



EQUALITY  
LAW  
CLINIC

# **The Lived Experiences of Migrants in the EU with a Single Permit**

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Using a transdisciplinary approach that places legal problems in their socio-economic context, the Equality Law Clinic provides ULB law students with an opportunity to work on real cases, in collaboration with lawyers, NGOs, national or international institutions, under the supervision of a specialised academic team.

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# EXECUTIVE SUMMARY

Across the European Union (EU), the need to address labour market shortages is a prominent component of labour market activation and labour migration policy discourse<sup>1</sup>. Matters such as the challenges posed by Europe's ageing and shrinking population, the green and digital transitions, and the need for EU Member States to compete on a global scale as an attractive destination for prospective workers are particularly key components<sup>2</sup>. Part of the solution to addressing the deficit in workforce supply has been for EU Member States to turn to non-EU citizens and has led to the development of a legal migration package consisting of legal instruments that harmonise the rules on entry and residence for specific categories of third country national migrant workers: in particular, highly qualified workers<sup>3</sup>, seasonal workers<sup>4</sup>, and intra-corporate transferees<sup>5</sup>. For third country nationals who do not fall within the scope of these categories, the EU Single Permit Directive 2011/98/EU<sup>6</sup> prescribes the procedural rules for their admission for the purpose of employment and minimum set of rights for permit holders. It is this legislative instrument that will be the focus of the present study, in which we will examine its impact on the lived experiences of third country nationals seeking access to the EU labour market as single permit holders in Belgium, the Czech Republic and Spain.

The comparative approach is adopted on the basis that the implementation of the Single Permit Directive has seen significant variation<sup>7</sup>, with particular concerns regarding the complexity and efficiency of the application (and renewal) procedure, the exclusion of certain categories of migrants from the scope of the Single Permit Directive and the lack of protection of migrant workers from exploitation<sup>8</sup>. These issues have been examined in 31 semi-structured interviews with prospective, current and former single permit holders, wherein we explored their lived experiences of seeking employment in the EU with particular emphasis on the procedural pathway to obtaining and retaining a single permit and the experience of living and working in the EU. From the findings, it is possible to discern eight key areas of improvement in the design and implementation of the Single Permit Directive, that will significantly contribute to guaranteeing the social and labour rights of migrant workers.

**Single permits must be valid for an adequate duration** as many migrant workers

are currently relying on short term single permits that increase the risk of insecurity and

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<sup>1</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a [New Pact on Migration and Asylum](#), COM/2020/609 final, 23.9.2020, p.24.

<sup>2</sup> Ibid, pp 24 & 25.

<sup>3</sup> Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, *OJ L 155, 18.6.2009, p. 17–29*.

<sup>4</sup> Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, *OJ L 94, 28.3.2014, p. 375–390*.

<sup>5</sup> Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer *OJ L 157, 27.5.2014, p. 1–22*.

<sup>6</sup> Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 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, *OJ L 343, 23.12.2011, p. 1–9*.

<sup>7</sup> European Commission, [Report from the Commission to the European Parliament and the Council on Directive 2011/98/EU 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](#), Brussels, 29.3.2019 COM(2019) 160 final.

<sup>8</sup> Ibid.

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precarity both in their professional and personal lives. In the event of unemployment, it is vital for permits to remain valid for a reasonable period of time to find a new job.

**The application and renewal procedures for single permits must be simplified and made more accessible** as the research participants experienced significant uncertainty due to lengthy, complex and costly procedures. This had significant implications for the prospects of migrant workers who, for instance, subsequently felt unable to seek alternative employment due to the uncertainty of the outcome of the administrative process. Similarly, for those who received a refusal often ended up enduring a significant period of legal limbo and precarity, whilst awaiting the outcome of an appeal.

**The dependence on the employer must be reduced** as single permit holders are currently beholden to their employer in relation to a wide range of personal and professional circumstances: such as, the application and renewal of a single permit, the access to information related to the status of the application, the renewal of short-term employment contracts, the provision of accommodation, the provision of information and assistance, and the opportunity for social integration.

