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REPORT

on the proposal for a Council directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State

(COM(2007)0638 – C6-0470/2007 – 2007/0229(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Patrick Gaubert

Rapporteur for the opinion (*):

Rumiana Jeleva, Committee on Employment and Social Affairs

(*) Procedure with associated committees - Rule 47 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State

(COM(2007)0638 – C6-0470/2007 – 2007/0229(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2007)0638),
 - having regard to Article 63(3)(a) of the EC Treaty,
 - having regard to Article 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0470/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Employment and Social Affairs (A6-0431/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Proposal for a directive

Recital 6

Text proposed by the Commission

(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

Amendment

(6) The conditions and criteria on the basis of which an application for a single permit can be rejected ***should be objective,***

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.

verifiable and laid down in national law.

Amendment 2

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) The period of validity of the single permit is to be determined by each Member State.

Amendment 3

Proposal for a directive Recital 10

Text proposed by the Commission

Amendment

(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 own nationals of their 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 for 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 Community or national legislation 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

(10) All third-country nationals who are lawfully residing and working in Member States should enjoy at least the same common set of rights ***related to work*** in the form of equal treatment with the own nationals of their 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 for 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 Community or national legislation 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

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.

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.

Amendment 4

Proposal for a directive Recital 13

Text proposed by the Commission

(13) Third-country nationals who have been admitted to the territory of a Member State ***for a period not exceeding 6 months in any twelve-month period*** to work on a seasonal basis should not be covered by the Directive given their temporary status.

Amendment

(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 ***and the fact that they will be governed by a specific directive.***

Amendment 5

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Beneficiaries of temporary protection should be subject to this directive as regards the common set of rights, as they are authorised to work legally within the territory of a Member State.

Amendment 6

Proposal for a directive Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) This Directive has to be implemented without prejudice to more favourable provisions contained in EU legislation and international instruments.

Amendment 7

Proposal for a directive Recital 19

Text proposed by the Commission

Amendment

(19) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation in particular in accordance with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.

(19) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation in particular in accordance with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin *and* Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, ***and in accordance with future legislation in this field, such as the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426).***

Justification

Future legislation should also be borne in mind.

Amendment 8

Proposal for a directive Article 1 – point (a)

Text proposed by the Commission

(a) a single application procedure for issuing a single permit for third country nationals to reside and work in the territory of a Member State, in order to simplify their admission and to facilitate the control of their status and;

Amendment

a) a single application procedure for issuing a single permit for third country nationals to reside and work in the territory of a Member State, in order to simplify **the procedure for** their admission and to facilitate the control of their status and;

Amendment 9

Proposal for a directive Article 1 – point (b)

Text proposed by the Commission

(b) a common set of rights to third country workers legally residing in a Member State.

Amendment

b) a common set of rights to third country workers legally residing in a Member State, **irrespective of the purposes for which they were initially admitted to the territory of a Member State.**

Amendment 10

Proposal for a directive Article 1 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

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

Amendment 11

Proposal for a directive Article 2 – point (d)

Text proposed by the Commission

(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 single permit for that third-country national.***

Amendment

(d) ‘single application procedure’ means any procedure leading ***to a decision on the single permit authorising a third-country national to reside and work in the territory of a Member State, on the basis of an application by that third-country national or by his future employer.***

Justification

It is up to the Member States to decide who can make the application. Indeed, this is the sense in which Article 4 (Single application procedure) of the Commission proposal has been drafted, as it is deliberately vague on the question of who submits the application.

Amendment 12

Proposal for a directive Article 2, paragraph (d) a (new)

Text proposed by the Commission

Amendment

(da) "frontier work" means performing work in a Member State other than the Member State of residence when the work is performed by a frontier worker as referred to in Article 1(b) of Regulation (EEC) No 1408/71.

Justification

This amendment defines the term 'frontier work'.

Amendment 13

Proposal for a directive Article 3 – paragraph 1 – point (b)

Text proposed by the Commission

(b) to third-country workers legally residing in a Member State.

