

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

2007/0229(COD) - 25/11/2011 - Commission communication on Council's position

The Commission states that the Common Position satisfies the Commission's original objective to simplify procedures and to have a single permit and to protect migrant workers, to provide them with a series of work-related socio-economic rights on the basis - as far as possible - of equal treatment with EU workers, thereby creating a level playing field throughout the EU. **The substance of the Council's Position is, therefore broadly in line with the Commission's proposal and can therefore be supported**

To recall: the Council's position is the result of a long negotiation process. Following the first reading position of the European Parliament on 24 March 2011, an agreement was finally reached between the co-legislators' on the outstanding issues in a Trilogue of 22 June 2011. The only open point was the question of correlation tables, on which a horizontal solution has been found in the meantime. On 15 July 2011 the Chairman of the LIBE Committee sent a letter to the Council Presidency confirming the agreement of the rapporteurs (the LIBE, the EMPL and the Shadow-rapporteurs) on the text approved by Coreper and on the Interinstitutional statement annexed to it, and stating that if these texts were formally transmitted to the European Parliament as the Council's position, he would recommend that the Members of the LIBE committee and subsequently the plenary **accept them without amendments**.

Coreper reached a political agreement on this basis on 20 July 2011.

Analysis of the Council Position: the main differences between the Common Position and the original Commission proposal are set out below.

Precision and some limitations to the scope (Article 3): the Common Position on the one hand specifies and on the other further limits the scope of the proposal. First, it gives a precision to the scope of the equal treatment provisions (Article 3(1)(b) and (ba) new) by referring to the two categories of possible beneficiaries; those third-country nationals who have been admitted to work and those with other admission purpose but allowed to work. This change confirms the Commission's intention to have a wide scope including also those who are allowed to work but came with a different initial purpose of admission. However these Amendments specify that the latter category should have a residence permit.

Second, it excludes from the scope sea-farers and those third-country nationals benefiting from international protection, temporary protection or protection under national law recalling that their rights are regulated in other instruments.

Third, it excludes self-employed workers from the scope as well. This exclusion is however only of a declarative nature, since the definition of third-country workers of the proposal (Article 2 (b)) makes it clear that only those in a paid relationship are targeted.

Finally there is a possible derogation - but only as regards the rules on the single procedure/permit - for students and those who are authorised to work for shorter than 6 months. These latter two categories remain subject to the equal treatment provisions in Article 12.

Parallel existence of a national long-term visa scheme (Article 2(c) and Article 3(4)): by replacing the reference to "any authorisation" with "a residence permit" in Article 2(c) the Common Position allows Member States to **keep their long-term visa system**. The Commission's objective was to have the single permit as the exclusive authorisation to work, but given the developments in that field (Regulation 265/2010 Article 1(1)(2) limits the duration of long-term visas to a year and recognises such documents for travel purposes within the Schengen area in the EU), the Commission can agree to allow Member States to issue long-term visas parallel to single permits, **provided the existence of long-term visas would not result in a difference of rights for migrant workers holding such a paper**.

Precisions to the application procedure (Articles 4, 5, 8 and 10): procedural rules are further specified in the Common Position. **Upon the request of the European Parliament reference is made to the possible applicants** (the third-country national, his/her future employer or either of the two). As regards the rules on fees, the principle of proportionality is maintained, but provisions on the possible calculation on the basis of the actual service are added. Finally as part of the final agreement at the request of Council the procedural deadline was extended to four months as opposed to the original three months proposed by the Commission.

Allowing to store the additional information electronically or in a paper format (Articles 6 and 7): as a part of the overall agreement, at the request of Council the possibility is given for Member States to store the information - which does not fit into the harmonised format - electronically or in an additional paper document. Such a possibility can serve the purpose of better control of migration, but it is in the interest of the migrant worker as well to possess all the information related to his/her employment which can prevent his/her exploitation (eg.: working hours). However it should be ensured that the possibility of such papers will not lead to the re-introduction of work permits.

The right to equal treatment (Article 12): **the Common Position has taken a more limitative approach as regards access to goods and services** by allowing Member States to apply the equal treatment provisions only to those who are in actual employment. As regards access to education, equal treatment is guaranteed to registered unemployed migrant workers as well however other limitations are possible as regards fees and other prerequisites, but as a minimum guarantee equal treatment in the area of vocational training linked to the concrete employment activity needs to be ensured. At the same time **at the request of the European Parliament, equal treatment provisions became more ambitious than the Commission proposal for social security** by including not only those who are currently employed but also those who have been employed for a minimum of 6 months and registered as unemployed. Further, the co-legislators agreed to extend the equal treatment rights for working conditions, and freedom of association also to those who are currently not employed. The right to export acquired pensions under the same conditions and at the same rates were maintained by the co-legislators with some legitimate technical precision.

There is one specific limitation in the area of social security; family benefits does not have to be granted to those who work on the basis of a visa or have been authorised to work for six months or less or were admitted as students. The Commission underlines its preference to apply the principle of equal treatment without any regard to the format of papers (visa or single permit) which the migrant workers possess. Taking into account however that the long-term visa holder workers will benefit from equal treatment as regards all rights except for this specific benefit and will benefit from full equal treatment as regards family benefits in a cross-border situation, the Commission does not object to this new provision.

Transposition (Recital 32 and Article 16): the only open point upon the last Trilogue between the co-legislators was the issue of correlation tables, on which a horizontal solution has been found in the meantime. Therefore - upon the justified request of the Commission - recital 32 of the Common Position

states that **Member States will undertake to accompany the notification of their transposition measures with one or more documents explaining the relationship between the components of this directive and the corresponding parts of national transposition instruments.**