

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

2007/0229(COD) - 23/10/2007 - Legislative proposal

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;
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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:

- (a) working conditions, including pay and dismissal as well as health and safety in the workplace;
- (b) 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);
- (c) education and vocational training (Member States can, however, restrict access to study grants);
- (d) recognition of diplomas, certificates and other professional qualifications;
- (e) 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);
- (f) payment of acquired pensions when moving to a third country;
- (g) tax benefits;
- (h) 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.