Council of the European Union

Brussels, 28 March 2023
(OR. en)

7622/1/23
REV 1

LIMITE

JAI 337
MIGR 104
SOC 195
ASIM 35
EMPL 139
EDUC 102
IA 47
CODEC 426

Interinstitutional File:
2022/0131(COD)

COVER NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	CM 1977/23; 6541/23
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 1977/23), 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 9:

Austria's reservation is withdrawn.

Art. 1 para. 2:

Austria remains strongly in 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, Austria would again request the inclusion of a new provision on regulated professions. 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".

Notwithstanding this, for Austria in this context it is essential, that both the proposed Art. 3(2)(k) and the new Recital 25 as well as Recital 5 are retained in their proposed form.

Art. 3 para. 2 letter. c:

The new wording is welcomed, as it clarifies that also postings from third countries and not only those from within the EU are excluded from the scope of the Single Permit Directive. However, recital 7 should also be adapted accordingly, as it still refers to Directive 96/71/EC only.

Art. 11 para. 2 letter b and **recital 33**:

The new wording is acceptable (as it incorporates the reasoning behind our previously proposed amendment).

Art. 11 para. 3:

The changes proposed by the Presidency are acceptable. However, we see a susceptibility to abuse of the possibility of multiple changes of employer under a single permit, when such a change is not for reasons of protection against labour exploitation. Poland's written proposal to supplement Art. 11 para. 3 is therefore supported: „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.“

GERMANY

Germany thanks the Presidency for the compromise text and agrees in principle with the approach of the Presidency as well as the content, although we still have a general scrutiny reservation. We would like to thank the Presidency for its efforts so far and in particular for the Discussion Paper, as it was helpful.
The comments below refer to the new compromise proposal. In all other respects, we refer to the comments made in our first written statement.

Recitals

Recital 32: Germany asks for the deletion of this recital as it is a mere statement and therefore does not, in our opinion, add any value to the proposal.

Article 3

Art. 3 (2) (h)

In the case of persons who have already been granted protection under national law, Germany is in favour of including these persons in the scope of application (as proposed by the Commission).

Article 5

Art. 5 (2)

- Germany continues to reject the Commission's proposal of including the process of issuing the visa in the four-month timeframe.
- Germany suggests the following rewording for clarification purposes:

The time limit referred to in the first subparagraph shall cover checking the labour market situation where such a check is carried out in connection with ***an individual*** ~~*a specific*~~ *application for a single permit […]. The time limit may be extended in exceptional and duly justified circumstances[…] linked to the complexity of the[…] application including, where applicable, the labour market test.*

As far as we understand, the aim is to express that the decision period is only affected insofar as the labour market check is carried out within the scope of the application examination for which this residence permit is carried out. In Germany, it is in certain cases possible to conduct a labour market check in advance and separately from the residence permit. However, this examination only has a limited durability and should therefore not affect the decision period.

Article 12

Art. 12 (2) (d) (ii)

Germany still has a scrutiny reservation and opposes any restriction of access to private housing. As a compromise, we suggest to adopt the wording in Art. 16 para. 2 Blue Card Directive: ”Member States may restrict equal treatment as regards procedures for obtaining housing. This shall be without prejudice to the freedom of contract in accordance with Union and national law“.

Article 13

Art. 13 (1)

Germany continues to request that the phrase “in accordance with national law or administrative practice” be moved to a position *before* the measures listed in the sentence. This rearrangement of the sentence would provide linguistic clarity that this clause applies to all of the measures listed, and not only to potential inspections that may be carried out. We would also propose the associated rewording of Recital 30.

*(1) Member States shall provide for measures to prevent possible abuses and to sanction infringements […] ~~of national provisions adopted pursuant to Article 12~~ of this Directive. ~~Preventive~~ Measures shall **in accordance with national law or administrative practice** include monitoring, assessment and, where appropriate, inspections ~~in accordance with national law or administrative practice~~.*

Art. 13 (3) *(NEW)*

*(3) Member States shall ensure that **~~services in charge of inspection of labour or other competent authorities and,~~** where provided for under national law for national workers, **services in charge of inspection of labour or other competent authorities and** organisations representing workers' interests have access to the workplace.*

According to German law, certain requirements have to be met in order for labour inspections and other public authorities to be allowed to access the workplace (to protect the rights of the employer and its employees and for reasons of proportionality). Especially in case the workplace is located inside of private premises (e.g. nursing care or telework from home), the privacy and inviolability of person‘s private apartment is protected by the German Constitution. Therefore, it is important for Germany to clarify that access to the workplace can only be granted in accordance with national law and practises.