**The ability of single permit holders to change employer or seek alternative employment must be unimpeded** as the findings reveal that there is a much increased possibility of workers being subjected to exploitation where restrictive conditions do not permit them to easily work for a different employer on their existing permit. This is the case in Belgium, where a whole new application must be made for the worker to change employer. If workers are only required to notify authorities of the change in employment situation, as is the case in the Czech Republic, this risk can be reduced. However, significant

practical challenges may still arise, for example, if there is a limited time period to be unemployed or the procedure remains unknown or complicated. Where a worker has the unimpeded right to change employer, like in Spain, their ability to change their circumstances is greatly facilitated where they are not satisfied with their working conditions and treatment by their employer, or where they wish to advance in their career.

**Prospective and current single permit holders must have improved access to information and support** as the research participants did not always know their social and labour rights and how to enforce them. This contributed to them accepting working conditions that, in some instances, led to serious violations of their labour rights. Research participants reported that they receive very little information and support from state authorities and/or third-party organisations about their rights prior to arrival and subsequently once they begin working. Instead, they are reliant on the employer to provide information, that is not always within their purview, leaving workers misinformed and disempowered. Conversely, the more advantageous position of employers means that the single permit holders' right to equal treatment is not always respected, which, in the case of unscrupulous employers, can even amount to fraudulent and illegal practices and the risk of exploitation.

Three further elements to address the imbalance of bargaining power and to minimise the risks of exploitation, include: first, **the full realisation of migrant workers human and social capital** as the restrictive conditions of the single permit means that some research participants were required to compromise and work in sectors for which they were overqualified or did not match their skills. Second, effective **access to complaint mechanisms must be guaranteed** to allow workers to voice their concerns and access

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remedy without fear of sanction or an adverse impact on their migration status. In a similar vein, **inspection and monitoring mechanisms must be in place** to identify and detect poor working conditions and situations where there is an over-dependence on the employer that could lead to exploitation. Such mechanisms should likewise ensure they do not result in workers losing their permits. Third, **transitional permits**

**should be available to workers who have experienced exploitation**, to enable them to stabilise their situation without falling into irregularity.

The findings and recommendations of the current study seek to contribute to ongoing European and national discourse around the revision and update of labour migration policy regarding the EU Single Permit Directive.

### I. Introduction

Across the EU, the need to address labour market shortages is a prominent component of labour market activation and labour migration policy discourse<sup>9</sup>. Matters such as the challenges posed by Europe's ageing and shrinking population, the green and digital transitions and the need for EU Member States to compete on a global scale as an attractive destination for prospective workers are particularly key components<sup>10</sup>. Part of the solution to addressing the deficit in workforce supply is for EU Member States to turn to non-EU citizens. Indeed, the EU has, for some time, sought to develop a legal framework that facilitates access to the European labour market by developing common rules for labour migration<sup>11</sup>. However, given that Member States' are the primary decision maker when it comes to determining the number of work permits to be issued (including renewals) and the sectors that will be targeted<sup>12</sup>, adjustment to European labour migration law and policy necessitates a multi-level approach that is receptive to both national and supra-national objectives.

Existing legal instruments harmonise the rules on entry and residence for specific categories of third country national migrant workers: in particular, highly qualified workers<sup>13</sup>, seasonal workers<sup>14</sup>, and intra-corporate transferees<sup>15</sup>. However, for third country nationals who are not included in these specific instruments, the procedural rules for admission to the territory of an EU Member State for the purpose of employment are prescribed in the EU Single Permit Directive 2011/98/EU<sup>16</sup>. It is this legislative instrument that will be the focus of the present study, in which we will determine its impact on the lived experiences of third country nationals who are seeking access to the EU labour market as single permit holders.

The Single Permit Directive has two key objectives: first, to offer a simplified and harmonised procedure for granting a combined title encompassing both residence and work permits, through a single administrative act<sup>17</sup>. Once issued, a single permit grants the holder the following rights, in accordance with national law: to enter and reside in the territory of the Member State issuing the single permit; to have free access to the entire territory of the Member State issuing the single permit; to exercise the specific employment activity authorised under the single permit; and to be informed about the holder's own rights linked to the permit<sup>18</sup>. The second purpose of the Directive, in turn, is to guarantee at least a common set of rights based on equal treatment between EU nationals and third

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<sup>9</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a [New Pact on Migration and Asylum](#), COM/2020/609 final, 23.9.2020, p.24.

