



**COUNCIL OF
THE EUROPEAN UNION**

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STATEMENT OF THE COUNCIL'S REASONS

Subject : 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
= Adopted by the Council on 24 November 2011

I. INTRODUCTION

On 23 October 2007, the Commission adopted 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 to the Council.

The European Economic and Social Committee and the Committee of the Regions adopted their opinions on the proposal respectively on 9 July 2008 and on 18 June 2008.

On 24 March 2011, the European Parliament adopted its position at first reading with a view to the adoption of the Directive. The Council was not in a position to approve the Parliament's position and adopted its position at first reading on 24 November 2011 in accordance with Article 294 of the Treaty.

II. OBJECTIVE OF THE PROPOSAL

The objective of the proposal is to introduce a single application procedure for third-country nationals who would like to reside in a Member State for the purpose of work, along with a single residence/work permit, and to provide for a common set of rights to all third-country workers legally residing in a Member State.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

General

The negotiations took place in a policy context shaped by the Hague programme which set out the objectives and the instruments in the field of freedom, security and justice for the period 2005 - 2010 and subsequently by the Stockholm programme covering the period 2010-2014. In the Stockholm programme, the European Council recognised the importance of labour migration in contributing to increased competitiveness and economic vitality of the Union and for this purpose encouraged the creation of flexible admission systems that are responsive to the priorities, needs, numbers and volumes determined by each Member State. More specifically, it invited the Commission and the Council to continue to implement the Policy Plan on Legal Migration of 2005 which, among other things, provided for a horizontal instrument setting out a framework of rights to all third-country workers lawfully residing in a Member State and introducing a single application procedure along with a single residence/work permit.

The Council started discussing the proposal in early 2008 but failed to reach unanimous agreement on it. Since the entry into force of the Lisbon Treaty the proposal falls under the ordinary legislative procedure with qualified majority required in Council.

In accordance with Articles 1 and 2 of the Protocol on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States are not taking part in the adoption of the Directive on the Single Permit and are not bound by it or subject to its application.

In accordance with Articles 1 and 2 of the Protocol on the Position of Denmark, annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of the Directive and is not bound by it or subject to its application.

Key issues

In line with the provisions of the Joint Declaration on practical arrangements for the co-decision procedure¹, representatives of the Council, the Parliament and the Commission 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, and those who have been admitted for the purpose of work. While the latter category is entitled to a single permit and the right to equal treatment 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.

¹ OJ C 148, 28.5.1999, p.1.

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

With regard to 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.

Reporting (Article 15)

The Council's position states that the statistics on the volumes of third-country nationals who have been granted a single permit should be provided in accordance with Regulation (EC) No 862/2007 on Community statistics on migration and international protection.

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.¹ The Council, subsequently, inserted a new Recital 32 and amended the relevant Article of the Directive.

IV. 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. COREPER endorsed this compromise at its meeting on 20 July 2011. Prior to that, 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. Due to its horizontal nature, the adoption of the Directive on the Single Permit will be of central importance in the field of legal migration at the EU level.

¹ Doc. 16058/11 MIGR 164 SOC 917 CODEC 1815