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THE EUROPEAN UNION**

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**REPORT**

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from: Presidency

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to: JHA Counsellors

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No. Cion prop.: 14491/07 MIGR 105 SOC 414

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Subject : Proposal for a Council Directive 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 single permit holders

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Delegations will find attached a report of the meeting of JHA Counsellors, held on 13 May 2009, where the above proposal was considered.

Proposal for a

**COUNCIL DIRECTIVE**

**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  
single permit holders**

Chapter I<sup>1</sup>

General provisions

*Article 1*

**Purpose**

The purpose of this Directive is to determine:

- (a) 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;
- (b) a common set of rights to single permit holders based on equal treatment with nationals of the Member State concerned.

This Directive does not affect the competence of the Member States with respect to the admission of third-country nationals to their labour markets.

*Article 2*

**Definition<sup>2</sup>**

For the purposes of this Directive:

- (a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

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<sup>1</sup> **DE, HU and AT:** general scrutiny reservations. **HU and NL:** Parliamentary reservations

<sup>2</sup> **FI:** scrutiny reservation on Article 2.

- (b) "single permit holder" means any third-country national who has been issued a single permit in accordance with this Directive
- (c) "single permit" means a valid residence permit issued by the authorities of a Member State allowing a third-country national to reside legally in its territory for the purpose of work;
- (d) "single application procedure" means any procedure leading, on the basis of one application for the authorisation of a third-country national's residence and work in the territory of a Member State, to a decision on the application for a single permit for that third-country national.

*Article 3*

**Scope<sup>3</sup>**

1. This Directive shall apply<sup>4</sup>:
  - (a) to third-country nationals who apply to reside for the purpose of work in the territory of a Member State and
  - (b) to single permit holders.

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<sup>3</sup> **FI**: scrutiny reservation on Article 3.

<sup>4</sup> The **Cion** restated its opposition to the Presidency compromise, insofar as it restricts the scope of the proposal to the holders of a single permit, who are the only ones entitled to enjoy the right of equal treatment with nationals referred to in Article 12. Supporting the **Cion** position, **ES** pointed out that it would prefer to revert to the compromise submitted by the **FR** Presidency, which covered all third-country workers (see 16673/08 MIGR 124 SOC 756). **ES** would like to provide for the possibility, for those Member States who so wish, to limit the application of Article 12 only to holders of a single permit. While expressing their preference for a wider scope, **PT**, **SE** and **SI** said that they could go along with the **Pres.** compromise.

2. This Directive shall not apply to third-country nationals:
- (a) who are family members of Union citizens who have exercised, or are exercising their right to free movement within the Community, in conformity with Directive 2004/38/EC;
  - (b) who, as well as their family members and whatever their nationality, enjoy rights of free movement equivalent to those of Union citizens under agreements between the Community and its Member States, on the one hand, and third-countries, on the other hand;
  - (c) who are posted, irrespective of whether their undertaking is established in a Member State or in a non-Member State, as long as they are posted;
  - (d) entering a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural;
  - (e) who have applied for admission or have been admitted to the territory of a Member State as a seasonal worker or as an au pair;
  - (f) who are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;
  - (g) who are beneficiaries of international protection under Directive 2004/83/EC or have applied for international protection under this Directive and whose application has not yet given rise to a final decision;
  - (h) who are beneficiaries of protection in accordance with national legislation, international obligations or practice of the Member State or have applied for protection in accordance with national legislation, international obligations or practice of the Member States and whose application has not yet given rise to a final decision.

- (i) who are EC long-term residents in accordance with Directive 2003/109/EC;
  - (j) whose expulsion has been suspended for reasons of fact or law;
  - (k) who have applied for admission or have been admitted to the territory of a Member State as self-employed.
  - (l) who have applied for admission or have been admitted as seafarer for employment or work in any capacity on board of a ship registered in / sailing under the flag of a Member State.
3. Member States may decide that Articles 4 to 10 shall not apply to third-country nationals who have been authorised to work on the territory of a Member State for a period not exceeding six months.
4. The provisions of Articles 4 to 10 do not apply to third country nationals who are allowed to work on the basis of a visa.

#### *Article 4*

#### **Single application procedure**

1. An application for a single permit shall be submitted in 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 his/her employer. Member States may decide to allow an application from either the third-country national or by his/her employer.
2. Member States shall examine the application and adopt a decision to grant, to modify or to renew the single permit if the applicant fulfils the requirements specified in national law. The decision granting, modifying or renewing the single permit shall constitute one combined title encompassing both residence and work permit within one administrative act.

