FIT FOR FUTURE Platform Opinion

Topic title	Directive on the single permitfor third-country nationals
	2021 AWP
	Directive 2011/98/EU *Legal reference*
Date of adoption	10 December 2021
Opinion reference	2021/SBGR2/08
Policy cycle reference	☑ Contribution to ongoing legislative process
	CWP 2021, Annex II, Revision of Directive 2011/98/EU on the Single permit *Commission work programme reference*
	As a follow up to the 2019 Fitness check on legal migration, the revision of the Single Permit Directive will aim to simplify and clarify its scope and to ensure a minimum harmonisation of admission and residence conditions for low and medium skilled workers. Planned adoption date: Q4/2021; Legislative; Legal basis: Article 79(2) of the TFEU. Impact assessment is envisaged
	☐ Contribution to the (ongoing) evaluation process
	Fitness check on EU Legislation on legal migration, (SWD(2019) 1056 final) *Title of the (ongoing) evaluation*
	In 2019, the Commission published the first implementation report of the Single Permit Directive, highlighting the main problems in the implementation of the Directive by the EU Member States. Furthermore, in 2019, the Commission finalised an evaluation of existing laws in this field. This evaluation identified a number of inherent shortcomings in the EU legal framework, including in the Single Permit Directive. To address these shortcomings, the Commission's 2020 New Pact on Migration and Asylum announced a number of new initiatives, including a review of the Single Permit Directive. This initiative has been included in Annex II of the 2021 Commission work programme.

	☐ Included in Annex VI of the Task force for subsidiarity and proportionality	
	No	
	☐ Other	
	No	
Have your say: Simplify!	*No relevant suggestions on this topic were received from the public.*	
Commission follow up	REFIT Scoreboard:	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
	Have your say portal:	Single work & residence permit for non-EU nationals
	Annual Burden Survey:	The EU's efforts to simplify legislation

FIT FOR FUTURE PLATFORM'S SUGGESTIONS SUMMARY

Suggestion 1: **Streamline and digitalise the single permit application and visa applications to reduce the administrative burden and costs on applicants and on authorities**

Suggestion 2: **Simplify procedures on change of employer and increasing ownership of workers will provide concrete benefits to national administrations and applicants**

Both suggestions should take into consideration the national competences regarding application for visas and residence permit.

SHORT DESCRIPTION OF THE LEGISLATION ANALYSED

Directive 2011/98/EU 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 was adopted on 13 December 2011. It was the sixth directive in the area of legal migration adopted after the Treaty of Amsterdam gave the EU the power to legislate in this field.

The Directive has two main objectives. The first is to facilitate the procedure for a third country national to be admitted for work in a Member State by introducing a single application procedure for a single permit (a combined work and residence permit) and in so doing help to better manage migration flows. In addition, the Directive lays down a number of safeguards in the application procedure. The Directive's second main objective is to ensure equal treatment between third country workers and nationals of the Member State of residence.

The Directive is therefore a key instrument in EU immigration policy for third country nationals admitted to work or working in the 25 Member States where the Directive applies (Ireland and Denmark are exempted).

Further sources of information

Have your Say entry page

Legislation framework webpage

Inception impact assessment

Fitness check

PROBLEM DESCRIPTION

Existing evidence available to the Commission suggests the following issues:

There are several problems in the implementation and functioning of the Single Permit Directive, as highlighted in the above-mentioned fitness check and implementation report. In addition, numerous complaints from citizens have been received and infringement procedures to Member States have been launched. These problems can be categorised as 'regulatory failures', as the existing Directive has failed to solve some of the issues that it was supposed to solve at the time of adoption. As a result, the revision of the Single Permit Directive has been included in the REFIT initiatives of the Commission work programme for 2021. The following main problems have been identified:

