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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL extending Directive [XXXX] to third country nationals legally residing in a Member State <i>- Mandate for negotiation with the European Parliament</i>

I. INTRODUCTION

On 31 October 2023, the Commission issued a proposal for a Directive of the European Parliament and of the Council extending Directive [XXXX] to third country nationals legally residing in a Member State¹. The title of the proposal refers to the draft Directive establishing the European Disability Card and the European Parking Card for persons with disabilities, published by the Commission on 6 September 2023² (hereinafter ‘main EDC Directive’).

¹ Doc 15003/23

² Doc 12755/23

The main EDC Directive aims to ensure equal access to special conditions and preferential treatment for persons with disabilities during short stays in other Member States and, as a result, facilitate the free movement of persons with disabilities. It also includes a common standardised model for a European Disability Card as proof of a recognised disability status or entitlement to specific services based on a disability, and for a European Parking Card for persons with disabilities as proof of a recognised right to parking conditions and facilities reserved for persons with disabilities. It covers Union citizens and their family members (whichever their nationality) with a recognised disability status or entitlement to specific services based on a disability when exercising their right to free movement in accordance with applicable rules.

This proposal aims to apply the same rules as the main EDC Directive to third-country nationals legally residing in the territory of a Member State, who are not beneficiaries of the main EDC Directive and whose disability status or entitlement to specific services based on a disability has been recognised by the Member State of their residence.

This Directive will therefore ensure that those third country nationals, during short stays in another Member State, will be able to access special conditions and/or preferential treatment, as well as parking conditions and facilities provided to or reserved for persons with disabilities, on equal terms and conditions with the persons with disabilities residing in that Member State and the beneficiaries of the main EDC Directive.

The proposed Directive is based on Article 79(2) point (b) TFEU. The Commission did not carry out an Impact Assessment for this proposal. This is because the Impact Assessment accompanying the proposal for the main EDC Directive assessed the situation of all persons with disabilities in the Union travelling for short periods to other Member States, including third-country nationals. Therefore, the Commission concluded that the analysis and results of the Impact Assessment accompanying the main EDC Directive apply and are relevant to this proposal as well.

In the European Parliament, the Committee on Employment and Social Affairs (EMPL) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) have the lead responsibility. The Parliament has not yet decided on its position.

II. STATE OF PLAY

The Social Questions Working Party discussed the proposal at its meetings on 9 November and 8 December 2023, and on 29 January 2024.

Given the outcome of the discussion and the broad measure of agreement reached in the Working Party, the Presidency has made only limited changes to prepare the compromise proposal set out in the Annex of this document. The compromise text was shared with delegations for an informal written consultation on 13 February 2024.

III. PRESIDENCY COMPROMISE PROPOSAL

The proposal has been examined in detail by the Social Questions Working Party over the past three months. The Presidency has made changes to the text of the Commission proposal to resolve the concerns expressed by delegations. Many of the modifications introduced aim to clarify the personal scope of the Directive, i.e. the third-country nationals that fall within the scope of this Directive, and to align the text with the main EDC proposal.

Main changes to the text:

The main changes to the Commission's proposal introduced by the Presidency include the following:

a) Disability status

Changes were made to the text to add the phrase 'entitlement to specific services based on a disability' after references to 'disability status', in line with the main EDC Directive.

b) Recitals on the aims and objective of the Directive

Recitals (1a) and (1b) were added to elaborate further the aims and objective of the Directive in relation to the legal basis.

c) Mobility of third-country nationals across the Union

It was considered necessary to elaborate further on the fact that this Directive does not affect Member States' competence to admit third-country nationals to their territory, nor the rules governing the mobility of such third-country nationals across the Union. A sentence was added to Recital (3) to that effect.

The wording of Recital (5) was amended to make it more explicit that the mutual recognition rights granted by this Directive only apply to those third-country nationals falling under the scope of this Directive who move or travel legally to another Member State.

Recital (4) referring to the Convention implementing the Schengen Agreement and the Schengen acquis was deleted to avoid ambiguity and uncertainty regarding the scope of this Directive and its link with the Schengen acquis.

d) Definition of third country nationals

It was considered appropriate to use the standard wording for the definition of ‘third-country national’, namely any person who is not a Union citizen within the meaning of Article 20(1) TFEU. To this end, the references in Article 3 to Articles 2(2) and 3(2) of Directive 2004/38/EC were deleted.

In addition, some elements which pertained to the personal scope of the Directive and not the definition of ‘third country nationals’ were initially included under Article 3. These elements were either deleted or moved to Article 1.

e) Personal scope of the Directive

Article 1 was amended to further clarify which third-country nationals fall under the scope of this Directive, i.e. those legally residing in the territory of a Member State who are not beneficiaries of the main EDC Directive and whose disability status or entitlement to specific services based on a disability, and/or rights to parking conditions and facilities reserved for persons with disabilities, have been recognised by the Member State of their residence.

The reference in Article 3 to the requirement that the third-country nationals legally reside in a Member States was moved to Article 1.

The reference in Article 3 to the ‘entitlement to move or travel to other Member States in accordance with Union law’ was deleted, as it would add one more condition for the issuance of the cards and it could also result in a different regime for third-country nationals residing in Schengen and non-Schengen Member States.

f) Opt-in/opt-out or Ireland

Recital (6) was amended to indicate that Ireland does not intend to take part in the adoption of this Directive.

Other changes:

The compromise text also includes the following minor changes of technical nature:

- The references to the opinions of the Committee of the Regions and the European Economic and Social Committee were deleted, as the legal basis used for this Directive does not provide for their consultation;
- Changes were made to align the wording used to refer to persons accompanying or assisting persons with disabilities, including their personal assistants, or assistance animals, with the wording used in the main EDC Directive.

