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The revised Single Permit Directive: protecting migrant workers from abusive employers or maintaining the *status quo*?

By Amy Weatherburn

On 21 December 2023, a [political agreement](#) was reached between the Council and the European Parliament on the text of the revised Single Permit Directive. This development is a key piece of the puzzle that aims at reforming the management of legal migration in the European Union (EU), as set out in the 2020 [Pact on Migration and Asylum](#).

The EU [Single Permit Directive 2011/98](#) provides for minimum rules with a view to facilitating a single application procedure for obtaining a (combined) single permit for the purpose of work and stay in the EU (Article 1(a)), and does not – unlike other EU labour migration legal instruments (e.g. [Blue Card Directive](#), [Seasonal Workers Directive](#), and [Directive on Intra-corporate Transferees](#)) – stipulate the conditions of entry. A second objective of the Directive is to provide for a common set of rights to ensure equal treatment of third-country national workers with EU citizens (Article 1(b)), subject to certain restrictions, in relation to working conditions, freedom of association, training and education, recognition of diplomas and professional qualifications, and social security and tax benefits (Article 12).

The implementation of the Single Permit Directive has been marked by the significant leeway that has been afforded to Member States. The resulting lack of harmonisation has, in turn, had a significant impact on the third-country workers who, by virtue of their status as single permit holders, have experienced uncertainty and extended periods of legal limbo with a heightened risk of falling into irregularity (see [De Lange and Falkenhain](#)). Our research into the lived experiences of single permit holders in [Belgium](#) and [other EU](#)

[countries](#) has revealed that the use of the single permit by EU countries as a means of granting access to the EU labour market has ultimately increased the precarity of third-country workers, regardless of skill level. Indeed, the European Commission's [evaluation](#) and [impact assessment](#) of the original Directive laments the failure to achieve its objectives. The recast of the Single Permit Directive was announced in the 2022 European Commission [Skills and Talent Package](#) with a view to attracting third-country nationals with the skills and professional experience to address labour market needs, tackling irregular migration by developing legal pathways and better protecting third-country national workers from labour exploitation.

The following post provides an initial appraisal of the new rules and addresses the question: to what extent does the revised Single Permit Directive contribute to the EU's toolbox to protect and safeguard migrant works from abusive employers or simply maintain the *status quo*?

Central role of the employer: heightened dependency and risk of exploitation

A [key matter of concern](#) that has arisen as an unintended consequence of the single application procedure is the extent to which the central role of the employer has heightened the dependency of single permit holders on their employers. Here, the conditionality of the right to reside on the right to work leaves migrant workers with limited options should they encounter problems in the workplace.

Scholarship and research clearly demonstrate that restrictive and conditional temporary migration regimes generate an increased likelihood of abusive work practices and exploitation (on construction of immigration regimes, see [Anderson](#); on UK tied seasonal worker visa, see [Robinson](#), on UK domestic worker visa, see [Mantouvalou and Sedacca](#)). This predicament is also applicable to the single permit. Our research ([here](#) and [here](#)) into the lived experiences of single permit holders in several EU countries (Belgium, the Czech Republic and Spain) reveals that the same risks exist as a result of the coupling of the right to reside with the right to work.

The way in which the 2011 Directive has been transposed in national legal orders has led to an exacerbation of single permit holders' [dependence on their employer](#). This dependence can be attributed to several factors that originate in the construction of EU Member States' labour migration regimes, who – as mentioned – have significant discretion in the design and implementation of the single permit within their national legal frameworks. The findings of our research confirmed the Commission's [Fitness Check on EU legislation on legal migration](#) and [Impact Assessment of the Single Permit Directive](#) and demonstrated that the impact of these legal rules has led to situations whereby:

- only the employer is permitted to apply and/or renew the single permit on behalf of the third-country national (e.g., in Belgium and Spain);
- access to certain jobs or sectors are restricted to applications from third-country nationals who are not on the territory of the EU (e.g., for bottleneck professions in Belgium);
- single permits can be rejected, withdrawn, or amended on the basis of the (intentional or reckless) conduct of the employer, with significant consequences for the third-country national worker who will lose both the right to reside and work in the EU (e.g., in Czech Republic the notion of an [unreliable employer](#) can be a bar to granting a single permit);
- single permit holders are required to apply for a new single permit should they wish to seek alternative employment or, in the case of unemployment, find a new job (e.g., in Belgium).

The EU institutions touched upon these issues during the revision process of the Directive with a view to clarifying the rules on the place of application for a single permit by increasing the efficiency of the application procedure and improving the protection of third country nationals from exploitation by introducing measures including, *inter alia*, the right to change employer. However, the extent to which such issues have been fully resolved in the revised Directive is still in question, particularly when it comes to the Member States' discretion to privilege the role of the employer (and by extension the national labour market and priority workforce, as discussed by [De Lange and Falkenhain](#)) over the rights of the single permit holders. The remainder of this post presents several examples outlining the key developments and identifying where there is still a role for Member States to play. If the stated aim of reducing the risk of exploitation of third-country nationals in the EU labour market is to be realised, the onus now lies on individual national governments to take these minimum rules one step further to ensure a labour migration regime that truly guarantees the rights of migrant workers.

