



Council of the  
European Union

060242/EU XXVI. GP  
Eingelangt am 02/04/19

Brussels, 2 April 2019  
(OR. en)

8095/19

ASIM 43  
SOC 275

#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	29 March 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2019) 160 final
Subject:	REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL 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

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Delegations will find attached document COM(2019) 160 final.

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Encl.: COM(2019) 160 final



Brussels, 29.3.2019  
COM(2019) 160 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**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**

## I. INTRODUCTION

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 Directive')<sup>1</sup> was adopted on 13 December 2011. It was the sixth directive<sup>2</sup> in the area of legal migration adopted after the Treaty of Amsterdam gave the EU the power to legislate in this field.

The Directive has two main objectives. The first is to facilitate the procedure for a third country national to be admitted for work in a Member State by introducing a single application procedure for a single permit (a combined work and residence permit) and in so doing help to better manage migration flows. In addition, the Directive lays down a number of safeguards in the application procedure.

The Directive's second main objective is to ensure equal treatment between third country workers and nationals of the Member State of residence.

The Directive is therefore a key instrument in EU immigration policy for third country nationals admitted to work or working in the 25 Member States<sup>3</sup> where the Directive applies.

In 2017, 2 635 896 permit decisions were reported for the Directive, of which 841 028 decisions were for issuing first permits. The other decisions were for renewing or changing permits. Of all the permits issued in 2017, 893 198 (34 %) were issued for 'remunerated activities', 1 006 318 (38 %) for family reasons, 279 405 (11 %) for education and 456 975 (17 %) for other reasons. Of all the first permits issued in 2017 (whose volume has increased since the first reporting year in 2013), over 88 % were for remunerated activities, therefore covering a large proportion of the intended target group<sup>4</sup>. Belgium and Greece do not report any statistics for the Directive<sup>5</sup>.

This report on implementation complies with the Commission's obligation under Article 15 of the Directive that requires that the Commission periodically present a report to the European Parliament and the Council on the Directive's application in the Member States. It gives an overview of the transposition and implementation of the Directive by 24 Member States and identifies possible problematic issues<sup>6</sup>. 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")<sup>7</sup>.

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<sup>1</sup> OJ L 343 of 23.12.2011p. 1.

<sup>2</sup> The first was Directive 2003/86/EC on the right to family reunification.

<sup>3</sup> Denmark, Ireland and the UK are not bound by the Directive.

<sup>4</sup> A thorough analysis of the statistics for the Directive is included in the Fitness check staff working document, Annex 9.

<sup>5</sup> Source [migr\_ressing] and [migr\_resocc] as of 7.12.2018. AT only reports total permit decision, not if first decisions. BG, CZ, LT, NL do not report permits for family reasons. BG, CZ, ES, IT, LT, LU, HU, MT, AT do not report permits for education. BG, CZ, IT, LT, MT, NL, RO do not report permits for other reasons.

<sup>6</sup> At the time of finalising this report, BE had still not fully transposed the Directive, and a conformity assessment of BE was therefore not available. See also (CJEU) C-564/17, Commission vs Belgium. The assessment of this report therefore refers to the 24 other relevant Member States.

<sup>7</sup> SWD(2019) 1055 of 29 March 2019 Fitness check on EU legislation on legal migration. See also: [https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration/fitness-check_en).

The report on implementation has been drawn up on the basis of an external study conducted between 2014 and 2016 at the Commission's request and on the basis of other sources, including a number of ad hoc queries launched through the European Migration Network<sup>8</sup>, individual complaints, questions, petitions and a few practical issues arising from the Directive's application as identified by the supporting study for the fitness check<sup>9</sup>. Complementary information on practical application is included in the fitness check document.

## II. MONITORING AND STATE OF TRANSPOSITION

Article 16 provides that Member States had until 25 December 2013 to transpose the Directive. Prior to this the Commission organised several meetings with Member State representatives to discuss issues concerning the Directive's implementation and interpretation<sup>10</sup>.

