

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**

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)(a-b) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) For the gradual establishment of an area of freedom, security and justice, the Treaty provides for measures to be adopted in the fields of asylum, immigration and protection of the rights of third-country nationals.
- (2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need for harmonisation of national law governing the conditions for admission and residence of third-country nationals. In this context, it stated in particular that the European Union should ensure fair treatment of third-country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim to grant them rights and obligations comparable to those of citizens of the European Union. The European Council accordingly asked the Council to rapidly adopt the legal instruments on the basis of Commission proposals. The need for achieving the objectives defined at Tampere was reaffirmed by the Stockholm Programme of 10 and 11 December 2009.
- (3) Provisions for a single application procedure leading to one combined title encompassing both residence and work permit within one administrative act should contribute to

simplifying and more harmonizing the rules currently applicable in Member States. Such procedural simplification has already been introduced in several Member States and has made for a more efficient procedure both for the migrants and for their employers, and allowed easier controls of the lawfulness of their residence and employment.

- (4) In order to allow initial entry into their territory, Member States should be able to issue, in a timely manner, a single permit or, if they issue such permits exclusively on their territory, a visa.
- (5) A set of rules governing the procedure for examination of the application for a single permit should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned.
- (6) The conditions and criteria on the basis of which an application for a single permit can be rejected is laid down in national law including the obligation to respect the principle of Community preference as expressed in particular in the relevant provisions of the Acts of Accession of 16 April 2003 and 25 April 2005.
- (7) The single permit should take the harmonized format of the residence permit in accordance with Regulation (EC) No 1030/2002, laying down a uniform format for residence permits for third-country nationals, enabling the Member States to enter information, in particular as to whether or not the person is permitted to work. Member States should indicate – also for the purpose of better control of migration – not only in the single permit but also in all the issued residence permits, the information relating to the permission to work irrespective of the type of the permit or the residence title on the basis of which the third country national has been admitted to the territory of a Member State and has been given access to the labour market of that Member State.

- (7a) The provisions in this Directive on the single permit and on the residence permit issued for purposes other than work do not prevent Member States from issuing additional documents, in particular to give more precise information on the right to work.
- (7b) The obligation of the Member States to determine whether the application is made by a third-country national or by his employer is without prejudice to any arrangements requiring both to be involved in the procedure.
- (7c) The provisions in this Directive on residence permits for purposes other than work only concern the format of such permits and are without prejudice to national and/or other Union rules on admission procedures and on procedures for issuing such permits.
- (7d) The provisions in this Directive on the single application procedure and on the single permit do not concern uniform and long-stay visas.
- (7e) The deadline for adopting a decision on the application should not include the time required for the recognition of professional qualifications nor the time required for issuing a visa. This Directive is without prejudice to the national procedures on the recognition of diplomas.
- (7f) The designation of the competent authority under this Directive is without prejudice to the role and responsibilities of other authorities and, where applicable, the social partners, with regard to the examination of and the decision on the application.
- (7g) The provisions of this Directive are without prejudice to the competence of the Member States to regulate the admission, including volumes of admission for third-country nationals for the purpose of employment. This Directive does not affect the competence of the Member States with respect to the admission of third-country nationals to their labour markets.

- (8) Third-country nationals who are in possession of a valid travel document and a single permit issued by a Member State applying the Schengen acquis in full, should be allowed to enter into and move freely within the territory of the Member States applying the Schengen acquis in full, for a period up to three months in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) and Article 21 of the Schengen acquis – Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (Schengen Implementing Convention).
- (9) The rights of third-country nationals vary, depending on the Member State in which they work and on their nationality. With a view to pursuing a further development of a coherent immigration policy and complementing the existing immigration acquis, a set of rights should be laid down in particular in the form of specifying the policy fields where equal treatment with own nationals is provided for third-country workers legally admitted in a Member State but not yet long-term residents. Such provisions are intended to establish a minimum level playing field within the European Union.
- (10) All third-country nationals who are lawfully residing and working in Member States should enjoy at least the same common set of rights in the form of equal treatment with the nationals of the respective host Member State, irrespective of the initial purpose of or basis for admission. The right to equal treatment in the fields specified by this Directive should be granted, not only to those third-country nationals who have been admitted to the territory of a Member State to work but also to those who have been admitted for other purposes and have been given access to the labour market of that Member State in accordance with other Union or national law including family members of a third-country worker who are admitted to the Member State in accordance with Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, third-country nationals who are admitted to the territory of a Member State in accordance with Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service and researchers admitted in accordance with Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.
- (11) Third-country nationals who have acquired long-term resident status in accordance with Council Directive 2003/109/EC of 25 November 2003 on the status of third-country

nationals who are long-term residents are not covered by this Directive given their more privileged status and their specific type of residence permit "long-term resident – EC".

