



COMMISSION OF THE EUROPEAN COMMUNITIES

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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**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal forms part of EU efforts to develop a comprehensive immigration policy. The Tampere European Council on 15 and 16 October 1999 stated 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 EU citizens. The Hague Programme of November 2004 recognised that "legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development, and thus contributing to the implementation of the Lisbon strategy". The 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 intra-corporate 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. This combined permit will create useful synergies and enable Member States to better manage and control the presence of third-country nationals on their territories for employment purposes.

- **General context**

Since the Tampere European Council of October 1999, the Commission has sought agreement on common rules for economic migration, which is a cornerstone of any immigration policy. In 2001 the Commission proposed a Directive on "the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities". Whilst the other EU institutions gave positive opinions, discussion in Council was limited to a first reading of the text and it was officially withdrawn in 2006.

This current proposal does not touch upon admission conditions, but concentrates instead on a common set of rights to be granted to all third-country workers already legally residing in a Member State and on one procedural aspect: a single permit issued in a single application procedure.

Currently there is a "rights gap" regarding third-country workers as opposed to own nationals. Granting employment-related rights to them (e.g. working conditions including pay, access to vocational training and core social security benefit) comparable to own nationals recognizes that third-country workers contribute to the European economy through their work and tax payments. It can also help reduce unfair competition emanating from this rights gap, thus serving as a safeguard for EU citizens by protecting them from cheap labour and migrants from exploitation. In addition granting a common set of rights in Community law would create a level playing field within the EU for all third-country nationals legally working, irrespective of the Member State in which they stay.

The proposed procedural simplification of a single permit issued in a single application procedure would significantly simplify the administrative requirements for third-country workers and employers throughout the EU. Moreover, due to its reinforced control function, it complements the Commission's recent proposal on sanctions against employers of illegally staying third-country nationals (COM (2007) 249).

- **Existing provisions in the area of the proposal**

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 is consistent with and complementary to these provisions, because it serves as a horizontal instrument granting rights to every third-country worker legally residing in a Member State, irrespective of the basis on which he/she has been admitted to the territory of a Member State and has been given access to the labour market of that Member State.

Council Regulation (EC) No 859/2003 extended the provisions of Regulation (EEC) 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. The Regulation ensures that there will be no difference in treatment between a third country national and an EU citizen when moving from one Member States to another. This present proposal is complementary to the Regulation, covering also access to social security benefits of a third country national worker in one Member State.

The format of a residence permit for third-country national is laid down in EC Regulation (EC) No 1030/2002, which enables Member States to refer, in the uniform format, to all other information "in particular as to whether or not the person is permitted to work." This proposal builds on that Regulation insofar as it obliges Member States to indicate on the uniform format the permission to work, irrespective

of the legal basis for admission.

In parallel to this proposal, the Commission will present a proposal for a Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. The two proposals have been drafted so as to be mutually compatible.

- **Consistency with the other policies and objectives of the Union**

The provisions in this proposal are consistent with and supportive of the objectives of the Lisbon strategy (COM (2005) 24) in particular to make the EU a more attractive place to work, the integrated Guidelines for Growth and Jobs (COM (2005) 141) and the Commission Communication on promoting decent work for all (COM (2006) 249). Securing a legal status for immigrants – where their rights as workers are clearly identified and recognised – can serve as a safeguard from exploitation and thereby augments the contribution third-country nationals make to the EU's economic development and growth and also protects EU citizens from cheap labour. Further, in compliance with the Communication on the demographic future of Europe - from challenge to opportunity (COM (2006) 571), this proposal contributes to the integration of immigrants and their families forming part of the response needed to prepare Europe's economy and society for the onset of ageing.

This proposal, affecting in particular employment-related rights of third-country nationals, complies with fundamental rights and observes the principles recognized by the Charter of Fundamental Rights with special regard to Article 12 on freedom of assembly and association, Article 14 on the right to education, Article 15(3) on equal working conditions, Article 21(2) non-discrimination, Article 29 on the right to placement services, Article 31 on fair and just working conditions, Article 34 on social security and social assistance and Article 35 on health care and Article 47 on the right to an effective remedy and to a fair trial.