- The **definition** of "third-country worker", as a third-country national who is allowed to work but does not necessarily work has proven to be difficult to transpose and implement in many Member States.
- The **personal scope** of the Directive (the categories of third-country nationals to whom the Directive applies) is very fragmented, with numerous exceptions that are difficult and exclude *de-facto* a large number of TCN. As a rule, the Directive covers all third-country workers, but with too many exceptions. It is also inconsistent with other Directives covering other categories of third-country nationals.
- The **single application procedure** does not ensure efficient coordination of the different administrative steps and authorities involved, including with relation to the entry visa and labour markets tests. In particular, the interaction with the national visa procedures sometimes undermines the simplification objective of the single application procedure. The procedure for applying for an initial 'entry visa' (as required by the majority of Member States that do not issue residence permits outside their territory) is outside the scope of the Single Permit Directive. As a result, visa requirements can duplicate administrative checks and the submission of documents, de facto extending the overall time needed to obtain the permit. A number of Member States have put in place additional administrative procedures (e.g. 'labour market authorisations' or obligations to register with local, tax and social security authorities) that can further undermine the simplification objective.
- The **equal treatment** provisions that grant single permit holders a set of rights in a number of areas are strict. They do not only include numerous exceptions but are also difficult to interpret and implement, which undermines the objective of granting fair treatment and facilitating the integration of third-country workers. For example, Member States are entitled to deny grants and loans for education and vocational training. Family benefits may not be awarded to workers authorised to work for a period of six months or less, or to students or third-country nationals entitled to work on the basis of a visa. Tax benefits may be restricted in cases where the registered or usual place of residence of family members for whom a third-country worker is claiming benefits lies in the territory of the member state concerned. Finally, housing restrictions may also be imposed.
- The Directive provides **insufficient protection against exploitation** of third-country workers. In particular, Member States are allowed to link the single permit with one

specific employer, which can make the permit holder too dependent on the employer and more likely to be victim of labour exploitation. Furthermore, the Directive has no provisions on sanctions or inspections for compliance with equal treatment provisions.

- The Single Permit Directive regulates the application procedure and the right to equal treatment for most low and medium skilled workers, but not their admission conditions. As a result, as it is a competence of Member States, **there are no coordinated rules at EU level on attracting low and medium skilled third-country workers[1] in key sectors for the future of the EU economy,** such as agriculture, manufacturing, construction, health care, and domestic care. Significant labour shortages are expected in these sectors in the coming years.

(Source: Inception impact assessment)

The Fit for Future Platform has acknowledged the issues raised by the legislation concerned as follows:

Regarding: modernisation and future proofing of existing laws, including via digitalisation, the efficient labelling, authorisation and reporting obligations, the simplification of EU legislation:

There are differences in implementation on national level, and some remaining procedural issues.

Evidence suggests that few Member States issue electronic permits or procedures for obtaining a physical permit after the authorities have already taken a positive decision and after the arrival to the Member State on a visa, which can take months in some cases. In some Member States, a substantive check of underlying documents takes place twice. Other Member States suggest that there are no indications of duplication in the administrative checks and in the investigations of the diplomatic representations, which receive the authorization directly from the "single access points for immigration" at the prefectures to issue entry visas. In relation to the single electronic permits issued by the police headquarters, some Member States indicate they have not registered difficulties in the implementation, in relation to the ICT systems or in relation to the purposes for which the single permit is requested.

Some stakeholders consider that national legislation adapts quickly to the needs of the labour market, while others underline that there are often significant gaps between real labour market needs and labour migration pathways. For example, evidence has shown many member states that do not adjust their labour migration schemes in relation to lists of shortage occupations, and that in those that do, the resulting policy adjustments focus on very specific, narrowly-defined shortage occupations (European Migration Network (2015), Determining labour shortages and the need for labour migration from third countries in the EU. Synthesis Report for the EMN Focussed Study 2015, Brussels: EMN; PICUM (2021) Designing labour migration policies to promote decent work, Brussels: PICUM). Nevertheless, Article 1 point 2 of the Directive states

