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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	CM 5311/22; 13954/22
Subject:	Proposal for a DIRECTIVE 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 (recast) - compilation of replies by Member States

Following the request for written contribution on the above-mentioned proposal (CM 5311/22), delegations will find in Annex a compilation of the replies as received by the General Secretariat.

ANNEX

Written replies submitted by the Member States

AUSTRIA

Recital 24:

AT welcomes the proposed amendment, thus the previously expressed concerns are no longer maintained.

Article 1 para 2: Reservation.

The admission of third-country nationals to the labour market falls within the competence of the Member States; this applies in particular to the area of regulated professions. For this reason, Austria is still in strong favour of retaining the current wording of Art. 1 (2) of Directive 2011/98/EU, which would at the same time ensure full consistency with Recital 5 of the proposal.

Should the proposed amendments to Art. 1 (2) be retained, the inclusion of a new provision on regulated professions would be necessary. A new Art. 1 (3) could provide that "this Directive is without prejudice to the conditions set out under national law for the admission to and the exercise of regulated professions".

In this context, it is also essential that both the proposed Art. 3(2)(j) (previously: (k)) and the new Recital 24 (2011/98/EU recital 23) are retained in their proposed form.

Insofar as the wording is intended to be consistent with the EU Blue Card Directive, it would also require the inclusion of a provision in the SPD corresponding to Article 15 (8) EU Blue Card Directive, according to which *Member State may retain restrictions on access to employment in accordance with existing national or Union law, provided that such employment activities entail at least occasional involvement in the exercise of public authority and the responsibility for safeguarding the general interest of the State or that such employment activities are reserved to nationals of that Member State, Union citizens or EEA citizens*.

Article 2 (b), deletion of **(c)** and **recital 6**:

AT welcomes the addition of paid and in principal the deletion of the definition of employer. Nevertheless, reservation remains with regard to recital 6, as it must be examined more intensively whether the wording is actually suitable for fully preserving the Member States' room for manoeuvre regarding temporary work agencies.

Article 3 para 2 (e) and (h):

The exemption of all au-pairs from the scope of the Directive is expressly welcomed by AT. The same applies to the exclusion of beneficiaries of protection in accordance with national law, etc (h).

Article 4 para 2: Reservation.

The amendments proposed by the Presidency are welcomed, provided that it is a genuine alternative and Member States can therefore continue to provide for application from abroad.

Nevertheless, the proposal to enable every third-country national who holds a long-stay visa to apply for a single permit within the Member State is still viewed critically and in AT's opinion, this group would be better covered by the *may*-clause ("*By way of derogation, a Member State may accept, in accordance with its national law, an application for a single permit submitted by a third-country national who is not in possession of a valid residence permit or long-stay visa but is legally present in its territory*"). Otherwise expectations would be raised that the TCN would be able to continue to reside in the Member State even in the case of an application submitted shortly before the expiry of the long-stay visa, which is not the case (such a problem does not arise, however, if the TCN already holds a residence title, as this in principle also gives him/her a further right of residence in an extension procedure). In addition, a prerequisite for the issuance of a visa is the intention to leave the territory of the Member States before the expiry of the visa, which would then be in conflict with the possibility of submitting an application for a single permit within a Member State.

Furthermore, the derogation/*may*-clause is understood as in the current text of the Directive, so that it is possible to differentiate between certain groups of TCNs.

Last but not least, recital 9 (last sentence: *The Member States should allow the application for a single permit to be submitted both in the Member State of destination and from a third country.*) would have to be adapted in view of the presidency proposal regarding Art. 4 (2).

Article 5 para 2 and recital 10:

The exemption of the visa procedure from the decision deadline for a single permit is explicitly welcomed.

Article 11 para 1:

AT welcomes the reintroduced reference to national law.

Article 11 para 2 and recital 31: Reservation.

The compromise proposal still has to be examined in more detail. In the event of a change of employer, the Member States must in any case have the possibility to apply the instrument of labour market assessment, especially since, unlike the Blue Card Directive, less qualified workers are included here and thus possible negative effects on the labour market can have an effect sooner.

Furthermore, it must also be possible to check compliance with working and wage conditions in the event of a change of employer. However, the list in Art. 11 (2) seems to exclude this.

The extension of the duration of the labour market review procedure to 60 days is a step in the right direction. However, 90 days would be better in order to have negotiating leverage vis-à-vis the European Parliament. As mentioned also at the IMEX WP on the 9th November, the Single Permit Directive affects a much larger number of workers than the Blue Card Directive.

Article 12 para 2 (b): Reservation.

A parent is only entitled to family benefits in Austria if there is a legal residence in Austria by means of a residence permit in accordance to paragraphs 8 and 9 NAG (Austrian Settlement and Residence Act), but not on a short-term visa C or D, which only entitles the holder to a temporary stay, regardless the duration for which such a visa is issued.

AT therefore does not agree with the proposed deletion because the wording in question is indeed relevant for distinguishing between settled and only short-term residing workers.

BELGIUM

Belgium supports or accepts the text as proposed by the CZ PRES in ST 13954/22 on the recast of the single permit directive, with the exception of following points.

Article 2, sub c and recital 6

Recital 6 of the compromise proposal emphasizes that employment through temporary employment agencies also falls within the scope of the single permit. In this context, Belgium would like to refer on the one hand to the case law of the Court of Justice (Vanderelst, Essent, Danieli) which raises the question of where the temporary employment agency must apply for the single permit? Determining an EU territorial reference point is interesting for employment through temporary employment agencies. On the other hand, an EU territorial reference point is also interesting if a Belgium temporary employment agency requests a single permit for making a foreign worker available to a company in one of the regions in Belgium. In that case, the single permit is granted for the performance at that specific user (=the effective place of employment), as a result of which the temporary agency worker is not allowed to perform work on the entire Belgian territory or the EEA. We are preparing further explanations on this issue.

Article 3, para 2 sub h

This is rather a request for clarification. As mentioned during the IMEX meeting on 9th November, Belgium would appreciate further explanations on the scope of this category to define our final position on whether or not to exclude it from the scope of the single permit directive.

Article 11, para 2

Belgium can't support the mechanism introduced by COM proposal which allows changes of employer without a new application for a residence permit, but is still examining the consequences of the proposal of CZ PRES mentioned in ST 13954/22. In general, the fact Belgium accepted this mechanism in the context of EU-directive 2021/1883 was linked to the specific scope of that directive, which can't automatically transferred to this negotiation and the single permit directive which has a more general scope. Furthermore, there are some concerns regarding the fact that certain concepts mentioned in the compromise proposal of CZ PRES give room to ambiguity and could in the end after interpretation of the Court of Justice result in a limitation of our national marge de maneuver.

However, we would like communicate the elements in the proposal of CZ PRES which are of our interest:

- Condition 2a. Belgium proposes adding further explanations on the consequences of the "communication" of the new employment and the time sequences of the whole procedure mentioned in art 11, para 2.

- Condition 2c which guarantees that the change of employer is limited to the same sector or an occupation that has the same characteristics, preventing – for example – a highly qualified worker from switching to an employment for low qualified workers.

- The extended period for checking the labour market situation and opposing the change of employment to 60 days, in which we would opt for another extension to 90 days.