## 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

*Consultation methods, main sectors targeted and general profile of respondents*

A public consultation was carried out with the Green Paper on an EU approach to managing economic migration. The Commission received more than 130 contributions from Member States, other EU institutions, social partners, NGOs, third countries, academia, etc. (available on [http://ec.europa.eu/justice\\_home/news/consulting\\_public/economic\\_migration/news\\_contributions\\_economic\\_migration\\_en.htm](http://ec.europa.eu/justice_home/news/consulting_public/economic_migration/news_contributions_economic_migration_en.htm)) and a public hearing was held on 14 June 2005.

Further consultations were held by means of seminars and workshops, while the Member States were consulted within the framework of the Commission's Committee on Immigration and Asylum. Through the external study commissioned to support the impact assessment, further consultations of the main stakeholders was undertaken by

means of questionnaires and interviews.

*Summary of responses and how they have been taken into account*

The analysis of the 130 contributions sent during the public consultation showed a general support for a common EU policy on economic immigration, albeit with important differences in the approaches to be followed and in the expected end result. Some clear elements emerged, i.e. the need for common EU rules regulating at least some key categories of economic immigrants establishing attractive conditions for them (i.e. highly-skilled workers) coupled with the request to ensure a secure legal position to all legally working immigrants. Therefore unlike the 2001 proposal for a directive on economic migration intended to regulate admission conditions generally - this proposal establishes a procedural simplification only and grants rights to those who are already admitted to a Member State's territory and labour market.

The Commission took account of comments made to its Policy Plan on Legal Migration and those made in the connection with the study for the impact assessment.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The following options were considered:

**Option 1** – No change

**Option 2** – The non-legislative option: communication, coordination, and cooperation: No new legislation is introduced on the rights of migrant workers in general. The rights of some third-country workers will be further specified by national legislation and only be covered at EU level by the specific Directives (e.g. on highly-skilled workers) Instead attention would be given to complementary and supporting activities in order to bring the legislative practices of Member States closer through the gathering and exchange of knowledge and information.

**Option 3a** – Legislative option in the form of a Directive focusing on the commonalities: This option would grant equal treatment to third-country nationals who are already admitted to the labour market in all the employment-related fields excluding social security, the transfer of social security contributions and pensions and access to public services.

**Option 3b** – The equal treatment legislative option in the form of a Directive: This option would grant equal treatment to third country nationals who are already admitted to the labour market in all the employment-related fields including social security, the transfer of social security contributions and pensions and access to public services.

**Option 4** - A complementary legislative option in the form of a Directive; single application procedure and single residence/work permit: The Directive would focus on a single application procedure simplifying the procedure both for immigrants and for public authorities and a single document enabling a third country national to reside and

work in a Member States. These provisions could build on Regulation 1030/2002 on a uniform residence permit which already enables Member States to add national remarks as regards the access to the labour market. This option could encompass – following the rights based approach - procedural safeguards and guarantees in relation to the application for a single permit.

**Option 5** - The fully-fledged legislative option in the form of a Directive regulating access to labour market and also granting equal treatment for third-country workers: The Directive would regulate the labour market access of third-country workers to a Member State in order to grant comparable treatment as regards access to employment and mobility within that Member State. In order to grant access to the labour market for third-country nationals, conditions for admission to work (economic needs test etc.) need to be harmonised. This option would further provide for equal treatment with own nationals – in all the areas listed in Option 3 b.

Comparing the options and their impacts, and in the light of Member State and stakeholder views, the preferred option is a combination of Options 3b and 4, which appear to offer the highest potential for benefits in practical and policy terms.

The Commission carried out an impact assessment as listed in the Work Programme, whose report is accessible on [to be completed]

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

The proposal provides for a single application procedure for third country nationals seeking to enter the territory of a Member State to work. If granted the permit to stay and work should be issued in a single act. There is a general obligation for Member States to provide for a "one-stop-shop" system and to comply with certain safeguards and standards when handling the application. Furthermore there is a general prohibition on additional permits (e.g. a work permit). As to the format of this single document, it is to take the harmonized format of the existing EU residence permit for third-country nationals, established by Regulation (EC) No 1030/2002. Finally, the proposal obliges Member States to indicate in the residence permits issued for other purposes (e.g. family member) whether the third-country national has been given access to the labour market of that Member State.

The proposal further grants rights to third-country nationals legally working in the territory of a Member State by defining fields in particular employment related fields where equal treatment should be provided in the case of own nationals. Equal treatment with own nationals in principle would apply to all third-country workers legally residing and not yet holding long-term resident status.