3. Member States may decide that the application is examined either when the third-country national concerned is residing outside the territory of the Member State in which her/she wishes to be admitted or, if foreseen by national law, when he/she is already legally residing in that Member State.
4. The single application procedure is without prejudice to the visa procedure which may be required for initial entry.
5. Member States shall issue a single permit, when the conditions provided for are met, to those third-country nationals who apply for admission and to those third-country national already admitted, who apply to renew or modify their residence permit after the entry into force of the implementing national provisions.

#### *Article 5*

#### **Competent authority**

1. Member States shall designate the authority competent to receive the application and to issue the single permit.
2. The competent authority shall adopt a decision on the complete application as soon as possible and no later than four months from the date on which the application was lodged.

The time limit referred to in the first subparagraph may be extended for reasons linked to the complexity of the examination of the application.

Any consequence of no decision being taken by the end of the period provided for in this provision shall be determined by national legislation of the relevant Member State.

3. The competent authority shall notify the decision to the applicant in writing in accordance with the notification procedures laid down in the relevant national legislation.

4. If the information or documents supplied in support of the application is inadequate, the competent authority shall notify the applicant of the additional information or documents that are required and may set a reasonable deadline to provide them. The period referred to in paragraph 2 shall be suspended until the authorities have received the additional information or documents required. If additional information or documents have not been provided within the deadline, the application may be rejected.

#### *Article 6*

#### **Single permit**

1. Member States shall issue the single permit 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 its Annex, a, 7.5-9.

Member States may issue an additional document to the single permit holding all relevant information on the specific right and conditions to work and may revise it when the labour market position of the holder of the single permit changes.

2. When issuing the single permit Member States shall not issue any additional permits as proof of the access given to the labour market.

#### *Article 7*

#### **Residence permits issued for purposes other than work**

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## *Article 8*

### **Procedural guarantees**

1. Reasons shall be given in the written notification for a decision rejecting an application for a single permit, not granting not modifying or not renewing or withdrawing the single permit on the basis of criteria specified in national or Community law.

Any decision rejecting the application, not granting, modifying or renewing or withdrawing a single permit shall be open to a legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the possible redress procedures available and the time-limit for taking action.

2. An application may be considered as not admissible on the grounds of volumes of admission of third-country nationals coming for employment and therefore has not to be processed.

## *Article 9*

### **Information**

Member States shall provide upon request for adequate information to the third-country national and the future employer on the documents required to complete the application.

## *Article 10*

### **Fees**

Member States may request applicants to pay fees. Where appropriate, these fees are collected for handling applications in accordance with this Directive. In such cases, the level of fees may be based on the principle of the service actually provided.

*Article 11*

**Rights on the basis of the single permit**

Where a single permit has been issued under national legislation and during its period of validity, it shall entitle its holder as a minimum to:

- (a) enter and stay in the territory of the Member State issuing the single permit provided that he/she meets all admission requirements in accordance with national legislation;
- (b) [...];
- (c) have free access to the entire territory of the Member State issuing the single permit within the limits provided for by national legislation;
- (d) exercise the concrete employment activity authorised under the single permit in accordance with national law;
- (e) be informed about his/her own rights linked to the permit conferred by this Directive and/or by national legislation.

Article 12

**Right to equal treatment<sup>5</sup>**

1. Single permit holders shall enjoy equal treatment with nationals in the Member State where they reside with regard to:
  - (a) working conditions, including pay and dismissal as well as health and safety at the workplace;
  - (b) freedom of association and affiliation and membership of an organization representing workers or employers or of any organization whose members are engaged in a specific occupation, including the benefits conferred by such organizations, without prejudice to the national provisions on public policy and public security;
  - (c) education and vocational training;
  - (d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;

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<sup>5</sup> **BG** and **AT**: reservations on Article 12, in particular in connection with paragraph 1 (e). **DE**, **FI** and **HU**: scrutiny reservation on Article 12.

**BG** and **AT** underlined the need to ensure consistency of paragraph 1 (e) with the provisions of the proposal for a Council Regulation extending the provisions of Regulation (EC) No 883/2004 and Regulation (EC) No [...] to nationals of third countries who are not already covered by these provisions solely on the grounds of their nationality, in particular with its Article 1 (2) and recital 16 (see 9192/09 SOC 284 MIGR 51).

