



19.3.2024

NOTICE TO MEMBERS

Subject: Petition No 0611/2023 by Eva Maria Jiménez Lamas (Belgian), on behalf of the Domestic Workers' League of CSC Brussels, on the protection of undocumented domestic workers and alleged breach of EU legislation in Belgium

1. Summary of petition

This petition, which falls within the scope of the discussions on the revision of the Single Permit Directive, aims to draw attention to the problems facing undocumented persons working in the home work and care sector. The petitioner points out that these people are especially vulnerable, disadvantaged, and subject to undignified working, wage and living conditions. They have no protection if they try to report an abusive boss in order to stop violence against them. She calls for the scope of the Directive to be extended so that the single permit can be accessed, under certain conditions, by irregular workers already in the country. In her view, the Victims Directive is not being complied with in Belgium and the Sanctions Directive has not been transposed at all.

2. Admissibility

Declared admissible on 17 October 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 19 March 2024

The petition refers to alleged problems faced by undocumented domestic workers in Belgium and alleged breaches of EU legislation in Belgium. It is argued that the scope of the Single Permit Directive (Directive 2011/98/EU) needs to be extended under certain conditions to cover irregular workers considering the important role these workers have in the care sector. It is further stated that the Victims' Rights Directive (Directive 2012/29/EU) is not being complied

with and that Article 13(4) of the Employers Sanctions Directive (Directive 2009/52/EC) has not been transposed.

The Commission's observations

Directive 2011/98/EU¹ establishes a single permit for both the right to work and reside in the EU and a set of rights for third-country workers. As part of the Skills and Talent Package, and in order to increase the EU's attractiveness to third-country workers and talents, the Commission presented on 27 April 2022 a proposal for a recast of Directive 2011/98/EU². However, this Directive, similarly to the other legal migration Directives, is not applicable to third-country nationals whose removal has been suspended on the basis of fact or law (Article 3(2)(j)).

On the specific topic of long-term care, the Communication on the Skills and Talent Package also recognises the importance of the long-term care sector in the EU's economy and the need to better attract and retain care workers. In this context, the Commission has launched a mapping of the admission conditions and rights of long-term care workers from non-EU countries in the Member States and the needs in this regard. Directive 2009/52/EC³ (Employers Sanctions Directive) provides for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The Communication on the application of the Directive 2009/52/EC of 29 October 2014 sets out measures to improve the implementation of the Directive, including measures to improve the protection of the rights of irregular migrant workers. These include training for labour inspectors on the rights of illegally staying third-country nationals deriving from the Directive. Article 13(4) of the Employers Sanctions Directive stipulates that Member States shall define in national law the conditions under which they may grant, on a case-by-case basis, permits of limited duration, linked to the length of the relevant national proceedings, to the third-country nationals involved, in respect of criminal offences under Article 9 (c) or (e), namely when the infringement is accompanied by particularly exploitative working conditions, or when the infringement relates to the illegal employment of a minor. The Commission is in contact with the Belgian authorities to clarify elements of the transposition of Article 13(4). When it comes to the rights of victims of crime, the Victims' Rights Directive⁵ is the core instrument that provides for minimum standards on victims' rights. In particular, the Directive provides for a set of rights for all victims of crime, including a right to be recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner. According to the Directive, victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with

1 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 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.

2 COM(2022) 655 final.

3 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

4 COM(2021) 592 final.

5 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57.

sufficient access to justice. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status. Thus, third country nationals and stateless persons who have been victims of crime on EU territory should benefit from these rights. On 28 June 2022, the European Commission adopted the evaluation of the Victims' Rights Directive⁶. The evaluation shows that the Victims' Rights Directive has greatly contributed to improving the lives of victims across the EU.

However, the evaluation also points that there are still situations where not all victims can fully rely on their rights. Shortcomings were identified in relation to all victims' rights - right to information, to support and protection in accordance with each victim individual needs, victims' access to justice and compensation. To address the identified shortcomings, the Commission adopted on 12 July 2023 a proposal for the revision of the Victims' Rights Directive⁷. When it comes to the situation of irregular migrants, the proposal contains provisions related to facilitating crime reporting. For those victims, safe environment to report crime means reducing fear of return procedures being launched as a result of contacts with law enforcement authorities. Therefore, the Commission proposed a requirement that the competent authorities coming into contact with a victim reporting a criminal offence will not be allowed to transfer personal data with the victim's residence status to migration authorities if this data has been collected as a result of crime reporting at least until the completion of the first individual assessment as referred to in the Victims' Rights Directive. In this context, it should be recalled that reporting the crime and participating in criminal proceeding under the Victims' Rights Directive do not create any rights regarding the residence status of the victim, neither have any suspensive effect when determining their residence status. In addition, in the case of irregular migrants who are victims of trafficking in human beings or have been the subject of an action to facilitate illegal immigration and are cooperating with the competent authorities, relevant authorities have the obligation to inform them of their rights and possibilities under the Residence Permit Directive (Directive 2004/81/EC)⁸. These possibilities notably include the granting of a reflection period to decide whether to cooperate with the investigation, and the issuance of the residence permit. The Commission proposal is being currently negotiated by the co-legislators – the European Parliament and the Council.

Conclusion

Directive 2011/98/EU⁹ is not applicable to third-country nationals whose removal has been suspended on the basis of fact or law (Article 3(2)(j)). The Commission will continue to monitor closely the state of transposition and implementation of the Employers Sanctions Directive and the Victims' Rights Directive in all Member States, including in Belgium. In particular, the Commission has analysed whether Member States have completely transposed into national legislation all normative provisions of the Victims' Rights Directive. According to the Commission, the Belgian law fully transposes the victims' rights legislation into national law.

6 SWD/2022/0179 final.

7 COM(2023) 424 final, 12.7.2023.

8 Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

9 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 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.

With regards to the Employers Sanctions Directive, the Commission is in contact with the Belgian authorities to clarify elements of the transposition of Article 13(4).