



A7-0265/2010

5.10.2010

*****I**

REPORT

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

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Véronique Mathieu

Rapporteur for opinion (*):

Alejandro Cercas, Committee on Employment and Social Affairs

(*) Procedure with associated committees – Rule 50 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

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

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in bold italics. Highlighting in normal italics alerts the relevant departments to parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act which the draft act seeks to amend includes a third and fourth line identifying respectively the existing act and the provision in that act affected by the amendment. Passages in a provision of an existing act that Parliament wishes to amend, but the draft act has left unchanged, are highlighted in bold. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...].

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	36
OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS	39
PROCEDURE	51

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2007)0638),
 - having regard to Articles 63(3)(a) and 67 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0470/2007),
 - having regard to the Communication from the Commission to the European Parliament and the Council entitled ‘Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures’ (COM(2009)0665),
 - having regard to Article 294(3) and Article 79(2)(a) and (b) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 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 (A7-0265/2010),
1. Adopts the position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Recital 2

Text proposed by the Commission

(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

Amendment

(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.

context, it stated in particular that the European Union should ensure fair treatment of third-country nationals residing lawfully on the territory of the Member States and that a more vigorous integration policy should aim to grant them rights and obligations comparable to those of citizens of the European Union. The European Council accordingly asked the Council to rapidly adopt the legal instruments on the basis of Commission proposals. The need for achieving the objectives defined at Tampere was reaffirmed by the *Stockholm Programme* of 10 and 11 December 2009.

Amendment 2

Proposal for a directive

Recital 3

Text proposed by the Commission

(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.

Amendment

(3) Provisions for a single application procedure leading to one combined title encompassing both residence and work permit within one administrative act should contribute to simplifying and *harmonising* the rules currently applicable in Member States. Such procedural simplification has already been introduced by ***several*** Member States and has made for a more efficient procedure both for the migrants and for their employers, and allowed easier controls of the lawfulness of their residence and employment.

Amendment 3

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 ***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.***

Amendment 4

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) The single permit should take the *harmonized* format of the residence permit in accordance with Regulation (EC) No 1030/2002, laying down a uniform format for residence permits for third-country nationals, enabling the Member States to enter information, in particular as to whether or not the person is permitted to work. Member States should indicate – also for the purpose of better control of migration – not only in the single permit but also in all the issued residence permits the information relating to the permission to work irrespective of the type of the permit or the residence title on the basis of which the third country national has been admitted to the territory of a Member State ***and has been given access to the labour market of that Member State.***

Amendment

(6) The conditions and criteria on the basis of which an application for a single permit can be rejected ***should be objective and*** laid down in national law. ***Any rejection decision should be duly reasoned.***

Amendment

(7) The single permit should take the *harmonised* format of the residence permit in accordance with Regulation (EC) No 1030/2002, laying down a uniform format for residence permits for third-country nationals, enabling the Member States to enter ***further*** 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.

Amendment 5

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) The provisions in this Directive on the single permit and on the residence permit issued for purposes other than work should not prevent Member States from issuing additional documents, in particular to give more precise information on the right to work. Such additional documents should, however, be optional for Member States and should not serve as a substitute for a work permit and thereby compromise the concept of the single permit.

Amendment 6

Proposal for a directive Recital 7 b (new)

Text proposed by the Commission

Amendment

(7b) The obligation on the Member States to determine whether the application is to be made by a third-country national or by his or her employer should be without prejudice to any arrangements requiring both to be involved in the procedure. The Member States should decide whether the application for a single permit may be made in the Member State of destination or from a third country. In cases where the third-country national is not allowed to make an application from a third country, Member States should ensure that the application may be made by the employer in the Member State of destination.

Amendment 7

Proposal for a directive Recital 7 c (new)

Text proposed by the Commission

Amendment

(7c) The provisions in this Directive on residence permits for purposes other than work should apply only to the format of such permits and should be without prejudice to national or to other Union rules on admission procedures and on procedures for issuing such permits.

Amendment 8

Proposal for a directive Recital 7 d (new)

Text proposed by the Commission

Amendment

(7d) The provisions in this Directive on the single application procedure and on the single permit should not concern uniform and long-stay visas.

Amendment 9

Proposal for a directive Recital 7 e (new)

Text proposed by the Commission

Amendment

(7e) The deadline for adopting a decision on the application should not include the time required for the recognition of professional qualifications or the time required for issuing a visa. This Directive should be without prejudice to national procedures on the recognition of diplomas.

Amendment 10

Proposal for a directive Recital 7 f (new)

Text proposed by the Commission

Amendment

(7f) The designation of the competent authority under this Directive should be without prejudice to the role and responsibilities of other authorities and, where applicable, the social partners, with regard to the examination of, and the decision on, the application.

Amendment 11

Proposal for a directive Recital 7 g (new)

Text proposed by the Commission

Amendment

(7g) This Directive should be without prejudice to the competence of the Member States to regulate the admission of third-country nationals for the purpose of employment, including the number of those nationals.

