

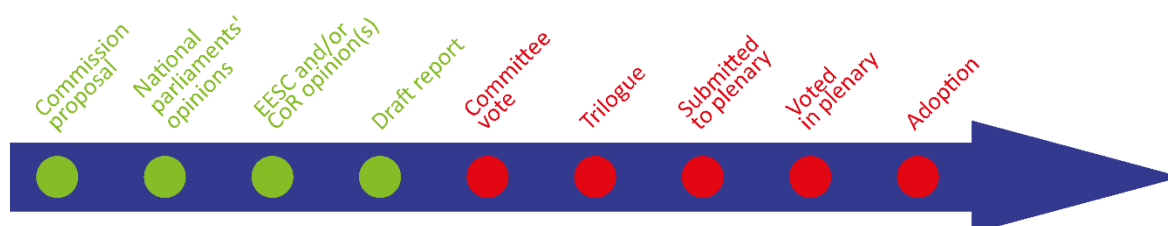
Revision of Directive 2011/98/EU on the single permit to reside and work

OVERVIEW

Most migrants arrive in Europe legally, to work, study or join family members. Over a million of the first residence permits granted to non-EU third-country nationals in 2019 were for work purposes. The EU shares competence on legal migration with Member States but can set conditions for third-country nationals' entry into and legal residence in Member States. However, Member States retain the right to determine admission numbers for third-country nationals seeking work. The Single Permit Directive lays down a single application procedure for a combined work and residence permit, and a common set of rights for third-country workers legally residing in an EU country.

In its communication 'Attracting skills and talent to the EU', adopted on 27 April 2022, the European Commission announced an overhaul of the EU's *acquis* on legal migration. It also proposed a recast of the Single Permit Directive, with the objective of simplifying the application process for living and working in the EU and improving rights for residents and their family members. In the European Parliament, the proposal has been assigned to the Committee on Civil Liberties, Justice and Home Affairs, which debated a draft report prepared by the rapporteur on 1 December 2022.

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 (recast)		
<i>Committee responsible:</i>	Civil Liberties, Justice and Home Affairs (LIBE)	COM(2022) 0655 27.4.2022
<i>Rapporteur:</i>	Javier Moreno Sánchez (S&D, Spain)	2022/0131 (COD)
<i>Shadow rapporteurs:</i>	Lena Düpont (EPP, Germany) Jan-Christoph Oetjen (Renew, Germany) Tineke Strik (Greens/EFA, the Netherlands) Tom Vandendriessche (ID, Belgium) Patryk Jaki (ECR, Poland) Konstantinos Arvanitis (GUE/NGL, Greece)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Awaiting Committee decision	



Context

Most migrants arrive in Europe legally to work, study or join family members. In 2019, EU Member States [issued](#) over three million first residence permits to non-EU third-country nationals (TCNs), of which more than one million were for employment purposes.

Legal migration of third-country (non-EU) nationals to the EU is part of a balanced common EU migration policy, which aims to benefit migrants, their countries of origin and the countries of destination. Taking the importance of integration in host societies fully into account, legal migration can also be considered an investment in the economy and society, addressing labour market needs and supporting the EU's green and digital transition, as well as contributing to more cohesive and resilient European societies.

The EU shares competence on legal migration with the Member States. The EU can lay down conditions for third-country nationals' entry into and legal residence in Member States, including for the purposes of family reunification, but Member States retain the right to determine volumes of admission for third-country nationals (either employed or self-employed) coming to seek work ([Article 79\(5\)](#) of the Treaty on the Functioning of the European Union (TFEU)). The Court of Justice of the European Union (CJEU) recently [clarified](#) that the national right to set volumes of admission only concerns workers and the self-employed (C-71/20), but not others, such as family members or asylum seekers. Family reunification cannot be subjected to any quota system, even though [Article 8\(2\)](#) of Council Directive 2003/86/EC on the right to family reunification has a 'standstill' clause, which allows a derogation taking 'into account [a Member State's] reception capacity'. The European Parliament challenged this provision in case C-540/03 [European Parliament v Council of the European Union](#), where the Court considered that this clause 'cannot be interpreted as authorising any quota system'.