<sup>10</sup> Ibid, pp 24 & 25.

<sup>11</sup> Council of the European Union, Presidency Conclusions, Tampere European Council, 15-16 October 1999, 16 October 1999. European Commission, [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, COM/2007/0638 final, 23.10.2007.

<sup>12</sup> Article 79(5), Treaty on the Functioning of the European Union: This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

<sup>13</sup> Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, *OJ L 155*, 18.6.2009, p. 17–29.

<sup>14</sup> Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, *OJ L 94*, 28.3.2014, p. 375–390.

<sup>15</sup> Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer *OJ L 157*, 27.5.2014, p. 1–22.

<sup>16</sup> Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 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, *OJ L 343*, 23.12.2011, p. 1–9.

<sup>17</sup> Ibid, Preamble, Recital 3 and Article 4.

<sup>18</sup> Ibid, Article 11.

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country migrant workers in areas such as working conditions, freedom of association, education and training, recognition of diplomas and qualifications, social security and tax benefits, access to goods and services, and advise services from employment offices<sup>19</sup>.

Member States were required to transpose the Single Permit Directive by the 31 December 2013 and since that date, its implementation has seen significant variation<sup>20</sup>. In this regard, concerns have been raised about the complexity and efficiency of the application (and renewal) procedure, the exclusion of certain categories of migrants from the scope of the Single Permit Directive and the lack of protection of migrant workers from exploitation<sup>21</sup>. Indeed, the reality does not reflect the ‘one-stop shop’ mechanism that had been envisaged, with implementation across EU Member States leading to concerns relating to three areas identified by the European Commission’s evaluation of the Directive’s implementation: first, “the multiple administrative steps required, the time needed to obtain the entry visas and labour market clearance and the respect of certain procedural safeguards”; second, the “restrictive interpretation of equal treatment provisions in a few Member States”; and third, “a lack of information among third country nationals about the possibility of obtaining a single permit and the rights attached to it”<sup>22</sup>.

As part of the Pact on Asylum and Migration, the European Commission announced, in September 2020, that the Single Permit Directive would be reviewed as it had “not fully achieved its objective to simplify the admission procedures for all third-country workers.”<sup>23</sup> A proposal for a recast Single Permit Directive was published by the European Commission in April 2022<sup>24</sup> and has been the subject of debate in both the European Parliament<sup>25</sup> and the Council of the European Union<sup>26</sup>, with negotiations between the institutions ongoing at the time of writing this report. The main aspects under discussion include: the imposition of a requirement on Member States to accept an application for a single permit both in the Member State of destination and from a third country (Article 4), the maximum duration of the application or renewal procedure (Article 5), the right to seek employment and to change employer during validity of the single permit and the right to remain on territory and seek employment following loss of employment without affecting validity of permit (Article 11), and new provisions on monitoring, assessment, inspections penalties and facilitation of complaints (Articles 13 and 14). The final articulation of these revised measures must ensure that the emphasis is on reinforcing the equal treatment of third country nationals, on guaranteeing fair access to the labour

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<sup>19</sup> Ibid, Preamble, Recital 20 and Article 12.

<sup>20</sup> European Commission, [Report from the Commission to the European Parliament and the Council on Directive 2011/98/EU 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](#), Brussels, 29.3.2019 COM(2019) 160 final; De Lange, T., & Groenendijk, K., De Lange, T., & Gronendijk, K., [The EU's legal migration acquis: Patching up the patchwork](#), European Policy Centre Issue Paper European Migration and Diversity Programme, 16 March 2021; De Lange, T., et al, [The EU legal migration package: Towards a rights-based approach to attracting skills and talent to the EU](#), Study Requested by the LIBE committee, December 2022.

<sup>21</sup> European Commission (2019), supra n. 20.

<sup>22</sup> Ibid., p.13.

<sup>23</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a [New Pact on Migration and Asylum](#), COM/2020/609 final, 23.9.2020.

<sup>24</sup> European Commission, [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 (recast), Brussels, 27.4.2022, COM(2022) 655 final.

<sup>25</sup> European Parliament, [Report on the proposal for a directive of the European Parliament and of the Council concerning 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 (recast), 13.4.2023 (COM(2022)0655 – C9-0163/2022 – 2022/0131(COD)).