Amendment

(b) to third-country workers legally residing in a Member State, ***irrespective of the purposes for which they were initially admitted to the territory of a Member State.***

Amendment 14

Proposal for a directive Article 3 – paragraph 2 – introductory part

Text proposed by the Commission

2. ***This Directive*** shall not apply to third-country nationals:

Amendment

2. ***The provisions of this Directive concerning the single procedure for issuing a single permit authorising third-country nationals to live and work in the territory of a Member State*** shall not apply to third-country nationals:

Justification

This amendment serves to clarify the ambiguities in the Commission proposal. While the single permit procedure applies only to certain third-country workers, the common set of rights is equally applicable to all third-country workers (clarification in relation to Article 12). Otherwise, discrimination between third-country workers would be likely to arise on such a fundamental issue as the right to equal treatment.

Amendment 15

Proposal for a directive Article 3 – paragraph 2 – point (d)

Text proposed by the Commission

(d) who have been admitted to the territory of a Member State ***for a period not exceeding six months in any 12 month***

Amendment

(d) who have been admitted to the territory of a Member State to work on a seasonal

period to work on a seasonal basis; basis;

Justification

Seasonal workers should be covered by a separate directive; it is in that framework that the concept of 'seasonal worker' should be defined.

Amendment 16

Proposal for a directive

Article 3 – paragraph 2 – point (d) a (new)

Text proposed by the Commission

Amendment

(da) who have been admitted to the territory of a Member State in order to work there for a period not exceeding six months, as regards solely the field of the single procedure;

Amendment 17

Proposal for a directive

Article 3 – paragraph 2 – point (f)

Text proposed by the Commission

Amendment

(f) staying in a Member State as applicants for international protection ***or under temporary protection schemes;***

(f) staying in a Member State as applicants for international protection;

Justification

On voit mal pourquoi les personnes bénéficiant d'une protection temporaire au titre de la directive 2001/55/CE du Conseil du 20 juillet 2001 devraient être exclues du champ d'application de la présente directive, d'autant qu'au titre de l'article 12 de la directive 2001/55/CE, "les États membres autorisent, pour une période ne dépassant pas la durée de la protection temporaire, les personnes qui en bénéficient à exercer une activité salariée ou non salariée", et que cette période est, aux termes de l'article 4, d'une année, avec possibilité de prorogation automatique par périodes de six mois pour une durée maximale d'un an.

Amendment 18

Proposal for a directive

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. It shall be the responsibility of Member States to determine whether the application for a single permit is to be submitted by the third-country national concerned, by his future employer or by either.

Amendment 19

Proposal for a directive

Article 4 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Where an application for a single permit is submitted by the third-country national concerned, it must be possible for that application to be submitted and examined either when the third-country national is residing outside the territory of the Member State to which he wishes to be admitted or when he is already legally in the territory of the Member State concerned.

Justification

To avoid any risk of illegal immigration it is important to ensure that third-country nationals legally in the territory of a Member State and wishing legally to pursue a paid activity there are able to submit an application for a single permit.

Amendment 20

Proposal for a directive

Article 5 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

If the applicant's permit expires before a decision has been taken on his renewal application, the Member State responsible for considering the application shall authorise the person concerned and, where applicable, his family, to stay legally within its territory until a decision is taken concerning his application for renewal of the single permit.

Amendment 21

Proposal for a directive

Article 5 – paragraph 4

Text proposed by the Commission

Amendment

4. If the information supporting the application is ***inadequate***, the designated authority shall notify the applicant of the additional information that is required. The period referred to in paragraph 2 shall be suspended until the authorities have received the additional information required.

4. If the information supporting the application is ***incomplete according to publicly specified criteria***, the designated authority shall notify the applicant of the additional information that is required. The period referred to in paragraph 2 shall be suspended until the authorities have received the additional information required.

Amendment 22

Proposal for a directive

Article 5 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Where the time limit for adopting the decision referred to in paragraph 2 is

suspended or extended, the applicant shall be duly informed by the competent authority.

Justification

The procedure should be as transparent as possible so that applicants can follow the progress made in processing their application.

Amendment 23

**Proposal for a directive
Article 5 – paragraph 4 b (new)**

Text proposed by the Commission

Amendment

4b. The competent authorities designated by the various Member States shall exchange the data concerning decisions to issue or renew the single permit in order to avoid the single permit's being issued by more than one Member State in response to applications by the same applicant.