In the last subparagraph, does "…while the Member State concerned checks the labour market situation and verifies that the requirements laid down by Union or national law are fulfilled." Does this mean that MS have the possibility to check the work conditions of the new employment, according to all provisions laid down in national law, as long as the MS stays in the time frame provided by the single permit directive of 60 days?

In the same subparagraph the last sentence is "The Member State concerned may oppose the change of employment within those 60 days."

- Does this prevent a MS from withdrawing the single permit after changing of employer and the MS not opposing, for a reason linked to examining the requirements laid down in national law or if after all one of the conditions was not fulfilled (same sector or characterics jobs) based on missing information at the time of not opposing or fraud?

Whenever a MS decides to oppose the change of employment, can the MS provide in national law for an appeal for the employer or the third country national worker, and if so, could the period of opposing the change of employment be de facto extended by this period of appeal?

CROATIA

Recital 11 and 12, in connection with Article 4 - Single application procedure

Recital 11 - We propose to **delete any general reference to issuance of visas within any deadlines**, since the issuance of visas is now excluded from deadline in operational part of the text (Art. 5, Para 2). **We believe that inclusion of any deadlines in Recital might lead to the conclusion that such deadlines exist.**

Recital 12-Although we understand the background of the proposal (avoiding duplication of the procedure and shortening the time required to process the application), however, bearing in mind the **different competent authorities for processing requests for the issuance of a single permit and visas**, **further clarification is needed how to understand the requirement "to carry out only one substantial check of the documentation" .**

Because the issuance of visa D is under different competent authority, and the application is to be made to the diplomatic/consular missions, is it necessary in this procedure that a third country national again presents a valid travel document for the purpose of identification (even if a copy of the travel document was already provided in the procedure for issuing a work and residence permit), as well as to present a photograph, attach proof of the means of travel, present proof of having adequate and valid travel health insurance (for example, this is not a requirement for a residence and work permit).

Also, **it needs to be clarified (whether the requirement of one substantial check) refers only to the documentation,** since the procedure for submitting an application for the issuance of a D visa may occur further in time, after the competent body examined the conditions for the issuance of the residence and work; **and does not include possibility to also undertake other checks** (for example, checking whether a person poses a threat to public order, national security or public health, as well as checking the ban on entering the territory and checks in the SIS).

We believe that this needs to be clarified to avoid any misinterpretations in legal text.

Article 5 - Competent authority (Para 2)

The proposal introduces an obligation that the 4-month deadline for deciding on application for residence and work permits now also include the time needed to conduct the labour market test. Under current Directive, there is no such obligation.

Having in mind that there are MS that conduct **labour market test** even before the application for residence and work permit (i.e. single permit) is submitted (also the case of Croatia) and having in mid the clarifications provided by CZ PRES that proposed text does not pose any obstacles to the practice of MS to test labour market even before the application, **we suggest to have this situation and assurance for MS included either in Recital or operational part of the text.**

Article 11 - Rights on the basis of the single permit (Para 2)

As we have previously communicated, we believe that this possibility should be a may provision, so that MS can adapt realities on the labor market (introduce the possibility of changing employers or not, especially considering the specifics of some national permits that MS have).

We welcome the introduction of the new point d) which can limit the change of employer for a certain period of time (the proposal is up to a maximum of 9 months) and the extension of the deadline for the suspension of the right to work to 60 days (while the competent authorities carry out checks), although we proposed a deadline of 90 days.

However, on wording in point a) "require that a change of employer be **communicated**" and wording in Recital 31 that refers to "**notification**", we are concerned is there substantial difference between these two concepts.

Having in mind explanation that single permit gives its holder the right to (1) reside, and (2) work in the host country on a long-term basis and that only the **second segment, i.e. conditions of employment,** should be subject to examination in this case, we want to make sure that legal text gives us assurance that in relation to second employer; and any further employer (in case of change during the validity of single permit), **we can check also all conditions that are laid down in national legislation in relation to employer** (i.e. the number of employed nationals if this is required under national law, capital of the employer, whether there has been a breach of rules on employment of third country nationals) and that for this purpose we can request any documentation, under national law.

This is what we understand under wording „Member States may require, in accordance with national law, that the change of employer be subject to the following conditions….“ and “The right of the single permit holder to pursue such a change of employer may be suspended for maximum of 60 days while MS concerned checks the labour market situation and verifies that the requirements laid down by Union or national law are fulfilled”.

In relation to third country national, it is also important to have clear understanding what can be also checked and requested from third country national (proof of housing, proof of health insurance…) under notification/communication procedure.

In relation to allowing a third country national to be allowed to stay in the territory for at least two more months based on the same residence and work permit after losing his job. **In principle, we are not against the mentioned provision, a**nd we were not even against the three-month deadline. However, **we propose to allow the verification of the possession of at least sufficient means of support in these cases**, so that unemployed workers do not fall under the burden of the MS. This is mainly due to the fact that in the area of equal treatment, they exercise a number of rights to the same extent as nationals.

Article 12 - Right to equal treatment

In the proposed compromise text, part of the sentence "access to public and private housing" has now been deleted in paragraph 1, point g), and the sentence only reads "access to housing". We believe that there is still no explanation as to what "access to housing" entails, within the meaning of private housing and how this should be interpreted, i.e. whether it includes the purchase and sale of real estate, rent, and how it is related to purchase incentives that some Member States may have introduced.

ESTONIA

Estonia does not support the proposal to remove derogation on the access to family benefits for third-country nationals who are allowed to work on the basis of a visa from article 12(2)(b). Under the current Directive, a Member State has the right to restrict access to family benefits for third-country nationals who are staying and working on the basis of a visa. Estonia does not support the deletion of this derogation on family benefits.

For many family benefits the beneficiaries are children. The parent of the child receives child benefits on behalf of the child. For this to be possible, the child must reside at the same address as the parent and, in the case of third-country nationals, the child and the parent must also have a residence permit.

Under the current proposal, third-country nationals who are allowed to work on the basis of a visa would be entitled to family benefits if they work in a Member State for more than six months.

Estonia is of the opinion that this amendment is not only a matter of equal treatment, but also brings a substantive change in the payment of family benefits. Estonian domestic law distinguishes between temporary residence in Estonia (residence without a residence permit, e.g. on the basis of a visa) and permanent residence. According to Estonian national law, foreigners residing in Estonia on the basis of a residence permit or right of residence are entitled to family benefits.

It remains unclear for Estonia what status the child must have if third-country nationals working on the basis of a visa are to be granted access to family benefits. According to Estonian national law, if their parents are staying in Estonia for a short period on the basis of a visa, children can also stay in Estonia on the basis of a visa (except in special cases, e.g. for studies). This means that the whole family can stay in Estonia on the basis of a visa and hence, their stay in Estonia is short-term and not permanent. If access to family benefits is now extended to third-country nationals who are staying and working with a visa, the scope of beneficiaries of family benefits will be significantly widened to persons who are not permanently linked to Estonia.

Moreover, the country of residence is also likely to pay family benefits to those children. This means that if children staying on the basis of a visa have to start receiving child benefits, they will most probably receive benefits twice from both countries. In the case of intra-EU mobility social security coordination rules apply exactly to avoid double payment of benefits.

The additional financial burden on the State must also be taken into account in situations where a permanent stay cannot be established.

