



EUROPEAN COMMISSION

Brussels, 25.11.2011
COM(2011) 832 final

2007/0229 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

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

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

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

1. BACKGROUND

Date of transmission to the European Parliament and to the Council 26 October 2007
(COM(2007) 638 final - 2007/0229(COD))

Date of the opinion of the European Economic and Social Committee: 9 July 2008

Date of the opinion of the Committee of the Regions 18 June 2008

Date of the position of the European Parliament, first reading: 24 March 2011

Foreseen date of adoption of the Council's position: 24 November 2011

2. PURPOSE OF THE COMMISSION PROPOSAL

The objective of the Commission proposal is twofold, on the one hand to introduce a single application procedure for third-country nationals who would like to reside in a Member State for the purpose of work, along with a single (residence and work) permit in order to cut red tape, and on the other hand to provide for a common set of rights to all third-country workers legally residing in a Member State. The common set of rights to third-country workers is ensured by defining a list of areas¹ where equal treatment with nationals shall be granted.

3. COMMENTS ON THE COUNCIL'S POSITION

The Council's position is the result of a long negotiation process. Following the first reading position of the European Parliament on 24 March 2011, an agreement was finally reached between the co-legislators' on the outstanding issues in a Trilogue of 22 June 2011. The only

¹ Working conditions; freedom of association, education and vocational training, recognition of diplomas; social security, export of acquired pensions; tax benefits, access to goods and services including procedure for housing and advice services of employment offices.

open point was the question of correlation tables, on which a horizontal solution has been found in the meantime.²

Coreper confirmed the agreement on the text on 29 June 2011. On 15 July 2011 the Chairman of the LIBE Committee sent a letter to the Council Presidency confirming the agreement of the rapporteurs (the LIBE, the EMPL and the Shadow-rapporteurs) on the text approved by Coreper and on the Interinstitutional statement annexed to it, and stating that if these texts were formally transmitted to the European Parliament as the Council's position, he would recommend that the Members of the LIBE committee and subsequently the plenary accept them without amendments. Coreper reached a political agreement on this basis on 20 July 2011.

The main differences between the Common Position and the original Commission proposal are set out below.

- Precision and some limitations to the scope (Article 3)

The Common Position on the one hand specifies and on the other further limits the scope of the proposal.

First, it gives a precision to the scope of the equal treatment provisions (Article 3(1)(b) and (ba) new) by referring to the two categories of possible beneficiaries; those third-country nationals who have been admitted to work and those with other admission purpose but allowed to work. This change confirms the Commission's intention to have a wide scope including also those who are allowed to work but came with a different initial purpose of admission. However these Amendments specify that the latter category should have a residence permit³.

Second, it excludes from the scope sea-farers and those third-country nationals benefiting from international protection, temporary protection or protection under national law recalling that their rights are regulated in other instruments.

Third, it excludes self-employed workers from the scope as well. This exclusion is however only of a declarative nature, since the definition of third-country workers of the proposal (Article 2 (b)) makes it clear that only those in a paid relationship are targeted.

Finally there is a possible derogation - but only as regards the rules on the single procedure/permit - for students and those who are authorised to work for shorter than 6 months. These latter two categories remain subject to the equal treatment provisions in Article 12.

- Parallel existence of a national long-term visa scheme (Article 2(c) and Article 3(4))

By replacing the reference to "any authorisation" with "a residence permit" in Article 2(c) the Common Position allows Member States to keep their long-term visa system. The Commission's objective was to have the single permit as the exclusive authorisation to work,

² A horizontal solution is found and outlined in a Joint political declaration of the Parliament, the Council and the Commission.

³ Under Regulation 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals.

but given the developments in that field (Regulation 265/2010 Article 1(1)(2) limits the duration of long-term visas to a year and recognises such documents for travel purposes within the Schengen area in the EU), the Commission can agree to allow Member States to issue long-term visas parallel to single permits, provided the existence of long-term visas would not result in a difference of rights for migrant workers holding such a paper.

Precisions to the application procedure (Articles 4, 5, 8 and 10)

Procedural rules are further specified in the Common Position. Upon the request of the European Parliament reference is made to the possible applicants (the third-country national, his/her future employer or either of the two). As regards the rules on fees, the principle of proportionality is maintained, but provisions on the possible calculation on the basis of the actual service are added. Finally as part of the final agreement at the request of Council the procedural deadline was extended to four months as opposed to the original three months proposed by the Commission.

- Allowing to store the additional information electronically or in a paper format (Articles 6 and 7)

As a part of the overall agreement, at the request of Council the possibility is given for Member States to store the information - which does not fit into the harmonised format⁴ - electronically or in an additional paper document. Such a possibility can serve the purpose of better control of migration, but it is in the interest of the migrant worker as well to possess all the information related to his/her employment which can prevent his/her exploitation (eg.: working hours). However it should be ensured that the possibility of such papers will not lead to the re-introduction of work permits.

- The right to equal treatment (Article 12)

The Common Position has taken a more limitative approach as regards access to goods and services by allowing Member States to apply the equal treatment provisions only to those who are in actual employment (Article 12 (2)d). As regards access to education, equal treatment is guaranteed to registered unemployed migrant workers as well however other limitations are possible as regards fees and other prerequisites, but as a minimum guarantee equal treatment in the area of vocational training linked to the concrete employment activity needs to be ensured (Article 12(2)a).

At the same time at the request of the European Parliament, equal treatment provisions became more ambitious than the Commission proposal for social security by including not only those who are currently employed but also those who have been employed for a minimum of 6 months and registered as unemployed. Further, the co-legislators agreed to extend the equal treatment rights for working conditions, and freedom of association (Article 12 (1)a and b) also to those who are currently not employed. The right to export acquired pensions under the same conditions and at the same rates were maintained by the co-legislators with some legitimate technical precision (Article 12 (4)).

⁴ Regulation 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals

There is one specific limitation in the area of social security; family benefits does not have to be granted to those who work on the basis of a visa or have been authorised to work for six months or less or were admitted as students (Article 12 2. (e)). The Commission underlines its preference to apply the principle of equal treatment without any regard to the format of papers (visa or single permit) which the migrant workers possess. Taking into account however that the long-term visa holder workers will benefit from equal treatment as regards all rights except for this specific benefit and will benefit from full equal treatment as regards family benefits in a cross-border situation,⁵ the Commission does not object to this new provision.

- Transposition (Recital 32 and Article 16)

As indicated above the only open point upon the last Trilogue between the co-legislators was the issue of correlation tables, on which a horizontal solution has been found in the meantime. Therefore - upon the justified request of the Commission - recital 32 of the Common Position states that Member States will undertake to accompany the notification of their transposition measures with one or more documents explaining the relationship between the components of this directive and the corresponding parts of national transposition instruments.

4. CONCLUSION

The Common Position satisfies the Commission's original objective to simplify procedures and to have a single permit and to protect migrant workers, to provide them with a series of work-related socio-economic rights on the basis - as far as possible - of equal treatment with EU workers, thereby creating a level playing field throughout the EU. The substance of the Council's Position is, therefore broadly in line with the Commission's proposal and can therefore be supported.

⁵ Regulation (EU) No 1231/10 of 24th November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.