In 2014 the Commission initiated infringement proceedings against 14 Member States under Article 258 (ex-226) of the Treaty on the Functioning of the European Union (TFEU) for failing to fulfil their obligations to notify the Commission of national measures implementing the Directive. Since then, given that all Member States have now notified the transposition measures, the infringement proceedings for non-communication have been closed with the exception of Belgium which was referred to the European Court of Justice<sup>11</sup>.

Since 2011, a number of complaints have been received relating specifically to the subject matter regulated by the Directive. These deal with the recognition of qualifications, excessive processing times by the authorities, other procedural aspects, level of fees, concerns related to lack of equal treatment, in particular for the export of pensions, and categories excluded from the scope of the Directive. Complaints have been or are currently being followed up through an exchange of information with the Member States concerned or through infringement procedures.<sup>12</sup>

## III. COMPLIANCE OF THE TRANSPOSITION MEASURES

### Article 1 — Subject matter

Article 1(1) sets out the subject matter of the Directive, which is to determine 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. This is in order to simplify the procedures for their admission and to facilitate the control of their status, and to lay down a common set of rights for 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.

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<sup>8</sup> See in particular EMN ad hoc queries from 2010 to 2013: the Single Permit System (176); the transposition of Directive 2011/98/EC on a single application procedure for a single permit; on the level of fees (204 and 205), parallel residence statuses (226); collection of a tax on residence permits (230), on the recognition of professional qualifications obtained outside the EU (271), the regulation of health insurance of third country nationals (342), duration of residence permit (428), on the format of residence cards and family permits (429).

<sup>9</sup> ICF(2018).

<sup>10</sup> Discussions within the Legal Migration Contact Group (2013 – 2014).

<sup>11</sup> Belgium notified completed transposition early January 2019 and the infringement case has been closed.

<sup>12</sup> This report reflects the situation as of January 2019, and does not necessarily reflect the dialogue undertaken with Member States thereafter on key issues raised in this report.

Overall, the Directive's subject matter has been correctly reflected in the national legislation of all Member States. In general terms, 23 Member States<sup>13</sup> 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.

The application of the Directive is, pursuant to Article 1(2), without prejudice to the Member States' powers concerning the admission of third country nationals to their labour markets. Almost all Member States perform the labour market needs test, and a variety of procedures are used.

## **Article 2 — Definitions**

Article 2 contains the definitions of key terms used in the Directive, namely 'third country national', 'third country worker', 'single permit' and 'single application procedure'.

The definition of 'third country national', provided for in Article 2(a), stipulates that a person who is not a citizen of the Union within the meaning of Article 20(1) TFEU is considered a 'third country national'. This definition has been correctly transposed.

Article 2(b) contains the definition of 'third country worker'. This definition is important to determine the personal scope of the Directive, notably in relation to the application of Chapter II (equal treatment). All Member States, except Slovakia, have correctly transposed this definition.

## **Article 3 — Scope**

Article 3 defines the personal scope of the Directive.

Article 3(1) determines the categories of third country nationals to whom the Directive applies. In accordance with Article 3(1)(a), the Directive applies to third country nationals who apply to reside in a Member State for the purpose of work. Member States issue various permits to third country nationals who apply to reside in a Member State for the purpose of work, which are considered single permits.

Pursuant to Article 3(1)(b), the Directive also applies to 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. Most Member States have transposed that provision correctly. Member States issue various permits for purposes other than work. This category of third country nationals is issued permits in accordance with Article 7 of the Directive. However, in the Czech Republic, it is not possible to ascertain whether certain categories of third country nationals coming to the Czech Republic for purposes other than work have the possibility to work on the basis of their respective residence titles. In Portugal, the relevant national legislation explicitly excludes third country nationals who are family members of Portuguese citizens from its scope. The Directive, pursuant to Article 3(2)(a), excludes from its scope third country nationals who are family members of EU nationals who have exercised the right to free movement in accordance with Directive 2004/38/EC, not family members of all Portuguese citizens.

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<sup>13</sup> All except Malta.

Finally, in line with Article 3(1)(c), the Directive applies to third country nationals who have been admitted to a Member State for the purpose of work in accordance with Union or national law. All Member States have correctly transposed these provisions.