Article 14

Germany understands the wording of Art. 14 para. 1 and 2 in a way that in Germany third parties are granted a right of appeal/complaint only in accordance with the existing German national law.

Art. 14 (2)

Germany suggests the following insertion for reasons of consistency:

Member States shall ensure that third parties […] which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring compliance with the national provisions adopted pursuant to this Directive may engage either on behalf of or in support of a third-country worker, with his or her approval, in any […] administrative or civil proceedings aimed at enforcing compliance with ***the national provisions adopted pursuant to*** *this Directive.*

Art. 14 (3)

Germany suggests the following amendment:

Member States shall ensure that third-country workers have the same access as nationals of the Member State where they reside with regard to measures protecting against dismissal or other adverse treatment by the employer as a reaction to a complaint within the undertaking or to any legal ***and administrative*** *proceedings aimed at enforcing compliance with the national provisions adopted pursuant to this Directive.*

The change from "judical and/or administrative" to "legal" entails a difference in meaning and thus leads to a limited scope of the safeguard clause. In order to ensure full protection of a worker who initiates or conducts proceedings against his employer for possible infringements of the Directive, in addition to judicial proceedings, administrative proceedings should also be included in the protection area (e.g. notification to the Trade Inspectorate).

HUNGARY

With regard to Article 11, Hungary maintains the previous general rejection. With regard to Article 11(3), we strongly reject proposals to provide the possibility of unemployment for a longer period than the 2 months currently proposed. In our view, a shorter period, even 1 month as a minimum period, could be sufficient in the Directive, allowing for room for manouvre for the Member States. With regard to unemployment, we also share Member States' concerns that a period of more than 2 months can be risky in terms of financial conditions of the person and abuses on the other hand.

FINLAND

Article 11(3) second subparagraph

According to the Presidency Proposal on document ST 6541/23:

"The single permit holder or the employer shall notify communicate the beginning and, where applicable, the end of any period of unemployment to the competent authorities of the Member State concerned, in accordance with the relevant national procedures. The consequences of not communicating unemployment shall be determined by national law. "

According to the Discussion paper ST 6688/23:

"*The second paragraph clarifies that the single permit holder **or** the employer **are** obliged to notify competent authorities of periods of unemployment. The Presidency has chosen a mandatory provision, by recommendation from the Council Legal Services, to provide legal certainty for **the single permit holder** and reduce the administrative burden for Member States.*"

For Finland, it is fine that this is a mandatory provision.

However, Finland has some remarks about the provision. First, it is unclear who has to make the notification, because the text is written that the single permit holder ***or*** the employer shall notify. What happens if neither one of those does not notify, or they might make argument that it is other's obligation? Which one is responsible of the consequences and what is their mutual relationship in this context? Second, the last sentence of the subparagraph states that the notification is to be made in accordance with the relevant national procedures. It does not say that a MS could choose either of these to have the obligation to notify, because it is not about national procedures. National procedures mean how the notification has to be made, but not by whom!

Please, do compare f.ex. to BC Directive (EU) 2021/1883 article 15(4), wherein is written:

"The EU Blue Card holder shall communicate the beginning and, where appropriate, the end of the period of unemployment to the competent authorities of the Member State of residence in accordance with the relevant national procedures."

For the sake of consistency, this would favour the option that only the single permit holder should be responsible to make notification. Legislation should avoid a vague regulatory approach. The conclusion must therefore be that the text in the subparagraph is not sufficiently specific legal text.