- **Legal basis**

The provisions of this Directive aim to introduce a procedural simplification (single application procedure and single permit) and secure the legal status of third-country workers legally residing in the territory of a Member State in the form of equal treatment, consequently the appropriate legal base is Article 63(3)(a) of the EC Treaty.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reason(s).

If Member States act alone there is a risk that differences in treatment of third-country nationals in different Member States will be maintained. This can lead to distortion of competition within the single market and can result in secondary movements of third-country nationals to those Member States which grant more rights than others. As to the proposed procedural simplifications, if those Member States who still use parallel structures continue to do so, procedures to obtain a permit to stay and work will remain long and cumbersome for both the employer and the employee.

Community action will better achieve the objectives of the proposal for the following reasons.

Providing equal treatment to third-country workers in a Community instrument in employment-related fields comparable to own nationals would reduce unfair competition between EU citizens and third-country workers and serve as a safeguard for EU citizens protecting the latter from cheap labour and migrants from exploitation. In addition granting a common set of rights through equal treatment in Community law would create a level playing field within the EU for all third-country nationals legally working irrespective of the Member State in which they stay. As regards the proposed procedural simplification it would ease the administrative requirements for third-country workers and employers throughout the EU.

Common action will ensure (1) more efficient procedures when handling an application; (2) equal treatment in employment-related fields for workers admitted to the Member States; and (3) better integration of those workers.

The proposal grants rights through equal treatment in employment related fields as a minimum requirement. Therefore, it does not interfere with Member States' right to define the content of the actual rights.

The proposal provides only for a minimum level of harmonisation as regards the proposed procedural simplification. It imposes only a general obligation for Member States to provide for a "one-stop-shop" system and a general prohibition on issuing additional documents - such as a work permit - and would not interfere in their internal procedures when handling an application. Further, as regards the format, it builds on the already harmonised format for residence permits as laid down in Regulation (EC) No 1030/2002.

The proposal, therefore, complies with the subsidiarity principle.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The method of providing rights is equal treatment and the procedural simplification is only a general obligation.

Under Article 63 penultimate subparagraph of the EC Treaty, Member States are free to maintain or introduce measures other than those set out in the Directive provided they are compatible with the Treaty and with international agreements.

- **Choice of instruments**

Proposed instruments: Directive.

Other means would not be adequate for the following reason(s).

A Directive is the appropriate instrument for this action: it sets minimum requirements concerning the rights and a general obligation to use a single application procedure for a single permit but gives Member States flexibility when incorporating it into national legislation and enforcing it in practice.

#### **4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

#### **5) ADDITIONAL INFORMATION**

- **Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between those provisions and this Directive.

- **Detailed explanation of the proposal**

Chapter I - General provisions

Articles 1, 2 and 3

This chapter lays down the purpose, the definitions and the scope of the Directive. Given the horizontal nature of this Directive and the aim to grant a common set of rights as a minimum requirement to all third country nationals legally residing and working in a Member State, the term "third-country worker" refers not only to those admitted to the territory of a Member State for the purpose of work and but also to those who were initially admitted for other purposes and were also given access to the labour market on the basis of Community or national provisions (e.g. family members, refugees, students, researchers). In the specific case of family members it is to be emphasized that this proposal does not touch upon conditions for the exercise of the right to family reunification. Once however a family member is admitted to a Member State in accordance with Council Directive 2003/86/EC he/she is covered by the this Directive provided he/she can be considered third-country worker in accordance with

the provisions of this Directive.

Exceptions from the scope of the proposal are provided in an exhaustive manner. Third-country nationals who are posted workers in accordance with Council Directive 1996/71/EC are excluded from the scope as they are not considered part of the labour market of the Member State to which they are posted. Intra-corporate transferees, contractual service suppliers and graduate trainees under the European Community's GATS commitments are not included following the same principle. Seasonal workers are also not covered by the proposal given the specificities and temporary nature of their status. Third-country nationals who have acquired long-term resident status are also excluded from the personal scope of proposal given their more privileged status and their specific type of residence permit.

## Chapter II - A single application procedure and a single permit

### Article 4

The central provision is the general obligation to examine the application to work and reside in the territory of a Member State in a single application procedure - and if granted - to issue a single permit enabling the applicant to stay and work.