Over the past two decades, the EU has developed a legal framework largely harmonising Member States' conditions of entry and residence for non-EU nationals. Through [Directive 2011/98/EU](#) ('The Single Permit Directive'), EU legislation lays down a single application procedure for a combined single permit for work and residence, and a common set of rights for third-country workers legally residing in an EU country.

The directive applies to almost all third-country workers admitted and employed based on national or EU law, and to third-country family members, supporting their integration in the host society. It is a 'framework' or 'horizontal' directive, which covers third-country workers also admitted to a Member State according to national migration law. The directive covers all 25 EU Member States, Denmark and Ireland being the exceptions.

Existing situation

The single permit allows third-country nationals to enjoy a set of rights, including the right to **move, work and reside freely in the issuing EU country**. It also offers the same conditions as provided to nationals of the issuing country regarding working conditions, education and training, recognition of qualifications, certain aspects of social security, tax benefits, access to goods and services and employment advice services. Nevertheless, pursuant to [Article 12\(2\)](#) of the Single Permit Directive, Member States **may restrict** equal treatment by limiting social security and/or tax benefits, as well as access to goods and services, such as housing. Member States can also choose to only apply the directive's equal treatment provisions to people in employment or who have been employed and who are registered as unemployed – as opposed to students, with regard to whom they may lay down special requirements (language proficiency, payment of tuition fees).

It is also important to note that the directive **does not create a right** for third-country national workers **to enter a state for the purposes of employment**; it only **introduces a single application procedure**. Authorities in EU countries must treat any application for single permit for residence

and work as a single application procedure. They must decide whether the third-country national or by their employer (or both) should make the application.

A key aspect of the directive is the establishment of a 'one-stop-shop' mechanism at national level. All Member States have stepped up their efforts to set up this type of mechanism. However, there are still problematic issues with the procedure, mainly related to the multiple administrative steps required, the time needed to obtain the entry visas and labour market clearance and the respect of certain procedural safeguards.

An [impact assessment report](#) presented by the European Commission to the European Parliament and the Council on 27 April 2022 highlights a number of problems in the implementation of the main obligations of the directive:

- inconsistencies relating to the single application procedure for a single residence and work permit,
- problems with the transposition of the equal treatment provisions (including the exclusion of some categories of third country nationals), a lack of coverage of some social security branches; and
- unequal treatment in relation to the export of statutory pensions, as well as issues with the practical application of procedural safeguards.

Equal treatment provisions are a key element of the EU legal migration framework. Most Member States have complied with the provisions on equal treatment and a limited use has been made of the provisions allowing certain rights to be restricted. This report reveals, however, certain deficiencies in the transposition of the directive (for example, a restrictive interpretation of equal treatment provisions in a few Member States), which should lead to further steps being taken at EU and national levels.

In addition, the [fitness check on legal migration](#) in 2019 showed a lack of information among third-country nationals about the possibility of obtaining a single permit and the rights attached.

Parliament's starting position

In its [resolution of 20 May 2021](#) on new avenues for legal labour migration, the European Parliament acknowledged the contribution that migrants make to our societies, economies and cultures, but called for migration to be managed in an 'orderly, safe and regular manner'. The Parliament found the EU needs to set ambitious goals for enhanced legal migration, using and improving the existing legal and policy framework. In this light, the Parliament welcomed the Commission's planned review of the Single Permit Directive and considered that the scope of the directive should be extended to reach a broader category of workers.

In its [resolution of 25 November 2021](#) with recommendations to the Commission on legal migration policy and law, the European Parliament demanded the proper implementation of the Single Permit Directive, and for further harmonisation and simplification of its rules, including promotion of its equal treatment provisions. The Parliament also emphasised the need to follow 'a balanced approach to the relationship between the Union and third countries in the field of migration', including through formal agreements with partner countries on migration mobility. The Parliament called on the creation of a Union talent pool for TCNs wishing to apply to work in the EU, considering it an 'essential tool for achieving the purpose of the proposed act'. This talent pool could also contain an option for a remote network, allowing TCNs to work remotely in another Member State than that in which they are resident. The use of such a network would be optional for Member States.