Finland proposes that there would be additional sentences at the end of the text, which would make the provision specific, f.ex. this way:

> **The single permit holder or the employer shall notify the beginning and, where applica-ble, the end of any period of unemployment to the competent authorities of the Member State concerned, in accordance with the relevant national procedures.** ***Member State may determine whether notification is to be made by the single permit holder or by the employer. Alternatively, Member States may allow notification to be made by either of the two.***

Government Counsellor Jarmo Tiukkanen
Ministry of Economic Affairs and Employment
Finland

20.3.2023

Please do find here Finland's comments on ST 6541/23:

Article 11(3) second subparagraph

According to the Presidency Proposal on document ST 6541/23:

> **"The single permit holder or the employer shall notify ~~communicate~~ the beginning and, where applicable, the end of any period of unemployment to the competent authorities of the Member State concerned, in accordance with the relevant national procedures. ~~The consequences of not communicating unemployment shall be determined by national law.~~ "**

According to the Discussion paper ST 6688/23:
"*The second paragraph clarifies that the single permit holder **or** the employer **are** obliged to notify competent authorities of periods of unemployment. The Presidency has chosen a mandatory provision, by recommendation from the Council Legal Services, to provide legal certainty for **the single permit holder** and reduce the administrative burden for Member States.*"

For Finland, it is fine that this is a mandatory provision.

However, Finland has some remarks about the provision. First, it is unclear who has to make the notification, because the text is written that the single permit holder ***or*** the employer shall notify. What happens if neither one of those does not notify, or they might make argument that it is other's obligation? Which one is responsible of the consequences and what is their mutual relationship in this context? Second, the last sentence of the subparagraph states that the notification is to be made in accordance with the relevant national procedures. It does not say that a MS could choose either of these to have the obligation to notify, because it is not about national procedures. National procedures mean how the notification has to be made, but not by whom!

Please, do compare f.ex. to BC Directive (EU) 2021/1883 article 15(4), wherein is written:

> *"The EU Blue Card holder shall communicate the beginning and, where appropriate, the end of the period of unemployment to the competent authorities of the Member State of residence in accordance with the relevant national procedures."*

For the sake of consistency, this would favour the option that only the single permit holder should be responsible to make notification. Legislation should avoid a vague regulatory approach. The conclusion must therefore be that the text in the subparagraph is not sufficiently specific legal text.

Finland proposes that there would be additional sentences at the end of the text, which would make the provision specific, f.ex. this way:

> **The single permit holder or the employer shall notify the beginning and, where applicable, the end of any period of unemployment to the competent authorities of the Member State concerned, in accordance with the relevant national procedures. *Member State may determine whether notification is to be made by the single permit holder or by the employer. Alternatively, Member States may allow notification to be made by either of the two.***

FRANCE

Appréciation générale :

La France remercie la présidence pour le travail réalisé afin de parvenir à un compromis équilibré sur la directive permis unique.

Article 5 :

Nous saluons le maintien de l'exclusion de la délivrance du visa dans le délai de quatre mois prévu pour le traitement de la demande de permis unique. Au regard des spécificités nationales et des difficultés exprimées par les États membres, il apparait fondamental de dissocier la délivrance du visa du dispositif global.

Considérant 12 :

La France note au considérant 12 la préconisation faite aux États membres de délivrer le visa dans le délai d'examen de la demande de permis unique (« *Member States should endeavour to issue the requisite visa for obtaining the single permit within the same deadline* »). Cette mention paraît incohérente avec l'évolution de l'article 5, qui ne fixe plus une telle obligation. Elle introduit donc de la confusion. Par souci de cohérence, la France propose de la remplacer par la formulation suivante :

« Member States should endeavour to issue the requisite visa for obtaining the single permit ~~within the same deadline~~ ***in a timely manner****. »*

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. We send the below comments following the meeting of 6 March 2023.

Directives in the text to which IE is not opted-in:

We have consulted on references to other Directives in the text and the following references require wording to reflect IE's status with regard to these Directives:

1. **Directive 2014/36/EU**, where cited throughout the text: insert 'or national law'
2. **Directive 2014/66/EU**: insert 'or otherwise'
3. **Directive 2016/801/EU**; insert 'or otherwise for the purpose of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing'

Recital 38:

Recital 38 on the position of the UK and IE. The usual wording for IE's recital is:

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 and to the Treaty on the Functioning of the European Union, 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

Or

In accordance with Article 3 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 and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this Directive.