### Article 5

A competent authority is to be designated by the Member States to receive the application and issue the single permit. This designation is without prejudice to the role and responsibilities of other national authorities with regard to the examination of and the decision on the application. Furthermore, this designation to receive and issue the permit should not prevent Member States from appointing other authorities where the third-country national or his/her future employer can lodge the application (e.g. consular offices) and where the permit can be delivered.

### Articles 6 and 7

The single permit is to take the harmonized format of the residence permit for third-country nationals in accordance with Regulation (EC) No 1030/2002, laying down a uniform format for residence permits for third-country nationals. ~~Article 1(1) of~~ This Regulation enables the Member States to add information in the relevant space of the uniform format as to whether or not the person is permitted to work. This present proposal obliges Member States to indicate this information. Such an obligation does not only apply to the single permit which is issued for the purpose of residence and work, but also to all the issued residence permits irrespective of the type of the permit or the residence title (i.e. family reunification, study) if the third-country national concerned has been given access to the labour market of that Member State. There is a general prohibition of issuing any additional permits.

### Articles 8, 9 and 10

Among the procedural guarantees it is stipulated that reasons must be given for a decision rejecting the application for a single permit so there is a clear explanation why national authorities have refused it. As this proposal does not define admission criteria of third-country nationals for the purpose of work, the conditions and criteria on the

basis of which an application for a single permit can be rejected have to be laid down in national law. One of the criteria is the obligation to respect the principle of Community preference as expressed in particular in the relevant provisions of the Acts of Accession of 2003 and 2005. In the event of rejection the applicant has to have the right to a legal remedy to be specified in the written notification to the applicant. Further procedural guarantees are the obligation of Member States to inform the third country national or the future employer which documents are necessary for the applications for a single permit. Further the level of fees - if Member States request the applicant to pay them – must be proportionate and may be based on the principle of the service actually provided.

#### Article 11

This Article states rights - to (re)-enter, to stay, to pass through - on the basis of the single permit. These rights are of relevance especially in those Member States which do not apply the Schengen acquis in full.

#### Chapter III - Right to equal treatment

#### Article 12

This Article grants rights to third country-workers by determining fields where equal treatment with own nationals should be provided in the form of a minimum requirement without prejudice to the right of Member States to adopt or maintain provisions which are more favourable.

Equal treatment as regards education and vocational training includes tuition fees at schools and universities. Member States however can restrict equal treatment as to study grants.

The proposal grants equal treatment as regards the recognition of diplomas in accordance with national procedures. This provision refers also to the application of the provisions of Directive 2005/36/EC. This means that a third-country national who acquired qualifications in other Member States should have them recognised in the same way as for EU citizens and his/her qualifications acquired in a third country would be taken into account as specified in particular in Article 3(3) of the above mentioned Directive.

Equal treatment as regards social security covers the benefits defined in Article 4 of Council Regulation (EEC) No 1408/1971 on the application of social security schemes to employed persons and their families moving within the Community. Council Regulation (EC) No 859/2003 extended the provisions of Regulation (EEC) No 1408/1971 to third-country nationals, but that only covered situations when a third-country national moved from one Member State to another. The provision on equal treatment concerning social security benefits in this proposal also apply to persons coming to a Member State directly from a third country.

Equal treatment is provided as regards access to goods and services made available to the public including both public and private-sector housing. Member States however may restrict that right as regards public housing to third-country nationals who have been staying or who have the right to stay in the Member State concerned for at least

three years. Equal treatment as regards assistance afforded by employment offices should include services afforded through EURES (European Employment Services).

#### Possible limitations to equal treatment

Member States may restrict the right to equal treatment in some cases for those who actually are in employment. The explanation of this possible limitation is the following. The main purpose of the proposal is to grant equal treatment to third-country workers who reside legally. The term "third country worker" however is defined in a way which includes all third-country nationals who have been admitted to the territory of a Member State and allowed to work there. This would mean that third-country nationals do not even have to be in actual employment in order to be covered by the equal treatment provisions of this proposal. Such a definition of third country workers was set in order to cover situation, which are prior to actually being employed (recognition of diplomas, assistance afforded by employment services) or which follow employment on the basis of previous contributions (unemployment benefit). Nevertheless most of the rights are by definition to be exercised by definition in employment. In any event the right to any equal treatment is strictly linked to the third-country national's legal residence and the access given to the labour market in a Member State, which is enshrined in the single permit.