[1] With the exception of seasonal workers covered under Directive 2014/36/EU;

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

In this sense, it would be useful if the Directive could address administrative requirements in application procedures that undermine the application of the Directive, and increase costs and inefficiencies associated with single permit procedures, e.g. when labour market tests are applied in a way that does not reflect real labour market needs, limitations to certain very specific occupations, quotas. This would significantly address bottlenecks in the way the legislation is implemented and contribute to better regulation and administration. Each Member States has competence to determine which profiles of workers are required for its labour market and in which manner will the Member States assess the qualifications of those people. It is up to Member States to decide on the criteria for admission of TCN workers and, in particular, quotas, as set out in the article 79(5) TFEU *("This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.").*

However, lack of coordination between different administrations, inefficiencies between national visa and single permit and national requirements create duplications (that should be avoided whenever possible) and lengthy procedures.

A large number of documents for issuing residence and work permits, which are requested from applicants could be acquired ex officio, except documents which are not issued by public authorities (travel documents, evidence of qualification/professional qualifications, proof that they have not been convicted in their country of origin, etc.). However, lack of coordination between public administrations can hamper the smooth transmission of documents and lengthens procedures.

Information concerning the documentation and procedure for issuing residence and work permits is not easy to retrieve and is difficult to interpret. There is further need to inform third-country nationals about the conditions of regulating their stay and about their rights, as well as to inform the employers about the conditions of employment and work for third-country nationals through professional associations.

Traditional paper submissions of applications lengthens the processing and increases costs linked to applications.

Moreover, given that the procedure for applying for an initial 'entry visa' is outside the scope of the Single Permit Directive (SPD), visa requirements can duplicate administrative checks and the submission of documents. Links between national visa procedures and the entry visa and labour market tests are inefficient. The SPD allows for in-country applications by regularly residing third-country nationals where provided for by national law but this is not possible in all Member States. This results in longer time needed to obtain the permit and more complex procedures. Moreover, additional national procedures result in complex and lengthy procedures.

There are also inconsistencies in terms of the length of permit issued. When permits have to be renewed regularly, it creates additional administrative burdens and costs for employers, workers and government administrations. Short-term permits in practice require to be renewed on a more frequent basis, which could be associated with loss of status and substandard working conditions, representing economic costs (undeclared work) as well as social and human costs.

Complex procedures to change employer and type of work and little ownership of workers creates inefficiencies.

The Directive combined residence permits and work permits into a single residence and work permit. This may be linked to unintended consequences.

Currently, in some Member States it is not possible to change the employer and type of job/ sector while remaining on the same permit (or with a simple conversion procedure). This results in higher risks of people losing their residence permit when they lose their job and can increase exploitation, as permits which are linked to a single employment relationship lead to dependency and exploitation and pull people into irregularity. This might create significant costs for workers, employers and public administration.

The SPD allows applications to be made by employers, by workers, or either. When workers have greater ownership over application procedures, it reduces risks of misinformation, deception, dependency and exploitation. If workers are enabled to make applications and provided adequate information and support to do so this would result in higher uptake.

SUGGESTIONS

Suggestion 1: Streamline and digitalise the single permit application and visa applications to reduce the administrative burden and costs on applicants and on authorities

Description: A streamlined and simplified procedure for single permit applications could result in a number of cost savings for employers, third-country nationals, as well as national authorities.

The interaction with the national visa procedures sometimes undermines the simplification objective of the single application procedure. The Directive should clarify the interactions between the two and make it easier to introduce digital procedures, while creating the conditions so that requests for documents are not duplicated.

Digitalisation of the application procedure could be a solution to simplify administrative processes. Digitalisation could be implemented as early as possible in the application process to avoid requesting information or documentation twice (visa and single permit) from the applicant or the employer.

Moreover, comprehensive information on procedures could be made available on the web site. If necessary, meetings with the representatives of employer associations can facilitate access to information.