Article 5, Paragraph 2:

Thank you for the opportunity to discuss our return and refund policy at the meeting on 6 March. CION (DG HOME) and PRES seem to agree that IE can continue to operate its 'Return and Refund' policy under the Single Permit Directive. We detail this here in writing for confirmation.

Based on the compromise text and the additional discussion text we want to ensure we are covered in returning a fundamentally incomplete application, for the applicant to restart their application. CION presents a system where all applications are held, extended, and suspended – but not *ejected*.

According to the discussion text: "The structure of Article 5 has raised some questions from Member States, in particular the connection between paragraphs 2 and 4 and the issue of "complete applications". On a general level, the Presidency has chosen to retain the structure of the current directive with some adjustments to align the text with wording already agreed upon in the revised Blue Card Directive (Article 11(2) of Directive 2021/1883). In the Presidency's view, paragraph 2 gives competent authorities the possibility to extend the time limit (i.e., longer than 4 months) if exceptional and duly justified circumstances linked to the complexity of the application apply. Paragraph 4, on the other hand, gives competent authorities the possibility to suspend the time limit if they discover that the submitted application is incomplete. This provision would apply regardless of when the competent authorities realise that relevant information is missing."

The time limit constraints are acceptable to the IE employment ministry, who process employment permit applications in 5-10 days. We are not concerned about the four-month maximum. However, we are concerned that suspending the time limit for incomplete applications does not provide sufficient power to IE's system. IE currently returns and refunds General Employment Permit applications which are found to be significantly incomplete, as tested by three fundamental criteria. The criteria are absence of: a labour market needs test; revenue documentation; and signature pages. The triage ensures immediate communication of the reasons for these returned and refunded applications so that the omissions/mistakes can be rectified and resubmitted correctly. It also ensures the continued operation of an effective and efficient employment permits system to the benefit of all users.

We are eager that this scenario is covered in the Directive, hence our earlier request for 'correctly completed'. If 'correctly' cannot be added, we are grateful for your verbal indications that this procedure seems to be covered by the current wording in the Directive and would appreciate your further analysis and confirmation of same.

Background:

IE operates a 'Return and Refund' process for General Employment Permit applications, whereby an initial screening of the applications takes place across a limited number of requirements (such as the undertaking of a valid Labour Market Needs Test). If the LMNT has not been undertaken correctly the application is returned with a fully explanation of why and what is required to be included an any subsequent application, the fee returned to the card which made the payment. This ensures that our processing unit and our appeals unit are not unduly impacted by applications which stand no chance of being successful, allowing Ireland to continue to provide an effective and efficient client-focused service.

The main refusal reason applying to General Employment Permit applications, is the failure to comply with the requirements of the Labour Market Needs Test (owing to our obligation as a MS). This requirement is enshrined in primary legislation (as is the signature page requirement), and therefore cannot be resolved with a time extension. The most efficient means of dealing with such applications is to return the application as swiftly as possible providing a detailed explanation as to why the application was returned, allowing the applicant to submit a new application as promptly as possible.

Article 12:

Ireland maintains a scrutiny reservation on the text in its entirety, but particularly on Article 12. We continue consulting nationally and would like to maintain this scrutiny reservation for now.

MALTA

Malta maintains a scrutiny reservation on the proposed compromise text. However, Malta has the following preliminary remarks and observations as follows:

- Recital 33

Malta agrees with the proposal made by the Presidency that the Member States may require that a change of employer cannot occur within the first year of employment, except in exceptional circumstances.

Furthermore, Malta also agrees with the proposal of the Presidency that Member States may carry out labour market testing for applications of change of employer (if there is a change of occupational sector). However, Malta considers that in such cases Member States should still have four months to process the application, the same period that is granted to Member States to decide on a new application.

Malta considers that the period of 90 days for an application where there is a change of employer is sufficient when the occupational sector is the same.

- Article 10

Malta would like to request a written clarification as to why this provision initially refers to 'handling of applications' and then proceeds to use the term 'processing of applications'.

- Article 11

Regarding Article 11(2)(a), Malta is of the view that the period proposed should reflect the same period granted for the first-time application, i.e., of 4 months.