Article 3(2) determines the categories of third country nationals excluded from the scope of application of the Directive. Most exclusions are due to other applicable EU legislation covering those third country nationals. In general, it should be noted that application of the Directive's provisions, including the issuance of a single permit, to any of the categories of third country nationals listed in Article 3(2) does not necessarily hamper the implementation of the Directive. Almost all Member States<sup>14</sup> transposed Article 3(2) in its entirety in a compliant manner.

According to Article 3(3), Member States may decide that Chapter II does not apply to third country nationals who have been authorised to work in the territory of a Member State for a period not exceeding 6 months or who have been admitted to a Member State for the purpose of study. 18 Member States applied this option. Cyprus, Greece, Lithuania, Malta and the Netherlands have applied the option in relation to both categories of third country nationals. Czechia, Estonia, France, Hungary, Portugal and Slovakia have only applied the option to workers who have been admitted to work in their territory for a period not exceeding 6 months, while Austria, Bulgaria, Spain, Italy, Luxembourg, Latvia and Slovenia have only applied the option to students.

In accordance with Article 3(4), Member States shall not apply Chapter II of the Directive to third country nationals who are allowed to work on the basis of a visa. All Member States have transposed the provision in a compliant manner.

#### **Article 4 — Single application procedure**

Article 4 of the Directive regulates key aspects of the single application procedure.

In line with Article 4(1), an application to issue, amend or renew a single permit shall be submitted through a single application procedure. Member States shall determine whether applications for a single permit are to be made by the third country national or by the third country national's employer. However, Member States may also decide to allow an application from either one. 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, in the territory of the Member State in which the third country national is legally present.

In the majority of Member States the relevant application may be submitted only by the third country national<sup>15</sup>, in two Member States only by the employer (BG and IT) and in several others by either the third country national or the employer<sup>16</sup>.

In some Member States<sup>17</sup> permits are not issued through a single administrative act. Instead, the applicable national procedures involve duplication of submission of documentation and/or long procedures.

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<sup>14</sup> See concerns regarding Portugal above.

<sup>15</sup> CZ, DE, EE, EL, FI, HU, LU, MT, PL, RO, SE and SK.

<sup>16</sup> AT, CY, ES, FR, HR, LT, LV, NL, PT and SI.

The obligation to obtain an employment clearance for market tests needs can sometimes also cause unnecessary prolongation of the single application procedure. 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.

Pursuant to Article 4(2) of the Directive, Member States shall examine an application and adopt a decision to issue, amend or renew the single permit if the applicant fulfils the requirements specified by Union or national law. A decision to issue, amend or renew the single permit constitutes a single administrative act combining a residence permit and a work permit. The adoption of the single decision can be problematic in Bulgaria, Portugal and Romania for the same reasons indicated in relation to Article 4(1).

Article 4(3) establishes that the single application procedure shall be without prejudice to the visa procedures that may be required for initial entry. This has been transposed in most Member States<sup>18</sup>. Recital (11) of the Directive states that the provisions on the single application procedure and on the single permit should not concern a uniform or long-stay visa. What is considered a visa for initial entry is not defined in the Directive. However, Article 7(1) of Directive 2009/50/EC (Blue Card)<sup>19</sup> and Article 5(3) of Directive (EU) 2016/801 on Students and Researchers<sup>20</sup> clarify that if the permit can only be obtained in the territory of the Member State once the admission conditions have been met, Member States shall issue the third country national with the requisite visa. In the case of the single permit procedure, the Commission takes the view that the visa procedure is an ancillary procedure which must be facilitated by the Member States.

Article 4(4) stipulates that 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. This provision has been transposed in a correct manner by most Member States.

## **Article 5 — Competent authority**

Article 5 establishes the obligation of Member States to designate a national authority who is empowered to receive the application and to issue the single permit. It also provides for a number of procedural safeguards, such as the time limit for taking a decision on a complete application, the consequences if there is no decision, the compulsory notification of the applicant and the consequences of an incomplete application.

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<sup>17</sup> BG, PT, RO.

<sup>18</sup> All except DE.

<sup>19</sup> OJ L 155, 18.6.2009, p. 17.

<sup>20</sup> OJ L 132, 21.5.2016, p.21.