Amendment 24

**Proposal for a directive
Article 6, paragraph 2 a (new)**

Text proposed by the Commission

Amendment

2a. A Member State may issue to a holder of a combined permit issued by another Member State a permit enabling him to perform frontier work. Such a permit shall be issued pursuant to the national law of that Member State. The period of validity of such a permit may not exceed the period of validity of the combined permit issued by the other Member State.

Justification

This amendment makes it possible for holders of a combined permit to work in another Member State without having to move house in order to do so.

Amendment 25

Proposal for a directive Article 8 – paragraph 1

Text proposed by the Commission

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

Amendment

1. ***Objective and verifiable*** reasons shall be given in the written notification for a decision rejecting the application, not granting, not modifying or not renewing, suspending or withdrawing the single permit on the basis of criteria specified in national or community law. ***Those criteria shall be objective and open to the public, so that the decision can be verified.***

Justification

Transparency is necessary to create legal certainty.

Amendment 26

Proposal for a directive Article 8 – paragraph 2

Text proposed by the Commission

2. Any decision rejecting the application, not granting, modifying or renewing, suspending or withdrawing a single permit shall be open to challenge before the ***courts*** of the Member State concerned. The written notification shall specify the possible redress procedures available and the time-limit for taking action.

Amendment

2. Any decision rejecting the application, not granting, modifying or renewing, suspending or withdrawing a single permit shall be open to challenge before the ***competent authority*** of the Member State concerned ***designated in accordance with national law***. The written notification shall specify the possible redress procedures available ***including the authority responsible*** and the time-limit for taking action. ***The challenge shall suspend the***

administrative decision until the final court decision is taken.

Amendment 27

Proposal for a directive Article 9

Text proposed by the Commission

Member States shall take the necessary measures to inform the third-country national and the future employer on all the documentary evidence they need in order to complete the application.

Amendment

Member States shall ensure that regularly updated information concerning the conditions of third-country nationals' entry into and stay in their territory for the purpose of work is made available to the general public, in particular via their consulates. In particular, Member States shall take the necessary measures to inform the third-country national and the future employer on all the documentary evidence they need in order to complete the application, and of the total fees for processing their application.

Justification

This amendment incorporates other provisions concerning the informing of applicants laid down in Article 14 in Chapter IV (Final provisions), where they do not really belong as Chapter IV concerns the methods for transposing the Directive. It aims to ensure that the information can be obtained in the country of origin, and that it includes the financial aspects of processing an application.

Amendment 28

Proposal for a directive Article 10

Text proposed by the Commission

Member States may request applicants to

Amendment

Member States may request applicants to

pay fees for handling applications in accordance with this Directive. The level of fees must be proportionate and may be based on the principle of the service actually provided.

pay fees for handling applications in accordance with this Directive. The level of fees must be proportionate and ***reasonable and shall not exceed the actual costs incurred by the national administration. An overall maximum amount shall be fixed in national law, including, where appropriate, the costs of subcontracting incurred by using external firms to collect the documents necessary for compiling a file with a view to obtaining a permit.***

Justification

Applicants should be clearly informed of the level of fees to pay for obtaining the single permit, and where the compilation of the file is subcontracted, any abuse must be prevented.

Amendment 29

Proposal for a directive Article 11 – introductory part

Text proposed by the Commission

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

Amendment

During the period of its validity ***as determined by each Member State***, the single permit shall entitle its holder as a minimum to:

Amendment 30

Proposal for a directive Article 11 – point c

Text proposed by the Commission

(c) have free access to the entire territory of the Member State issuing the single permit within the limits provided for by national legislation for reasons of security;

Amendment

(c) have free access to the entire territory of the Member State issuing the single permit. ***Member States may impose territorial restrictions on the right of residence and the right to work*** within the limits provided for by national legislation

for reasons of security *where the same restrictions apply to their own nationals*;

Amendment 31

Proposal for a directive Article 11 a (new)

Text proposed by the Commission

Amendment

Article 11a

Notification of decisions

The notification and information referred to in Articles 5, 8 and 9 shall be communicated in such a way that the applicant is able to comprehend their content and implications.