IV. CONCLUSION

The Permanent Representatives Committee is invited to confirm agreement on the text of the mandate for negotiations with the European Parliament, as set out in the Annex to this Note, to enable the Presidency to conduct the negotiations on that basis.

In accordance with the approach to legislative transparency endorsed by Coreper on 14 July 2020³, and in full consistency with Regulation (EC) 1049/2001 and the Council's Rules of Procedure, the text of the mandate thus agreed will be made public unless the Permanent Representatives Committee objects.

³ Doc 9493/20

2023/0393 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
extending Directive [XXXX] to third-country nationals legally residing in a Member State

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(2), point (b), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In order to facilitate the exercise of rights by persons with disabilities when travelling to or visiting for a short period of time a Member State other than the Member State in which they reside, Directive (EU) [.../...] of the European Parliament and of the Council⁴ established the framework, rules and common conditions, including a common standardised model, for a European Disability Card as proof of recognised disability status or entitlement to specific services based on a disability, for accessing special conditions or preferential treatment offered by private operators or public authorities in a wide variety of services, activities and facilities, including when not provided for remuneration, and for a European Parking Card for persons with disabilities, as proof of a recognised right to parking conditions and facilities reserved for persons with disabilities.
- (1a) The TFEU provides that, in defining the rights of third-country nationals legally residing in Member States, the Union's action should be aimed at ensuring, *inter alia*, their fair treatment. To that end, the European Parliament and the Council should adopt measures, including on the definition of the rights of third-country nationals legally residing in a Member State.
- (1b) In this context, a set of rules should be laid down specifying the rights in respect of which equal treatment between the beneficiaries of Directive (EU) [.../...] and such third-country nationals is provided for.

⁴ [...] OJ L, p. .

- (2) In order to contribute to equal treatment and non-discrimination of persons with disabilities who are third-country nationals legally residing in the territory of a Member State and who are not beneficiaries of Directive (EU) [.../...], and to guarantee the recognition of their disability status or entitlement to specific services based on a disability across the Union, thus also ensuring a more effective participation and inclusion in society of such persons on an equal basis with Union citizens, it is necessary to apply the rules, rights and obligations laid down in Directive (EU) [.../...] to persons with disabilities who are third-country nationals legally residing in the territory of a Member State and whose disability status or entitlement to specific services based on a disability has been recognised by that Member State, as well as, when applicable, to persons accompanying or assisting them, including their personal assistants, or assistance animals.
- (3) Therefore, Member States should take the necessary measures to ensure that the rules set out in Directive (EU) [.../...] governing the European Disability Card and the European Parking Card for persons with disabilities as proof respectively of a disability status or entitlement to specific services based on a disability, or of a right to parking conditions and facilities reserved for persons with disabilities, providing access, on equal terms and conditions, to any special conditions or preferential treatment with respect to services, activities or facilities, including when provided not for remuneration, and to parking conditions and facilities offered to or reserved for persons with disabilities, as well as, when applicable, to persons accompanying or assisting them, including their personal assistants, or assistance animals, equally apply to third-country nationals legally residing in the Union. Granting rights to such third-country nationals to access special conditions or preferential treatment, and/or parking conditions and facilities reserved for persons with disabilities in the same way as those provided for the beneficiaries of Directive [.../...] does not affect Member States' competence to admit such third-country nationals to their territory, nor the rules governing the mobility of such third-country nationals across the Union.

- (4) [...]
- (5) In particular, while this Directive should not affect applicable rules governing mobility across the Union of third country nationals legally residing in a Member State, [...] it could facilitate the exercise of the right of those persons to move or travel across the Union [...] if they already have such a right to mobility. Only those persons who move legally across the Union should benefit from the mutual recognition rights under this Directive.
- (6) In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union (TEU) and to the Treaty on Functioning of the European Union (TFEU), and without prejudice to Article 4 of that Protocol, **Ireland** is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (7) In accordance with Articles 1 and 2 of Protocol No 22 on the position of **Denmark**, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (8) Since the main objective of this Directive, namely to define certain rights of persons with disabilities who are third-country nationals legally residing in the territory of a Member State and who are not beneficiaries of Directive [.../...], as well as, when applicable, for persons accompanying or assisting them, including their personal assistants, or assistance animals, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action establishing a framework of rules and common conditions, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Member States shall ensure that the rules laid down in Directive (EU) [...] apply to third-country nationals legally residing in the territory of a Member State who are not beneficiaries of that Directive and whose disability status or entitlement to specific services based on a disability, and/or rights to parking conditions and facilities reserved for persons with disabilities, have been recognised by the Member State of their residence, as well as, when applicable, to persons accompanying or assisting them, including personal assistants, or assistance animals, within the meaning of Article 3 of that Directive.

Article 2

This Directive shall not affect applicable rules governing mobility across the Union of third-country nationals legally residing in the territory of a Member State.

Article 3

For the purposes of this Directive “third-country national” means any person who is not a Union citizen within the meaning of Article 20(1) TFEU.

Article 4

1. Member States shall adopt and publish, by dd/mm/yy [*Publications Office, please insert the date of transposition of the Directive adopted in procedure 2023/0311 (COD)*], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall communicate to the Commission the text of those provisions.

They shall apply those provisions from dd/mm/yy [*Publications Office, please insert the date of application of the Directive adopted in procedure 2023/0311 (COD)*].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 5

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

Article 6

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