In accordance with Article 5(1), Member States must designate authorities empowered to receive the application and to issue the single permit. Most Member States correctly transposed the provision by designating one relevant competent authority. These are generally immigration offices, relevant departments in the Interior Ministries and the police administration or police station of the place of residence of the third country national.

Article 5(2), 1<sup>st</sup> subparagraph, provides that the competent authority must adopt a decision on the complete application as soon as possible and in any event within 4 months of the date on which the application was lodged. There are concerns about the overall time limit for issuing a decision in 9 Member States<sup>21</sup>, mainly due to the lack of specific time limits determined in national law, but also to the time implications of requirements to register in different institutions with the involvement of several authorities (e.g. social security, medical services) and the obligation to obtain an employment clearance which can prolong or cause delay in practice the whole procedure.

In exceptional circumstances linked to the complexity of examining the application, Member States have the possibility to extend the four-month time limit for adopting a decision on a complete application as set out in the second subparagraph of Article 5(2). 17 Member States<sup>22</sup> have applied this option.

Article 5(2), 3<sup>rd</sup> subparagraph, stipulates that where no decision is taken within the time limit provided for in this paragraph, any consequences shall be determined by national law.

The legislation of a number of Member States<sup>23</sup> establishes tacit rejection and the right to take legal action against such a rejection. Other Member States have established tacit approval or the right to take action if the administration fails to act within a specified time limit. This is done through specific implementing legislation or by reference to the general administrative law.

However, some problematic national legislation or practices have been observed. In Germany, for example, conformity can be impaired due to the failure to explicitly include the four-month time limit for the single permit procedure in national legislation. In addition, the remedies applied in some Member States do not appear to be appropriate and can lead to legal uncertainty for long periods of time (FI, SE), and in the case of Sweden are combined with excessive processing times.

Article 5(4) requires the competent authority to notify the applicant in writing if the application is incomplete, and, if so, of the additional information or documents required, setting a reasonable deadline to provide them. The four-month time limit referred to in Article 5(2) may be suspended until the competent authority, or other relevant authorities, have received the additional information required. Most of the Member States apply this provision correctly.

Moreover, the administrative authority of Czechia does not have the obligation to suspend the proceedings, but only the possibility to do this. In the case of Italy, the time limit for adopting a decision on a complete application set in Article 5(2) starts again from the moment when the competent authority receives the completed documentation.

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<sup>21</sup> AT, DE, ES, IT, LT, LU, LV, RO and SE.

<sup>22</sup> BG, CY, CZ, EE, EL, FI, HR, LT, LU, LV, MT, NL, PL, RO, SE, SI and SK.

<sup>23</sup> CZ, EE, EL, ES, FR, HR, HU, IT, LT, LU, PL, PT, RO and SK.



A possible application issue has been identified in Malta for incomplete applications. The Maltese authorities are found to refuse to accept incomplete applications or reject them without any notification in writing, which means that applicants are rarely aware of the status of their application.

### **Article 6 — Single permit**

Article 6 applies both to those who apply to be admitted and those admitted for the purpose of work. The first subparagraph of Article 6(1) stipulates that as laid down in Regulation (EC) No 1030/2002<sup>24</sup>, Member States must issue a single permit using the uniform format and, in accordance with point (a) 7.5-9 of the Annex to the Regulation, must indicate the information relating to the permission to work. This provision has been complied with by most Member States either explicitly<sup>25</sup> or implicitly<sup>26</sup> on the basis of the national provisions on permits equivalent to the single permit.

According to the second subparagraph of Article 6(1), 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) in paper format, or store such data in electronic format. This option has not been applied in most Member States. The option has been applied for both the paper and electronic format in Cyprus, Malta and the Netherlands. In the case of Spain, France and Slovakia, the option has only been applied for the paper format, whereas Hungary only applied the option for the electronic format.

Article 6(2) establishes that Member States may not issue additional permits as proof of authorisation to access the labour market in addition to the single permit. Most Member States comply with this. Some transposed this requirement explicitly (Cyprus, Latvia and Malta) and others implicitly<sup>27</sup> on the basis of the national provisions on permits equivalent to the single permit. Transposing provisions are not clear in Germany.

