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**MIGR 10
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OUTCOME OF PROCEEDINGS

of : Working Party on Migration and Expulsion
on : 29 January 2008
No. Cion doc: 14491/07 MIGR 105 SOC 414
Subject : Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State

1. At its meeting on 29 January 2008, the Working Party, following a presentation from the Commission, held a preliminary exchange of views on the above proposal.

Delegations welcomed and broadly supported the proposal, which has a two-fold objective:

- a) to establish a single application procedure for third-country nationals, resulting in the issue of a permit to reside and to work, and
- b) to grant to the third-country workers legally residing in a Member State a common set of rights, including equal treatment with EU nationals in a series of areas.

While signalling that their respective national laws do not currently provide for a single application procedure, **several delegations** indicated their interest to consider the proposal and the system it introduces.

A number of delegations drew attention to the need for further consideration of the scope of the proposal - which was considered either too wide or too restricted, insofar as it excludes certain categories of third-country workers (such as seasonal workers or self-employed) -, as well as the question of the rights to be granted, and in particular the equal treatment with EU nationals.

DELETED pointed out that the question of providing equal treatment to third-country workers should only be considered once the applicable transitional arrangements, which limit full access to the labour market to nationals of the Member States who have acceded in 2004 and 2007 when they move to another Member State, no longer apply. It also felt that this proposal should be examined prior to the proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (hereafter referred to as the "Blue Card" proposal)

DELETED, which evoked the principle of subsidiarity, considered that the admission procedure, as well as the choice to issue a single permit to work and to reside or two separate permits, as is currently the case in the Netherlands, should be left entirely at the discretion of the Member States. In its view, the system envisaged by the Commission does not lead to an effective simplification of the admission procedure.

According to **DELETED**, which raised the issue of the legal basis of the proposal, the access of third-country nationals to the labour market falls within the competence of the Member States.

The **Cion** pointed out that Article 63 (3) (a) of the Treaty is the appropriate legal basis of this proposal. In this context, it drew attention to the fact that the proposal does not address the question of the access to the labour market, insofar as it focuses only on procedural aspects.

It noted that the scope of the proposal covers all third-country workers, with the exception of certain categories, for which specific Community rules are applicable. It underlined the importance of this horizontal proposal, which addresses the issue of rights, after a series of sectorial instruments.

With respect to the question of the relationship of this proposal with the Blue Card proposal and with the proposal for a Directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals (hereafter referred to as the "sanctions proposal"), the **Cion** pointed out that it does not see any risk of interference. In this context it noted that in the area of socio-economic rights there are marginal differences with the Blue Card proposal. However, the Blue Card proposal offers a more favourable treatment insofar as residence rights are concerned.

Concerning a remark from **DELETED** - according to which the treatment granted by this proposal is more favourable than that provided for by the Directive on the status of third-country nationals who are long-term residents - the **Cion** took the view that the Directive confers to the persons who have acquired long-term resident status more rights and benefits (for instance in the area of social assistance, as well as in the area of study grants, where there are no limitations).

2. The Working Party then started the first reading of the above proposal and addressed in particular Articles 1-3.

The results of the discussions are set out in the Annex to this Note, with delegations' comments in the footnotes.

Chapter I¹

General provisions

Article 1²

Purpose

The purpose of this Directive is to determine:

- (a) a single application procedure for issuing a single permit for third country nationals to reside and work in the territory of a Member State, in order to simplify their admission and to facilitate the control of their status³ and;
- (b) a common set of rights to third country workers legally residing in a Member State.

¹ **DELETED** entered scrutiny reservations on the entire proposal. CZ, HU and LI also entered Parliamentary reservations.

Several delegations signalled inaccuracies in their language versions.

² **DELETED** entered a reservation on Article 1.

According to **DELETED**, supported by **DELETED**, it should be clarified in this provision, for instance by adding a new sub-paragraph, that the proposal does not affect the competence of the Member States with respect to the access of third-country nationals to the labour market.

DELETED pointed out that it should be clarified in this provision that the procedure for the issue of the visa, when required, falls outside the scope of this proposal. In this context, it suggested replacing the word *issuing* with *processing*.