In the light of the above, please clarify:

1) What status the child has to have in order to give the third-country nationals working under visa access to family benefits? Would a requirement under national law for a child to have a residence permit, in order to be entitled to family benefit, be compatible with the proposed Directive?

2) With which measures will you ensure that family benefits are not paid double by two countries?

FINLAND

Art. 2(c)

Finland supports the proposal made by the presidency that the definition of employer would not be regulated in the directive. There is no enacted definition of an employer in Finland's national law, but the Finnish Employment Contracts Act provides for the characteristics of an employment relationship. The national law does not define an employer, so it should not be done with this directive either. It is problematic for us that the definition would be regulated in the migration legislation, when it would more properly belong to the labour legislation. Finland leaves a reservation.

Art. 3(2)(c) and recital 6

Finland proposes that the text of this section of the current directive would be kept as it is, and no changes be made to it. This is because the proposed change would lead to unequal treatment. The wording of the proposal only excludes intra-EU posting. Finland leaves a reservation.

Art. 4(1)

Finland supports the proposal as long as the MS may decide which one, employer or applicant, makes the application. According to Finnish national law, the applicant submits the application, and e.g. the employer, as well as neither a family member nor the educational institution, can submit the application.

Art. 4(2)

In principle, Finland supports the proposal, but wants further clarification on the matter. The basis in the Finnish Aliens Act is that a residence permit must be applied abroad before obtaining a residence permit. The Alien enters Finland with the permit. Finland wants to keep this clear and therefore leaves a reservation here. We don't want to give the wrong signal when and where to apply for a residence permit to Finland. According to the Finnish Aliens Act, a residence permit can be applied for in Finland in certain situations, exceptional situations. It is of course also possible to apply for a residence permit in Finland if a citizen of a third country is staying in the country illegally, because we want to urge them to apply for a permit so that we know who is staying in the country.

Art. 11(2)

Finland supports the proposal. However, we would like have further clarification on what "communication to the competent authority" means in practice. For the competent authority, the communication sounds like the same workload as making the decision to the application. In article 10 there is no mentioned communication as a reason for require the payment of fee of communication the same it is the case with handling of application. Finland proposes that there would be possibility to charge a fee of communication as well.

According to the Finnish Alien's Act, a residence permit is granted for working in a certain professional sector. If the employee wants to change employer, it is possible with the valid residence permit, as long as the professional sector remains the same, and the employee needs then not to make a notification or communicate with the competent authorities. If there happens the change of the professional sector to some other sector, the employee must make a new application for a residence permit, into which the check of the labour market situation is applied. However, the check of the labour market situation is not applied if the working has taken place for at least one year with the valid residence permit (at the moment there is in the Finnish Parliament a proposal to change the law in order to lower the minimum time to nine months).

According to the Finnish Alien's Act, an alien is granted an extension permit to apply for a new job or to start a business if there are reasonable grounds to suspect that his/her employer has significantly neglected his/her duties as his/her employer or exploited his/her in some other way. The residence permit is issued continuously for one year after the expiration of the previous residence permit. Issuing a residence permit does not require that the alien has sufficient financial resources. A residence permit can be granted once for each neglect or abuse. An alien may, after finding a job, start working or starting a business. In addition, alien's family member will be granted a residence permit.

According to the Finnish Alien's Act, an alien who works on the basis of a residence permit is granted the right to work without occupational restrictions or other restrictions, if there are reasonable grounds to suspect that his/her employer has neglected his/her duties as an employer in a significant way or abused him/her in some other way.

According to the art. 11(2)(c) MS may require that a change of employer not entail a change of occupational sector or substantial characteristics of the occupation for which the single permit was issued. Finland would like to have further clarification, especially what substantial characteristics mean in practice.
According to Art. 11(3) the single permit holder and/or the employer, as the case may be, shall communicate the beginning and, where appropriate, the end of any period of unemployment to the competent authorities of the Member State of residence in accordance with the relevant national procedures. Finland would like to have further clarification into this. Who would be obliged to report and are there consequences for not doing so? The obligation of one instead of two could be clearer, so that also the possible sanctions could be more correctly applied.

Recital 31

In the Presidency proposal, there is more text in recital 31 than was in the original proposal. Finland supports new texts, but wants to notify that there is written: ”In exceptional and duly justified cases, for example in case of exploitation of the single permit holder by the first employer, Member States should allow the change of employer before the expiration of that minimum period”. Finland proposes that instead of writing this in recital, this should be written in article.

Article 13

Finland supports the Presidency proposal to remove employer from paragraphs 1 and 2 of Article 13 because Article 12 has includes education and housing etc. In Finland, the national requirement of equal treatment applies also to others than employer's activities, so this would not be a problem nationally (either way).

Article 14

The article 14 is problematic for Finland, because it states that a third party with a legal interest could engage on behalf of or in support of the third-country worker in any juridical and/or administrative procedures with the employee's consent. We do not have such an extensive right of lateral intervention, and not necessarily the right of initiation either. Finland wants clarification of what *“support”* and *“engage”* mean here. Finland leaves a reservation on this article.

FRANCE

Articles 1 à 3 :

La France **soutient la suppression de l'article 2 (c)** sur la définition du terme « employeur » ainsi que les **reformulations proposées par la présidence tchèque à l'article 3, 2 (e) et (h).**

Article 4 :

La France **soutient la reformulation proposée à l'article** 4, répondant aux préoccupations visant à laisser la procédure de dépôt d'une demande de permis unique à la discrétion des États membres.

Article 5 :

La France est **d'accord pour la reformulation proposée à l'article 5** visant à ne pas inclure la délivrance du visa dans le délai maximum de traitement de la demande de 4 mois.

Article 10 :

La France est **d'accord avec la reformulation proposée**.

Article 11 :

Les **reformulations proposées conviennent à la France**.

Article 12 à 21 :

La France n'a **pas d'observations particulières**

GERMANY

Germany still has a general scrutiny reservation.

Art. 1-3 (+ recitals 6, 8)

Art. 1

- Germany welcomes the clarifying wording.

Art. 2, recital 6

- Germany agrees. To avoid misreading, the term "worker" in the second sentence of Recital 6 could be replaced with "third-country national".

Art. 3, recital 8

- para 2 lit. (e)

  Agreed.
- para 2 lit. (f)

  We would like to propose again to add an explicit reference to Directive 2001/55/EC.
- para 2 lit. (h), recital 8
  - Germany agrees to exclude TCN from the scope of the directive who have applied for protection and whose application has not been the subject of a final decision.
  - However, Germany still has a scrutiny reservation in regard to excluding beneficiaries of protection. We refer to our written comments from September and would like to ask the Commission for clarifications on the posted questions.

Art. 4-5 (+ recitals 10, 11, 12)

Art. 4, recital 10

- Agreed. However, we would like to propose to delete "by the way of derogation" at the beginning of para 2 sentence 2 since it's unclear what this refers to and the meaning is the same with or without it.

Art. 5, recital 11, 12

- Germany has a scrutiny reservation. It is important that the checking of the working conditions and the reliability of the employer is included here and that it is possible to prolong the deadline if there are problems with the checking of the working conditions and the checking of the reliability of the employer.

  Germany therefore asks to add **", the working conditions and the reliability of the employer**" in para 2 subpara 2 sentence 1 after "checking the labour market situation".