### **Article 7 — Residence permits issued for purposes other than work**

Article 7 applies to those admitted for reasons other than work, but who have the right to work, such as family members, students and others, including those who have national permanent residence status.

Pursuant to the first subparagraph of Article 7(1), when issuing residence permits in accordance with Regulation (EC) No 1030/2002, Member States must indicate the information relating to the permission to work irrespective of the type of the permit. That provision has been transposed in most Member States either explicitly (CY, LV and MT) or implicitly<sup>28</sup> on the basis of the national provisions on permits equivalent to the single permit issued for purposes other than work.

The second subparagraph of Article 7(1) gives Member States the possibility to indicate additional information about the employment relationship of the third country national (such as

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<sup>24</sup> As amended by Regulation (EU) 2017/1954, OJ L 286, 1.11.2017, p. 9–14.

<sup>25</sup> CY, FR, LV, MT and RO.

<sup>26</sup> CZ, DE, EE, EL, ES, FI, HR, HU, LT, LU, PL, SE, SI and SK.

<sup>27</sup> AT, CZ, EE, EL, ES, FI, FR, HR, HU, IT, LT, LU, PL, PT, RO, SE, SI and SK.

<sup>28</sup> CZ, DE, EE, EL, ES, FI, FR, HR, LT, LU, PL, RO, SE, SI and SK.

the name and address of the employer, place of work, type of work, working hours, remuneration) in paper format, or store such data in electronic format. Most Member States have not applied this option. The option has been applied for both the paper and electronic format in Cyprus, Malta and the Netherlands. In the case of Spain the option has only been applied for the paper format, whereas Hungary only applied the option for the electronic format.

Article 7(2) requires that when issuing residence permits in accordance with Regulation (EC) No 1030/2002, Member States may not issue additional permits as proof of authorisation to access the labour market.

Most Member States transposed this provision either explicitly (CY, LV and MT) or implicitly<sup>29</sup> on the basis of the national provisions on permits equivalent to the single permit issued for purposes other than work. In Hungary, however, it cannot be ascertained whether all permits which could be considered as single permits for purposes other than work also grant the right to work and therefore whether additional permits as proof of authorisation to access the labour market are required. Finally, in the Netherlands, although the work permit in conjunction with the residence document functions as a single permit, no specific provisions explicitly designate the use of the uniform format as required by the Directive, and thus it is not ensured that additional documentation is not given as proof of a work permit.

### **Article 8 — Procedural guarantees**

Article 8 provides for certain procedural guarantees given to the applicant of the permit, namely the obligation to state reasons in writing for decisions rejecting an application to issue, amend or renew a permit, as well as the guarantee that written information will be provided on the authority where the applicant may lodge an appeal and the time limits. 19 Member States have transposed the procedural guarantees in accordance with the Directive's provisions<sup>30</sup>. The transposition into national law is done by introducing specific legislation or referring to general administrative rules. Conformity issues relating to Article 8(1) and (2) include that the applicable rules in some Member States do not guarantee that the applicant will receive information in writing about the reasons for rejection, the name of the authority where the applicant can lodge an appeal and the time limit for review (MT and PL).

Article 8(3) stipulates that an application may be considered inadmissible on the grounds of the volume of admission of third country nationals coming for employment and, on that basis, it does not need to be processed. Most Member States have not applied this option.<sup>31</sup> Others have applied it in a compliant manner, explicitly (CY, EL and IT) or implicitly (EE, HR, HU, MT, NL, RO and SK).

### **Article 9 — Access to information**

Article 9 obliges Member States to provide, upon request, adequate information to the third country national and the future employer on the documents required to make a complete application. This provision has been transposed by the majority of Member States either through explicit transposition (CY, EL, LU and MT) or on the basis of the general principles of

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<sup>29</sup> AT, CZ, DE, EE, EL, ES, FI, FR, HR, IT, LT, LU, PL, PT, RO, SE, SI and SK.

<sup>30</sup> BG, CY, CZ, DE, EE, ES, FI, FR, HR, HU, LT, LU, LV, NL, PT, RO, SE, SI and SK.