#### Article 13

The proposal is without prejudice to more favourable provisions in Community or mixed agreements that have been or are to be concluded with third countries to govern the legal situation of third-country workers such as the EEA agreement, or the Association Agreement with Turkey. Annex 4 of the Commission Staff Working Paper which accompanying this proposal provides an extensive list of these agreements. This exclusion is valid where the provisions concerned are related to the content of the proposal and it concerns the agreements themselves, decisions taken under them and related court decisions. Further, the proposal is also without prejudice to more favourable international instruments under the Council of Europe which apply to third-country workers who are nationals of Council of Europe member countries (the European Social Charter of 18 October 1961, the amended European Social Charter of 1996 and the European Convention on the legal status of migrant workers of 24 November 1977). The proposal should also be without prejudice to more favourable provisions contained in international conventions prohibiting discrimination on the basis of national origin such as the International Covenant on Economic, Social and Cultural Rights. Annex 5 of the Commission Staff Working Paper accompanying document for this proposal provides a list of such treaties specifying whether they have been ratified by all Member States.

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**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3)(a) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

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

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 legislation 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 Hague Program of 4 and 5 November 2004.
- (3) In an increasingly global labour market, the EU should enhance its appeal to attract third-country workers. This should be facilitated by administrative simplification and by facilitating access to relevant information. 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 harmonizing the diverging rules currently applicable in Member States. Such procedural simplification has already been introduced by the majority of 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<sup>1</sup>, 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.
- (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)<sup>2</sup> and Article 21 of the 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)<sup>3</sup>.
- (9) In the absence of horizontal community legislation, the rights of third-country nationals vary, depending on the Member State in which they work and on their nationality. They do not have the same rights as nationals of the Member State, or other EU citizens. With a view to pursue a further development of a coherent

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<sup>1</sup> OJ L 157, 15.6.2002, p. 1.

<sup>2</sup> OJ L 105 of 13.4.2006 p. 1

<sup>3</sup> OJ L 239, 22.9.2000 p. 19

immigration policy, to lower the rights gap between EU citizens and third-country nationals legally working 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 States but not yet long term residents. Such provisions are intended to establish a level playing field within the EU, to recognize that such third-country nationals legally working in a Member States contribute to the European economy through their work and tax payments and to serve as a safeguard to reduce unfair competition between own nationals and third-country nationals resulting from possible exploitation of the latter.

- (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 right to family reunification<sup>4</sup>, 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<sup>5</sup> 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<sup>6</sup>.
- (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<sup>7</sup> 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 covered by Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services<sup>8</sup> as long as they are posted to a Member State and third-country nationals entering 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 should not be covered by this Directive as they are not considered part of the labour market of that Member State.

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<sup>4</sup> OJ L 251, 3.10.2003, p. 12.

<sup>5</sup> OJ L 375, 23.12.2004, p.12.

<sup>6</sup> OJ L 289, 3.11.2005, p.15.

<sup>7</sup> OJ L 16, 23.1.2004, p. 44.

<sup>8</sup> OJ L 18, 21.1.1997, p. 1.

- (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.
- (14) The right to equal treatment in specified policy fields should be strictly linked to the third-country national's legal residence and 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 States 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.<sup>9</sup>
- (16) Third-country nationals who work in the territory of a Member State should enjoy equal treatment as regards social security. Branches of social security are defined in the Council Regulation (EEC) N° 1408/1971 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.<sup>10</sup> 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<sup>11</sup> extends the provisions of Regulation (EEC) No 1408/1971 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 concerning social security in this Directive also apply to persons coming to a Member State directly from a third country. Nevertheless, this Directive should not confer more rights than those already provided in existing Community legislation in the field of social security for third-country nationals who have cross-border elements between Member States.
- (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 Community, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.

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<sup>9</sup> OJ L 255, 30.9.2005, p. 22

<sup>10</sup> OJ L 149, 5.7.1971, p. 2

<sup>11</sup> OJ L 124, 20.5.2003, p. 1.

- (18) This Directive respects the fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights and Fundamental Freedoms and has to be implemented accordingly.
- (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<sup>12</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation<sup>13</sup>.
- (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 European Union and to the Treaty establishing the European Community 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 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 European Union and the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE

## **Chapter I**

### **General provisions**

#### *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 and work in the territory of a Member State, in order to simplify 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.

#### *Article 2*

##### **Definition**

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<sup>12</sup> OJ L 180, 19.7.2000, p. 22.

