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

2007/0229(COD) - 28/09/2010

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.