  Furthermore we ask for a change in subpara 2 sentence 2:
  "The time limit may be extended in exceptional and duly justified circumstances, linked to the complexity of the examination of the application or the checking ~~**of the labour market situation.**~~ **as described in sentence 1**."

- The relation between para 2 and para 4 sentence 2 remains unclear. In Germany's view the period of the time limit should only start running when all application materials have been submitted ("on the complete application") and not - as foreseen in para 4 - be suspended by the demand for documents. Germany asks to change Art. 5 in order to obtain clarity on the starting point of the time limit.

Art. 6-10

Art. 9

- Agreed.

Art. 10

- In principle, Germany can agree but would like to ask for adding "be based on the services actually provided and shall" in the second sentence which would then read as follows: "The level of fees imposed by a Member State for the processing of applications shall **be based on the services actually provided and shall** not be disproportionate or excessive."

Art. 11 (+ recital 31)

- para 2 sentence 1

  Question: Should the option only exist for the transfer from the first employer to the second employer? Does this mean that the further change (from the second employer to the third employer) is not cover by the directive or are measures concerning that not possible?
- The procedures are still not clear: Only notification of change of employer? According to the last WP meeting, this is determined by national law. Germany would prefer a clarification in the directive itself, e.g. in a recital.
- para 2 sentence 2 lit. (b)

  In order to clarify that especially the checking of the working conditions is included and not just the labour market test, Germany asks for adding ", working conditions and reliability of the employer" at the end of this lit.
- para 2 sentence 2 lit. (c)

  Does this regulation also enable a national law, which allows single permit owners to take on **any** employment after two years, when in the first two years a qualified employment is necessary?
- para 2 sentence 2lit. (d), recital 31
  - Germany understands that it is up to the MS to include the requirements that para 2 offers ("may"), but in our view it should be taken into account that a prohibition of a change of employer creates a strong dependence for the employer and is therefore problematic. At least there should be an explicit exception for protection against exploitation from the minimum period of employment. There shall be no minimum period if there are abusive working conditions.
- para 2 sub-para 2
  - Germany can agree to the longer period of 60 days. In this case, we strongly advocate to keep the minimum time period of 3 months in para 3, in order to avoid situations where there is an obligation for TCNs to leave the country immediately (with family members) as soon as a negative decision is taken. An alternative option could be to leave a period of 30 days but add the possibility to prolong it for another 30 days (in the style of Art. 5 para 2). It should be clarified that the period of the time limit should only start running when all relevant information and documents are available.

- In order to clarify that the checking of the working conditions and the reliability of the employer is included and not just the labour market test, Germany asks for adding ", working conditions and the reliability of the employer".

- para 3, recital 31
  - Germany supports the notification obligation.
  - What does "where appropriate" mean?
  - Germany would rather keep the minimum time period of 3 months, but understands that it is up to the MS to decide ("at least").
  - But we were asking ourselves what about the means of subsistence during that time.
  - And does the time period also precludes the withdrawal on the basis of general reasons (e.g. lack of means of subsistence)?
  - In the last sub-para it should be clarified that this applies only if the notification of unemployment has been made before the end of the time period.

Art. 12 (+ recital 24)

- para 1 lit. (c)
- Agreed.
- para 2 lit. (d)

  In order to clarify that there is no restriction of access to private housing, Germany is in favour of the Commission's proposal to add "public".

Art. 13-14

Art. 13

For Germany, there is still a considerable need to review:

- Germany does not deem it appropriate to include in Art. 13 the obligations of the MS for monitoring, risk assessments, inspections and penalties for possible infringements of Art. 12 by deleting the words "by employers".

  We do not question the applicability of Art. 12 to the MS. Nevertheless, we doubt the eligibility of the regulation in Art. 13 for infringements by the MS.

- In Germany, the oversight and enforcement of legislation in matters of labour law which are determined entirely by civil law, is conducted not by public regulatory authorities but rather through effective possibilities for legal redress (e.g. court proceedings). According to the wording, the regulatory area is very broad and is not sufficiently able to be limited. It is unclear whether and to what extent the establishment of preventive measures will be necessary.
- Against this backdrop, Germany proposes two clarifying amendments to the wording of para 1:
    - deletion of "preventive" in sentence 2
    - move "in accordance with national law or administrative practice" from the end of sentence 2 in front of the named measures

  Sentence 2 would then read as follows:

  ~~Preventive m~~**M**easures shall include **in accordance with national law or administrative practice** monitoring, assessment and, where appropriate, inspections ~~in accordance with national law or administrative practice~~
- para 2
    - Germany assumes that civil law damages or compensation payments are sufficient as sanctions within the meaning of the directive.
    - Germany has a scrutiny reservation regarding the deletion of "by employers". Is the purpose of this deletion that there should also be sanctions for government violations of the equal treatment regulations?
- recital 29

  Germany asks for the deletion of sentence 2. Sentence 2 reaches too far into the administrative enforcement of the MS. The measures should be taken according to national practices, as expressed in the sentence 2 of Art. 13 (1).

Art. 14

- para 1

  Does para 1 relate only to complaints against the employer?

- para 1 lit. (b)

  Germany would like to ask again for an explanation whether para 1 lit. (b) in connection with para 2 provides an independent right of third parties to lodge a complaint or bring judicial action against employers. Or is it sufficient within the meaning of this provision for third parties to be able to initiate a procedure with the consent of the affected third-country worker?
- para 2

  Germany assumes that para 2 refers solely to judicial action against the employer and insofar specifies para 1 lit. (b), but does not include more extensive actions against competent authorities (including immigration law procedures). This should be clarified more, possibly in the recitals.
- Why does the wording deviate from that of Directive 2009/52/EC providing for minimum standards on sanctions (Article 13 (2)) and that of Directive 2014/54/EU concerning facilitation of the free movement of workers (Article 13 (2))?
- In general, a special right of collective appeal/collective judicial action with the purpose of strengthening the rights of third-country workers would be new in German law on foreigners and German labour law and needs further examination. Referring to the questions in the German written comments in September, we would therefore ask the Commission again to present the reasons for the proposal and a thorough assessment.

Art. 15-21

Art. 17 para 2: In the understanding that the additional categories are to be reported only “where available” (anyway), Germany agrees.

HUNGARY

Article 11

On the Hungarian side, we do not support the possibility of changing employers in principle, given that changing employers poses a migration risk and may give rise to abuses, reducing the controllability of the current single permit system. We remain concerned about the possibility to change employer without applying for an extension of the residence permit, as only the labour market situation can be examined, but the migration authority is not able to examine the residence conditions, including for example whether the working time or the salary of the third-country national has changed negatively compared to the one taken into account for the issued permit.

However, in the light of the further discussion of the detailed rules, the amendment that this possibility may be linked to the requirement of a prior period of work [new point (d) in paragraph (2)] is a good approach.

In the Hungarian context, the name of the employer is indicated on the residence permit, in accordance with Article 6. We consider it appropriate to retain this remark in order to facilitate the detection of possible abuses.

We would like to confirm that at the meeting it was clarified unanimously by the Legal Service, Commission, and the Presidency, that an obligation under national law to exchange the document on the basis of a request by the client, with the payment of a fee by the client, is an acceptable solution.