Amendment 12

Proposal for a directive Recital 9

Text proposed by the Commission

Amendment

(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 immigration policy, *to lower* the rights gap

(9) In the absence of horizontal **Union** 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 **Union** citizens. With a view to *pursuing the* further development of a coherent immigration policy, *narrowing*

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.

the rights gap between *Union* citizens and third-country nationals legally working and complementing the existing immigration acquis a set of **socio-economic and labour-law** rights should be laid down in particular in the form of specifying the policy fields where equal treatment with own nationals is provided for third-country workers legally admitted in a Member State but not yet *long-term* residents. Such provisions are intended to **introduce a minimum level of fairness** within the *Union*, to *recognise* that such third-country nationals legally working in 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. ***Without prejudice to the interpretation of the concept of the employment relationship in other Union legislation, a third-country worker should be defined as any third-country national who has been admitted to the territory of a Member State, is legally resident and is allowed to work under national law or in accordance with national practice in that Member State.***

Justification

The purpose of this proposal is to clarify that the definition of “third country worker” shall not influence the interpretation of the concept of employment relationship in any other EU legislative instrument because there is no uniform definition of the concept of “an employment relationship” in the field of EU labour law. Besides the definition proposed by the Commission seems to differ from of the current definitions applied in at least some Member States.

Amendment 13

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) Third-country nationals **covered by**

Amendment

(12) **Posted** third-country nationals **are not**

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 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.

covered by this Directive. This should not prevent third-country nationals who are legally resident and lawfully employed in a Member State and posted to another Member State from continuing to enjoy equal treatment with respect to nationals of the Member State of origin for the duration of their posting, in respect of those terms and conditions of employment which are not affected by the application of 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 services¹.

¹ OJ L 18, 21.1.1997, p. 1.

Amendment 14

Proposal for a directive

Recital 16

Text proposed by the Commission

(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) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality extends the provisions of Regulation (EEC) No 1408/71 to third country nationals who are legally residing in the European Union and who are in a cross-border situation.* The provisions on equal

Amendment

(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 *Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.* 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.

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.*

Amendment 15

Proposal for a directive Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Union law does not limit the power of the Member States to organise their social security schemes. In the absence of harmonisation at Union level, it is for the legislation of each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, Member States should comply with Union law.

Amendment 16

Proposal for a directive Recital 16 b (new)

Text proposed by the Commission

Amendment

(16b) Member States should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly of the

Amendment 17

Proposal for a directive

Recital 18

Text proposed by the Commission

(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.**

Amendment

(18) This Directive respects the fundamental rights and observes the principles *recognised* by **Article 6 of the Treaty on European Union and reflected in** the Charter of Fundamental Rights of the European Union.

Amendment 18

Proposal for a directive

Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) This Directive should be applied without prejudice to more favourable provisions contained in Union legislation and international instruments.

Amendment 19

Proposal for a directive

Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) In accordance with Point 34 of the Interinstitutional Agreement on better law-making¹, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables, which will, as far as possible, illustrate the correlation between this Directive and their transposition measures, and to make those tables

public.

¹ OJ C 321, 31.12.2003, p. 1.

Amendment 20

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 that Member State, based on equal treatment with nationals of that Member State.***

Amendment 21

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

Text proposed by the Commission

Amendment

This Directive is without prejudice to the Member States' powers concerning the admission of third-country nationals to their labour markets.

Amendment 22

Proposal for a directive Article 2 – point b

Text proposed by the Commission

(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;

Amendment

(b) "third-country worker" means, ***without prejudice to the interpretation of the concept of employment relationship in other Union legislation***, any third-country national who has been admitted to the territory of a Member State, ***who is legally***

resident and *who* is allowed to work *under national law or in accordance with national practice* in that Member State;

Amendment 23

Proposal for a directive Article 2 – point c

Text proposed by the Commission

(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;

Amendment

(c) "single permit" means *a residence permit* issued by the authorities of a Member State allowing a third-country national to stay legally in its territory *in order to work there*;

Amendment 24

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, on the basis of *a single* application *made by a third-country national, or by his or her employer*, for the authorisation of residence and work in the territory of a Member State, to a decision *ruling on that application for* the single permit.

Amendment 25

Proposal for a directive Article 3 – paragraph 1 – point a

Text proposed by the Commission

a) to third-country nationals seeking to reside *and work* in the territory of a Member State, *and*

Amendment

(a) to third-country nationals seeking to reside in the territory of a Member State *in order to work there*,

Amendment 26

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 **nationals who have been admitted for purposes other than work under national or Union rules, are allowed to work and are issued a residence permit in accordance with Regulation (EC) No 1030/2002, and***

Amendment 27

Proposal for a directive

Article 3 – paragraph 1 — point b a (new)

Text proposed by the Commission

Amendment

*(ba) to third-country **workers who have been admitted for the purpose of work under national or Union rules;***

Amendment 28

Proposal for a directive

Article 3 – paragraph 2 – point a

Text proposed by the Commission

(a) who are family members of Union citizens who have exercised, or are exercising, their right to free movement within the **Community**;

Amendment

(a) who are family members of Union citizens who have exercised, or are exercising, their right to free movement within the **Union in conformity with Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States¹**;

¹ OJ L 229, 29.6.2004, p. 1.