Amendment 32

Proposal for a directive Article 12 - paragraph 1 - point (a)

Text proposed by the Commission

Amendment

(a) working conditions, including pay and dismissal as well as health and safety at the workplace;

(a) working conditions, including pay, **holidays, working time** and dismissal as well as health and safety at the workplace;

Amendment 33

Proposal for a directive Article 12 – paragraph 1 – point (b)

Text proposed by the Commission

Amendment

(b) freedom of association and affiliation

(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;

and membership of an *organisation* representing workers or employers or of any *organisation* whose members are engaged in a specific occupation, including the benefits conferred by such *organisations*, ***such as information and support***, without prejudice to the national provisions on public policy and public security;

Amendment 34

Proposal for a directive Article 12 – paragraph 1 – point (c)

Text proposed by the Commission

(c) education and vocational training;

Amendment

(c) education ***in the broad sense of the term (language learning and cultural familiarisation with a view to improving integration)*** and vocational training;

Amendment 35

Proposal for a directive Article 12 – paragraph 1 – point (d)

Text proposed by the Commission

(d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;

Amendment

(d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures ***applicable pursuant to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications***¹.

¹ OJ L 255, 30.9.2005, p. 22.

Amendment 36

Proposal for a directive

Article 12 - paragraph 1 - point (f)

Text proposed by the Commission

(f) *payment of acquired* pensions *when moving to a third country*;

Amendment

(f) *portability of pensions or annuities in respect of old age, death, or invalidity at the rate applied by virtue of the law of the debtor Member State or States when moving to a third country*;

Amendment 37

Proposal for a directive

Article 12 - paragraph 1 - point (g)

Text proposed by the Commission

(g) tax benefits;

Amendment

(g) tax benefits, *provided that the worker is considered to be resident for tax purposes in the Member State concerned*;

Amendment 38

Proposal for a directive

Article 12 – paragraph 1 – point (h)a (new)

Text proposed by the Commission

Amendment

(ha) information and counselling services offered by employment offices;

Amendment 39

Proposal for a directive
Article 12 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

2. Member States may restrict equal treatment with nationals:

2. Member States may restrict equal treatment with nationals ***only in the following cases:***

Amendment 40

Proposal for a directive
Article 12 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) by requiring proof of appropriate language proficiency for access to education and training. Access to university may be subject to the fulfilment of specific educational prerequisites;

deleted

Amendment 41

Proposal for a directive
Article 12 – paragraph 2 – point (b)

Text proposed by the Commission

Amendment

(b) by restricting the rights conferred under paragraphs 1(c) in respect to study grants;

deleted

Justification

This provision would be more appropriate in an instrument uniformly regulating the right to study.

Amendment 42

Proposal for a directive
Article 12 – paragraph 2 - point (c)

Text proposed by the Commission

(c) by restricting the rights conferred under paragraphs 1(h) in respect to **public housing to cases where the third-country national has been staying or who has the right to stay in its territory for at least three years;**

Amendment

(c) by restricting the rights conferred under paragraphs 1(h) in respect to housing.

Amendment 43

Proposal for a directive
Article 12 – paragraph 2 - point (d)

Text proposed by the Commission

(d) by restricting the rights conferred under paragraphs 1(a), (b) and (g) to those third-country workers who are in employment;

Amendment

deleted

Amendment 44

Proposal for a directive
Article 12 – paragraph 2 - point (e)

Text proposed by the Commission

(e) by restricting the rights conferred under paragraphs 1(e) to third-country workers who are in employment except for unemployment benefits.

Amendment

deleted

Amendment 45

Proposal for a directive
Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall take the necessary measures to ensure that any

violation of the rights enshrined in this Directive is countered by effective, proportionate and deterrent measures.

Justification

It will not be possible to take effective action against possible violations of the rights to equal treatment enshrined in this Directive unless legal remedies are provided.

Amendment 46

**Proposal for a directive
Article 13 a (new)**

Text proposed by the Commission

Amendment

Article 13a

Penalties

Member States shall take the necessary measures to ensure that any infringement of the rights arising under this Chapter is subject to effective, proportionate and dissuasive measures, including the use of penalties where appropriate.

Amendment 47

**Proposal for a directive
Article 14**

Text proposed by the Commission

Amendment

Each Member State shall ensure that 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, is made available to the general public.

deleted

Justification

See amendment to Article 9.