In the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), the rapporteur Javier Moreno Sánchez (S&D, Spain) published his [draft report](#) on 21 November 2022. The rapporteur proposes to **shorten the processing time** for an application for a single permit to a maximum of **90 days instead of 4 months**. This period should include all stages of the process. A new accelerated procedure of 45 days is also created 'where the application is submitted by or on

behalf of an applicant who has participated in an EU Talent Partnership with a third country, or where the applicant is already a single permit holder in another Member State'.

The draft report introduces a **minimum period of validity for the permit**, which shall be 'equivalent to the duration of the employment contract or of two years, whichever period is shorter'.

The holder of the single permit will have the right to seek employment with another employer and to **change employers**. The new employer would need to communicate the change to the competent authorities before the first day of work.

The rapporteur is of the position that, should they become unemployed, the holder of a single permit must be able to **remain in the territory of the Member State** for a sufficiently long period to find a new job and thus continue to enjoy the right of residence. The rapporteur sets this period at **nine months after becoming unemployed**, even if the permit expires during this period, whereas the Commission had proposed a period of at least three months during the validity of the permit.

The draft report was debated in the LIBE committee on 1 December 2022. While the rapporteur's proposals were relatively well received by most groups, the European People's Party (EPP) and European Conservatives and Reformists Group (ECR) expressed certain reservations. The EPP group advocated that Member States with a national permit system retain full competence over the entry of migrant workers. Patryk Jaki (ECR, Poland) argued that the nine-month period during which third-country workers who have become unemployed would be allowed to remain in the Member State for the purpose of finding work is too long and may generate abuse in the form of 'fictitious unemployed[persons]'. Tineke Strik (Greens/EFA, Netherlands) approved that the Commission had included the beneficiaries of temporary protection in this directive, but requested stronger sanctions for employers who exploit workers.

Council (and European Council) starting position

On [3 March 2022](#), ministers took stock of the state of work on migration and asylum in the EU, and the Council presidency presented its proposals regarding the first step, which should build on a balanced approach between solidarity and responsibility, as identified at the [informal meeting](#) of Justice and Home Affairs (JHA) ministers on 3 February 2022.

On 22 July 2022, the first reading of the proposal was completed by the Integration, Migration and Expulsion (IMEX) (Admission) Working Party. A set of compromise proposals, was discussed by the working party on [9 November 2022](#), under the Czech Presidency of the Council.

Preparation of the proposal

The directive was initially agreed as part of nine legal migration directives adopted between 2003 and 2016 seeking to achieve two objectives: ensuring the efficient management of migration flows in the EU, and the fair treatment of third-country nationals residing legally in Member States. Negotiations leading to the adoption of the directive took more than four years. An initial version of the text was proposed by the European Commission on 27 October 2007, but the final version of the Single Permit Directive was not adopted by the Council and the European Parliament until 13 December 2011.

The Commission admits that during the 10 years of application of the directive, it received several complaints about Member States' implementation (e.g. failure to comply with the legal deadlines for issuing a single permit or problems related to social security).

To evaluate the efficacy of the instrument, the European Commission conducted a [fitness check](#) on the EU legislation on legal migration and adopted an [implementation report](#) on the Single Permit Directive on 29 March 2019. Both indicated room for improvement to adjust this policy to the EU's migratory and demographic challenges. Following a [public consultation](#) and two resolutions from

the European Parliament in 2021 (see above), the Commission was asked to present proposals to facilitate legal migration to the EU, with the objective of reducing bureaucracy, strengthening harmonisation, promoting fundamental rights and equal treatment, and preventing labour exploitation.

In its [communication](#) 'Attracting skills and talent to the EU', adopted on 27 April 2022, the Commission announced an overhaul of the EU's *acquis* on legal migration, with the objective of simplifying the application process for living and working in the EU and improving rights for residents and their family members.

The communication is accompanied by an [impact assessment report](#), which identifies three main problem areas related to the Single Permit Directive, namely:

1. Complex and inefficient application procedures and unclear rights resulting from a fragmented implementation decrease EU attractiveness for TCNs (non-EU nationals);
2. Lack of EU-level coverage of certain migrant categories, differing admission conditions for low- and medium-skilled TCNs;
3. Insufficient protection of third-country workers from exploitation.