Amendment 29

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

Text proposed by the Commission

Amendment

(aa) who, together with their family members, and whatever their nationality, enjoy rights of free movement equivalent to those of Union citizens under agreements either between the Union and its Member States or between the Union and third countries;

Amendment 30

Proposal for a directive Article 3 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) covered by Directive 96/71/EC as long as they are posted;

(b) covered by Directive 96/71/EC for the duration of their posting and shall not affect the Member States' responsibility for the access and admission of third-country nationals to their labour markets;

Justification

It is very important to explain that the proposed Directive, in association with Directive 96/71/EC, does not affect the Member States' responsibility for the admission of third-country nationals to their national labour markets. The Member States' right to decide who will be admitted to their labour markets must not be undermined.

Amendment 31

Proposal for a directive Article 3 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) entering a Member State under commitments contained in an international agreement facilitating the entry and temporary stay of certain

(c) who have applied for admission or have been admitted to the territory of a Member State to work as intra-corporate transferees;

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;

Amendment 32

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 period to work on a seasonal basis;*

Amendment

(d) who *have applied for admission or* have been admitted to the territory of a Member State *as seasonal workers or au pairs;*

Amendment 33

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

Text proposed by the Commission

(da) who are authorised to reside in a Member State on the basis of temporary protection, or who have applied for authorisation to reside there on that basis and are awaiting a decision on their status;

Amendment

Amendment 34

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

Text proposed by the Commission

(db) who are beneficiaries of international protection under Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status

Amendment

of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted¹ or have applied for international protection under that Directive and whose application has not yet given rise to a final decision;

¹ OJ L 304, 30.9.2004, p. 1.

Amendment 35

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

Text proposed by the Commission

Amendment

(dc) who are beneficiaries of protection in accordance with national law, international obligations or the practice of the Member State or have applied for protection in accordance with national law, international obligations or the practice of the Member State and whose application has not given rise to a final decision;

Amendment 36

Proposal for a directive
Article 3 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) who have applied for recognition as refugees and whose application has not yet given rise to a final decision;

deleted

Amendment 37

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;

deleted

Amendment 38

Proposal for a directive Article 3 – paragraph 2 – point h

Text proposed by the Commission

Amendment

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

(h) whose ***removal*** has been suspended for reasons of fact or law;

Amendment 39

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

Text proposed by the Commission

Amendment

(ha) who have applied for admission or have been admitted to the territory of a Member State as self-employed workers;

Amendment 40

Proposal for a directive Article 3 – paragraph 2 – point h b (new)

Text proposed by the Commission

Amendment

(hb) who have applied for admission or have been admitted as seafarer for employment or work in any capacity on board of a ship registered in or sailing under the flag of a Member State.

Amendment 41

Proposal for a directive Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States may decide that Chapter II of this Directive does not apply to third-country nationals who have been either authorised to work on the territory of a Member State for a period not exceeding six months or admitted for the purpose of study.

Amendment 42

Proposal for a directive Article 3 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Chapter II of this Directive shall not apply to third-country nationals who are authorised to work on the basis of a visa.

Amendment 43

Proposal for a directive Article 4 – paragraph 1

Text proposed by the Commission

Amendment

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

1. An application ***for a single permit*** shall be submitted in a single application procedure. ***Member States shall determine whether applications for a single permit are to be made by the third-country national or by his or her employer. If the application is to be submitted by the third-country national, Member States shall allow the application to be introduced from a third country or, if provided for by national law, on the territory of the Member State in which he or she is already legally present.***

Amendment 44

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

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*.

Amendment

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 *by* national *or Union* law. The decision granting, modifying or renewing the single permit shall constitute *a single administrative act combining a* residence permit and *a* work permit.

Amendment 45

Proposal for a directive Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The single application procedure shall be without prejudice to the visa procedure which may be required for initial entry.

Amendment 46

Proposal for a directive Article 4 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States shall issue a single permit, when the conditions provided for are met, to those third-country nationals who apply for admission, and to those third-country nationals already admitted and who apply to renew or modify their residence permit after the entry into force of the national implementing provisions.

Amendment 47

Proposal for a directive Article 5 – paragraph 3

Text proposed by the Commission

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**.

Amendment

3. The **relevant** authority shall notify the decision to the applicant in writing in accordance with the notification procedures laid down in the relevant **provisions of national law**.

Amendment 48

Proposal for a directive Article 5 – paragraph 4

Text proposed by the Commission

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.

Amendment

4. If the information **or documents** supporting the application **are incomplete according to the criteria specified in national law**, the **competent** authority shall notify the applicant **in writing** of the additional information **or documents** required. The period referred to in paragraph 2 shall be suspended until the authorities have received the additional information required.

Amendment 49

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 relevant authority.

Amendment 50

Proposal for a directive Article 6 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Member States may issue an additional document to the single permit holding all relevant information specific to the right to work.

That additional document shall be optional and purely informative in nature. It shall have no effect on the validity of the single permit.

The additional document may be updated when the single permit holder's labour market situation changes.

Amendment 51

Proposal for a directive Article 7 – paragraph 1 – subparagraphs 1 a and 1 b (new)

Text proposed by the Commission

Amendment

Member States may issue an additional document to the residence permit holding all relevant information on the specific right and conditions to work.

Such an additional document shall complement the residence permit and may be updated or withdrawn when the labour market position of the holder of the residence permit changes.