For clarity we propose to add a new last sentence in Article 11.2:

If the change of employer is permitted, the issuance of a new single permit document may be required in accordance with national law.

IRELAND

Ireland is positively disposed towards the EU's 'Skills and Talent' package and supports an ambitious and sustainable EU legal migration policy, attracting talent to our labour markets and creating safe channels to reach Europe. However, the particular implications of any measure must be considered carefully.

As a general comment, there are numerous references throughout the text to previous EU legislation that Ireland is not a part of. **The current wording assumes that all Member States are a part of the referenced Directives and Regulations. Text additions will be required to reflect that Ireland is not a part of the referenced legislation but may admit some off these categories under national schemes or earlier EU measures that still apply to Ireland. Our legal unit is currently assessing the text and we will return with suggested wording.**

Further comments:

Article 5, Paragraph 2:

- IE supports the removal of the issuing of a visa from the four-month timeline.
- IE would like further clarification/guidance on what would be considered "exceptional and duly justified circumstances" for the purposes of extending the four month deadline.

IE supports a proposal put forward at the last IMEX meeting by some Member States to remove the labour market check from the four-month deadline.

LITHUANIA

Lithuania would like to indicate that we take a positive approach concerning Presidency compromise text, however we are keeping the verification reservation.

- We would like to note that in Lithuania the possibility to change employer is foreseen. If the third country national needs the labour market test, he should pass this procedure first and only then he will be able to submit his application to change the employer. Both procedures (labour market test and permission to change employer) are set as separate administrative procedures and third country national or his future employer must pay the fee for the procedure first. Therefore we would like to suggest to add to 31 point of recital of COM's proposal to foresee the possibility for Member State to require the payment of fees for the handling of applications to change the employer (both labour market test and permission to change employer). Article 11(2) could be added with such possibilities as well.

- Regarding Article 12(2)(b) of the COM's proposal Lithuania maintains its position and does not support suggestion to remove the possibility of imposing restrictions regarding payment of family benefits to third country nationals staying and working in the Member State based on national visas. We propose to maintain the existing provisions of the Article 12(2)(b) of the Single Permit Directive due to the following reasons:

    - The visa is for a short period of time, during which no link with the host Member State is established. The family members of the third country worker can apply for the national visa irrespective the fact, that one of the family members' woks or stay in the Member State.

    - If third country nationals plan to work for a longer period of time in one of the Member States, he should apply for a residence permit on the basis of which child benefits are already paid;

- Administrative burden of checking whether the children of incoming workers are living in the LT and do not receive benefits in their home countries. The third country national having visa do not require to stay actually in the Member State during all visa validity period. Such third country nationals usually maintain their place of residence in the third country.

- Significant burden on the budget. Preliminary estimates suggest that around 14,000 children would be eligible for benefits, costing the LT budget around €13.3 million per year.

THE NETHERLANDS

Recital 6

(6) This Directive should cover employment relationships between third-country workers and employers, whereby the meaning of employer is defined by national law. Where a Member State's national law allows admission of third-country nationals through temporary work agencies established on its territory and which have an employment relationship with the worker, such ~~agencies~~ **third country nationals** should not be excluded from the scope of this Directive, **and all provisions of this Directive concerning employers should equally apply to such agencies.**

Explanation:

The proposal is to delete the definition of employer in art. 2 because this should be regulated in national law. For the sake of clarity it is useful to mention this in a recital (recital 6 seems most suitable).

Article 5, par. 2/ article 11, par. 2, sub b

Article 5

Competent authority

2. The competent authority shall adopt a decision on the complete application as soon as possible and in any event within four months of the date on which the application was lodged.

The time limit referred to in the first subparagraph shall cover checking the labour market situation ~~and issuing the requisite visa referred to in Article 4(3)~~. The time limit may be extended in exceptional **and duly justified** circumstances~~,~~ linked to the complexity of the ~~examination of the~~ application **or the checking of the labour market situation and other conditions, laid down in national law.**

Article 11

Rights on the basis of the single permit

2. ~~Within the period of validity referred to in paragraph 1~~Member States shall allow a single permit holder to be employed by a different employer than the first employer with whom the permit holder concluded a contract of employment. **Member States may require, in accordance with national law, that the change of employer be subject to the following conditions:**

~~3. Within the period of validity referred to in paragraph 1, Member States may:~~

(a) require that a change of employer be communicated to the competent authorities in the Member State concerned, ~~in accordance with procedures laid down in national law,~~

(b) require that a change of employer be subject to a check of the labour market situation and other conditions, laid down in national law.

Explanation:

The test on the labour market is obly one part of the test if a third country worker is allowed to work. There is also a test on labour conditions (i.a. fair wages) and if an employer is not convicted for breaching of labour law) This is important to protect the rights and position of the labour migrants.

Article 11, par. 2, last paragraph:

The right of the single permit holder to pursue such a change of employer may be suspended for a maximum of ~~30~~ **~~60~~ 90** days while the Member State concerned checks the labour market situation and verifies that the requirements laid down by Union or national law are fulfilled. The Member State concerned may oppose the change of employment within those ~~30~~ **~~60~~ 90** days.

Explanation:

The period of 60 days to assess if a labour migrant is allowed to work for another employer than the first one is too short; s the Netherlands prefers a period of 90 days.

POLAND

We are raising analytical and parliamentary reservations concerning all the provisions of the proposal of the Directive.

1) Art. 1 sec. 2 Subject matter (t This Directive shall not affect the right of Member States to determine volumes of admission of third-country nationals in accordance with Article 79(5) TFEU.)

In art. 1 sec. 2 we maintain the necessity to return to the current wording of the Directive, according to which "This Directive is without prejudice to the Member States' powers concerning the admission of third-country nationals to their labor markets." This is an important provision that defines the subject matter of the Directive as well as the competences of the Member States.

Moreover, as we have already pointed out, the introduced change, which currently provides for an explicit reference to Art. 79 sec. 5 TFEU regarding the possibility of introducing of volumes of admission is not justified in our opinion. The Single Permit Directive does not regulate the conditions of admitting foreigners for the purpose of work, but only the procedure for granting a single permit. The conditions for admitting foreigners for the purpose of work, including the application of volumes of admission are regulated by national law. Such reference to Art. 79 sec. 5 TFEU is justified in the EU Blue Card Directive regulating at the EU level the admission conditions of highly qualified workers but not in the Single Permit Directive. Art. 79 sec. 5 TFEU concerns the volumes of admission of third-country nationals coming from third countries to the territory of the Member States in order to seek work, which may be narrowly understood as not covering third-country nationals already residing in the EU or in a host Member State or third-country nationals who came initially for other purposes than to seek work.

Therefore we ask the Council Legal Service to provide a comment on this.

We suggest the following wording of Art. 1(2) :

2. This Directive is without prejudice to the Member States' powers concerning the admission of third-country nationals to their labour markets including the right to determine volumes of admission of third-country nationals.

2) Art. 3 sec. 2 Scope - reinstation of point h (beneficiaries of protection in accordance with national law, international obligations or the practice of a Member States and those who have applied for such protection and whose application has not been the subject of a final decision)

In art. 3 sec. 2, we welcome the reintroduction of point h concerning the exclusion from the personal scope of the Directive of third-country nationals enjoying protection in accordance with national law, international obligations or the practice of a Member State and those applying for such protection, as well as the deletion of recital 8. This is a specific category of foreigners for which the application of the procedure for granting residence and work permits is not justified.