The Directive could require national authorities to accept applications both from outside and from inside the country.

This Directive should address the length of permits and their renewability to provide a framework for permits of a decent length (such as minimum 2 year renewable permit), and streamline the procedures for renewal.

Financial, administrative, social and human consequences related to undeclared work and if they can be addressed by improving the implementation of the equal treatment provisions could be considered, taking into account the competences of the Member States. A possible option could be making general labour inspection and complaints mechanisms more accessible and effective for all migrant workers. Making these mechanisms more effective could make employers pay all due wages, social security and taxes, contributing to state budgets, removing incentives for undeclared work and exploitation, ensuring would ensure fair pay and remedy for workers.

Expected benefits: It is estimated that the digitalisation of the submission of applications for issuing permits for residence and work, as well as greater use of in-country applications, would contribute to the acceleration of the processing of applications and the reduction of costs for those submitting the applications, as well as enable job matching and reduce risks of undeclared work. Permits with a longer duration and that are easily renewable would contribute as well to the reduction of costs and administration for those submitting the applications and public administrations. They will increase stability for employers and workers, and contribute to improving full implementation of the Directive, including the equal treatment provisions.

Suggestion 2: Simplify procedures on change of employer and increasing ownership of workers will provide concrete benefits to national administrations and applicants

Description: Making it possible to workers to change employer on the same permit or through a simple conversion procedure and require Member States to enable workers to make applications and provide adequate information and support to do so. This should include ensuring sufficient time to be unemployed and look for another job depending on the Member States assessment of the specific labour market. While putting clear provisions on this in the directive would provide more legal clarity, this issue could also be addressed if the directive is not reformed (i.e. guidelines). Overall, it would be important to analyse the scope of rights those persons would have, especially regarding unemployment benefits.

Expected benefits: reduced administrative burdens for workers and employers, higher legal clarity and ultimately a better matching on labour supply and demand (job and skills matching and career progression).

ABSTENTIONS

- 1 Member State

DISSENTING VIEWS

- Introduction of digital procedures should be up to Member States;
- No need to streamline visa procedures;
- Requiring Member States to accept applications in their territory sends wrong signals;
- No need for allowing TCN workers to change employer on the same permit and increase ownership of the worker;
- No need for extending unemployment rights;
- No need to extend the Single Permit Directive (SPD) to admission conditions of low and medium qualified third country workers.

*Rationale for dissenting views on the suggestions***:**

A Member State does not share the conclusions regarding the **visa procedures**. TCN who are subject to a visa requirement need an entry visa to pick up the respective residence permit in the territory. The country's consulates abroad usually issue those national visas as quick as possible under simplified procedures after having received the necessary authorization. In those cases, there is no renewed full examination of all documents, which would duplicate the administrative burden of the applicant or employer. Therefore, for the Member State in question, the procedure for applying for an entry visa as a national competence should remain outside the scope of the Directive.

The Member State considers that requiring Member States to accept **digital applications** raises a lot of questions and in particular security concerns over proving the identity and qualification of the person concerned. One has to keep in mind that identity documents of the applicants are issued by third countries, where the administration has no way of knowing if it is really the person applying for the document. Furthermore, fingerprints are required and according to the VIS regulation pictures should be taken live. How this would work in a purely digital procedure is completely unclear. The Member State can support the idea of not requesting documents that are available to the authorities (often much more up to date like criminal records or family status).

Finally, to require Member states to **accept applications both from outside and inside** the country (irrespective of immigration status) would send a wrong signal, in particular to failed asylum seekers who then apply for a single permit. This only prolongs the procedures and puts public pressure on the authorities tasked with return to await the outcome of a single permit application rather than carry out the return.

Simplifying change of employer: we may state that in the experience of the Member State the first permit usually contains a binding to a specific job. This enables authorities to check whether the initially offered conditions are adhered to in practice and up to authorization

standards. It also ensures authorization practice in line with labour market needs. Finally, the link between the worker and the job is relatively short in the Member State.