Amendment 52

Proposal for a directive Article 7 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. ***When issuing residence permits in accordance with Regulation (EC) No 1030/2002,*** Member States shall not issue any additional permits ***as proof of authorisation to access*** the labour market.

Amendment 53

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

Amendment 54

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 ***a legal challenge in*** the Member State concerned ***in accordance with national law.*** The written notification shall specify the ***court or administrative authority where the person concerned may lodge an appeal*** and the time-limit for ***the appeal.***

Amendment 55

Proposal for a directive Article 8 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. An application may be considered inadmissible for reasons connected with the number of third-country nationals admitted to the territory of a Member State in order to work there. In such a situation, the application need not be processed.

Amendment 56

Proposal for a directive Article 9

Text proposed by the Commission

Amendment

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.

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

Amendment 57

Proposal for a directive Article 10

Text proposed by the Commission

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.

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

Amendment 58
Proposal for a directive
Article 11 – introduction

Text proposed by the Commission

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

Amendment

Where a single permit *has been issued in accordance with national law and during its period of validity, it* shall *authorise* its holder as a minimum to:

Amendment 59

Proposal for a directive
Article 11 – point a

Text proposed by the Commission

(a) enter, *re-enter* and stay in the territory of the Member State issuing the single permit;

Amendment

(a) enter and stay in the territory of the Member State issuing the single permit, *provided that he or she meets all admission requirements in accordance with national law;*

Amendment 60

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 within the limits provided for by national legislation;

Amendment 61

Proposal for a directive
Article 11 – point d

Text proposed by the Commission

(d) exercise of the *activities* authorised

Amendment

(d) exercise of the *specific professional activity* authorised under the single permit

under the single permit;

in accordance with national law;

Amendment 62

Proposal for a directive

Article 11 – point e

Text proposed by the Commission

(e) be informed about his/her own rights linked to the permit conferred by this Directive *or* by national legislation.

Amendment

(e) be informed about his/her own rights linked to the permit conferred by this Directive *and/or* by national legislation.

Amendment 63

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 provided in such a way that the applicant is able to comprehend their content and implications.

Amendment 64

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 and dismissal as well as health and safety at the workplace, *working time, leave and disciplinary procedures, taking into account general collective agreements in force;*

Justification

Extends the scope for equality of treatment.

Amendment 65

Proposal for a directive

Article 12 – paragraph 1 – point e

Text proposed by the Commission

*(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;***

Amendment

*(e) branches of social security, as defined in **Regulation (EC) No 883/2004 of the European Parliament and of the Council;***

Justification

The new legislation on the coordination of social security systems will be (EC) 883/2004.

Amendment 66

Proposal for a directive

Article 12 - paragraph 1 - point g

Text proposed by the Commission

(g) tax benefits;

Amendment

*(g) tax benefits, **in so far as the worker is deemed to be resident for tax purposes in the Member State concerned;***

Amendment 67

Proposal for a directive

Article 12 - paragraph 1 - point h

Text proposed by the Commission

(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.

Amendment

(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 **and advice services** afforded by employment offices **as provided by national law**.

Amendment 68

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 imposing restrictions on the full application of** the rights conferred under *paragraph 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 less than** three years;

Amendment 69

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

(e) **by making use of residence criteria (for the residence-based benefits, but not employment-related benefits) if the residence permit is issued for the purposes other than work but the residence permit allows working;**

Amendment 70

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

Text proposed by the Commission

Amendment

2a. Third-country workers moving to a third-country, or the survivors of such a worker residing in third-countries as they derive their rights from the worker, shall receive, in relation to old-age, invalidity and death, statutory pensions based on the worker's previous employment and acquired in accordance with the legislation set out in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third-country. Member States may make the application of this provision conditional to the existence of bilateral agreements in which the reciprocal export of pensions is acknowledged and a technical cooperation established.

Amendment 71

Proposal for a directive Article 12 - paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States shall take the necessary measures to ensure that any violation of the rights enshrined in this Directive is subject to effective, proportionate and deterrent penalties.

Justification

Effective remedies should be available in case of breach of the equal treatment principle for

instance by employers

Amendment 72

Proposal for a directive

Article 12 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. Member States shall take the necessary measures to ensure that any violation of the rights enshrined in this Directive is subject to legal challenge.

Amendment 73

Proposal for a directive

Article 13 - paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

This Directive shall apply without prejudice to the rights and principles contained in the European Social Charter of 18 October 1961 and the European Convention on the legal status of migrant workers of 24 November 1977.

Amendment 74

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.***

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

Amendment 75

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Periodically, and for the first time no later than three years after the date specified in Article 16, the Commission shall **present a** report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments **it deems** necessary.

Amendment 76

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

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.**

Amendment

2. Annually, and for the first time no later than 1 **July** [one year after the date of transposition of this Directive], Member States shall communicate to the Commission statistics on the volumes of third-country nationals who have been granted a single permit during the previous calendar year, **in accordance with Regulation (EC) No 862/2007 of the European Parliament and of the Council on Community statistics on migration and international protection¹.**

¹ OJ L 199, 31.7.2007, p. 1.

Amendment 77

Proposal for a directive

Article 16 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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**.

