third country national's status and purpose of residence in the Member State. In the same time close internal coordination between the administrative services is needed in order to successfully operate a single application procedure. Furthermore, where the existing procedure will need to be restructured additional one-time costs might occur from employing specialised personnel or from training the existing one. As far as the format is concerned, it is to be emphasized that a single permit should be built on the already existing uniform format for residence permits for third-country nationals⁵. This means that Member States would not have to introduce, at their expenses, new permits but use the already existing uniform format in which they would have to include, on a mandatory basis, all relevant information on the access to the labour market (extent, duration of the access etc.).

6.2. Assessment of the administrative and implementation costs of the preferred option

Qualitative analysis revealed:

- an increase in the payment of social security benefits to third country workers and in the expenditure on public services for third country workers in Member States where equal treatment has not yet been fully granted and
- cost savings in the application procedure and issuing of residence and work permits, which relate to administrative costs (a reduction in labour input to process applications and inform applicants) and additional tax revenues (as third country workers can become gainfully employed at an earlier stage).

Qualitative analysis has further shown that the preferred option could have a positive impact on the socio-economic performance of third country workers, thus raising their contributions to taxes and social security while lowering their use. Therefore the costs of extending specific rights to third country workers may be mitigated by additional tax revenues due to improvement in the socio-economic performance of third country workers.

7. MONITORING AND EVALUATION

As far as monitoring and evaluation arrangements are concerned they could take the form of a Commission report on the basis of Member States' reports three years after the transposition deadline of the Directive. Member States can be obliged through the Directive to communicate correlation tables to demonstrate implementation of the provisions of the Directive in their national legislation. Within the framework of this reporting exercise the Commission should decide whether proposals for amendment should be put forward in order to better respond to the defined objectives.

⁵ Laid down in Council Regulation (EC) No 1030/2002 of 13 June 2002.