Based on this assessment, the Commission communication proposes to revise the Single Permit Directive and the Long-Term Residents Directive, notably by simplifying admission conditions to acquire EU long-term residence status and streamlining the procedure for the single permit. The set of proposals also includes specific actions to facilitate the integration of those fleeing Russia's invasion of Ukraine into the EU labour market through a [pilot talent pool](#) launched in October 2022. This web-based pilot initiative will help to identify and map the skills of people that have fled Ukraine and who are present in the Member States, and help match them with EU employers. The Commission has announced that another, more permanent and general EU Talent Pool for all nationals of non-EU countries who are interested in migrating to live and work in the EU, will be launched formally by mid-2023.

The changes the proposal would bring

According to the Commission explanatory statement, the proposal would streamline the application procedure and make it more effective. It would enable applicants to apply for permits from both non-EU countries and EU Member States.

Currently, the **overall duration** of the application procedure is not defined, and the fitness check shows that the time required to apply for a visa sometimes extends the overall procedure considerably, in some cases by as much as three months. This delay deters employers from international recruitment. Reducing this duration is expected to help increase the EU's attractiveness and address EU labour shortages. Under the new provisions, both the labour market test (if applicable) and visa processing would have to be completed within the four-month processing deadline. Diploma recognition could, however, still be excluded from the four-month standard processing time.

The recast proposal aims to clarify the **scope of application** of the directive, in particular the exclusions from the scope. Third-country workers posted from another Member State as well as third-country nationals who have been admitted to the territory of a Member State to work as intra-corporate transferees or as seasonal workers are excluded from the scope. Yet, the proposal extends the personal scope of the directive to persons enjoying protection under national law who are currently not fully covered by the provisions on equal treatment.

The recast proposal provides that Member States should allow for a **single application procedure** for a permit to be made both in the Member State of destination and from a third country. For this, the proposal requests that Member States issue the required visa when the requirements laid down by Union or national law are met. Moreover, the **four-month period envisaged for the adoption**

of a decision should also include issuing the required entry visa and the time needed to carry out the labour market test before deciding on an application for a single permit.

The amendments also aim to give permit holders the right to **change employer** during the validity period. Currently, restrictions on employer changes are considered to hinder flexibility in the labour market. Member States could require a notification of the change and check the labour market situation in case a change of employer takes place. This provision is expected to facilitate labour matching and reduce vulnerability to labour exploitation. The recast also clarifies the rights of the permit holder in case of job loss – Member States that withdraw the single permit following **a loss of employment** would be required to allow third-country workers to **remain in their territory for at least three months** during the validity of the permit.

The proposed recast clarifies that **equal treatment** should apply to access to private housing and that any restrictions introduced by Member States may only concern access to public housing. The proposal also includes clarifying provisions regarding access to social security coverage and specifies that third-country nationals who are authorised to work under a visa would be **entitled to family benefits** if they work in the Member State concerned for a period exceeding six months. Overall, the provisions in Article 12 of the directive related to equal treatment have only been slightly modified, with mostly clarifications rather than changes to the provisions, which means that Member States retain the discretion to impose certain restrictions.

Member States should provide for effective, proportionate and dissuasive **sanctions** against employers who fail to comply with national provisions adopted pursuant to the directive, in particular as regards working conditions, freedom of association and membership, and access to social security benefits. These measures should include **monitoring, risk assessment** and, where appropriate, **inspection**. To improve compliance with the directive, **redress mechanisms** would be set up. They should be open not only to single permit holders, but also to third parties who, in accordance with the criteria established by national law, have a legitimate interest in ensuring compliance with the directive.

Advisory committees

In the **European Committee of the Regions**, the rapporteur, Giuseppe Varacalli (Renew Europe, Italy), presented his [draft opinion](#) to the plenary on 30 November 2022. The rapporteur noted that legal migration is a fundamental driver of cities' growth, which is why it is necessary to strengthen the equal treatment of third-country workers, in particular as regards working conditions, freedom of association and affiliation and social security benefits. The rapporteur urged that all migrant workers should be considered, and not only highly skilled ones. Regarding the approach taken in the directive and in the overall skills and talents package, the rapporteur regrets that a distinction has not been drawn between categories of access: foreign nationals who are already employed and apply to a Member State for professional purposes; as opposed to asylum-seekers and individuals in a vulnerable situation.