Amendment

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

*** OJ please insert date: two years after entry into force of this Directive.**

Amendment 78

Proposal for a directive

Article 16 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field **governed** by this Directive.

EXPLANATORY STATEMENT

1. GENESIS OF THE PROPOSAL

In 2001, the Commission submitted 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 a favourable opinion from the European Parliament, this ambitious proposal, which sought to establish the entry and residence conditions for third-country nationals wishing to undertake an economic activity within the Union, did not survive beyond its first reading within the Council, and the Commission officially withdrew it in 2006.

In December 2005, the Commission adopted an action programme on legal immigration in which it presented its new strategy on economic immigration. It proposed laying down the conditions for the admission of certain categories of workers who were third-country nationals (highly qualified workers, seasonal workers, people transferred within their undertaking and paid trainees). In addition to the adoption of these sectoral directives, the action plan also referred to a framework directive which would have the aim, on the one hand, of establishing a single application procedure for work permits and residence permits, and on the other hand of creating a common set of rights for third-country workers legally resident in a Member State. The Commission submitted this proposal for a directive in October 2007. The European Parliament was asked for an opinion under the consultation procedure then in force pursuant to Article 63(3)(a) of the EC Treaty. But in the absence of unanimity within the Council, it was not possible to adopt the proposal until the Lisbon Treaty entered into force, altering the procedure for adopting legislation on legal immigration. The new legal basis requires a qualified majority within the Council and provides for codecision with the European Parliament. It is for this reason that this proposal is again being considered by the European Parliament, this time under the 'omnibus' procedure.

2. SUBSTANCE OF THE PROPOSAL

The Hague Programme recognised that legal immigration would play an important role in economic development. It was with this in mind that it called on the Commission to submit an action plan to enable the labour market to respond rapidly to the constantly changing demand for manpower from abroad.

The Stockholm Programme adopted by the European Council on 10 and 11 December 2009 expressed the view that labour immigration may increase competitiveness and economic vitality. In view of the considerable demographic challenges which the European Union will face in future, with growing demand for manpower, this new multiannual programme calls on Member States to adopt flexible immigration policies in order to support the Union's long-term economic development and performance.

The proposal for a directive now under consideration tackles these concerns. By establishing a single application procedure for third-country nationals who wish to be admitted to the territory of a Member State in order to work there, and by offering them a secure legal status, this directive will simplify the often complex administrative procedures for receiving economic migrants. It will thus enable the labour markets of our Member States to meet current and future manpower needs and will provide a way of combating exploitation and discrimination, to which these workers too often fall victim.

The proposal for a directive also seeks to reduce the differences which exist between national legislations regarding, firstly, the procedure for applying for a work permit and a residence

permit and, secondly, the rights granted to third-country nationals working legally within the European Union who do not yet enjoy the status of long-term residents. Significant differences currently exist between Member States.

It is important to note that this proposal does not stipulate the conditions for admitting third-country nationals. Member States retain the power to decide these conditions and to set the number of migrants that they wish to admit to their territory for employment purposes.

3. POSITION OF THE RAPPORTEUR

One of the best ways of combating illegal immigration and undeclared work is to develop balanced legal immigration channels which meet the needs of our labour markets. Economic immigration is a reality on which we must impose order, but it is also a necessity in view of the demographic and economic challenges which the EU will face in the near future.

Immigration policy can therefore be regarded as an instrument for regulating our labour needs, thus helping to implement the 'Europe 2020' Strategy.

Your rapporteur welcomes the establishment of this horizontal legal framework applicable to all third-country nationals admitted to European territory for purposes of employment.

She has sought to preserve the broad scope of the proposal. The directive will apply not only to any third-country national admitted to the territory of a Member State for employment purposes but also to all those who were originally admitted for other purposes but who have acquired the right to work there on the basis of national or Community law. The exclusion of seasonal workers and workers posted within their undertaking is justified by the

Commission's presentation of proposals for directives specific to these categories of worker. If such workers had been included within the scope of this proposal for a directive, we would have been compelled to amend the whole of the original Commission proposal and to further postpone its adoption. As regards the exclusion of asylum-seekers and people granted international protection, it is important to emphasise that existing instruments in these fields afford greater protection than the present proposal for a directive.

The single procedure

The adoption of this directive will simplify procedures for the admission of third-country nationals for employment purposes. The existence of a single procedure enabling a single document to be issued authorising residence and access to the labour market constitutes a considerable simplification of the admission system. Two separate procedures entail more protracted processing of applications and higher administrative costs. With this one-stop shop system, the administrative procedure will be simpler, less expensive and quicker. Issuing a single document will also make it easier to check on people admitted to the territory of a Member State and authorised to work there. This document will have the format of the residence permit common to all Member States. Member States will also be able to make provision for an additional document which has a purely informative status. In this way the information contained in the single permit can be supplemented, thus facilitating monitoring. This proposal therefore has advantages for migrants, employers and national administrations. As the Commission proposal does not state who may submit an application – the employer or the employee – and from which State an application may be made, your rapporteur considered it necessary to clarify this important issue. She therefore proposes that, if an application cannot be made from a third country, the employer can submit it himself in the host Member State so that the third-country national does not have to visit Community territory specially in order to submit the application.