<sup>26</sup> Council of the European Union, [Proposal for a directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of an EU Member State](#), Brussels 17 May 2023.



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market and minimising the dependence on employers and the risk of migrant workers falling into irregularity<sup>27</sup>.

In what follows, we will outline the research objectives and methodology (2) and then outline the current state of play of the Single Permit Directive by focusing upon its transposition in the three EU Member States concerned by this study, namely Belgium, the Czech Republic and Spain (3). We will then present the findings of the single permit holders lived experiences in relation to their desire to seek employment in the EU (4) outlining their motivations (4.2), their experiences of recruitment (4.3) and, critically, their experience of applying for a single permit (including renewals) (4.4). We will then discuss their perspectives on working and living in the EU (5). Concluding remarks will look to the future of single permit holders in the EU with a view to the research findings providing an evidence-base that can contribute to a meaningful revision process of the Single Permit Directive (6).

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<sup>27</sup> Carta, S., [How Europe can make work permits actually work](#), EUObserver, 6 March 2023; Weatherburn, A., [Guaranteeing fair and equal treatment of migrant workers in the EU: The new Single Permit as a piece of the EU's labour migration puzzle](#), Human Rights Here Blog, 26 April 2023.

### 2. Research objectives and methodology

The current study seeks to contribute to ongoing European and national discourse around the revision and update of labour migration policy regarding the Single Permit Directive. Importantly, however, in parallel to the developments at the EU level, national labour migration law and policy are in constant flux, including in relation to the transposition of the Single Permit Directive<sup>28</sup>. Crucially, the aim of this study is to reflect upon developments in relation to labour migration law and policy across the EU by taking into consideration the perspective of the workers themselves. By investigating the lived experiences of prospective, current and former single permit holders in three EU Member States, namely Belgium, the Czech Republic and Spain, the present study offers invaluable insight into determining to what extent the national implementation of the EU Single Permit has realised its abovementioned dual purpose. We will do so by:

- i) considering the implications of the introduction of the single permit and the conditions attached to its implementation in practice; and
- ii) determining the main challenges single permit holders face in both their professional and private lives.

To achieve these objectives, the research focuses on the provision of work or services in a safe and secure environment, the respect for socio-economic rights, the provision of information and awareness of rights, the capacity to integrate and increase human and social capital<sup>29</sup>. In addition, the analytical framework of the research adopts a rights-based approach that seeks to assess the extent to which the rights of migrant workers are respected and guaranteed in practice. Finally, we will make recommendations as to how the current labour migration policy approach to third country nationals can be improved, taking into account the impact of challenges faced by those who, despite having a regularised migration status, are still subject to insecurity and precarity in both their professional and private lives.

The study adopts a qualitative comparative approach to assess the practical implementation of the single permit and the lived experiences of single permit holders in three EU Member States: Belgium, Spain, and the Czech Republic. Geographically, the three countries represent different perspectives and entry points into the EU with a variety in the main nationalities for third country nationals residing in their territory. Politically, as will be discussed *infra*, Spain and Belgium both have a multi-level governance system whereby the competences for deciding who has the right to work and right to reside does not lie with one single state authority. Conversely, in the Czech Republic, the Ministry of the Interior is solely competent for granting single permits. Legally, both Spain and the Czech Republic transposed the Single Permit Directive within the timeframe required (25 December 2013), whereas the late transposition of the Directive in Belgium meant that the single permit was not introduced in the country until 2019. Interestingly, in addition to the revision of the Directive, there are also recent and ongoing legal reforms in all three countries that have an impact on the rights afforded to single permit holders in a national setting<sup>30</sup>.

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<sup>28</sup> See section 3 for details of ongoing law and policy changes in relation to the national transposition of the Single Permit Directive in the three Member States under study.

<sup>29</sup> Ruhs, M., *Price of Rights: Regulating International Labor Migration* (Princeton University Press, 2013).

<sup>30</sup> In particular, in Belgium and the Czech Republic, efforts are being made to extend the time period to change employer. In Belgium, an announcement by the Secretary of State for Migration on 7 July 2023 confirmed that the period to change employer will be extended from 90 to 180 days where a worker has experienced violations of their social rights committed by their employer: Nicole de Moor (CD&V), [Interministeriële Conferentie pakt misbruik en uitbuiting bij arbeidsmigratie aan](#) (7 July 2023). For other developments in Member States, see more in Section 3.