Art. 4 – 5 Single application procedure, Competent authority

3) Art. 4 sec. 2 (An application for a single permit shall be considered and examined either when the third-country national concerned is residing outside the territory of the Member State to which he or she wishes to be admitted, or when he or she is already residing in the territory of that Member State as holder of a valid residence permit or long-stay visa. By way of derogation, a Member State may accept, in accordance with its national law, an application for a single permit submitted by a third-country national who is not in possession of a valid residence permit or long-stay visa but is legally present in its territory.).

In connection with the introduction of the new paragraph 2 in Art. 4 of the draft (based on Art. 10 of the new EU Blue Card Directive), **we are in favour of keeping the wording of Art. 4 sec. 1 of the current Single Permit Directive** according to which *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, in the territory of the Member State in which the third-country national is legally present.*

The current wording of Art. 4 sec. 1 of Directive 2011/98/EC is more flexible, allows foreigners to use various entry bases and better corresponds to the Polish conditions of the policy of admitting third-country nationals for the purpose of work as well as our organizational possibilities.

The proposed change would be also difficult to implement especially as regards the examination of applications submitted abroad and would require significant organizational changes and financial expenses.

Recital 9, second paragraph, should be marked separately as recital 10 and should correspond to the content of Art. 4, including the possibility of submitting the application only by the employer.

4) Art. 5 sec. 2, second paragraph (time limit of 4 months to adopt a decision on the complete application shall cover checking of the labour market situation with exclusion of issuance of the requisite visa referred to in Article 4(3)).

As regards art. 5 sec. 2, second paragraph, we appreciate the modification of the provision, so that the 4-month period for issuing a decision on a complete application for a single permit does not include issuing a visa, if required.

However, in our opinion **the provision should also expressly include the possibility of submitting a separate application for a labor market test by the employer, prior to the submission of the application** by a foreigner for a residence and work permit.

If the procedure for applying for a single permit was also to include checking the situation on the labor market, it should, in our opinion, be **extended to 5 months**.

In recital 11, we propose that Member States should endeavour to issue the required visa for the purpose of obtaining a single permit **as soon as possible** and not within the time limit for issuing a single permit. The authorities issuing a decision on a single permit should have legal certainty how long time they have for processing application.

Art. 6-10

5) Art. 8 sec. 3 Procedural guarantees (An application may be considered as inadmissible on the grounds of volume of admission of third-country nationals coming from third countries for employment and, on that basis, need not to be processed)

In art. 8 sec. 3, **the original wording should be restored as the possibility of applying volumes of admission by Member States is not limited to third-country nationals coming from third countries for employment, but may also concern those already staying in the EU or in the host Member State.** We have already raised this issue in relation to Art. 1 sec 2. The Single Permit Directive does not regulate the conditions of admitting foreigners for the purpose of work including volumes of admission, but only the procedure of granting a single permit. Therefore, Art. 79 sec. 5 TFEU does not apply here.

Art. 10 on fees - we support the modification of the provision, in line with the analogous provision of Art. 12 of the new EU Blue Card Directive.

Art. 11 Rights on the basis of the single permit

6) Art. 11 sec. 2 (change of employer procedure and 60 instead of 30 days for labour market test, verification of other requirements and possible objection)

In Art. 11 sec. 2, extension of the deadline for a change of employer procedure from 30 to 60 days and additional conditions that Member States can impose go in the right direction. However, we propose a deadline of **90 days for the procedure of a change of the employer**, due to the need of verification of requirements concerning the new employer (except of labour market test we verify the amount of remuneration, the comparability of remuneration, the authenticity of employment, the employer's criminal record and the foreigner's professional qualifications depending on the new position).

Obtaining a single permit by a third-country national, which during its validity period entitles its holder to perform a specific job for which a single permit was issued, allows as a condition for changing the employer, checking the situation on the labor market as well as verification of other requirements concerning new employment. However, the time limit indicated in the draft provision - 60 days, may prevent in our opinion the competent authority from conducting an effective and reliable analysis of the market needs, e.g. in terms of the employment conditions offered by the employer, an analysis of the available human resources on the labor market, an assessment of the foreigner's skills and competences as well as verification of other requirements concerning new employment.

Too short and strictly set out deadline for a change of employer procedure may lead to a situation in which the verification process concerning new employment could be illusory. In a situation of great interest in changing the employer (this process seems to be fully natural, when a foreigner, after arriving in the host country, learns about the situation on the labor market and finds a job that pays better or gives a higher level of professional satisfaction), the competent authorities may not be able to timely issue a reliable opinion on the situation on the labor market and the decision on the whole application. This process may be particularly difficult to carry out in large urban centers where large groups of foreigners are concentrated. In order to ensure the proper capacity and effectiveness of the process of examining the needs of the labor market and other required verifications, it seems necessary to extend the proposed period from 60 to 90 days.

Moreover, we have reservations about the notification procedure. This procedure may cause legal uncertainty, e.g. as to the effective notification of the authority and the consequences of not expressing objection.

It is also **not clear whether a procedure to amend a temporary residence and work permit provided for in national law will still be possible in order to change of the employer indicated in the permit**. Article 4 and Article 8 of the Directive refer to the application and decision to amend a single permit.

We believe that Member States should be able to continue to use a procedure to amend a single permit for the purpose of a change of the employer indicated in the permit or use the notification procedure, if they decide to introduce such procedure. We propose to include such a possibility in Art. 11 sec. 2 by stating that Member States **may alternatively require an application to amend a single permit and issue a decision on amendment of the permit** instead of notification of a change of employer and objection.

Moreover, in our opinion **explicite statement that a change of employer may take place during the period of validity of the single permit should be reinstated** in Art. 11 sec. 2. Lack of this statement may raise doubts in this respect or cause too broad interpretations.

The possibility of verifying other requirements concerning new employment laid down by Union or national law should also be clear.

In point 7) we are presenting possible new wordings including our proposition of deadlines in Art. 11 (2), (3).

7) Art. 11 sec. 3 (period of at least 2 months (instead of 3 months) during which single permit may not be withdrawn due to unemployment)

In Art. 11 sec. 3, we propose to shorten the possibility of permissible unemployment **to 1 month**, as a foreigner will be able to take advantage of a change of employer procedure, during which he/she will be able to stay longer in the host country, in accordance with Art. 11 sec. 3 third paragraph.

In Poland, we provide for 1 month of permitted unemployment. In practice the period of unemployment overlaps with the procedure of changing a single permit for the purpose of a change of employer or with the procedure for granting a new single permit and is actually longer.

It should be taken into account that the right to permissible unemployment makes it impossible to withdraw a single permit if the conditions justifying the purpose of its issue cease to exist. Cessation of work by a foreigner will not constitute grounds for initiating proceedings to withdraw a single permit during that period. In addition, the proposed solution in our opinion will not motivate the holder of a single permit to look for a job, because having the status of an unemployed foreigner will equal to pursue the purpose of the stay, which is to perform work. This may result in a very high level of unused labor resources in the Member States, in the form of unemployed foreigners, economically inactive.