Your rapporteur also wished to stress the requirements of legal certainty and transparency of decision-making by national authorities. These decisions have a strong impact on the life of the persons concerned, and they must therefore be taken in a way which is completely transparent. With this in mind, your rapporteur wished to make it clear that any rejection decision must be duly substantiated. The conditions and criteria for rejecting an application for a single permit must also be objective and laid down by national law.

Lastly, as regards the costs of issuing the single permit, it is important to your rapporteur that fees should be not only proportionate but also based on the principle of the service actually rendered.

The common set of rights

This proposal for a directive provides for treatment equal to that enjoyed by national workers on the basis of a common set of rights in fields associated with the labour market. Although these provisions in the proposal are matters for consideration by the European Parliament's Committee on Employment and Social Affairs, your rapporteur believes that they have the advantage of conferring better protection on workers from third countries than is currently the case on the basis of international conventions ratified only by certain Member States. As these persons participate in the economic life of their host country, they must have the benefit of a secure and protective legal status which safeguards them against exclusion and discrimination. This status will also make it possible to combat unfair competition, which often arises from the lack of a legal status to protect these workers.

Your rapporteur hopes that this directive will be adopted soon. She believes that it is time for the European Union to legislate on economic immigration in order to establish an approach common to the 27 Member States. The changes brought about by the Lisbon Treaty have made this progress possible, and it is now up to us to make it a reality.

30.4.2010

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Alejandro Cercas (*):

(*) Associated committee – Rule 50 of the Rules of Procedure

SHORT JUSTIFICATION

This proposal for a directive is part of EU efforts to develop a global migration policy and is a framework proposal for citizens of third countries, the aim of which is twofold:

- a) to create a single application procedure for a permit to reside and work in a Member State;
- b) to establish a uniform set of minimum rights for third-country workers legally resident in the EU, on the basis of equality of treatment with EU nationals.

The proposal has been debated in Council and was the subject of an EP resolution (Gaubert-Jeleva report of 20 November 2008) adopted under the consultation procedure, pursuant to the former EC Treaty. A new EP resolution is justified under the new legal procedure (ordinary legislative procedure) applicable to this proposal pursuant to the new TFEU.

Your rapporteur would like to stress that the scope of this report is limited to matters falling solely under the remit of the EMPL Committee, i.e. recitals 9, 12, 15 and 16, and Articles 2(b), 3(2)(b), 12 (not including the introduction to paragraph 1) and 13, even though your rapporteur or another MEP on this committee may wish to table amendments in LIBE concerning aspects of this proposal falling outside the exclusive remit of EMPL.

The proposal is part of a package of legislative measures announced by the Commission in 2007. This document should constitute a framework document and a minimum standard to be applied to more specific directives on migration that form part of the package (sanctions against employers of illegal workers; skilled workers; temporary workers; paid apprentices and intra-corporate transferees).

It would have made sense for this proposal to be the first text in the package of measures to be debated and for an agreement on it to have served as a basis for debate on the more specific proposals. However, this is not what happened and the EU has already adopted the directives on sanctions against employers (Directive 2009/52/EC) and on qualified employment (Directive 2009/50/EC). This rather illogical sequence of events forces us to work around a number of *faits accomplis*: any analysis, in the context of this proposal, of the rights applicable to all third-country nationals working in the EU must take due account of rights already enjoyed by skilled workers so as to avoid inconsistencies and seek to achieve a minimum level of coherence and consistency with the two aforementioned texts. To this end, account must be taken of rights already accorded by the EU to long-term resident workers (Directive 2003/109/EC), third-country nationals admitted to the EU for the purposes of studies, pupil exchange, unremunerated training or voluntary service (Directive 2004/114/EC), and third-country nationals admitted for the purposes of scientific research (Directive 2005/71/EC).

The main problem facing this proposal for a directive is that the framework legislation with which we have to work, and its horizontal nature, have been compromised by exclusions from its scope of application and derogations of rights concerning certain groups. Your rapporteur believes that this undermines the fundamental purpose of this directive, which is to ensure that all third-country nationals legally working in Europe enjoy equal treatment with EU citizens in both the world of work and the wider socioeconomic context.

This equality is fundamental both for reasons of fairness and social justice and in order to recognise the contribution migrants make to the EU through their work and the taxes and social security contributions they pay. Such recognition will also help reduce unfair competition, deter illegal work and stop third-country workers from suffering exploitation at work and social exclusion. A set of minimum rights must be established in order to create a uniform set of rules applicable across the EU for third-country nationals legally working there, regardless of the Member state in which they live.

We must adopt this set of rights, covering all legal migrants without exception and with a minimum of derogations, if we want to keep our promises on respect and social integration for legal workers in Europe, thereby showing respect for their dignity and recognising their contribution to the economic and social development of our continent.

So as to make this directive more horizontal in nature and for it to be a point of reference and a framework for future directives on specific groups, it should be stressed that, contrary to the Commission's wishes, no group, especially temporary workers, should be excluded from its scope of application: the specific directives must lay down conditions of access to the EU and, possibly, specific rights, but without undermining the framework directive's aim of fair, just and equal treatment for all legal migrants.

