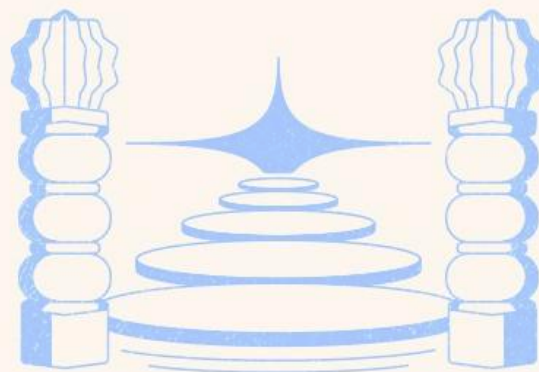




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Directive 2011/98

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

Known as Single Permit Directive (SPD)

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Some key facts on SPD

- **In 2007** the Commission **adopted a proposal** for a Directive establishing a single application procedure for a single permit for TCN workers, and ensuring equal treatment for TCN allowed to work in the EU.
- The proposal was based on the **idea of reducing the “rights gap”** between TCN workers and nationals of MS, and **facilitating the procedures** for TCNs to be admitted for work in a MS.
- The SPD was **adopted in 2011** after 4 years of negotiations and had **to be transposed in December 2013**. All MS, except Denmark and Ireland, are bound by it.
- **All the MS have transposed the SPD** and it is one of the most used directives, though application in practice varies.
- Currently, a **recasting process is ongoing** and might result in certain changes of the SPD.



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What is meant by the SPD?

In its essence, the Directive facilitates the procedure for TCNs **to work and reside** in a MS through a **'single permit', which is a combined work and residence permit**. Basically, it aims to establish a 'one-stop shop' and creates:

- 1) a **combined single permit** for residence and work for non-EU workers legally residing in an EU country,
- 2) a **single application procedure** for this permit,
- 3) a **set of rights** (including equal treatment compared to nationals) for non-EU workers in areas such as working conditions, education, training, access to goods and services, social security.

The Directive also includes **procedural safeguards** based on general good administration principles – for example, the **time limit for examining the application** is set at **max. 4 months**.



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Who is SPD applied for?

The Directive applies to three main categories of TCNs:

- 1) TCNs who apply to reside in a MS to work,
- 2) TCNs who have already been admitted to a MS for the purpose of work,
- 3) TCNs who have already been admitted to a MS for purposes other than work and who are allowed to work (for example, family members of migrant workers, students and researchers).



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Who is excluded from the SPD?

Excluded from its scope are seasonal workers, au pairs, beneficiaries of international protection, LTR, self-employed workers and posted workers, including ICTs:

- Beneficiaries of international protection, family members of EU citizens and EU long-term residents are excluded from the scope due to the special and enhanced status that they already enjoy based on other EU instruments.
- Posted workers and ICTs are excluded, as they are not considered to be part of the labour market to which they have been posted. For similar reasons, seasonal workers are excluded due to the temporary nature of their status. These categories are now also covered by other specific Directives.

SPD does not contain any specific provisions concerning the intra-EU mobility of family members, and the issue was left to national legislation.



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Digging deeper into the Single application procedure and Single permit (Chapter II)

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How does a Single application procedure for a Single permit look like in practice?

Single Permit – Single application Procedure

One application	Who applies - The applicant is either TCN or the would-be employer Where - from the 3rd country or in-country When - when a new permit is issued, when existing permits are renewed
One (main) authority	- to receive the application and issue the single permit without prejudice to the involvement of all relevant authorities - "the competent authority" being responsible for the single decision
One decision	Single administrative act - if yes - a single permit is issued, - if no – reasoned decision in writing When? Decision within 4 months
Procedural guarantees	- Legal challenge , upon request info on required documents - provisions on the fees - proportionality and may be based on the services actually provided



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MS have a wide margin of interpretation and implementation of SPD

In the conduct of the application procedure national authorities may decide:

- 1) who, between TCNs or employers or both, have to initiate the procedure in order to obtain a single permit;
- 2) the time limit for examining the application is set at maximum four months and, if no decision is taken, the consequences are determined by the MS;
- 3) the application procedure for a single permit is without prejudice to the visa procedure, which may be required for initial entry in a MS, thus extending the application procedure.