With respect to this issue raised by **DELETED**, the **Cion**, while noting that its suggestion could be further considered, drew attention to recital 4 of this proposal (*In order to allow the initial entry into their territory, Member States should be able to issue, in a timely manner, a single permit or, if they issue such permits exclusively on their territory, a visa*).

³ **DELETED** entered a reservation on point a), for the reasons referred to in the Introductory Part.

DELETED felt that, in the framework of this point, or in Article 4, a distinction should be introduced between three different cases: third-country nationals who are entering the territory of a Member State for the first time (with a reference to the visa procedure); third-country nationals who are already on the territory of a Member State and who have been granted a residence permit for other grounds; and third-country nationals who do not request a visa to enter the territory of a Member State.

Article 2

Definition

For the purposes of this Directive:

- (a) "third-country national" means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;
- (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 legally⁴ in that Member State⁵;

⁴ **DELETED** suggested deleting the word *legally* in point b), as well as in point c).

⁵ **DELETED** entered a reservation and **DELETED** a scrutiny reservation on this provision. In order to clarify that the third-country nationals to which point b) refers are employed persons and that the self-employed are excluded from its scope, **DELETED**, supported by **DELETED** suggested adding a wording such as *in the context of an employment relationship before in that Member State*.

DELETED considered this definition too broad. Expressing concerns about the consequence that this definition might have in regard of the Gattoussi case (C-97/05), it suggested using the following draft:

"third-country worker" means any third-country national who has been admitted for work to the territory of a Member State.

DELETED supported the **DELETED** suggestion. However, **DELETED** expressed doubts about the reference to the Gattoussi case, insofar as this ruling could only apply in cases when the work and residence permit do not have the same duration.

With respect to the **DELETED** suggestion, the **Cion**, which pointed out that in its view the word *work* was exclusively intended to refer to employed persons, did not oppose the idea of clarifying this provision. In this context, **DELETED** drew attention to the fact that Article 39 of the Treaty on workers does not expressly exclude self-employed persons. The **Cion**, in response to a point made by **DELETED** noted that there two actors involved in the procedure, the employee and the employer. It is admissible that the competent authority needs to contact both actors. It finally drew attention to the fact that, according to the proposal, it is left to the discretion of the Member States to decide if the application should be submitted by the employee or by the employer. In this context, and in relation to a point made by **DELETED** remark concerning Regulation 1030/2001, it noted that this instrument does not define who should be the applicant, but the third-country workers concerned will inevitably have to get in touch with the competent national administration for the biometrics requirements.

With respect to the **DELETED** suggestion, the **Cion** preferred sticking to the current definition, insofar as the objective of the proposal is to confer a series of rights to the third-country nationals falling within its scope, irrespective of the initial reasons for which they entered the territory of a Member State.

Finally, in reply to a query from **DELETED**, the **Cion** underlined that this proposal, which establishes a general framework, applicable to all third-country workers, is the basis for the Blue Card proposal, which introduces specific rules for highly skilled workers (i.e. the "EU Blue Card" would be a sub-category of the single permit).

- (c) "single permit" means any authorisation⁶ issued by the authorities of a Member State allowing a third-country national to stay and work legally in its territory⁷
- (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 national⁸.

⁶ **DELETED** considered this definition too broad, insofar as it refers to *any authorisation*. In its view, this definition should be redrafted in the sense that the person concerned has been authorised to reside and to work in the Member States.

Pointing out that this definition needs to be considered in relation with Article 6, the **Cion** did not support the **DELETED** suggestion.

In relation with this provision, **DELETED** raised the question of the visa procedure, which was already evoked by **DELETED** in the framework of the consideration of Article 1 (see footnote 2 on page 4)

⁷ With respect to a remark from **DELETED**, the **Cion** pointed out that the question of the recognition of diplomas is not covered by this definition, since this issue is covered in Article 12.

⁸ **DELETED** suggested redrafting the final part of sentence of this provision as follows: *...to a decision on the **application for a single permit for that third-country national***

Article 3

*Scope*⁹

1. This Directive shall apply¹⁰:
 - a) to third-country nationals seeking to reside and work in the territory of a Member State, and
 - b) to third-country workers legally residing in a Member State.