Your rapporteur also takes issue with the Commission's proposal for essential elements of the

protection of such migrants to be left to the Member States' discretion. It is quite clear that the labour market situation and requirements for foreign labour, whether skilled or unskilled, differ from Member State to Member State. However, in such a diverse context it would be both useful and necessary to define common minimum standards so as to pave the way for a coherent and fair single European policy on migration capable of contributing in a meaningful way to the integration of migrants into both society and the world of work.

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

Recital 9

Text proposed by the Commission

(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 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.

Amendment

(9) In the absence of horizontal **Union** 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 *pursuing* further development of a coherent immigration policy, *narrowing* the rights gap between EU citizens and third-country nationals legally working and complementing the existing immigration *acquis* a set of **socio-economic and labour-law** rights should be laid down in particular in the form of specifying the policy fields where equal treatment with own nationals is provided for third-country workers legally admitted in a Member *State* but not yet *long-term* residents. Such provisions are intended to **introduce a minimum level of fairness** within the EU, to *recognise* that such third-country nationals legally working in 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. *Without prejudice to the interpretation of the concept of employment relationship in other Union legislation, third-country worker, as laid down in Article 2(b) of this Directive, should mean any third-country national who has been admitted to the territory of a Member State, is legally resident and is allowed to work under national law or in accordance with national practice in that Member State.*

Justification

The purpose of this proposal is to clarify that the definition of “third country worker” shall not influence the interpretation of the concept of employment relationship in any other EU legislative instrument because there is no uniform definition of the concept of “an employment relationship” in the field of EU labour law. Besides the definition proposed by the Commission seems to differ from of the current definitions applied in at least some Member States.

Amendment 2

Proposal for a directive Recital 12

Text proposed by the Commission

(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 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.

Amendment

(12) Third-country nationals who are posted are not covered by this Directive. This should not prevent third-country nationals who are legally residing and lawfully employed in a Member State and posted to another Member State from continuing to enjoy equal treatment with respect to nationals of the Member State of origin for the duration of their posting, in respect of those terms and conditions of employment which are not affected by the application of 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 services¹.

¹ OJ L 18, 21.1.1997, p. 1.

Amendment 3

Proposal for a directive Recital 16

Text proposed by the Commission

(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) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community. Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality extends the provisions of Regulation (EEC) No 1408/71 to third country nationals who are legally residing in the European Union and who are in a cross-border situation.* The provisions on equal treatment 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.*

Amendment

(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 *Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.* 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.

Amendment 4

Proposal for a directive Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Union law does not limit the power of the Member States to organise their social security schemes. In the absence of harmonisation at Union level, it is for the legislation of each Member State to lay down the conditions under which social security benefits are granted, as well as the amount of such benefits and the period for which they are granted. However, when exercising that power, Member States should comply with Union law.

Amendment 5

Proposal for a directive Recital 16 b (new)

Text proposed by the Commission

Amendment

(16b) Member States should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly of the United Nations on 18 December 1990.

Amendment 6

Proposal for a directive Article 2 – point (b)

Text proposed by the Commission

Amendment

(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;

(b) "third-country worker" means, **without prejudice to the interpretation of the concept of employment relationship in other Union legislation**, any third-country national who has been admitted to the

territory of a Member State, **is legally resident** and is allowed to work **under national law or in accordance with national practice** in that Member State;

Amendment 7

Proposal for a directive Article 3 – paragraph 2 – point b

Text proposed by the Commission

(b) covered by Directive 96/71/EC as long as they are posted;

Amendment

(b) covered by Directive 96/71/EC as long as they are posted **and shall not affect the Member States' responsibility for the access and admission of third-country nationals to their labour markets;**

Justification

It is very important to explain that the proposed Directive, in association with Directive 96/71/EC, does not affect the Member States' responsibility for the admission of third-country nationals to their national labour markets. The Member States' right to decide who will be admitted to their labour markets must not be undermined.

Amendment 8

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 and dismissal as well as health and safety at the workplace, **working time, leave and disciplinary procedures, taking into account general collective agreements in force;**

Justification

Extends the scope for equality of treatment.

Amendment 9

Proposal for a directive

Article 12 – paragraph 1 – point e

Text proposed by the Commission

(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;*

Amendment

(e) branches of social security, as defined in *Regulation (EC) No 883/2004 of the European Parliament and of the Council;*

Justification

The new legislation on the coordination of social security systems will be (EC) 883/2004.

Amendment 10

Proposal for a directive

Article 12 - paragraph 1 - point g

Text proposed by the Commission

(g) tax benefits;

Amendment

(g) tax benefits, *in so far as the worker is deemed to be resident for tax purposes in the Member State concerned;*

Amendment 11

Proposal for a directive

Article 12 - paragraph 1 - point h

Text proposed by the Commission

(h) access to goods and services and the supply of goods and services made available to the public including

Amendment

(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.

procedures for obtaining housing and the assistance **and advice services** afforded by employment offices **as provided by national law**.

Amendment 12

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 imposing restrictions on the full application of** 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 less than** three years;

Justification

This is a technical amendment intended to remedy the fact that the Commission text says the opposite of what it should say: i.e. it should restrict the rights of third-country nationals with short-term residence permits.