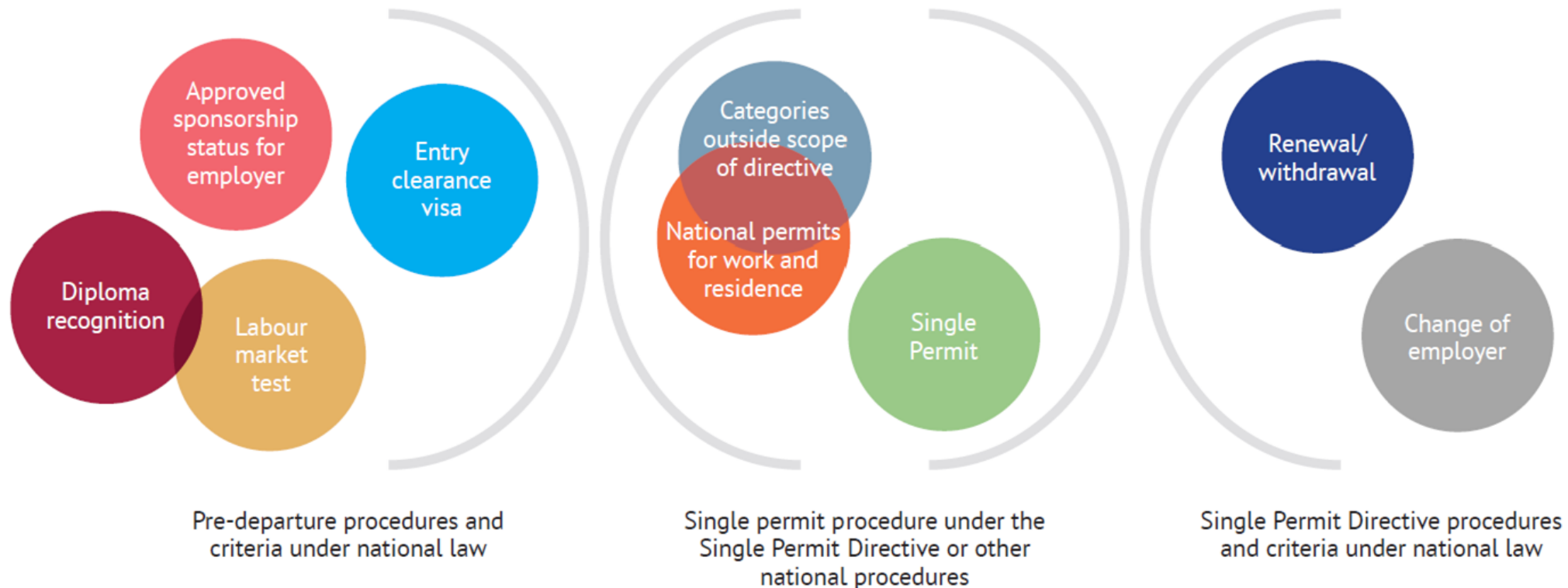


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The exact application procedure for a Single Permit changes depending on the EU MS

Tesseltjede Lange, Kees Groenendijk, The EU's legal migration acquis: Patching up the patchwork, ISSUE PAPER EUROPEAN MIGRATION AND DIVERSITY PROGRAMME, 16 MARCH 2021





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Variations in application in MS

- In some MS permits are not issued through a single administrative act. Instead, the applicable national procedures involve duplication of submission of documentation.
- In some MS an employment clearance for market tests is a first step before the third country national can apply for a visa.
- In some MS the registration of the vacancy by the employer is required before the issuance of the visa for the third country national to enter the country.
- The duration of the permit is not defined in the Directive. In the majority of MS the duration of the permit is less or equal to 2 years. In few MS, the duration depends on the duration of the work contract and also varies depending on the particular permit.



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Digging deeper into the Right to equal treatment (Chapter III)

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Key set of rights included in the SPD

The SPD grants the TCNs a certain **set of core rights**, that would allow them **to enjoy the equal treatment with nationals** of the MS where they reside, including:

- the right to work, reside and move freely in the issuing EU country,
- the same conditions as nationals of the issuing country with regards to working conditions (pay, dismissal, health and safety), freedom of association and trade union membership, education and vocational training, recognition of qualifications, social security, tax benefits, access to goods and services – including procedures for obtaining housing – and support services provided by employment offices,
- Export of pensions – TCNs, or their survivors who reside in a third country and who derive rights from those workers, are entitled to receive statutory pensions (based on the TCNs' previous employment) for old age, invalidity and death.



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SPD sets specific criteria, based on which MS can restrict equal treatment on certain issues

- Application may be limited to those TCNs who are in employment or who have been employed and who are registered as unemployed,
- MS are allowed to deny grants and loans for education and vocational training, also lay down specific requirements and payment of tuition fees in accordance with national law, with respect to access to university and vocational training which is not linked to specific employment activity,
- Family benefits may not be awarded to workers authorised to work for a period of six months or less, or to students or TCNs entitled to work on the basis of a visa,
- Tax benefits may be restricted in cases where the registered or usual place of residence of family members for whom a TCN is claiming benefits lies in the territory of the MS concerned,
- Access to housing restrictions are also allowed.



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Variations in application in MS

Transposition issues on equal treatment arise, in particular, in relation to the following aspects:

- Some MS have restriction of access to sickness cash benefits and unemployment benefits for persons with a temporary residence.
- Some MS provide only one type of family benefits — the child supplement — to TCNs.
- In some MS single permit holders are excluded from certain types of family benefits.
- Some MS have restrictions to social security benefits for stays of less than 1 year.
- In some MS TCNs do not have the right to buy real estate property for housing purposes.



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Outlook towards SPDs future – Summary of Recast proposal

Commission finds that SPD has not fully achieved its objective of simplifying admission and that the equal treatment provisions are incoherent, include numerous exceptions and are difficult to interpret and implement. Therefore, the Commission is proposing to **further streamline the application procedure and enhance safeguards for equal treatment and protection from labour exploitation. The main proposed changes to the SPD include:**

- An obligation for MS to accept applications filed both in the MS of destination and from a third country;
- The 4 month time limit for issuing a decision must also cover the issuing of the requisite entry visa and the time needed to conduct a labour market test;
- The right for the permit holder to change employer during the permit's validity. The permit should also not be withdrawn in the event of unemployment for at least 3 months;
- New provisions on penalties against employers in case of violations of working conditions, freedom of association and access to social security benefits and to introduce complaints mechanisms.



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