Regarding Article 11(3), Malta calls for the period of two months mentioned in this provision to be decreased to a period of 'one month'. In addition, a requirement needs to be included that ensures that the permit holder has sufficient resources for the period of unemployment until a new employment is found

Malta also proposes that the proposal should also clearly state that a complete application needs to be submitted by either the applicant or the employer within the 2-month period, not that the applicant needs to find employment within such timeframe.

Malta would also like to clarify whether the single permit which is issued under a specific employer is to remain in the possession of the third country national once he is no longer in employment, as Malta believes the single permit would not be reflecting the true situation of the third country national. For labour market purposes, it will seem that employer A has 6 employees working with him, when it might not be the case.

In view of the above, Malta would like to propose the following changes:

> 3. […] In the event of unemployment, the single permit shall not be withdrawn during a period of at least […] ~~two~~ **one** month~~s~~ […].
>
> The single permit holder or the employer shall notify the beginning and, where applicable, the end of any period of unemployment to the competent authorities of the Member State concerned, in accordance with the relevant national procedures.
>
> Where an unemployed single permit holder finds a new employer **and submits the complete application** within that period of at least ~~two~~ **one** month~~s~~, Member States may subject the taking up of the new employment to the conditions referred to in paragraph 2. In such a case, Member States shall allow the single permit holder […] to stay in their territory until the competent authorities have assessed the fulfilment of the conditions set out in paragraph 2 and the conditions for admission in accordance with national law […], even if that period of at least ~~two~~ **one** […] month~~s~~ expired. **Single Permit holders may avail themselves of a period of unemployment once a year.**
>
> **Member States may also require the single permit holder to provide proof of sufficient resources to maintain himself/herself throughout the period of unemployment.**

THE NETHERLANDS

Article 13, par. 2:

The Netherlands would like to return to the original text of this paragraph:

"Member States shall provide for penalties against employers who have not fulfilled their obligations under Article 12."

Explanation:

This original text is consistent with Article 17, first paragraph of the Seasonal workers directive (Dir. 2014/36/EU). A different text could raise questions about the different wordings (consistency of provisions in the different directives was one of the results of the Fitness Check on EU Legislation on Legal Migration, March 2019).

Article 18, par. 1:

In the view of the Netherlands, the phrase *"two years after the entry into force"* should be changed into *"two and a half years after the entry into force"*.

Explanation:

The implementation of the recast directive means legislation with the involvement of the National Parliament (both Chambers). This could take a lot of time, so in the vieuw of the Netherlands a longer period than two years is required

POLAND

Written comments of Poland following the meeting of the Working Party on Integration, Migration and Expulsion (Admission) on 6 March 2023

on the 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)

doc 6541/23, 6688/23- a Presidency compromise text and discussion paper

We are maintaining analytical reservations concerning all the provisions of the proposal of the Directive.

1) - Article 3 par. 2 lit. c - regarding the exclusion of posted workers, **we support the return to the current wording of the directive 2011/98/EU.** Our ministry responsible for labour indicates that pursuant to Article 1 paragraph 4 of Directive 96/71/EC, undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State. On this basis, Member States are obliged to ensure an adequate level of protection for workers posted from third countries. In addition, posting of workers by employers from other countries has a different specificity than the employment of a worker by an employer in a given Member State.

- Article 3 par. 2 lit. h - we are basically against the inclusion of persons enjoying from protection in accordance with national law, international obligations or the practice of a Member State to the scope of the Directive. This is a specific category of foreigners for whom it is not justified to apply the procedure of granting a residence and work permit. These persons are granted legal residence due to their special situation. According to Polish law, these are foreigners residing on the territory of Poland mostly illegally, who have been granted protection, e.g. because of the situation in the country of origin, inability to oblige them to return because of practical obstacles in execution of the return decision or due to the conduct of a family life. They should not be free to change the protection status to regular one by applying for temporary residence and work permit because they did not meet earlier immigration conditions like all other foreigners should do and stayed illegally.

It is however, **possible to include these beneficiaries in Chapter III of the Directive on equal treatment.** These persons have the right to work in Poland and in practice may enjoy in Poland the same rights as other employees from third countries.