Amendment 13

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

(e) **by making use of residence criteria (for the residence-based benefits, but not employment-related benefits) if the residence permit is issued for the purposes other than work but the residence permit allows working;**

Amendment 14

Proposal for a directive

Article 12 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Third-country workers moving to a third-country, or the survivors of such a worker residing in third-countries as they derive their rights from the worker, shall receive, in relation to old-age, invalidity and death, statutory pensions based on the worker's previous employment and acquired in accordance with the legislation set out in Article 3 of Regulation (EC) No 883/2004, under the same conditions and at the same rates as the nationals of the Member States concerned when they move to a third-country. Member States may make the application of this provision conditional to the existence of bilateral agreements in which the reciprocal export of pensions is acknowledged and a technical cooperation established.

Amendment 15

Proposal for a directive

Article 12 - paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States shall take the necessary measures to ensure that any violation of the rights enshrined in this Directive is subject to effective, proportionate and deterrent penalties.

Justification

Effective remedies should be available in case of breach of the equal treatment principle for instance by employers

Amendment 16

Proposal for a directive

Article 12 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. Member States shall take the necessary measures to ensure that any violation of the rights enshrined in this Directive is subject to legal challenge.

Amendment 17

Proposal for a directive

Article 13 - paragraph 1 - point b a (new)

Text proposed by the Commission

Amendment

(ba) This Directive shall apply without prejudice to the rights and principles contained in the European Social Charter of 18 October 1961 and the European Convention on the legal status of migrant workers of 24 November 1977.

PROCEDURE

Title	Single application procedure for residence and work		
References	COM(2007)0638 – C6-0470/2007 – 2007/0229(COD)		
Committee responsible	LIBE		
Opinion by Date announced in plenary	EMPL		
Associated committee(s) - date announced in plenary	21.4.2010		
Rapporteur Date appointed	Alejandro Cercas 21.1.2010		
Discussed in committee	22.2.2010	16.3.2010	27.4.2010
Date adopted	28.4.2010		
Result of final vote	+: 42	-: 1	0: 7
Members present for the final vote	Regina Bastos, Edit Bauer, Jean-Luc Bennahmias, Pervenche Berès, Mara Bizzotto, Martin Callanan, David Casa, Alejandro Cercas, Ole Christensen, Philip Claeys, Derek Roland Clark, Sergio Gaetano Cofferati, Marije Cornelissen, Tadeusz Cymański, Frédéric Daerden, Proinsias De Rossa, Sari Essayah, João Ferreira, Pascale Gruny, Thomas Händel, Marian Harkin, Roger Helmer, Stephen Hughes, Liisa Jaakonsaari, Danuta Jazłowiecka, Ádám Kósa, Jean Lambert, Veronica Lope Fontagné, Olle Ludvigsson, Elizabeth Lynne, Thomas Mann, Elisabeth Morin-Chartier, Csaba Óry, Siiri Oviir, Rovana Plumb, Konstantinos Poupakis, Sylvana Rapti, Licia Ronzulli, Elisabeth Schroedter, Jutta Steinruck, Traian Ungureanu		
Substitute(s) present for the final vote	Raffaele Baldassarre, Filiz Hakaeva Hyusmenova, Véronique Mathieu, Gesine Meissner, Ria Oomen-Ruijten, Evelyn Regner, Csaba Sógor, Emilie Turunen, Gabriele Zimmer		

PROCEDURE

Title	Single application procedure for residence and work			
References	COM(2007)0638 – C6-0470/2007 – 2007/0229(COD)			
Date submitted to Parliament	23.10.2007			
Committee responsible Date announced in plenary	LIBE			
Committee(s) asked for opinion(s) Date announced in plenary	EMPL			
Associated committee(s) Date announced in plenary	EMPL 21.4.2010			
Rapporteur(s) Date appointed	Véronique Mathieu 11.1.2010			
Discussed in committee	16.3.2010	28.4.2010	10.5.2010	28.9.2010
Date adopted	28.9.2010			
Result of final vote	+: 41	-: 8	0: 2	
Members present for the final vote	Jan Philipp Albrecht, Roberta Angelilli, Vilija Blinkevičiūtė, Rita Borsellino, Emine Bozkurt, Simon Busuttil, Philip Claeyns, Carlos Coelho, Agustín Díaz de Mera García Consuegra, Cornelia Ernst, Tanja Fajon, Héléne Flautre, Kinga Gál, Kinga Göncz, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Livia Járóka, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Baroness Sarah Ludford, Clemente Mastella, Véronique Mathieu, Nuno Melo, Louis Michel, Claude Moraes, Jan Mulder, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Csaba Sógor, Rui Tavares, Valdemar Tomaševski, Wim van de Camp, Daniël van der Stoep, Axel Voss			
Substitute(s) present for the final vote	Alexander Alvaro, Edit Bauer, Anna Maria Corazza Bildt, Ioan Enciu, Stanimir Ilchev, Iliana Malinova Iotova, Wolfgang Kreissl-Dörfler, Jean Lambert, Mariya Nedelcheva, Cecilia Wikström			
Substitute(s) under Rule 187(2) present for the final vote	Marie-Thérèse Sanchez-Schmid			