<sup>31</sup> AT, BG, CZ, DE, ES, FI, FR, LT, LU, LV, PL, PT, SE and SI.

administrative law which ensure access to information<sup>32</sup> and with the (additional) possibility to obtain information on the necessary documents via the websites of the competent authorities (AT, CZ, DE, FR, HR and SK). Some Member States (BG, EE, PT and SI) do not clearly set out an obligation for the competent authorities to provide adequate information on the documents required to make a complete application.

### **Article 10 — Fees**

Article 10 allows Member States to 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, and contrary to the principle of proportionality endangering the Directive's *effet utile*. The Court of Justice confirmed this in two judgments<sup>33</sup>. The Commission engaged in exchanges with the national authorities and launched a number of infringement procedures against Member States for charging excessive and disproportionate fees for residence permits under different Directives, including the single permit Directive<sup>34</sup>.

### **Article 11 — Rights on the basis of the single permit**

Points (a) to (d) of Article 11 establishes the rights granted on the basis of the single permit: entry and residence, free access to the entire territory, right to exercise the specific employment activity authorised and right to be informed about the holder's own rights. Most Member States transposed Article 11 in its entirety<sup>35</sup>.

The transposition provisions of Article 11, point b (free access to the entire territory) in Poland and of Article 11, point d (exercising the specific employment activity) in Austria, Germany, Estonia, Luxembourg and Slovenia are not clearly identified. Information on the rights granted does not seem to be available in these Member States. Only in a small number of Member States did third country workers have the same rights as nationals to change their job or employer (FI, FR, IT and SI).

### **Article 12 — Right to equal treatment**

Under the terms of Article 12 of the Directive, single permit holders enjoy equal treatment with nationals in a number of areas, including working conditions, freedom of association, social security benefits, education, recognition of academic and professional qualifications, tax benefits, access to goods and services and advice services (points (a) to (h)). Generally, Member States transposed this Article in a compliant manner.

Article 12 further allows restrictions to equal treatment in respect of some of the specified areas and clarifies that equal treatment should be without prejudice to the right of Member States to withdraw or to refuse to renew the residence permit. Despite the existence of these optional restrictions, few Member States have made use of them.

Moreover, Article 12 addresses equal treatment in relation to the portability of pension benefits. Pursuant to Article 12(1), the Directive's provisions on equal treatment apply not only to those

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<sup>32</sup> AT, CZ, DE, ES, FI, HR, HU, IT, LT, LV, PL, NL, RO, SE and SK.

<sup>33</sup> 26 April 2012, C-508/10, *Commission v. Netherlands*; and 2 September 2015, C-309/14, *CGIL & INCA*.

<sup>34</sup> BG has been closed following changes in national legislation. EL, NL and PT still ongoing.

<sup>35</sup> BG, CY, CZ, EL, ES, FI, FR, HR, IT, LT, LV, MT, NL, PT, RO, SE and SK.

admitted to work under EU or national law, but also to those who are permitted to reside on other grounds, provided that they are allowed to work.

Article 12 is transposed either into national laws through specific provisions, general equal treatment clauses or through provisions regulating each of the specified areas under points (a) to (h).

A number of complaints lodged in this area indicate that there can be some problems in practice with transposition, especially where the principle of equal treatment has to be implemented by a range of different regional and local authorities.

Transposition issues on equal treatment arise, in particular, in relation to the following aspects:

- General exclusion of visa holders (Portugal);
- Recognition of diplomas, certificates and other professional qualifications in the Netherlands (recognition of diplomas only for permanent residents);
- Access to branches of social security in the Netherlands (restriction of access to sickness cash benefits and unemployment benefits for persons with a temporary residence), Slovenia (only one type of family benefits — the child supplement — is available to third country nationals); Italy (single permit holders excluded from certain types of family benefits)<sup>36</sup>, Sweden (restrictions to social security benefits for stays of less than 1 year);
- Access to goods and services in Cyprus (third country workers do not have the right to buy real estate property for housing purposes).

#### *Optional restrictions*

Pursuant to Article 12(2), Member States have the option to restrict equal treatment in accordance with points (a) to (d) of Article 12(1). Most Member States have not applied all these options, only Cyprus has chosen to adopt all optional restrictions, whereas some (BG, CZ, ES, HR, LU, RO and SK) did not apply any of the options.