Access to the single application (and renewal) procedure which remains (heavily) employer-led

The European Commission and the European Parliament respectively put forward proposals ([here](#) and [here](#)) that sought to balance the role of the employer and the third-country national worker in the application and renewal procedure. The final text from December 2023, however, maintains the *status quo* and allows for national legal orders, under Article 4(1) "to determine whether applications for a single permit are to be submitted by the third-country national or by the third-country national's employer" with the option to "decide to allow an application from either of the two".

A positive sign however can be discerned by the insertion of a new provision – originally proposed by the European Parliament (Amendment 48) – to oblige Member States to “ensure that the employer informs the third-country national about the status of the application and its outcome in a timely manner” (Article 5(3)). This is an important development as the lack of information regarding the consent and status of the application/renewal was a significant cause for concern amongst single permit holders whose right to information is not effectively realised given that the balance of power disproportionately remains in the hands of the employer. The effect of this can lead to [unscrupulous employers](#) informing workers that their application has been accepted when this was not the case and requiring them to start work on an undeclared basis. The realisation of this requirement on Member States will nevertheless be tricky as it will be difficult to establish effective monitoring mechanisms to ensure that employers abide by the obligation to provide information to (prospective) single permit holders in practice.

A further safeguard would have been to ensure that the competent authorities have a direct communication channel with the (prospective) single permit holders so that their right to information can be guaranteed. However, even in this scenario, it would be necessary for the employer to provide correct contact details of the third-country nationals when submitting an application. Indeed, researchers trying to reach out to single permit holders working in bottleneck professions in the Belgian region of Flanders encountered [difficulties](#) as the information that the authorities had on file (provided by the employers at the time of applying) was either incomplete or inaccurate in nearly 50% of the permit holders.

Access to single permit determined by place of residence and residence status and economic sector

The national transpositions of the 2011 Directive saw restrictions on access to a single permit to applications from third-country nationals who were outside the territory of the Member State. For instance, access to bottleneck professions in the Belgian region of Flanders was restricted to those who applied for single permits whilst they were residing in a third country. The difficulties that this condition raised for third-country nationals – even in some cases requiring migrant workers who had a different migration status to leave Belgium to submit an application for a single permit – have subsequently been recognised with a legal modification in November 2022, [allowing](#) in-country applications to be accepted for jobs in bottleneck professions.

The revised Directive emphasises that single permits should be accessible to those who are residing outside of the territory, those who have legal residence on the territory of the

Member State and introduces the possibility of an expedited procedure for those who are single permit holders in another EU Member State (Recital 16b). Notwithstanding, there is still scope for Member States to use the single permit as a means of regularising the employment (and by extension the residence) of undocumented migrant workers, as has been advocated by stakeholders in [Belgium](#) or facilitating access to the labour market for former unaccompanied minors following [Spanish legal reforms](#) in 2021.

Access to effective remedy following rejection or withdrawal

The new rules expand on the original standards relating to the conditions and criteria for the issue, amendment, renewal and withdrawal of a single permit. A welcome development is the efforts to address administrative delays and backlogs (a common feature in many national contexts, see [Van Huylbroeck](#)) by placing a three-month time limit for national authorities to make a decision (inclusive of any labour market tests and extendable for 30 days (Recital 30)) following receipt of a complete application (Article 5(2)). The revised Directive, in recognition of the need to facilitate access to the EU labour market, also includes provisions that refer to a fast-track procedure in the context of Talent Partnerships (Recital 16a) and the possibility to expedite the application process for third country nationals who are single permit holders in another EU Member State (Recital 16b). The introduction of a shorter maximum time limit (from four months to three months) for Member States to decide on an application provides for more certainty and reduces the likelihood that third-country nationals will fall into irregularity whilst awaiting the outcome of the application.

A similar situation may arise when it comes to awaiting the outcome of any appeal. Our research has shown that the [absence of effective recourse to appeal](#) can leave third-country nationals in serious legal limbo with no means of subsistence and increasing the risk of turning to informal forms of employment to make ends meet. Again, the need for access to an effective appeal process links back to the role of the employer being the lead applicant.

The decision to reject or withdraw a single permit is particularly problematic in circumstances where employers submit [fraudulent applications](#) that do not reflect the agreement between the employer and the third-country national, thus invalidating both their right to reside and right to work, should they come to the attention of the authorities. Even where employers submit an application in good faith, it is still possible that the authorities reject the application despite the eligibility criteria being met in practice. It is for this reason that single permit holders [told us](#) that employers can be reluctant to engage

in the procedure in the first instance due to their lack of familiarity with the process and the uncertainty of the outcome due to the complexity of the administration procedure.