EXPLANATORY STATEMENT

In recent years both the Member States and public opinion have strongly supported a common European policy on economic immigration, despite differences over the approaches to be taken and the expected final result.

Demographic forecasts and our Member States' economic situation have revealed that immigration policy can be conceived as an instrument for regulating our labour force requirements. In the coming decades Europe's economic and social development will depend on an influx of new economic migrants. Consequently, active policies need to be established for admitting both highly-skilled workers and less-skilled workers.

In 2001 the Commission published a proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities. Despite gaining a favourable opinion from the European Parliament, this proposal did not pass its first reading in the Council.

The Commission's proposal for a Directive on which Parliament has been asked to give an opinion envisages, on the one hand, a single application procedure for third-country nationals seeking admission to the territory of a Member State in order to work there and, on the other hand, provides for rights to be granted to third-country nationals working legally in a Member State.

One of the aims of the Policy plan on legal migration adopted by the December 2006 European Council was to establish 'a general framework for a fair and rights-based approach to labour migration'. This proposal for a Directive also seeks to attain its objectives by establishing a legal status for already admitted third-country workers, in line with the broad philosophy of the Lisbon Agenda.

Rapporteur's view

The rapporteur emphasises that this Directive and that on the Blue Card complement each other. The aim of adopting them simultaneously is to avoid the effects of a twin-speed immigration policy, which would favour immigration by highly-skilled people while refusing access and rights for less-skilled workers. These two texts also seek to put an end to the illusion of closed borders.

The rapporteur welcomes the fact that the Commission has drawn up a proposal establishing an overall, horizontal legislative framework for all third-country nationals admitted to EU territory with a view to working here and that it seeks to ensure that they are treated in the same way as EU citizens. The rapporteur believes that this Directive should serve as a reference document for the sectoral directives which the Commission has published or plans to publish in the near future (i.e. the directive on the conditions of entry for highly-skilled third-country nationals, the directive on seasonal employment and the posted workers directive).

The rapporteur regrets that the proposal was not more ambitious and does not cover the entry conditions for all third-country nationals wishing to pursue an economic activity in the EU, but is aware of the Member States' reluctance with regard to such a proposal.

Your rapporteur proposes a number of modifications to the proposal as presented by the Commission with a view to clarifying or supplementing certain aspects.

Your rapporteur considers it important to make clear that the content of this Directive does not affect the Member States' right to determine the entry conditions nor the number of migrants they wish to admit to their territory.

Your rapporteur is firmly convinced of the need to keep the scope as broad as possible, which the proposal provides for. The common set of rights must apply to all nationals admitted to the territory for employment purposes, and also to all those who were initially admitted for other reasons but who obtained the right to work on the basis of national or Community law.

Furthermore, excluding seasonal workers is justified by the existence of a forthcoming of a directive specifically intended to cover that category of workers.

Note that 'cross-border' workers, i.e. those working in a country other than the one in which they reside, are not covered by this Directive. In accordance with Article 2(b), the scope of this Directive only extends to people residing and pursuing a professional activity in the same country. However, 'cross-border' workers should also benefit from appropriate protection and guarantees as regards employment. In any case, a specific regulation will be needed at a later stage for this category of workers.

As far as what the Directive proposed by the Commission could mean in legal terms, your rapporteur notes that while there are ILO and Council of Europe conventions on migrant workers, some Member States have not signed them. This Directive contains provisions which, because of their specific nature, will be directly applicable once the transposition period is concluded. Therefore the adoption of this Directive would have the advantage of providing better protection for workers than they currently enjoy on the basis of the international agreements in force in this field.

On the single procedure

The proposal for a Directive seeks to put in place a single application procedure leading to the issuing of a single residence and work permit.

There are several advantages to establishing a single procedure, given the diversity of situations from one Member State to another as far as the relationship between residence permit and work permit is concerned. The declared objective is to reduce bureaucratic procedures and simplify the administrative steps for the individuals concerned - applicants, administration or employers.

This single procedure and permit will also make it easier for both administration and employers to check the validity of permits.

The obligations imposed on the Member States remain sufficiently flexible: general obligation to provide for a 'one-stop-shop' system and a prohibition on issuing additional documents, compliance with procedural guarantees (right to information, grounds for the decision, right of appeal). The procedure in no way interferes with the Member States' competence as far as the processing of requests is concerned, only as regards the time limit which needs to be complied with.