We also see the risk of large groups of fictitiously unemployed foreigners appearing in official registers kept by a Member State as unemployed persons who may work outside the official fiscal system of a Member State, not paying taxes and social security contributions due for their work.

Moreover, a condition should be added that the single permit shall not be withdrawn during the above mentioned period **provided that the beginning of the period of unemployment has been communicated if required in accordance with national law**, especially within the time limit provided for in national law.

In addition, in our opinion acceptable unemployment **should not occur more than once or possibly twice during the period of validity of the permit, except in cases of exploitation**. The lack of such reservation will mean that this right could be used many times during the period of validity of the permit and might be abused by employers and/or single permit holders. Currently Art. 13 (1) of the EU Blue Card Directive 2009/50/EC provides for such restriction.

We issue single permits for up to 3 years of validity. It happens that we find out that our single permit holder stays actually in another Member State or works illegally. The new solution of the Directive would enable single permit holders to invoke on permissible unemployment at any time. We are afraid that single permit holders actually would not have to pursue the purpose of stay even for most of the period of validity of the single permit.

Of course, cases of exploitation of a single permit holder may be taken into account in the entire Art. 11.

In Art. 11 sec. 3, last subparagraph, a condition should be added that there is a right to remain in the territory of the host country until the end of the procedure for changing the employer, **provided that communication or application referred to in paragraph 2, point (a) has been submitted within the period of permissible unemployment**.

Possible new wordings including our proposition of deadlines in Art. 11 (2), (3):

2. ~~Within the period of validity referred to in paragraph 1~~ **Within the period of validity referred to in paragraph 1** Member States shall allow a single permit holder to be employed by a different employer than the first employer with whom the permit holder concluded a contract of employment. Member States may require, in accordance with national law, that the change of employer be subject to the following conditions:

~~3. Within the period of validity referred to in paragraph 1, Member States may:~~

(a) require that a change of employer be communicated to the competent authorities in the Member State concerned **or an application to amend a single permit be submitted to such authorities if provided for**, ~~in accordance with procedures laid down in national law,~~

(b) require that a change of employer be subject to a check of the labour market situation~~.~~,

(c) require that a change of employer not entail a change of occupational sector or substantial characteristics of the occupation for which the single permit was issued,

(d) set out a minimum period of time for which the single permit holder is required to work for the first employer; this minimum period of time shall not exceed nine months,

(e) require that other requirements concerning such employment laid down by Union or national law are fulfilled.

The right of the single permit holder to pursue such a change of employer may be suspended for a maximum of ~~3060~~ **90** days while the Member State concerned checks the labour market situation and verifies that the requirements laid down by Union or national law are fulfilled. The Member State concerned may oppose the change of employment within those ~~3060~~ **90** days **or issue a decision on rejection of the application within that period**.

34. ~~Within the period of validity referred to in paragraph 1, t~~The single permit holder and/or the employer, as the case may be, shall communicate the beginning and, where appropriate, the end of any period of unemployment to the competent authorities of the Member State of residence in accordance with the relevant national procedures.

The single permit shall not be withdrawn during a period of at least ~~three~~ ~~two months~~ **one month** in the event of unemployment of its holder **provided that the beginning of the period of unemployment has been communicated if required in accordance with national law.**

Member States may decide that they allow for such unemployment not more than once or two times during the period of validity of the single permit unless in case of exploitation.

Member States shall allow the third-country national to stay in their territory until the competent authorities have assessed the fulfilment of the conditions set out in paragraph 2, ~~taken a decision in accordance with paragraph 3, point (b), as relevant,~~ even if that period of at least ~~two~~ ~~three months~~ **one month** expired **provided that communication or application referred to in paragraph 2, point (a) has been submitted within that period.**

Art. 12 Equal treatment

8) Recital 24 of the 2011/98/EU Directive – deletion of the last two sentences concerning rights related to family members residing outside the host Member State with regard to the Court judgement in Case C-302/19 and explicite reference to the judgement.

We need further internal consultations on this issue.

9) Art. 12 sec. 1 point g) and Art. 12 sec. 2 point d) (ii) in connection with Art. 12 sec. 1 point g) **equal treatment regarding procedures for obtaining housing** as well as **possibility to restrict access to housing**

We support withdrawal from introducing changes to art. 12 on equal treatment as regards access to housing. Deleting possible restrictions in access to private housing in Art. 12 sec. 2 point d) (ii) could be very problematic for us as regards our legislation concerning acquisition of properties including houses in Poland what we have explained in details in our written comments after the WP IMEX on 22.07.2022.

10) Art. 13 Monitoring, risk assessment, inspections and penalties

We do not support the proposed deletion of the words "by employers" in Art. 13 sec. 1 and 2. The new formulation of these provisions is not sufficiently precise. In particular, there is doubt as to which entities, in addition to employers, may infringe national law in the aforementioned scope and which, as a consequence, will be subject to preventive measures such as monitoring, evaluation and, where appropriate, controls in accordance with national law or national administrative practice as well as to possible penalties. This is important for the scope of competence of national inspection institutions, mainly the National Labor Inspectorate. Such broadly formulated provisions may mean further burdening of these control institutions, which are already heavily burdened.

In our opinion, the Directive should not introduce new, separate control and sanctions mechanisms with regard to the rights of third-country workers in the areas of equal treatment, but rather ensure that they are subject to mechanisms applicable to national workers.

11) Art. 14 Facilitation of complaints and legal redress

In our opinion **it should be clarified in Art. 14 that complaints and legal redress referred to in this Article concern the right to equal treatment and not e.g. the procedure for the issue of single permit or other migration procedures**.

We suggest also adding a new section 4 setting out that art. 12 sec. 3 of the Directive is applicable. Pursuant to Art. 12 sec. 3 of the Directive, the right to equal treatment laid down in paragraph 1 shall be without prejudice to the right of the Member State to withdraw or to refuse to renew the residence permit issued under this Directive, the residence permit issued for purposes other than work, or any other authorisation to work in a Member State. Filing a complaint against the employer or participation in a court or administrative proceedings aimed at enforcing employees' rights in the field of equal treatment should not exclude the possibility of applying the appropriate immigration procedures against third-country national.

ROMANIA

recital 6 - we appreciate the revised text, considering that, currently, the national legislation regarding the operating conditions and the authorization procedure of the temporary work agent allows employment through a temporary work agent only in the situation where the foreigner has the residence/domicile on Romania's territory;

recital 8 – we agree with the elimination of this provision;

art.1-3 – we agree with the changes, with the exception of art. 3, where *we consider that au pairs should be included in the scope* of the Directive. Therefore, we suggest to remove this category from paragraph 2, letter e)[1] and include it within the 1st paragraph of art.3.

art. 4-5 (+ recitals 10, 11, 12) - we agree with the text (in the relevant national legislation, deadlines are provided for each procedural stage separately, which do not exceed, added up, the value established in the proposal);

art. 6-10 - we agree with the compromise text;

art. 11 (+ recital 31) - we can accept the changes, with the exception of the art. 11, paragraph (2), letter d) where we propose to extend the term from a maximum of 9 months to 12 months, considering that in Romania, the social security benefits are granted after this period of contribution;

art. 12 (+ recital 24) – we agree with the revised text;

art. 13-14 – we approve the revised text;

art. 15-17- we agree with the revised option;

art. 18 – we support the NL proposal from the previous meeting (22.07.2022) regarding the transposition term of 2 years and 6 months;

art. 19-21 – we agree with the text.