<sup>13</sup> OJ L 303, 2.12.2000, p. 16

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 17(1) of the Treaty;
- (b) "third-country worker" means any third-country national who has been admitted to the territory of a Member State and is allowed to work legally in that Member State;
- (c) "single permit" means any authorisation issued by the authorities of a Member State allowing a third-country national to stay and work legally in its territory;
- (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.

### *Article 3*

#### **Scope**

1. This Directive shall apply:

- a) to third-country nationals seeking to reside and work in the territory of a Member State, and
- b) to third-country workers legally residing in a Member State.

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 Community;
- (b) covered by Directive 96/71/EC as long as they are posted;
- (c) entering 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 in particular to intra-corporate transferees, contractual service suppliers and graduate trainees under the European Community's GATS commitments;
- (d) who have been admitted to the territory of a Member State for a period not exceeding six months in any 12 month period to work on a seasonal basis;
- (e) who have applied for recognition as refugees and whose application has not yet given rise to a final decision;
- (f) staying in a Member State as applicants for international protection or under temporary protection schemes;
- (g) who have acquired long-term resident status in accordance with Directive 2003/109/EC;

(h) whose expulsion has been suspended for reasons of fact or law.

## **Chapter II**

### **Single application procedure and Single permit**

#### *Article 4*

#### **Single application procedure**

1. An application to reside and work in the territory of a Member State shall be submitted in a single application procedure.
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 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.

#### *Article 5*

#### **Competent authority**

1. Member States shall designate the authority competent to receive the application and to issue the single permit.
2. The designated authority shall process the application and adopt a decision on the application as soon as possible and in any event no later than three months from the date on which the application was lodged.  
  
The time limit referred to in the first subparagraph may be extended in exceptional circumstances, linked to the complexity of the examination of the application.
3. The designated authority shall notify the decision to the applicant in writing in accordance with the notification procedures laid down in the relevant legislation.
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.

#### *Article 6*

#### **Single permit**

1. Member States shall issue the single permit using the uniform ~~a~~-format as laid down in ~~in accordance with the provisions of Article 1(1) of 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.
2. Member States shall not issue any additional permits, in particular work permits of any kind as proof of the access given to the labour market.

## *Article 7*

### **Residence permits issued for purposes other than work**

1. When issuing ~~In all~~ residence permits in accordance with ~~issued within the meaning of Article 1(1) and (2) (a) of Regulation (EC) No 1030/2002 and its Annex a, 7.5-9., issued for other purposes other than work~~ Member States shall indicate 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.~~
2. Member States shall not issue any additional permits, in particular work permits of any kind as proof of the access given to the labour market.

## *Article 8*

### **Remedies**

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.
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.

## *Article 9*

### **Access to information**

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.

## *Article 10*

### **Fees**

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.

## *Article 11*

### **Rights on the basis of the single permit**

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

- (a) enter, re-enter and stay in the territory of the Member State issuing the single permit;
- (b) passage through other Member States in order to exercise the rights under point (a);
- (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;
- (d) exercise of the activities authorised under the single permit;
- (e) be informed about his/her own rights linked to the permit conferred by this Directive or by national legislation.

### **Chapter III**

#### **Right to equal treatment**

##### *Article 12*

1. Third-country workers shall enjoy equal treatment with nationals at least 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) 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. Regulation (EEC) No 859/2003, extending the provisions of Regulation (EEC) No 1408/71 and its implementing Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality shall apply accordingly;
- (f) payment of acquired pensions when moving to a third country;
- (g) tax benefits;
- (h) access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing and the assistance 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 may be subject to the fulfilment of specific educational prerequisites;

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

(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;

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

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

#### *Article 13*

#### **More favourable provisions**

1. This Directive shall apply without prejudice to more favourable provisions of:

(a) Community legislation, including bilateral and multilateral agreements between the Community, or the Community 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.

#### **Chapter IV**

#### **Final provisions**

#### *Article 14*

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.

#### **Reporting**

#### *Article 15*

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 April of [one year after the date of transposition of this Directive], Member States shall communicate to the Commission and the other Member States through the network established by Decision 2006/688/EC statistics on the volumes of third-country nationals who have been granted, renewed or withdrawn a single permit during the previous calendar year, indicating their nationality and their occupation. Statistics on admitted family members shall be communicated likewise.

## **Transposition**

### *Article 16*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ..... at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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.

## **Entry into force**

### *Article 17*

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

## **Addressees**

### *Article 15*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*  
*The President*