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The implementation of the study and the outreach to research participants in all three countries has been innovative in its methodology in both the fieldwork and analysis stage. During the fieldwork phase, civil society organisations (Fundación CEPAIM in Spain, CNCD-11.11.11 in Belgium and the Association for Integration and Migration - SIMI in the Czech Republic) identified and interviewed the research participants, allowing for a relaxed interview environment where they had a pre-existing relationship of trust with the organisation and/or the interviewer. Another advantage of this approach has been that in many circumstances the interviewer has been able to engage directly with the research participant, with very limited need for interpreters, allowing research participants to be able to fully express their experiences. To ensure consistency and coherence in the implementation of the fieldwork across three different national contexts, a collective online training session was organised where techniques for semi-structured interviews and the key topics to be discussed in the interviews were outlined. Furthermore, interview simulations were run to identify any difficulties or points that required further clarification. The use of this approach has also meant that the fieldwork (given the size and diversity of the sample size) has been completed in a relatively short timeframe (8 months). Once the transcripts (and in many cases translations) of the interviews were received, the analysis phase has been facilitated by the involvement of final year Master students from the Université Libre de Bruxelles Equality Law Clinic where they have been given additional instruction in analytical techniques including coding and thematic analysis. The interviewers' training and the work of the students has been supervised by Dr Amy Weatherburn.

A total of 31 interviews have been conducted in Belgium (9),<sup>31</sup> Spain (12) and Czech Republic (10). The eligibility criteria for the target sample size were purposefully left broad with no restrictions regarding the profession exercised and skill-level with a view to garnering a wide range of experiences. The participants thus included those who were single permit applicants (3), current single permit holders (19) and former single permit holders (6) (provided that they had been single permit holders on or after January 2019). Three undocumented participants have been included as, despite the conditions for accessing the single permit not extending to those residing irregularly on Belgian territory, their experiences of living and working in Belgium, as well as their skills, competence and contribution to professions that experience labour market shortages are relevant to the overall discussion around the accessibility of residence and work permits such as the single permit.

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<sup>31</sup> The participants from Belgium were working in either the Brussels Capital or Wallonian region. The premise of the study builds upon previous research in Belgium that sought to investigate the lived experiences of single permit holders in Flanders who were working in medium-skilled bottleneck professions. In this regard, the analytical framework and the thematic topics are the same and thus allow for comparison with the findings from the present study. See Weatherburn, A., Herman Kruithof, E., & Vanroelen C., [Labour Migration in Flanders and the use of the single permit to address labour market shortages: the lived experiences of single permit holders working in medium skilled bottleneck professions](#). VUB Interface Demography Working Paper No. 2022-01, April 2022.

### 3. The EU Single Permit Directive: state of play and national transposition in Belgium, the Czech Republic and Spain

The EU Single Permit Directive does not encroach on Member States' competence in matters relating to labour migration law and policy as stated in Article 79(5) TFEU, instead it prescribes minimum rules in relation to a limited number of procedural aspects of admission and rights of third country nationals and leaves a margin of discretion in the implementation of the Directive in the national context. In practice, State discretion means that the transposition of the Directive at the national level can vary from one Member State to another and has not led to the procedural harmonisation envisaged<sup>32</sup>. A patchwork approach to the use of the single permit can also be determined from the latest statistical data, which shows that of the 2.9 million third country nationals were granted a single permit across the EU in 2021<sup>33</sup>, three countries – namely Spain (one of the countries under study), France and Italy - accounted for 70% of all single permits<sup>34</sup>. The majority of the permits granted were for employment and family reasons (i.e., admitted on basis of family reunification and are in work) and were issued with a validity of 12 months or over in 2021<sup>35</sup>. It is also important to note that, as the Single Permit Directive is not a pathway in itself and has broad-reaching application, provisions may be applicable – or be voluntarily applied by Member States – to a range of different residence and work permits provided for under national labour migration policy. The bulk of this section focuses on the most relevant pathway for labour migration for which the Single Permit Directive applies: in Belgium, the 'Single Permit', in Czech, the 'Employee Card', and in Spain, the Temporary Residence and Work Visa.