Your rapporteur believes it necessary to clarify who is authorised to submit a request if the employer also has this possibility.

On the common set of rights

The 1999 Tampere European Council declared that the European Union should ensure fair treatment of third-country nationals residing lawfully on the territory of its Member States and grant them rights and obligations comparable to those of EU citizens.

Currently in the EU there are major differences among the Member States regarding the treatment of migrant workers. Moreover, major inequalities in treatment remain between legal migrant workers and Community workers. It appears that these rights also vary depending on the workers' country of origin and the EU country in which they are working, as numerous bilateral agreements exist between EU Member States and certain third-countries, as well as agreements concluded between the EU and certain third countries.

Your rapporteur strongly welcomes the proposal to grant rights to third-country nationals working legally in a Member State, particularly in areas connected with employment, where equal treatment with EU citizens must be guaranteed. As far as your rapporteur is concerned, the granting of these rights is a minimum requirement, without prejudicing the Member States' right to maintain or adopt more favourable provisions.

This recognition of basic social rights for migrants legally present in EU territory and for new arrivals will help to improve their integration and therefore improve social cohesion.

This measure will also constitute a proactive policy to combat exploitation of the labour force, particularly of newly-arrived migrants, while protecting EU citizens from unfair competition emanating from a rights gap. Third-country nationals would enjoy a level playing field throughout the EU, irrespective of their place of residence.

For all these reasons, your rapporteur very much hopes that the European Parliament and the Council can reach an overall agreement on the Commission proposal as soon as possible so that the 'single permit' directive can soon enter into force.

5.11.2008

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS (*)

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (COM(2007)0638 – C6-0470/2007 – 2007/0229(CNS))

Rapporteur (*): Rumiana Jeleva

(*) Associated committees – Rule 47 of the Rules of Procedure.

SHORT JUSTIFICATION

The Proposal on a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State is a part from the EU policy to develop a comprehensive immigration policy. The proposal is seen as a result of a number of Union's forums, and in December 2006 European Council Conclusions agreed on a series of steps to be taken for 2007, among which to "develop, as far as legal migration is concerned, well-managed migration policies, fully respecting national competences, to assist Member States to meet existing and future labour needs while contributing to the sustainable development of all countries; in particular, the forthcoming Commission proposals within the framework of the Policy Plan on Legal Migration of December 2005 should be rapidly examined".

This proposal seeks to respond to these requests in accordance with the Policy Plan on Legal Migration which aimed at laying down admission conditions for specific categories of migrants (highly qualified workers, seasonal workers, remunerated trainees and intracorporate transferees) in four specific legislative proposals on the one hand and introduce a general framework for a fair and rights-based approach to labour migration on the other. This proposal is to meet the latter objective by securing the legal status of already admitted third-country workers, in line with the broad philosophy of the Lisbon Agenda, and by introducing procedural simplifications for the applicants.

To achieve these objectives the Commission proposes to guarantee a common set of rights to all third-country workers lawfully residing in a Member State and not yet entitled to long-term residence status, and to introduce a single application procedure, along with a single residence/work permit.

In the field of legal immigration a number of directives have been adopted covering specific groups of third-country nationals: Council Directive 2003/86/EC on the right to family reunification; Council Directive 2003/109/EC concerning the status of third country nationals who are long-term residents; Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service; Council Directive 2005/71/EC for facilitating of the admission of researchers into the EU.

This proposal has to be seen as a horizontal instrument, granting a minimum set of labour rights to every third-country worker legally residing in a Member State. What the draftsman sees as essential is the right of every person, already admitted to work and reside in a Member State, to have a set of guaranteed rights equal to those which apply to the nationals, when it concerns the participation in the labour market and the effective implementation of these rights. That's why this opinion is focused on giving such rights to those third-country nationals, who have been admitted especially for work and not every other reason.

As pointed earlier, the understanding of the draftsman is that this proposal for a Directive aims to guarantee a common set of labour rights in the form of equal treatment with the nationals of the host Member State. In this respect, Article 12 on the right to equal treatment is extremely important, because this is where the third country nationals admitted for work, who reside and work in a Member State, should be guaranteed the set of labour rights which will put them on equal footing as compared to the nationals and other workers originating from the European Union.