The **European Economic and Social Committee** adopted its [opinion](#) on 'Legal migration – skills and talents package' on 26 October 2022, welcoming the shorter procedures and the opportunity to launch the procedure from the country of origin or the Member State of destination, as improvements. The Committee welcomed the proposal to extend the single permit directive to beneficiaries of the Temporary Protection Directive. However, the opinion regrets that the proposal neither used the opportunity to extend the rights related to access to unemployment benefits, nor to cover migrants in temporary work. The Committee also recommends developing and enforcing mechanisms to prevent exploitation of migrant workers, who may not dare to present complaints for fear of negative repercussions on their residency status.

National parliaments

No reasoned opinions from national parliaments have been submitted, but the proposal has received [contributions](#) from the Spanish Congress of Deputies and the Czech Senate.

Stakeholder views¹

A European and worldwide network of over 50 civil society organisations, SOLIDAR, [welcomes](#) the skills and talent package, and especially the recast of the Single Permit Directive, which they find is much needed to facilitate workers' mobility and protect them from labour exploitation. They acknowledge that the Commission has taken some civil society and European Parliament recommendations on board, and value the Commission's commitment to helping the beneficiaries of temporary protection to integrate in EU labour markets.

Discussants at the Max Planck Society for the Advancement of Science on behalf of the '[Population Europe](#)' collaborative network acknowledge that the EU's legal migration initiatives can contribute to Member States' activity to attract skills and talent. Nevertheless, the overall conclusion was that the initiatives do not go far enough, especially considering expected demographic changes and serious skill shortages in the EU in the coming years. The authors underlined that attracting and retaining third-country workers remains primarily an employment issue, of which migration is an important element.

Academic views

Tesseltje de Lange of Radboud University Nijmegen [expresses](#) the view that the recast proposal contains some welcome elements, such as improving procedural fairness, shortening procedures and allowing in-country applications. She also welcomes provisions aiming to reduce the risk of abuse by employers and to increase third-country employees' right to file a complaint. Nevertheless, she finds that the recast will have only a limited positive effect, as it still remains centred around national entry procedures and fails to cover the conditions for low- and medium-skilled labour migrants.

Jean-Baptiste Farcy, Attorney at the Brussels Bar (Altea) and Teaching Assistant at the University of Gent [argues](#) that EU legal migration policy should not set as an objective replacement of national policies. In his view, Member States can better determine their labour market needs, they have more flexibility, and they can act faster, with arguably more democratic legitimacy – which he sees important in an area as politically charged as labour migration. Thus, he suggests that EU policies should complement national ones through EU-wide measures such as procedural safeguards and reinforced workers' rights, which could really help attract and retain third-country workers. He finds that the reform of the Single Permit Directive is headed in the right direction. Regarding the possibility of extending the scope of application to low- and medium-skilled workers, he argues that it would have created an 'unnecessary confusion', as the directive itself does not regulate conditions of entry and stay, but only procedures and common rights for migrant workers.

Legislative process

The Commission adopted the legislative proposal ([COM\(2022\)0655](#)) on 27 April 2022. It falls under the ordinary legislative procedure on the Single Permit Directive (Recast) 2022/0131(COD).

In the Council, the proposal is under discussion in the Integration, Migration and Expulsion (IMEX) Working Party.

In the European Parliament, the proposal has been assigned to the Committee on Civil Liberties, Justice and Home Affairs (LIBE). Rapporteur Javier Moreno Sánchez (S&D, Spain) was appointed on 5 September 2022 and presented his draft report on 21 November 2022. The Committees on Employment and Social Affairs and on Legal Affairs are also expected to present opinions on the recast directive. The draft report was discussed in the LIBE committee on 1 December 2022.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Ahamad Madatali H., [Single permit for third-country nationals to reside and work in the EU – Directive 2011/98/EU](#), EPRS, European Parliament, April 2022.

Eisele K., [Recasting the Single Permit Directive for third-country nationals](#), EPRS, European Parliament, October 2022.

OTHER SOURCES

[Single Permit Directive. Recast](#), Legislative Observatory (OEL), European Parliament.

[Impact assessment report](#), accompanying the document '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 (recast)', SWD(2022) 656 final, European Commission.

ENDNOTES

- ¹ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

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