Our [research](#) revealed that regardless of whether the employer has intentionally or recklessly submitted an inaccurate application, where a decision to reject, withdraw or refuse to renew a single permit is made the third-country worker will ultimately suffer as it is their migration status that hangs in the balance. In these circumstances, it is paramount for single permit holders to be provided with access to effective remedy. The criteria and conditions that Member States lay down in national law should not only include access to an appeal but also a clear indication of the time limit to take a decision. Furthermore, where employers have acted fraudulently, authorities must minimise the impact on the third-country national, and where possible grant an extension to the validity of their permit or grant a transitional permit, as will be discussed further in the next section.

(No) right to change employer or seek alternative employment

The adverse effects of the aforementioned rules on single permit holders, and in particular the fraudulent actions of an employer, have been heightened by the absence of minimum rules regarding the possibility to change employer in the 2011 Directive. Thus, a key change in the revised Directive is the explicit inclusion of a right to change employer in case of unemployment (Article 11(2-4)).

Under the new rules, the single permit may not be withdrawn for the sole reason of unemployment for at least three months. This can be extended up to six months if i) the third country national worker has been a holder of the single permit for more than two years (Article 11 (4)(a)), or ii) there are reasonable grounds that the single permit holder has experienced particularly exploitative working conditions (Article 11(4)(ba)). Crucially, a new permit is not required to start a job with a new employer (which is currently the case in some Member States such as the [Czech Republic](#)). Instead, a notification to authorities will suffice, with the new employer required to communicate to competent authorities the details of the employment (Article 11 (3)(a)) but a caveat exists whereby authorities may suspend the right of the single permit holder to change employer for a maximum period 45 days from the date on which the notification to the national competent authorities was made.

The introduction of the requirement to notify authorities is a significant development and brings the Directive in line with the revised EU [Blue Card Directive 2021/1883](#) that also requires a notification of a change of employer to the competent authorities (Article 15(2)). This change also should remove some of the obstacles that single permit holders encountered, even in circumstances where the national law provided for a restricted right

to change employer. For instance, the [types of barriers](#) single permit holders encountered, even if a new employer had been identified, included the (new) employer not being willing to start the application process as it was too complex or involved too much uncertainty as to the outcome or there was simply not enough time to complete the process of applying for a new permit before the expiration of their current permit. Given these barriers, the single permit holders ultimately decided to play it safe and remain with their current employer.

The requirement to notify authorities facilitates the possibility to seek alternative employment, however migrant workers on a tied visa basis are often unaware of their rights and, in this case, their options for labour market mobility. Once again, given the significant dependence that single permit holders have on their employers, they are also often reliant on them to [provide information](#). Unfortunately, unscrupulous employers may feed them false information or, in more serious cases threaten workers with denunciation to authorities should they complain about their working conditions. Therefore, it is of great importance that the rights of single permit holders, including their right to change employer are communicated to them through reliable, independent channels.

Whilst the explicit right to change employer is a significant step forward, the new rules do have some limitations. A three-month guarantee that the permit will not be withdrawn is, in most cases, still not long enough to find a new job. This is especially true where migrant workers lack familiarity with the specificities of the national labour market. A longer, more reasonable period of nine months would have been preferable. In this way, the Single Permit Directive would not only have been brought into line with other with other legal migration instruments that allow for a (minimum) period of nine months of unemployment – such as international researchers and students in an EU Member State (Article 25(1) of [Directive 2016/801](#)) – but also would have reduced the risk that single permit holders fall victim to unscrupulous employers and/or fall into irregularity upon expiration of the three-month extension.

Similarly, the three-month period places [additional pressure](#) on workers to find any job even if it does not match their skills and qualifications, potentially leading to them to work in sectors or jobs for which they are overqualified. Given the combined nature of the single permit and the right to reside being conditional on the right to work, this was a sentiment that single permit holders [shared](#) when it came to accepting job offers to prolong their residency in the EU and can only be overcome by giving single permit holders enough time to situate themselves in the local labour market in accordance with their professional experience and qualifications. Crucially, the reality faced by migrant workers who want to continue to live and work in Europe runs contrary to other initiatives announced in the Commission's Skills and Talent Mobility package that prioritise the importance of matching the skills and qualifications of third-country workers with EU employers (see, for

instance, the [creation of an EU Talent Pool](#) and Talent Partnerships). In this regard, a three-month period of unemployment is a hindrance to the EU's efforts to match labour market demand and supply.

What next for single permit holders in the EU?

The new rules, at first sight, denote a significant step forward and go some way to addressing the concerns that single permit holders have shared in relation to the impact on their professional and private lives. There are however some gaps that are still to be addressed to ensure that the rights of single permit holders are respected, and the risk of exploitation is minimised. Once the political agreement is approved by the co-legislators the baton is passed onto Member States to transpose the changes into their national legislative and policy framework. Given that the Single Permit Directive prescribes minimum legal standards, it is hoped that the concerns raised above are taken into account by national governments by meaningful engagement with evidence-based recommendations from stakeholders to go beyond the minimum standards stipulated in the revised Directive.