As regards **third country nationals who have applied for protection in accordance with national law**, international obligations or the practice of a Member States and whose application has not been the subject of a final decision, these categories **should not be covered by the Directive at all.** They are mostly covered by a return procedure in Poland and there is no reason to combine return procedure with a single permit procedure. This is also possible that national legislation provides for the international protection procedure merged with the national law protection procedure (in case international protection would be refused). There is also no reason to combine international protection procedure with a single permit procedure. Moreover, beneficiaries of protection in accordance with national law have the right to work without a work permit in Poland, therefore it is not needed to introduce a single permit procedure in order to grant them national protection.

Furthermore, during the procedure of granting national protection foreigners are not entitled to work in Poland therefore also Chapter III of the Directive on equal treatment would not apply to them.

2) Thank you for adapting **Recital 10 to Art. 4**, including the possibility of submitting an application for a single permit only by the employer.

3) Art. 11 Rights on the basis of the single permit, change of employer, allowed unemployment

- **In Art. 11 sec. 3 second paragraph, the second sentence was deleted:** *The consequences of not communicating unemployment shall be determined by national law*. **In our opinion, this sentence is important, and "may" clause can be used here. We would like to reinstate the provision expressly stating that Member States may foresee the consequences of not communicating unemployment, in accordance with the procedure laid down in national law. In particular, the lack of such a provision makes it unclear whether, for example, MS may provide in national law that the right to unemployment referred to in Art. 11 sec. 3 may be subject to notification of the commencement of the period of unemployment within a period specified in national law.**

- **In addition, in our opinion, consideration should be given how to specify par. 3 concerning permitted unemployment in order to prevent possible abuse** of this entitlement by employers or holders of a single permit, including the growth of the shadow economy in employment, as indicated by our Border Guard. **We have already presented our proposal regarding the possibility for MS to limit the number of allowed periods of unemployment during the validity of the permit.**

In this context, we have **further questions:**

- will MS be able to withdraw the single permit during the period of permitted unemployment due to lack of means of subsistence? This would apply if the person was not entitled to unemployment benefits during this period.

- moreover, will MS be able to withdraw the single permit during the period of permitted unemployment due to a finding of abuse? (e.g. a foreigner is working illegally at that time, or is staying abroad and is not looking for a job in Poland).

Article 11 par. 3, the first paragraph seems to imply that during the period of permitted unemployment, the permit cannot be withdrawn for any reason.

4) Articles 13-14 Monitoring, risk assessment, inspections and penalties, facilitation of complaints and access to justice

We appreciate adding a new Recital 32 explaining that, in the context of the protection of workers, similar national measures concerning monitoring, assessment, inspections, penalties and facilitation of complaints have already been adopted and are in force at national level. These measures may also apply to workers from third countrie

PORTUGAL

PT comments

1) Scope - Beneficiaries of protection in accordance with national law

PT advocates restoring recital (8) and amendments to Article 3(2)(h) and (4):

(8) Third-country nationals who are beneficiaries of protection in accordance with national law, international obligations or the practice of a Member State should be covered by the scope of this Directive in order to be granted an enhanced set of rights.

Article 3 (2) (h)

who ~~**are beneficiaries of protection in accordance with national law, international obligations or the practice of a Member State or**~~ have applied for protection in accordance with national law, international obligations or the practice of a Member State and whose application has not been the subject of a final decision;

Article 3 (4)

Chapter II shall not apply to third-country nationals who are allowed to work on the basis of a visa **and to third-country nationals who are beneficiaries of protection in accordance with national law, international obligations or the practice of a Member State.**

Reasoning – Given the nature, objectives and different types of protection procedures existing in MS, we consider that the procedural rules set out in Chapter II are not applicable. However, we believe that, as beneficiaries of protection have access to the labour market, they should enjoy the same right to equal treatment foreseen in Chapter III as other third-country nationals.

2) Application Procedure – article 4(2) and Recital 10

PT supports the second sentence of article 4(2). However, we do not understand the reasoning to delete the reference to long-stay visas in the first sentence of the same provision and in recital 10, so we advocate its reinsertion:

Article 4(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 a long-stay visa**. A Member State may also accept, in accordance with its national law, applications for a single permit submitted by other third-country nationals who are legally present in its territory.