Pursuant to Article 12(3), the right to equal treatment laid down in Article 12(1) should be without prejudice to the right of the Member State to withdraw or to refuse to renew the residence permit issued under this Directive, the residence permit issued for purposes other than work, or any other authorisation to work in a Member State. Poland did not transpose Article 12(3). The remaining Member States have transposed this provision either explicitly or through other national legislation.

#### *Export of pensions*

In line with Article 12(4), third country workers moving to a third country, or their survivors who reside in a third country and who derive rights from those workers, are entitled to receive statutory pensions for old age, invalidity and death. The pensions must be based on the third country workers' previous employment and acquired in accordance with the legislation referred to in Article 3 of 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.

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<sup>36</sup> See Case C-449/16 Martinez Silva.

Thirteen Member States<sup>37</sup> 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. According to Slovenian law, the beneficiary who as a foreign national relocates permanently outside of Slovenia, will receive a pension in a foreign country if an international agreement has been signed with the country of relocation or if that state recognises such a right to the Slovenian nationals. However, for nationals Slovenia pays the pension to the beneficiary living abroad in all circumstances. In France, invalidity and death pensions are not exportable to third countries. In the Netherlands the rates appear to be reduced for the export of pensions affecting the return to third countries. Bulgarian legislation allows the export of pensions only if there are bilateral agreements with third countries.

### **Article 13 — More favourable provisions**

Article 13 allows the application of more favourable provisions. In accordance with Article 13(1)(a), the provisions of this Directive shall apply without prejudice to more favourable provisions of Union law, including bilateral and multilateral agreements between the Union, or the Union and its Member States, on the one hand and one or more third countries on the other. The large majority of Member States transposed this provision in a compliant manner.

In accordance with Article 13(1)(b), the provisions of the Directive shall also apply without prejudice to more favourable provisions of bilateral or multilateral agreements between one or more Member States and one or more third countries. No problematic issues were observed. In line with Article 13(2), the application of this Directive should be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies. No problematic issues were observed.

### **Article 14 — Information to the general public**

Article 14 requires Member States to make regularly updated information available to the general public concerning the conditions of third country nationals' admission to and residence in its territory in order to work there. All Member States comply with this obligation. Explicit transposition in the legislation has been provided in ten Member States<sup>38</sup>. The study<sup>39</sup> on the practical application of the EU legal migration framework carried out for the fitness check pointed to generally insufficient information provided by competent authorities on admission conditions and rights attached to permits.

### **Article 15(2) — Reporting**

Article 15(2) obliges Member States annually, and for the first time by 25 December 2014, to communicate to the Commission statistics on the volumes of third country nationals who have been granted a single permit during the previous calendar year, in accordance with Regulation (EC) No 862/2007. In the majority of Member States<sup>40</sup> the information obligations are not explicitly transposed in the national legislation, but are fulfilled in the context of the

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<sup>37</sup> AT, CY, EE, ES, HR, IT, LT, MT, NL, PL, RO, SE and SK.

<sup>38</sup> CY, EL, ES, FI, FR, HR, LT, MT, PT and SK.

<sup>39</sup> Evidence base for practical implementation of the Legal Migration Directive's Annex 2A ICF (2018) report.

<sup>40</sup> AT, BG, CZ, DE, EE, ES, FI, FR, HR, HU, IT, LU, LV, MT, PL, PT, NL, RO, SE, SI and SK.

administrative procedures. Only Cyprus, Greece and Lithuania regulate such obligations in their legislation. Greece and Belgium have not, however, reported any statistics yet.

#### **IV. CONCLUSIONS**

Promoting the integration and non-discrimination of third country nationals is a long-standing commitment of the EU. The Single Permit Directive is a crucial tool for achieving this objective. Since the expiry of its transposition deadline at the end of 2013, the Commission has launched a number of infringement procedures and exchanged information with Member States to ensure that they have correctly transposed and implemented its provisions.

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 — namely the Ministry of the Interior and the Ministry of Labour. 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.

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.

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.