Your draftsman fully supports the rights granted under Article 12(1)(a) and (b). In paragraph 1(a) the right to holidays is explicitly added, as it is part of the industrial relations.

Being granted a set of rights also entails certain responsibilities. One of these is reflected in the right to vocational training. Your draftsman supports the right to tax benefits on the condition that the third-country worker is considered as a resident for taxation purposes in the Member State concerned. Your draftsman considers that third-country nationals should be granted access to procedures for obtaining housing only when they get more permanent status in the EU - such as long-term status for example - and an amendment to this effect has been included in the opinion. The portability of pensions or annuities in respect of old age, death (or invalidity) at the rate applied by virtue of the law of the debtor Member State or States when moving to a third country is to be guaranteed and is developed in more detail in the opinion.

.AMENDMENTS

The Committee on Employment and Social Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Article 12 - paragraph 1 - point a

Text proposed by the Commission

(a) working conditions, including pay and dismissal as well as health and safety at the workplace;

Amendment

(a) working conditions, including pay, ***holidays, working time*** and dismissal as well as health and safety at the workplace;

Amendment 2

Proposal for a directive Article 12 – paragraph 1 – point b

Text proposed by the Commission

(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;

Amendment

(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, ***such as information and support***, without prejudice to the national provisions on public policy and public security;

Amendment 3

Proposal for a directive Article 12 – paragraph 1 – point c

Text proposed by the Commission

(c) education and vocational training;

Amendment

(c) education ***in the broad sense of the term (language learning and cultural familiarisation with a view to improving integration)*** and vocational training;

Amendment 4

Proposal for a directive
Article 12 – paragraph 1 – point d

Text proposed by the Commission

(d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;

Amendment

(d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures ***applicable pursuant to Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications***¹.

¹ OJ L 255, 30.9.2005, p. 22.

Amendment 5

Proposal for a directive
Article 12 - paragraph 1 - point f

Text proposed by the Commission

(f) ***payment of acquired*** pensions ***when moving to a third country***;

Amendment

(f) ***portability of pensions or annuities in respect of old age, death, or invalidity at the rate applied by virtue of the law of the debtor Member State or States when moving to a third country***;

Amendment 6

Proposal for a directive
Article 12 - paragraph 1 - point g

Text proposed by the Commission

(g) tax benefits;

Amendment

(g) tax benefits, ***provided that the worker is considered a resident for tax purposes in the Member State concerned***;

Amendment 7

Proposal for a directive
Article 12 – paragraph 1 – point i (new)

Text proposed by the Commission

Amendment

(i) information and counselling services offered by employment offices;

Amendment 8

Proposal for a directive
Article 12 – paragraph 2 - introductory part

Text proposed by the Commission

Amendment

2. Member States may restrict equal treatment with nationals:

2. Member States may restrict equal treatment with nationals ***only in the following cases:***

Amendment 9

Proposal for a directive
Article 12 – paragraph 2 - point a

Text proposed by the Commission

Amendment

(a) by requiring proof of appropriate language proficiency for access to education and training. Access to university may be subject to the fulfilment of specific educational prerequisites;

deleted

Amendment 10

Proposal for a directive
Article 12 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) by restricting the rights conferred under paragraphs 1(c) in respect to study grants;

deleted

Justification

This provision would be more appropriate in an instrument uniformly regulating the right to study.

Amendment 11

Proposal for a directive

Article 12 – paragraph 2 - point c

Text proposed by the Commission

Amendment

(c) by restricting the rights conferred under paragraphs 1(h) in respect to **public housing to cases where the third-country national has been staying or who has the right to stay in its territory for at least three years;**

(c) by restricting the rights conferred under paragraphs 1(h) in respect to housing.

Amendment 12

Proposal for a directive

Article 12 – paragraph 2 - point d

Text proposed by the Commission

Amendment

(d) by restricting the rights conferred under paragraphs 1(a), (b) and (g) to those third-country workers who are in employment;

deleted

Amendment 13

Proposal for a directive

Article 12 – paragraph 2 - point e

Text proposed by the Commission

Amendment

(e) by restricting the rights conferred under paragraphs 1(e) to third-country workers who are in employment except for unemployment benefits.

deleted

Amendment 14

Proposal for a directive
Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

Penalties

Member States shall take the necessary measures to ensure that any infringement of the rights arising from this Chapter is subject to effective, proportionate and dissuasive measures, including the use of penalties where appropriate.