- (12) Third-country nationals who are posted, irrespective whether the establishment that posts them is located in the Member State or in the third country, should not be covered by this Directive as they are not considered part of the labour market of that Member State.
- (13) Third-country nationals who have been admitted to the territory of a Member State to work on a seasonal basis should not be covered by the Directive given their temporary status.
- (14) The right to equal treatment in specified policy fields should be strictly linked to the third-country national's legal residence and to the access given to the labour market in a Member State, which is enshrined in the single permit encompassing the authorization to both reside and work and in residence permits issued for other purposes containing the information on the permission to work.
- (15) Professional qualifications acquired by a third-country national in another Member State should be recognised the same way as for Union citizens and qualifications acquired in a third country should be taken into account in conformity with the provisions of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. The right to equal treatment accorded to third-country workers as regards recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures is without prejudice to the competence of Member States to admit these third-country workers to their labour market.

- (16) Third-country workers should enjoy equal treatment as regards social security. Branches of social security are defined in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality extends the provisions of Regulation (EEC) No 1408/71 to third country nationals who are legally residing in the European Union and who are in a cross-border situation. The provisions on equal treatment as regards social security in this proposal also apply to persons coming to a Member State directly from a third country, provided that the person concerned is legally residing and he/she fulfils the conditions set out under national law for being eligible to the social security benefits concerned. Nevertheless, this Directive should not confer to third country workers more rights than those already provided in the existing Union legislation in the field of social security for third-country nationals who have cross-border elements between Member States. This Directive furthermore should not grant rights in relation to situations which lie outside the scope of Union legislation like for example family members residing in a third country.
- (16a) Union law does not limit the power of the Member States to organise their social security schemes. In the absence of harmonisation at EU level, it is for the legislation of each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, Member States should comply with Union law. Third-country nationals covered by this Directive should fulfil the conditions laid down by the legislation of the competent Member State with regard to affiliation to a social security scheme or for the entitlement to a benefit.
- (16b) Receiving social security benefits may depend on general conditions defined in national law, including the readiness and formal entitlement to performing work.
- (16c) Equal treatment of third country workers does not cover measures in the field of vocational training which are financed under social assistance schemes.

- (17) Since the objectives of the proposed action, namely determining a single application procedure for issuing a single permit for third-country nationals to work in the territory of a Member State and securing rights for third-country workers legally residing in a Member State cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Union, 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 those objectives.
- (18) This Directive respects the fundamental rights and observes the principles recognized by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union.
- (19) [deleted]
- (19a) In accordance with paragraph 34 of the Interinstitutional agreement on better law making, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables, which will, as far as possible, illustrate the correlation between the Directive and the transposition measures and make them public.
- (20) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on the Functioning of the European Union and without prejudice to Article 4 of the said Protocol these Member States are not participating in the adoption of this Directive and are not bound by it or subject to its application.
- (21) In accordance with Article 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on the Functioning of the European Union, Denmark is not participating in the adoption of this Directive and is not bound by it or subject to its application.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Purpose

The purpose of this Directive is to determine:

- (a) a single application procedure for issuing a single permit for third country nationals to reside for the purpose of work in the territory of a Member State, in order to simplify the procedures for their admission and to facilitate the control of their status and;
- (b) a common set of rights to third country workers legally residing in a Member State, based on equal treatment with nationals of this Member State.

