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**NOTE**

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from : Presidency

to : Working Party on Migration and Expulsion

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No. Cion prop. : 14491/07 MIGR 105 SO 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 third-country workers legally residing in a Member State

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Delegations will find attached compromise suggestions from the Presidency for consideration by the Working Party at its meeting on 28 and 29 July 2008.

# Chapter I

## 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 and 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<sup>1</sup>;
- (b) a common set of rights to third country workers legally residing in a Member State.

### Article 2

#### *Definition*

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;(b) "third-country worker" means any third-country national who has been admitted to the territory of a Member State, **is legally resident** and is allowed to work [...]in that Member State<sup>2</sup>;
- (c) "single permit" means any authorisation issued by the authorities of a Member State allowing a third-country national to stay and work legally in its territory
- (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.

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<sup>1</sup> **It is suggested to insert the following recital :**  
*The provisions in this Directive are without prejudice to the competence of Member States to define admission criteria or to determine volumes of admission for third-country nationals for the purpose of employment.*

<sup>2</sup> **It is suggested to insert a recital which will clarify that self employed persons are excluded from the scope of the Directive.**

## Article 3

### *Scope*

1. This Directive shall apply<sup>3</sup>:
  - (a) to third-country nationals seeking to reside **for the purpose of** work in the territory of a Member State, and
  - (b) to third-country workers legally residing in a Member State.
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;
  - (b) covered by Directive 96/71/EC as long as they are posted;
  - (c) 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 [...];
  - (d) [who have been admitted to the territory of a Member State for a period not exceeding six months in any 12 months period to work on a seasonal basis]<sup>4</sup>;
  - (e) **[...]who are authorized to reside in a Member State on the basis of temporary protection or have applied for authorization to reside on that basis and are awaiting a decision on their status;**
  - (f) **[...]who have applied for international protection under Directive 2004/83/EC and whose application has not yet given rise to a final decision;**

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<sup>3</sup> It is suggested to insert a recital indicating that a Member State may provide for the possibility for a third country national to apply for a single permit even if he/she is already residing in the Member State concerned.

<sup>4</sup> The Presidency will submit a new suggestion on this issue at a later stage of the negotiations.

- (g) who have applied for protection in accordance with national legislation or practice of the Member State and whose application has not yet given rise to a final decision;
- (h) [...] who are EC long term residents in accordance with Directive 2003/109/EC in the Member State which granted the long term resident status;
- (i) whose expulsion has been suspended for reasons of fact or law.

## Chapter II

### Single application procedure and Single permit

#### *Article 4*

#### **Single application procedure**

1. An application to reside **for the purpose of** work in the territory of a Member State shall be submitted in a single application procedure.
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. **The single application procedure is without prejudice to the visa procedure which may be required for initial entry.**

## Article 5

### Competent authority

1. Member States shall designate the authority competent to receive the application and to issue the single permit<sup>5</sup>.
2. The designated authority shall [...] adopt a decision on the **complete** application as soon as possible and [...] no later than three months<sup>6</sup> from the date on which the application was lodged.

The time limit referred to in the first subparagraph may be extended in exceptional circumstances, 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 designated authority shall notify the decision to the applicant in writing in accordance with the notification procedures laid down in the relevant legislation.
4. If the information **or documents supplied in support of [...]** the application is inadequate, the designated 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.**

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<sup>5</sup> **The Presidency suggests inserting the following clause in the Preamble as a recital:**  
*The designation of the competent authorities under this Directive is without prejudice to the role and the responsibilities of other national authorities with regard to the examination of and the decision on the application.*

<sup>6</sup> **The Presidency suggests inserting the following clause in the Preamble as a recital:**  
*The deadline for adopting a decision on the application should not include neither the time required for the recognition of professional qualifications nor the time required for issuing a visa.*

## *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.
2. Member States shall not issue any additional permits, in particular work permits of any kind as proof of the access given to the labour market.

## *Article 7*

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

1. 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.
2. Member States shall not issue any additional permits, in particular work permits of any kind as proof of the access given to the labour market.

## *Article 8*

### **Procedural Guarantees**

1. Reasons shall be given in the written notification for a decision rejecting the application, not granting, not modifying or not renewing, [...]or withdrawing the single permit on the basis of criteria specified in national or community law.
2. Any decision rejecting the application, not granting, modifying or renewing, suspending or withdrawing a single permit shall be open to **a legal challenge in** the Member State concerned. The written notification shall specify the possible redress procedures available and the time-limit for taking action.
3. **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.**

4. 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 must be proportionate and may be based on the principle of the service actually provided.

*Article 9*

**Access to information**

*(deleted and moved to Article 8 (3))*

*Article 10*

**Fees**

*(deleted and moved to Article 8(4))*

*Article 11*

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

During the period of its validity, the single permit shall entitle its holder as a minimum to:

- (a) enter [...] and stay in the territory of the Member State issuing the single permit;
- (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 **employment activity** authorised under the single permit;
- (e) be informed about his/her own rights linked to the permit conferred by this Directive **and/or** by national legislation.

## Chapter III

### Right to equal treatment

#### *Article 12*

1. Third-country workers shall enjoy equal treatment with nationals at least 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;
  - (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 **as well as** in Regulation (EEC) No 859/2003 of 14 May 2003.;
  - (f) payment of **income related** acquired **state pensions or annuities in respect of old age at the rate applied by virtue of law of the Member State or States** when moving to a third country;



- (g) tax benefits **once they are considered as tax residents under national legislation or international tax agreements**;
- (h) access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing [...];
- (i) **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 **or to vocational training** may be subject to the fulfilment of specific educational prerequisites;
- (b) by restricting the rights conferred under paragraphs 1(c) in respect to study **and maintenance** grants;
- (c) by restricting the rights conferred under paragraphs 1(h) in respect to public housing [...];
- (d) by restricting the rights conferred under paragraphs 1(a), (c) (g) **and (h)** to those third-country workers who are in employment;
- (e) by restricting the rights conferred under paragraphs 1(e) to third-country workers who are in employment except for unemployment benefits.

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 single permit or the residence permit issued for purposes other than work.**

*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;
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.

**Chapter IV**

**Final provisions**

*Article 14*

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 for the purpose of work [...].

*Article 15*

***Reporting***

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 and shall propose any amendments deemed necessary.

2. Annually, and for the first time no later than 1 April of [one year after the date of transposition of this Directive], Member States shall communicate to the Commission and the other Member States [...] statistics on the volumes of third-country nationals who have been granted, renewed or withdrawn a single permit during the previous calendar year, indicating their nationality [...]. Statistics on admitted family members shall be communicated likewise.

*Article 16*

**Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ..... at the latest. They shall forthwith communicate to the Commission the text of those provisions<sup>7</sup> [...].

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.

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<sup>7</sup> In relation with this provision it is suggested including the following recital:  
*In accordance with paragraph 34 of the Interinstitutional agreement on better law making, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures and make them public.*

*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*

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