⁹ **DELETED** entered a reservation on Article 3. With respect to the points made by **DELETED** - according to which, taking into account the Gattoussi case, the scope should be restricted to persons who have come for the purpose of work, excluding those who were admitted for other purposes (refugee, family members) but were granted access to the labour market - the **Cion** pointed out that the objective of the proposal is to create a horizontal framework, guaranteeing a minimum set of rights to all third-country workers irrespective of the reasons for their initial admission.

¹⁰ **DELETED** entered a reservation on paragraph 1. In reply to a query from **DELETED**, the **Cion** pointed out that third-country nationals who are already in the territory of a Member State may also apply for a single permit, if the Member State concerned allows them to submit the application.

2. This Directive shall not apply to third-country nationals¹¹:
- (a) who are family members of Union citizens who have exercised, or are exercising their right to free movement within the Community;
 - (b) covered by Directive 96/71/EC as long as they are posted¹²;
 - (c) 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 in particular to intra-corporate transferees, contractual service suppliers and graduate trainees under the European Community's GATS commitments¹³;

¹¹ **DELETED** entered a reservation on paragraph 2.

¹² **DELETED** felt that this category of third-country nationals should not be excluded from the scope of the proposal.

¹³ **DELETED** asked why point c) does not entirely correspond to an almost identical clause contained in the Blue Card proposal (Article 3 (1) (f)). The **Cion** explained that, in the final stage of the preparation of the two instruments, the list of examples contained in point c) was deleted in the corresponding provision of the Blue Card proposal.

- (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 basis¹⁴;

¹⁴ **DELETED** entered a reservation on point d), insofar as, in its view, seasonal workers should fall within the scope of this proposal. **DELETED** noted that the notion of seasonal work to which this provision refers is not in line with that applied in its national legislation. **DELETED**, supported by **DELETED** felt that not only seasonal workers, but other categories of third-country national who stay on a temporary basis should be excluded from the scope of the proposal as well. According to **DELETED**, which drew attention in particular to students, there could be a conflict between this proposal and the Students Directive. In this context **DELETED**, supported by **DELETED**, made reference to Article 3 (1) (e) of the Directive concerning the status of third-country nationals who are long-term residents (according to which the third-country nationals *who reside solely on temporary grounds such as au pairs or seasonal workers, or as a worker posted by a service provider for the purposes of cross-border provision of services, or as cross-border of services or in cases where their residence permit has been formally limited* are excluded from the scope of the Directive) and suggested aligning the cases of exclusion defined in the proposal with those of the Directive. **DELETED** also took the view that a more general wording would be more appropriate.

In relation with point d), the **Cion** underlined that it specifically refers to seasonal workers insofar as it is preparing a proposal which will set out rules concerning this category of third-country nationals.

With respect to students, it felt that there is no risk of a clash with the Students Directive. If the student works - under the conditions set out by Article 17 of the Students Directive - the rules of the proposal will apply to him/her. In this case, the information about the work and the modalities under which it is exercised will be introduced in the national part of the single permit. If the student works for a number of hours which goes beyond the period of time allowed by the Directive, a change of status could be considered.

As far as the exclusion of additional categories of third-country nationals staying on a temporary basis is concerned, the **Cion** agreed that this issue could be further considered.

However, it drew attention to the need to examine this question with special caution, in order not to weaken the legal status of the persons concerned. In its view, excluding all the cases of temporary stay might risk jeopardizing the objective of this horizontal instrument.

Finally, with regard to the link between this proposal and the Long-Term Residents Directive, the **Cion** pointed out that the two instruments have different objectives.

- (e) who have applied for recognition as refugees and whose application has not yet given rise to a final decision¹⁵;
- (f) staying in a Member State as applicants for international protection or under temporary protection schemes;
- (g) who have acquired long-term resident status in accordance with Directive 2003/109/EC;
- (h) whose expulsion has been suspended for reasons of fact or law¹⁶.

¹⁵ **DELETED**, supported by **DELETED**, suggested merging points e) and f).
The **Cion** said that it would not oppose combining the two provisions.

¹⁶ **DELETED** felt that the draft of point h) needs to be clarified.