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

Article 2

Definition

For the purposes of this Directive:

- (a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union;
- (b) "third-country worker" means any third-country national who has been admitted to the territory of a Member State, is legally resident and is allowed to work in the context of a paid relationship under national law and/or in accordance with national practice in that Member State;
- (c) "single permit" means a residence permit issued by the authorities of a Member State allowing a third-country national to reside legally in its territory for the purpose of work;

- (d) "single application procedure" means any procedure leading, on the basis of one application for the authorisation of a third-country national's residence and work in the territory of a Member State, to a decision on the application for a single permit for that third-country national.

Article 3

Scope

1. This Directive shall apply:
 - (a) to third-country nationals who apply to reside for the purpose of work in the territory of a Member State,
 - (b) to third-country nationals who have been admitted for purposes other than work under national or Union rules, are allowed to work and are issued a residence permit in accordance with Regulation (EC) No 1030/2002; and
 - (c) to third-country nationals who have been admitted for the purpose of work under national or Union rules.
2. This Directive shall not apply to third-country nationals:
 - (a) who are family members of Union citizens who have exercised, or are exercising their right to free movement within the Union, in conformity with Directive 2004/38/EC;
 - (b) who, as well as their family members and whatever their nationality, enjoy rights of free movement equivalent to those of Union citizens under agreements between the Union and its Member States, on the one hand, and third-countries, on the other hand;
 - (c) who are posted, irrespective of whether their undertaking is established in a Member State or in a non-Member State, as long as they are posted;

- (d) who enter a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain categories of trade and investment-related natural persons;
- (e) who have applied for admission or have been admitted to the territory of a Member State as a seasonal worker or as an au pair;
- (f) who are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;
- (g) who are beneficiaries of international protection under Directive 2004/83/EC or have applied for international protection under that Directive and whose application has not yet given rise to a final decision;
- (h) who are beneficiaries of protection in accordance with national law, international obligations or practice of the Member State or have applied for protection in accordance with national law, international obligations or practice of the Member State and whose application has not given rise to a final decision.
- (i) who are EC long-term residents in accordance with Directive 2003/109/EC;
- (j) whose expulsion has been suspended for reasons of fact or law;
- (k) who have applied for admission or have been admitted to the territory of a Member State as self-employed;
- (l) who have applied for admission or have been admitted as seafarer for employment or work in any capacity on board of a ship registered in / sailing under the flag of a Member State.

3. Member States may decide that Articles 4 to 10 shall not apply to third-country nationals who have been authorised to work on the territory of a Member State for a period not exceeding six months and to third-country nationals who have been admitted for the purpose of study.

4. The provisions of Articles 4 to 10 do not apply to third country nationals who are allowed to work on the basis of a visa.

Article 4

Single application procedure

1. An application for a single permit shall be submitted in a single application procedure. Member States shall determine whether applications for a single permit are to be made by the third-country national or by his/her employer. Member States may decide to allow an application from either the third-country national or by his/her employer.
2. Member States shall examine the application and adopt a decision to grant, to modify or to renew the single permit if the applicant fulfils the requirements specified in Union or national law. The decision granting, modifying or renewing the single permit shall constitute one combined title encompassing both residence and work permit within one administrative act.
3. Member States may decide that the application is examined either when the third-country national concerned is residing outside the territory of the Member State in which he/she wishes to be admitted or, if foreseen by national law, when he/she is already legally residing in that Member State.
4. The single application procedure is without prejudice to the visa procedure which may be required for initial entry.
5. Member States shall issue a single permit, when the conditions provided for are met, to those third-country nationals who apply for admission, and to those third-country nationals already admitted and who apply to renew or modify their residence permit after the entry into force of the implementing national provisions.

Article 5

Competent authority

1. Member States shall designate the authority competent to receive the application and to issue the single permit.
2. The competent authority shall adopt a decision on the complete application as soon as possible and no later than four months from the date on which the application was lodged. The time limit referred to in the first subparagraph may be extended for reasons linked to the complexity of the examination of the application.

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

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

Article 6

Single permit

1. Member States shall issue the single permit using the uniform format as laid down in Regulation (EC) No 1030/2002 and shall indicate the information relating to the permission to work in accordance with its Annex, a, 7.5-9.

