

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

2007/0229(COD) - 13/12/2011 - Final act

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.

LEGISLATIVE ACT: Directive 2011/98/EU 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.

BACKGROUND: in 1999 the European Council at its special meeting in Tampere, acknowledged the need for harmonisation of national law governing the conditions for admission and residence of third-country nationals. In this context, it stated that the European Union should ensure fair treatment of third-country nationals who are legally residing in the territory of the Member States and that a more vigorous integration policy should aim to grant them rights and obligations comparable to those of citizens of the Union. The Council asked the Commission for a proposal on a single application procedure leading to a combined title encompassing both residence and work permits within a single administrative act.

At the same time, with a view to developing further a coherent immigration policy and narrowing the rights gap between citizens of the Union and third-country nationals legally working in a Member State, a set of rights should be laid down in order to specify the fields in which equal treatment between a Member State's own nationals and such third-country nationals who are not yet long-term residents is provided. Such provisions are intended to:

- establish a minimum level playing field within the Union ;
- recognise that such third-country nationals contribute to the Union economy through their work and tax payments and
- serve as a safeguard to reduce unfair competition between a Member State's own nationals and third-country nationals resulting from the possible exploitation of the latter.

CONTENT: following agreement in second reading between European Parliament and Council, this Directive lays down:

- 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, in order to simplify the procedures for their admission and to facilitate the control of their status; and
- 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.

Scope: the Directive applies to:

- third-country nationals who apply to reside in a Member State for the purpose of work;
- 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; and
- third-country nationals who have been admitted to a Member State for the purpose of work in accordance with Union or national law.

The Directive does not apply to third-country nationals: (i) who are family members of citizens of the Union who exercise their right to free movement within the Union in accordance with Directive 2004/38/EC; (ii) who with their family members, and irrespective of their nationality, enjoy rights of free movement equivalent to those of citizens of the Union under bilateral agreements with the Union; (iii) who are posted for as long as they are posted; (iv) who work as intra-corporate transferees; (v) seasonal workers or au pairs; (vi) who are authorised to reside in a Member State on the basis of temporary protection; (vii) who are beneficiaries of international protection under Council Directive 2004/83/EC; (viii) who are beneficiaries of protection in accordance with national law, international obligations or the practice of a Member State; (ix) who are long-term residents in accordance with Directive 2003/109/EC; (x) whose removal has been suspended on the basis of fact or law; (xi) self-employed workers; (xii) seafarers.

Furthermore, Member States may decide that the application procedure for a single permit does not apply to third-country nationals who have been either authorised to work in the territory of a Member State for a period not exceeding six months or who have been admitted to a Member State for the purpose of study.

In any event, the single application procedure and single permit will not apply to third-country nationals who are allowed to work on the basis of a visa.

A single application for a single permit: the Directive provides for a simplified, one-stop-shop system of admission and work of third-country nationals. The application can be made by the third-country national or by his/her employer. 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). The single permit will be issued using the uniform format as laid down in Regulation (EC) No 1030/2002 and shall indicate the information relating to the permission to work in accordance with the text.

Procedural guarantees: reasons shall be given in the written notification of a decision rejecting a single permit, and that decision shall be open to legal challenge in the Member State concerned. An application may be considered as inadmissible on the grounds of volume of admission of third-country nationals coming for employment and, on that basis, need not to be processed.

Residence permits issued for purposes other than work: when issuing residence permits in accordance with Regulation (EC) No 1030/2002 Member States shall indicate the information relating to the permission to work irrespective of the type of the permit, and may indicate additional information relating to employment as above. When issuing such residence permits, Member States shall not issue additional permits as proof of authorisation to access the labour market.

Rights on the basis of the single permit: the permit will allow its holder at least to:

- enter and reside in the territory of the Member State issuing the single permit ;
- have free access to the entire territory of the Member State
- exercise the specific employment activity authorised under the single permit in accordance with national law.

Right to equal treatment: holders of a single permit will enjoy, subject to possible limited restrictions as detailed in the Regulation, equal treatment with nationals with regard to:

- working conditions, including pay and dismissal as well as health and safety at the workplace;
- freedom of association, affiliation and membership of an organization representing workers or employers, including the benefits conferred by such organizations;
- education and vocational training. However, Member States may limit the application of this right to those third-country workers who are in employment or who have been employed and who are registered as unemployed; excluding those third-country workers who have been admitted to their territory in conformity with Directive 2004/114/EC; excluding study and grants and loans, and laying down specific prerequisites including language proficiency and the payment of tuition fees;
- recognition of diplomas, certificates and other professional qualifications;
- branches of social security, as defined in Regulation (EC) No 883/2004. Member States may limit these rights, but shall not restrict such rights for third-country workers who are in employment or who have been employed for a minimum period of six months and who are registered as unemployed. In addition, Member States may decide that with regard to family benefits, this right shall not apply to third-country nationals who have been authorised to work in the territory of a Member State for a period not exceeding six months, to third-country nationals who have been admitted for the purpose of study, or to third-country nationals who are allowed to work on the basis of a visa;
- tax benefits, in so far as the worker is deemed to be resident for tax purposes in the Member State concerned. Application of this right shall be limited to cases where the registered or usual place of residence of the family members of the third- country worker for whom he/she claims benefits, lies in the territory of the Member State concerned.
- access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing. However, Member States may limit the application of this right to those third-country workers who are in employment, and they may restrict access to housing;
- advice services afforded by employment offices;
- in relation to old age, invalidity and death, statutory pensions based on those workers' previous employment and acquired in accordance with the legislation referred to in Article 3 of Regulation (EC) No 883/2004.

More favourable provisions: the Directive will be applied without prejudice to more favourable provisions contained in Union law and applicable international instruments (such as bilateral instruments).

Reports: periodically, and for the first time by 25 December 2016, the Commission shall present a report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose amendments it deems necessary. Annually, and for the first time by 25 December 2014, Member States shall communicate to the Commission statistics on the volumes of third-country nationals who have been granted a single permit during the previous calendar year.

ENTRY INTO FORCE: 24.12.2011.

TRANSPOSITION: 25.12.2013.