Procedural ownership of the worker: the Member States points to the fact that the SPD already provides that workers are able to apply for a single permit. Since the implementation of the SDP, this has become the usual way for most workers and their employers. The country also points to the fact that the optional application by the employer as provided for in the SPD allows for accelerating the procedure, since the employer usually better knows the laws and procedures. Since the SPD already offers sufficient possibilities, changes of its provisions are not necessary.

Proposed extension of unemployment rights: in our view, the provisions foreseen in SPD are sufficient.

Finally, the Member State recalls their position on Commission's intention of extending the EU legal framework **low and medium skilled TCN workers**:

Labour Market Access Conditions should remain in the competence of Member States. Labour market needs vary and Member States need full flexibility to respond fast to rapidly changing needs, which occur more often in the low and medium skilled segment of the labour market than in the highly skilled segment covered by the EU Blue Card or Researchers et al Directives.

In the Member State in question unemployment rates are significantly higher for lower skilled workers. It would be counterproductive to attract additional workforce to sectors already under pressure. Their priority for the low and medium skilled segment should be to reduce unemployment rates and to increase the qualifications of workforce already available.

*Alternative suggestions***:**

With regard to **ownership of workers**, the directive already foresees that workers shall be able to apply for a single permit, which is in fact the way used by most TCN and their employers in the Member State in question. The optional application by the employer is an important tool to speed up the procedure. As the directive already foresees the possibility, no further changes to the legal framework are necessary.

With regard to time for a **job search,** it should also be kept in mind that not all permits issued under the single permit directive require the holder to have a specific job. Such a link is usually only present for the first permit issued, where the job is the reason the person moves to the Member State in question. When a residence permit is issued for a specific employer, the person has to undergo a change of employer procedure (which is in essence the same as applying for a new permit). In case a person loses their job, the Member State's authorities have to withdraw the existing permit. The withdrawal is carried out through an administrative procedure, where the person concerned is also heard and the principle of proportionality taken into account. The person concerned can use this time to look for a new job, and if he/she has a new offer, the authority will examine the new job offer and issue a new permit, if the criteria

are met rather than withdrawing the old permit. Therefore no further rules on changing jobs in the directive are required. In any case, more time would be needed to study the effects of the rules for changing an employer that were just introduced in the new Blue Card Directive. Complex rules do not provide more legal security for the person concerned, as they are difficult to understand and implement correctly.

If other Member States face issues on the implementation, some general guidelines could be more helpful and have a much more immediate impact, than revising the single permit directive.

The current SPD offers sufficient opportunities to streamline national admission systems. Therefore, we prefer some general guidelines and a faster tool for Member States having trouble to implement it. A revision of the SPD is not necessary.

With regard to the additional administrative procedures, which in the view of the authors can undermine the idea of the single permit directive, the dissenting Member State wants to offer the perspective from the local level:

From their point of view, the police registration system (Registration Act) - whose task it is to make those people traceable who take up residence in the federal territory - should in any case remain the responsibility of the registration authorities (= municipalities).

Only these have always had the necessary know-how in dealing with registration procedures (registration, deregistration and re-registration procedures, official registration and deregistration procedures, etc.) and also know the local conditions in the municipality.

The involvement of other authorities that have not been familiar with the police registration system so far bears the risk of incorrect entries (in the Local and thus also) in the Central Register of Residents. It is a source register for several other central registers and must therefore guarantee the highest possible data quality (the citizen cards issued so far are also based on the data stored in the Central Register of Residents).

Therefore the one-stop-shop principle is also not suitable because the regulations of the Registration Act serving to ensure data accuracy, require the prior involvement of the accommodation provider. The accommodation provider has to confirm that the accommodation has already been taken by the registrant via providing his or her name and signature on the registration form already filled out by the registrant.