[1] who have applied for admission or have been admitted to the territory of a Member State as seasonal workers in accordance with Directive 2014/36/EU ~~or au pairs. in accordance with Directive (EU) 2016/801;~~

SPAIN

Article 1 and 2

Spain is favourable to the proposed changes to the text in the compromise text.

Article 3, para 2 (h)

Spain sees no reason to exclude beneficiaries of protection in accordance with national law, international obligations, or the practice of a Member State from the scope of the single permit directive. Procedural improvements, equal rights and protection against exploitation should also benefit to them, so Spain would welcome to come back to the initial wording proposed by the Commission.

Article 4, para 1

Spain is favourable to the proposed changes to the text, as it makes clear that member states may allow applications to be submitted by the TCN, his/her employer or either of the two.

Article 4, para 2

It is unquestionable for Spain that a third country national that is present in the country as a holder of a Schengen visa is "legally present" in its territory. Therefore, Spain considers that allowing third country nationals to apply to a single permit under this condition must be kept.

With regards to the new wording, Spain is not favourable to the addition of ***"by way of derogation"*** to this circumstance and **requires clarification of its legal implications**. It may be understood that applications should only be accepted in exceptional cases, requiring one-by-one justification, entailing additional administrative burden. This would be contrary to the core objective of the directive of having a manageable and effective procedure, as stated in Recital 4.

Spain understands the reasons of the proposal and takes into consideration the concerns of other member states with regards to this point. Therefore, we propose following wording, which keeps the spirit of the proposal, does not impose obligation to justify the use of this provision, and still allows member states to require any such justification in accordance to national law:

"2. An application for a single permit shall be considered and examined either when the third-country national concerned is residing outside the territory of the Member State to which he or she wishes to be admitted, or when he or she is already residing in the territory of that Member State as holder of a valid residence permit or long-stay visa. ***Alternatively****, a Member State may accept, in accordance with its national law, an application for a single permit submitted by a third-country national who is not in possession of a valid residence permit or long-stay visa but is legally present in its territory"*

Article 5, para 2

Spain considers that four months should be sufficient time to decide on a complete application, including all necessary steps, also the issuance of a visa when required.

A time limit should be established for the end-to-end process, including all necessary steps. Spain could accept an increase of the time limit, even if we think that 4 months is enough, if this includes all necessary steps, also the visa.

Articles 6 to 10

Spain is favourable to the changes proposed in the compromise text.

Article 11, para 1

Spain has a scrutiny reservation with regards to this topic. We **require clarification** of the objectives and legal impact of adding the expression "in accordance with national law", which is also redundant to the same expression, found in sub para (a), (b), (c) and (d).

Article 11, para 2

Spain considers that imposing excessive conditions to the change of employer and increasing from 30 to 60 days the period during which a member state may suspend the right of a single permit holder to change employer are against the objective of fostering competition in the EU, puts TCN workers in unequal conditions in comparison to EU citizens, and does not contribute to protect workers against exploitation.

However, we are favourable to the definition of such conditions if they are optional for member states, as it reads in current wording.

Article 11, para 3

Spain rejects the proposal to reduce from 3 to 2 months the allowed period of unemployment after which a member state can withdraw a single permit and considers it to be contrary to the objective of combating exploitation. We may not further insist on increasing of the time beyond 3 months, as stated verbally during the IMEX (A) meeting on 22 July, but we are not willing accept a reduction.

Additionally, the wording of sub paragraph 3 is unclear, as it may be understood that the conditions set in para 2 are mandatory, when such conditions are an optional choice to member states. Therefore, we propose following wording:

*"Member States shall allow the third-country national to stay in their territory until the competent authorities have assessed**, where applicable,** the fulfilment of the conditions set out in paragraph 2, even if that period of at least ~~two~~ **three** months expired."*

Article 12, para 1, sub para (c)

Spain considers that the right to equal treatment should be extended to all kinds of education, which is fundamental for the integration of TCNs and for the adaptation to the needs of the labour market. Therefore, sub para (c) should be as broad as possible.

We **require clarification** of the intention and legal implications of the proposed wording and, depending on the clarification, we would be favourable to keep initial proposal:

"(c) education and ~~vocational~~ training"

Articles 13 to 21

Spain is favourable to the changes proposed in the compromise text.

SWEDEN

Recital 24 – Equal treatment

In our understanding, recital 24 aims *inter alia* to clarify that this Directive does not create any further rights beyond the right to equal treatment in Article 12. It is important to make a distinction between the purpose of this recital and the judgement which says that Member States cannot have national legislation that treat workers from a third country differently than its own citizens, regarding Article 12. Since the deleted sentences in recital 24 fulfils a different purpose than the judgement, we would like the text in the current Directive to remain (i.e., the text deleted by the COM), with the addition to the referral to the judgement as proposed by the Presidency.

Article 4.1 – Where an application can be submitted

Sweden appreciates the Presidency proposal, which is a step in the right direction. We can however not fully support the proposal since we wish to keep the text in the current directive. This provision is very important for Sweden as the principle that residence permits should be granted before a person enters Sweden is a cornerstone of Swedish migration policy. It is an issue of ensuring regulated immigration. There are of course exemptions from this rule, for example for students who have been offered employment, but the main principle remains vital. The Presidency proposal comes from the revised Blue Card Directive, but the Single Permit Directive concerns all categories of labour migrants, not just the highly skilled, which makes a clear difference.

Article 10 – The level of fees

From the information given by the Council Legal Services at the meeting, Sweden got the impression that the Presidency proposal does not limit the level of fees Member States can charge, compared to the text in the current Directive. If Member States can base their fees on the cost of providing the services necessary for handling an application (if such fees are not excessive), Sweden can accept the Presidency proposal.

Article 11 – Change of employer

Sweden supports the principle of introducing a right to change employer in the Single Permit Directive. We do however believe that the details should be handled at the national level as it is closely linked to the national labour migration system. As mentioned by the Presidency, the Single Permit Directive only regulates procedures, not criteria for admission etc.

It is also important for Sweden that authorities have sufficient time to check new employers and make sure that terms of employment meet standards set in national policy. To have some margin of negotiation in the trialogue, the council should put 90 days in Article 11.

If authorities find problems with the new employer or employment after the 90 days have passed (for example if the terms of employment are not in line with national standards), we assume that Member States can withdraw the single permit in accordance with national law and practices, as that is outside the scope of the Single Permit Directive.

Article 13/14 – Measures to prevent abuse and exploitation

Sweden appreciates the Presidency proposal but find that more comprehensive changes are required in article 13 and 14. The first sentence in Article 13 gives the impression that Member States must implement measures specifically in relation to Article 12. This is however not in line with the information given by the Commission at the meeting in July, when the Commission talked about the importance of using *existing* tools to prevent exploitation etc.

Making sure that labour migrants are not exploited is a priority for the Swedish Government, but such measures are best handled at the national level. In Sweden, the social partners (unions and employers' organizations) are largely responsible for wages and conditions for workers. The COM proposal has been sent to different stake holders and the unions and employers' organizations are worried that art. 13 and 14 could undermine the role of the social partners in Sweden. The Swedish labour market model must be respected.