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

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

Article 7

Residence permits issued for purposes other than work

1. When issuing residence permits in accordance with Regulation (EC) No 1030/2002 Member States shall indicate the information relating to the permission to work irrespective of the type of the permit. Member States may issue an additional document to the residence permit holding all relevant information on the specific right and conditions to work and may revise it when the labour market position of the holder of the residence permit changes.
2. When issuing residence permits in accordance with Regulation (EC) No 1030/2002, Member States shall not issue any additional permits as proof of the access given to the labour market.

Article 8

Procedural guarantees

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

Any decision rejecting the application, not granting, not modifying or not renewing or withdrawing a single permit shall be open to a legal challenge in the Member State concerned, in accordance with national law. The written notification shall specify the possible redress procedures available and the time-limit for taking action.
2. An application may be considered as inadmissible on the grounds of volumes of admission of third-country nationals coming for employment and therefore has not to be processed.

Article 9

Information

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

Article 10

Fees

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

Article 11

Rights on the basis of the single permit

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

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

Article 12

Right to equal treatment

1. Third-country workers as referred to in paragraph 1(b) and (c) of Article 3 shall enjoy equal treatment with nationals of the Member State where they reside with regard to:
 - (a) working conditions, including pay and dismissal as well as health and safety at the workplace;
 - (b) freedom of association and affiliation and membership of an organization representing workers or employers or of any organization whose members are engaged in a specific occupation, including the benefits conferred by such organizations, without prejudice to the national provisions on public policy and public security;
 - (c) education and vocational training;
 - (d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
 - (e) provisions in national laws regarding branches of social security, as defined in Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. The special provisions in the Annex to Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third-countries who are not already covered by these provisions solely on the basis of nationality shall apply accordingly;
 - (f) access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law. This paragraph is without prejudice to the freedom of contract in accordance with Union and national law;

(g) counselling services afforded by employment offices.

2. Member States may restrict equal treatment with nationals:

- (a) by requiring proof of appropriate language proficiency for access to education and training. Access to university and post-secondary education or to vocational training may be subject to the fulfilment of specific prerequisites, including the payment of tuition fees, according to national law;
- (b) under paragraph 1(c) in respect to study and maintenance grants and loans or other grants and loans regarding secondary and higher education and vocational training;
- (c) under paragraph 1 (c) in respect to those third-country workers who have been admitted to their territory in conformity with Council Directive 2004/114/EC.
- (d) under paragraph 1(f) in respect to housing;
- (e) by limiting the rights conferred under paragraphs 1(c) and (f) to those third-country workers who are in employment;
- (f) by limiting the rights conferred under paragraph 1(e), with the exception of unemployment benefits for those whose entitlement is based on previous employment in the respective Member State, to third-country nationals who are in employment;
- (g) by limiting the rights conferred under paragraph 1 (g) to the third-country nationals who are allowed to work without any restriction.

3 The right to equal treatment as laid down in paragraph 1 is without prejudice to the right of the Member State to withdraw or to refuse to renew the residence permit issued under this Directive, the residence permit issued for purposes other than work, or any other authorisation to work in a Member State.

4. Without prejudice to bilateral agreements, third-country workers moving to a third-country, or the survivors of such a worker residing in third-countries as they derive their rights from the worker, shall receive, in case of old-age, invalidity and death, statutory pensions based on the worker's previous employment and acquired in accordance with the legislation defined in Article 3 of Council Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third-country.

Article 13

More favourable provisions

1. This Directive shall apply without prejudice to more favourable provisions of:
 - (a) Union legislation, including bilateral and multilateral agreements between the Union, or the Union and its Member States, on the one hand and one or more third countries on the other.
 - (b) bilateral or multilateral agreements between one or more Member States and one or more third countries;
2. This Directive shall be without prejudice to the right of Member States to adopt or maintain provisions that are more favourable to the persons to whom it applies.

Article 14

Information to the general public

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

Article 15

Reporting

1. Periodically, and for the first time no later than three years after the date specified in Article 16, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments deemed necessary.
2. Annually, and for the first time no later than 1 July of [one year after the date of transposition of this Directive], Member States shall communicate to the Commission statistics on the volumes of third-country nationals who have been granted a single permit during the previous calendar year, in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council on Community statistics on migration and international protection.

Article 16

Transposition

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

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 17

Entry into force

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

Article 18

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Parliament

The President

For the Council

The President

