



EUROPEAN PARLIAMENT

2009 - 2014

---

*Committee on Employment and Social Affairs*

---

**2007/0229(COD)**

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

PA\_Legam

## 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

##### *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 *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.

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 services<sup>1</sup>.**

<sup>1</sup> 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**

*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.

*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 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*

*Amendment*

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

(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 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 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

<b>Title</b>	Single application procedure for residence and work		
<b>References</b>	COM(2007)0638 – C6-0470/2007 – 2007/0229(COD)		
<b>Committee responsible</b>	LIBE		
<b>Opinion by</b> Date announced in plenary	EMPL		
<b>Associated committee(s) - date announced in plenary</b>	21.4.2010		
<b>Rapporteur</b> Date appointed	Alejandro Cercas 21.1.2010		
<b>Discussed in committee</b>	22.2.2010	16.3.2010	27.4.2010
<b>Date adopted</b>	28.4.2010		
<b>Result of final vote</b>	+: 42	–: 1	0: 7
<b>Members present for the final vote</b>	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		
<b>Substitute(s) present for the final vote</b>	Raffaele Baldassarre, Filiz Hakaeva Hyusmenova, Véronique Mathieu, Gesine Meissner, Ria Oomen-Ruijten, Evelyn Regner, Csaba Sógor, Emilie Turunen, Gabriele Zimmer		