PROCEDURE

Title	Single application procedure for residence and work
References	COM(2007)0638 – C6-0470/2007 – 2007/0229(CNS)
Committee responsible	LIBE
Opinion by Date announced in plenary	EMPL 15.1.2008
Associated committee(s) - date announced in plenary	13.3.2008
Drafts(wo)man Date appointed	Rumiana Jeleva 20.11.2007
Discussed in committee	10.9.2008 4.11.2008
Date adopted	5.11.2008
Result of final vote	+: 33 -: 2 0: 13
Members present for the final vote	Jan Andersson, Iles Braghetto, Philip Bushill-Matthews, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Luigi Cocilovo, Jean Louis Cottigny, Jan Cremers, Proinsias De Rossa, Harald Ettl, Richard Falbr, Carlo Fatuzzo, Ilda Figueiredo, Joel Hasse Ferreira, Roger Helmer, Stephen Hughes, Karin Jöns, Sajjad Karim, Jean Lambert, Bernard Lehideux, Elizabeth Lynne, Thomas Mann, Jan Tadeusz Masiel, Maria Matsouka, Elisabeth Morin, Juan Andrés Naranjo Escobar, Siiri Oviir, Marie Panayotopoulos-Cassiotou, Pier Antonio Panzeri, Jacek Protasiewicz, Elisabeth Schroedter, José Albino Silva Peneda, Kathy Sinnott, Jean Spautz, Gabriele Stauner, Ewa Tomaszewska, Anne Van Lancker, Gabriele Zimmer
Substitute(s) present for the final vote	Mihael Brejc, Françoise Castex, Gabriela Crețu, Rumiana Jeleva, Sepp Kusstatscher, Roberto Musacchio, Dimitrios Papadimoulis, Patrizia Toia, Georgios Toussas, Claude Turmes
Substitute(s) under Rule 178(2) present for the final vote	Giles Chichester, Árpád Duka-Zólyomi

PROCEDURE

Title	Single application procedure for residence and work			
References	COM(2007)0638 – C6-0470/2007 – 2007/0229(CNS)			
Date of consulting Parliament	14.12.2007			
Committee responsible Date announced in plenary	LIBE 15.1.2008			
Committee(s) asked for opinion(s) Date announced in plenary	EMPL 15.1.2008			
Associated committee(s) Date announced in plenary	EMPL 13.3.2008			
Rapporteur(s) Date appointed	Patrick Gaubert 18.12.2007			
Discussed in committee	27.3.2008	16.7.2008	7.10.2008	5.11.2008
Date adopted	5.11.2008			
Result of final vote	+	44		
	-	2		
	0	1		
Members present for the final vote	Alexander Alvaro, Catherine Boursier, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Maddalena Calia, Michael Cashman, Giusto Catania, Jean-Marie Cavada, Carlos Coelho, Gérard Deprez, Bárbara Dührkop Dührkop, Armando França, Urszula Gacek, Kinga Gál, Patrick Gaubert, Roland Gewalt, Jeanine Hennis-Plasschaert, Livia Járóka, Ewa Klamt, Magda Kósáné Kovács, Henrik Lax, Baroness Sarah Ludford, Viktória Mohácsi, Javier Moreno Sánchez, Rareş-Lucian Niculescu, Athanasios Pafilis, Maria Grazia Pagano, Martine Roure, Sebastiano Sanzarello, Inger Segelström, Csaba Sógor, Vladimir Urutchev, Ioannis Varvitsiotis, Manfred Weber, Renate Weber, Tatjana Ždanoka			
Substitute(s) present for the final vote	Simon Busuttil, Marco Cappato, Genowefa Grabowska, Ona Juknevičienė, Jean Lambert, Marian-Jean Marinescu, Antonio Masip Hidalgo			
Substitute(s) under Rule 178(2) present for the final vote	Giuseppe Gargani, Fernand Le Rachinel			
Date tabled	7.11.2008			