In order to accommodate these concerns, the **Pres.** suggests inserting in the Preamble, in relation with paragraph 1 (e), the following new recital inspired from recital 16 of the above proposal:

*Community law does not limit the power of the Member States to organize their social security schemes. In the absence of harmonization at Community level, it is for the legislation of each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, the Member States should comply with Community law. Third-country nationals covered by this Directive should fulfil the conditions laid down by the legislation of the competent Member State with regard to affiliation to a social security scheme or for the entitlement to a benefit.*

- (e) provisions in national legislations regarding branches of social security, as defined in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. The special provisions in the Annex to Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third-countries who are not already covered by these provisions solely on the basis of nationality shall apply accordingly;
- (f) access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law. This paragraph without prejudice to the freedom of contract in accordance with Community and national law;
- (g) counselling services afforded by employment offices.

2. Member States may restrict equal treatment with nationals:

- (a) by requiring proof of appropriate language proficiency for access to education and training. Access to university and post-secondary education or to vocational training may be subject to the fulfilment of specific prerequisites, including the payment of tuition fees, according to national law;
- (b) by restricting the rights conferred under paragraph 1(c) in respect to study and maintenance grants and loans or other grants and loans regarding secondary and higher education and vocational training;
- (d) by restricting the rights conferred under paragraph 1(f) in respect to housing;
- (e) by granting the rights conferred under paragraphs 1(c) and (g) to those third-country workers who are in employment;

- (f) by granting the rights conferred under paragraph 1(e), with the exception of unemployment benefits for those whose entitlement is based on previous employment in the respective Member State, only to third-country nationals who are in employment.
- (g) by restricting the rights conferred under paragraph 1 (g) to the third-country nationals who are allowed to work without any restriction.

3 The right to equal treatment as laid down in paragraph 1 is without prejudice to the right of the Member State to withdraw or to refuse to renew the residence permit issued under this Directive.

4. Without prejudice to bilateral agreements, single permit holders moving to a third-country, or the survivors of such a single permit holder residing in third-countries as they derive their rights from the single permit holder, shall receive, in case of old-age, invalidity and death, statutory pensions based on the single permit holder's previous employment and acquired in accordance with the legislation defined in Article 3 of Council 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<sup>6</sup>.

### *Article 13*

#### ***More favourable provisions***

1. This Directive shall apply without prejudice to more favourable provisions of:
  - (a) Community legislation, including bilateral and multilateral agreements between the Community, or the Community and its Member States, on the one hand and one or more third countries on the other.
  - (b) bilateral or multilateral agreements between one or more Member States and one or more third countries;

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<sup>6</sup> LT: scrutiny reservation on paragraph 4.

2. This Directive shall 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.
3. This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that grant the same or similar level of equal treatment as provided for in Article 12 to third-country nationals who, while not being holders of a single permit, are legally residing in the territory and are allowed to work in the Member State concerned.

#### *Article 14*

#### **Information to the general public**

Each Member State shall make available to the general public a regularly updated set of information, concerning the conditions of third-country nationals' entry into and stay in its territory as single permit holders.

*Article 15*

**Reporting<sup>7</sup>**

1. Periodically, and for the first time no later than three years after the date specified in Article 16, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States, on the proportion between single permit holders and other legally residing third country nationals who are allowed to work and on the extent to which Member States grant the latter the same or a similar level of equal treatment as provided for in Article 12 as to single permit holders and shall propose any amendments deemed necessary **in the light thereof.**<sup>8</sup>
  
2. Annually, and for the first time no later than 1 July of [one year after the date of transposition of this Directive], 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, in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council on Community statistic on migration and international protection.

*Article 16*

**Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by {three years after the entry into force} at the latest. They shall forthwith communicate to the Commission the text of those provisions.

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<sup>7</sup> **SI**, supported by **CY**, wanted to reinforce the current text of Article 15, which results from a Presidency compromise, by inserting a specific *rendez-vous* clause. This clause would provide, after three years from the implementation of the Directive, for the presentation of a proposal aimed at extending the right to equal treatment to all third-country workers. **BG, HU, FI, MT** and **AT** opposed the **SI** suggestion and supported the Presidency compromise.

<sup>8</sup> Recital 10 would read as follows:

*Three years from the final date of implementation of this Directive the Commission will evaluate how this Directive is applied by the Member States. From this evaluation it should also appear to what extent Member States are granting the same or a similar level of equal treatment to all third country nationals, whether single permit holders or not, who are allowed to work, compared to their own nationals.*

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 17*

**Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*

*Article 18*

**Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*

The President