

ETUC Position on the recast of the Single Permit Directive (SPD)

Adopted at the ETUC Executive Committee of 6 December 2022

On 27 April 2022, the European Commission presented its [Communication Attracting skills and talent to the EU](#), which included legal, operational and policy initiatives in the area of labour migration. As part of the legislative framework, the Commission proposes the recast of the [Single Permit Directive](#).

This proposal aims at amending Directive 2011/98/EU. This covers the single application **procedure** for a single permit for third-country nationals to reside and work in the territory of a Member State and a common set of **rights** for third-country workers 'legally' residing in a Member State.

Based on the [ETUC Resolution on Fair Labour Mobility and Migration](#), the Commission's proposal to review the SPD was an opportunity to increase labour market coherence and mobility, and to **tackle labour exploitation**. The harsh reality that trade unions encounter on a daily basis is that migrant workers in the EU are not treated equally, face abuse and labour exploitation, which can result in severe forms like forced labour and human trafficking for the purpose of labour exploitation. For this reason, the recast of the SPD is of high priority for the ETUC.

One of ETUC's demands was to **expand its scope and application**, in particular by: extending the use of applications from within the country and including other categories of workers in precarious situations; and by clarifying the continued validity of permits in case of loss of employment to source alternative work. These are vital tools to facilitate job-matching and labour mobility, and to tackle potential abuses stemming from dependence of migrant workers on a particular employer.

The proposal expands the scope to workers who are beneficiaries of national protection statuses, however, it continues to exclude seasonal workers. It also introduces a definition of an employer, which includes temporary work agencies. Temporary work agencies should be curtailed as much as possible, particularly when it concerns migrant workers in sectors with high risk of labour rights violations.

The SPD shall include provisions to prevent forum shopping and artificial cross-border arrangements, Member States shall only issue single permits for the purpose of work habitually carried out on their territory. To this end, Member States shall provide for adequate measures to protect third-country workers from abuse through fraudulent postings to other Member States. In the single application procedure and in the monitoring of employers, due regard should be given to the provisions of Regulation (EC) No 593/2008 of the EP and of the Council ('Rome I') or the Rome Convention, in order for the competent authority to verify that the Member State concerned is in fact the habitual place of work. To ensure the proper enforcement of this Directive, Member States shall therefore provide for measures to prevent possible infringements by employers in regards to the habitual place of work of their third-country workers, thereby also giving effect to the Employers Sanctions Directive.

It is welcomed that the proposal requires MS to accept applications for the single permit both from inside and from outside the country. However, article 4 keeps referring to the 'legal' status of the migrant worker; and therefore, excluding undocumented migrant workers. Applicants should always be granted the choice between remote and in-person service provision and have the opportunity to submit documents relevant for the procedure both electronically and physically.

On the **right of access to information** (Article 9) it is positive that MS have the obligation to make 'easily' accessible information on entry and residence conditions, obligations, rights and procedural safeguards for the workers and their family members. To be strengthened, this should include labour and trade unions, and **complaints mechanisms** in a language they will understand before leaving the country. Upon arrival, they should receive a short introduction of the country and information on labour rights.

Regarding Article 10 on fees, ETUC recalls the ILO principle according to which there should be no fees borne by the worker in relation to their recruitment from public or private placement and employment services. Member States may require applicants to pay fees, where appropriate, for processing applications **to issue and renew single permits** in accordance with this Directive. The level of such fees shall be **affordable** and proportionate, and shall be based on the services actually provided for the processing of applications and the issuance of permits **and their renewals**. **When such fees are paid by the employers, they shall not be recoverable from the third-country national.**

The introduction of new provisions (Article 11) is welcomed, these give the **right to the worker to change employer** during the period of a permit's validity. Appropriate and sufficient safeguards must be in place to protect migrant workers from labour exploitation and abuse.

Information must be systematically provided to permit holders in an accessible way on rights, procedures (including the right to change employer), who to turn to for information, advice, in case of labour dispute, particularly to trade unions. It would be important to clarify if the worker will be able to change employer more than once during its validity and whether there are any checks on workers changing to an employer based in another Member State.

It would be important to introduce an obligation on the new employer before the start of the new employment to communicate to the competent authorities (be that within a Member State, in cases where another authority is concerned) of any change, providing information on at least the name and address of the employer, the habitual place of work, the type of work, working hours, and remuneration.

In the Commission proposal, MS may suspend or oppose the change of employment (within 30 days), while the MS concerned checks the labour market situation. The ETUC believes that no labour market test should be applied to migrant workers who are already holders of a single permit. It could be of relevance to introduce the obligation on MS to check that the employment and working conditions are in compliance with applicable labour standards. The rights of the worker should be strengthened during the period that MS is reviewing the request of a change of employer.

It is a reality that even if permits allow workers to change employers, it is not always possible, resulting in people losing their status due to exploitation and job loss. In this sense, the proposal introduces the obligation to MS not to withdraw the single permit for a maximum **period of three months in the case of job loss**. The ETUC advocates for a longer period – **nine months** - to allow time for job searching, as it would be more realistic and coherent with existing EU standards. Issues related to the access to unemployment benefits, subsistence, housing and access to the labour market during this period remain unsolved.

It is essential to provide migrant workers equal treatment together with national workers (under Article 12) . The ETUC advocates for an improvement, considering harmonisation with the Seasonal Workers Directive and the Directive on Transparent and Predictable Working Conditions regarding terms of employment and transparent and predictable working conditions, working hours, paid leave and holidays, as well as health and safety and training at the workplace. ETUC advocates for the addition of the right to strike and take industrial action, including the right to negotiate and conclude collective agreements. Discriminatory restrictions on social security, access to good and services and housing should be removed. It would be important to clarify that housing costs should not be deducted directly from their remuneration and that the rent contract should be decoupled from the work contract to avoid dependency on employers. Decent standards for housing must be ensured .

Lastly, Articles 13 and 14 addressed the ETUC demands on the need to strengthen the equal treatment provisions on the monitoring and effective complaint mechanisms. Article 13 includes monitoring, risk assessment, inspections and penalties, which shall be implemented in accordance with national law and practice. It would be important to include the obligation to MS to cooperate with social partners on measures to prevent possible infringements by employers. The penalties shall include, among others, publicly registering infringements conducted by employers, administrative and financial penalties, such as fines or the payment of compensation, and the exemption for employers from public procurement procedures. Member States shall ensure that services in charge of inspection of labour or other competent authorities and, where provided for under national law in respect of national workers, organisations representing workers, in particular trade unions, have access to the workplace and, with the agreement of the worker, to their housing.

The same provisions on **facilitation of complaints** (Article 14), as provided under the Seasonal Workers Directive, have been added. Migrant workers may lodge complaints against their employers directly or through third parties, with their approval, in any related judicial and/or administrative proceedings. Member States should ensure that migrant workers have the same access as nationals do for protection against dismissal or other adverse treatments by the employer. It is important to apply the legislation and regulations of different national labour systems, such as collective bargaining rights and trade union prerogatives. There is no provision that specifies that personal data on workers gathered through labour inspections and complaint mechanisms should not be used for immigration enforcement purposes. Safeguards for the migrant worker shall be introduced in cases of labour exploitation and abuse, in order for the worker not to lose its work and residence permit. The ETUC advocates for a transitional permit valid for twelve months to be introduced in such cases (obligation on MS to grant this permit).