(10) The obligation on the Member States to determine whether the application is to be submitted by a third-country national or by his or her employer should be without prejudice to any arrangements requiring both to be involved in the procedure. The Member States should **consider and examine applications for a single permit 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 a holder of a valid residence permit or long-stay visa. Member States should also have the option of accepting applications submitted by other third-country nationals that are legally present on their territory**.

Reasoning – the submission of single permit applications by holders of a long-stay visa is the rule in Portugal and we believe in many other MS. This situation should be provided for as a rule, like in the Blue Card directive, and not only as one of the national and exceptional situations covered by the second sentence of Article 4(2).

ROMANIA

Following the Presidency doc **CM 1977/23** regarding the request to send written comments on **ST 6541/23**, please find below the Romanian contribution:

- We may agree with the proposal of removing the posted workers from the scope of this Directive, as provided by **art. 3, paragraph 2, letter c).** ;
- Also, we agree with the changes made into **art. 4, paragraph 2 (+ recitals 10, 11)**;
- We accept the modifications indicated in **art. 11 (+ recital 33 new**);
- We agree also the changes made into **art.13 (+ recitals 29, 30**);
- We may agree with the new version of **art.14 (+ recital 32 new**).

SLOVENIA

SI proposal in writing:

In order to improve the clarity of the text, the Republic of Slovenia proposes to add (in bold) to Article 4(2) that an application for a single permit may be made in a Member State if the third-country national is already residing in that Member State as the holder of a valid residence permit **issued by that Member State**.

The proposed amendment to Article 4(2) would read as follows (with the added text in bold):

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 **issued in that Member State**. A Member State may also accept, in accordance with its national law, an applications for a single permit submitted by other third-country nationals who is not in possession of a valid residence permit but is are legally present in its territory. 3. Member States shall examine an application submitted under paragraph 1 and shall adopt...

With this amendment to the wording, the Republic of Slovenia wishes to make clear that third-country nationals who are legally residing in the first Member State on the basis of a residence permit issued in another Member State cannot apply for a single permit in the first Member State (unless otherwise –more favourably – provided for in national law).

SPAIN

Please, find enclosed the contribution from Spain following the request for written contributions for the compromise text 6541/23 on the 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).

General comment

We welcome the compromise text from the Swedish Presidency. We believe it is a balanced proposal that includes a value-added in comparison with the current directive, counts with the support of most Member States and is a reasonable basis for the future negotiation with the European Parliament.

In general terms, as expressed during the meeting, we consider that some adjustments need to be done in order to make the wording of some recitals (e.g. Recital 7, 10and 11) closer to the articles they refer to.

The same could actually be said with regard to Recital 12. **Yet,** although the way it is presented does not involve any legal obligation to national authorities, we agree that it might give a (modest) sign of progress when it comes to the time limits for the issuance of visas. While we clearly see there is room for manoeuvre, we acknowledge the high sensitivity of quite several delegations on this and therefore we agree on keeping the Recital as a "desire", as it is something that the Parliament will definitely come back to.

In addition, some topics deemed essential for some Member States, such as keeping regularization processes out of the scope of the directive, could perhaps be more clearly reflected in the Recitals if they are not explicitly expressed in the corresponding articles.

Articles 1 and 2

We agree with the compromise text.

Article 3, para 2 (h)

We agree to maintain the *beneficiaries of protection in accordance with national law, international obligations, or the practice of a Member State*, out of the scope of the directive, given that it remains unclear what is meant by "protection" in this sentence and no clarification has been provided so far by the Commission or the Legal Services of the Council Secretariat. Moreover, the reference made to "national law" leaves a door open to a flexible interpretation in accordance with each Member State´s sensibility and national provision with regard to this.

Articles 4 to 10

We agree with the compromise text.

Article 11

Although we would have preferred a more flexible scheme with regards to the change of employer and the conditions of unemployment, we understand that the compromise text represents the Council position and still allows Member States to put in place flexible conditions if they prefer to do so.

Article 12 to 21

We agree with the compromise text.