Belgium, the Czech Republic and Spain have transposed the Directive; however, it is worth noting that both Belgium and Spain received formal notice from the Commission as a result of not fully transposing the Directive by the time of the transposition deadline of 25 December 2013<sup>36</sup>. The delay in transposition can be (partly) attributed to national governance mechanisms that have a division of competences in relation to immigration and employment<sup>37</sup>. For instance, in Belgium, since the sixth state reform in 2014, there is a multi-level distribution of competences, with the federal Immigration Office having competence to regulate the right to reside and the four regional governments having the competence to determine the right to work<sup>38</sup>. Indeed, the implementation of the Directive in Belgium first saw the light upon the conclusion of a Cooperation Agreement on 6 December 2018 between the federal state and regional governments<sup>39</sup> that led to a general framework transposed into the

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<sup>32</sup> De Lange, T., & Groenendijk, K., (2021), supra n. 20, p.16.

<sup>33</sup> Eurostat, [Residence permits – statistics on authorisations to reside and work](#), December 2022. (including first permit, renewals and change of status); Spanish Ministry of Labour and Social Economy, [Statistics on Work Permits for Foreign Nationals](#), consulted on 1 July 2023.

<sup>34</sup> And are consistently in the top three since 2014. The disproportionate distribution of single permit statistics across EU Member States was also an observation made by De Lange, T., & Gronendijk, K., (2021), supra, n. 20 p. 14.

<sup>35</sup> Eurostat (2022), supra n. 33; Spanish Ministry of Labour and Social Economy, supra n. 33.

<sup>36</sup> European Commission, [April infringements package: main decisions](#), 29 April 2015, consulted on 1 July 2023. Belgium transposed the Directive in 2019 and Spain in 2014. See also, Angel Cabra De Luna, M., "La Union Europea", *Boletín de información*, 2015, p. 9; Mohimont, P., "Permis unique en Belgique et réalité pratique", (2018) *Revue du droit des étrangers*, no. 197, 5-15, p. 8.

<sup>37</sup> Van der Elst, E., & Bronckaers, N. (2019). De langverwachte implementatie van Richtlijn 2011 / 98 / EU inzake één enkele aanvraagprocedure voor een gecombineerde vergunning en haar gevolgen voor het Belgisch wetgevend kader inzake de tewerkstelling van buitenlandse onderdanen landse onderdanen in. Tijdschrift Voor Vreemdelingenrecht, 2, 106–119.

<sup>38</sup> Namely, the Walloon Region, the Flemish Region, the Brussels-Capital Region and the German-speaking Community.

<sup>39</sup> Cooperation agreement of 6 December 2018 between the Federal State, the Walloon Region, the Flemish Region, the Brussels-Capital Region and the German-speaking Community on the implementation of the cooperation agreement of 2

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Belgian Immigration Act by a federal law adopted on 24 December 2018<sup>40</sup> and subsequent Decisions by the Regional governments<sup>41</sup>.

	Belgium	Czech Republic	Spain
<b>Number of permits issued in 2021</b> <sup>42</sup>	11.519	73.079	324.714
<b>Duration of 12 months or over</b>	11.519	64.696	319.063
<b>Number of renewals in 2021</b> <sup>43</sup>	5.609	58.755	114.411
<b>Gender</b>	74% men; 26% women <sup>44</sup>	70% men; 30% women <sup>45</sup>	54% men; 46% women <sup>46</sup>
<b>Nationality (top 5)</b>	1. India (+- 1713) 2. Turkey (540) 3. Morocco (437) 4. Tunisia (270) 5. Japan (257) <sup>47</sup>	1. Ukraine 2. Mongolia 3. Russia 4. Vietnam 5. Serbia <sup>48</sup>	1. Morocco 2. Honduras 3. Colombia 4. Perú 5. Venezuela <sup>49</sup>

*Table 1: Single permit (number of issues and renewals) and single permit holders (gender and nationality) statistics for 2021 for Belgium, the Czech Republic and Spain*

Similarly, in Spain, political decentralisation also has an impact on work and residence permits<sup>50</sup>. Overall, the state has exclusive jurisdiction over immigration as well as the competence to grant work permits. However, by virtue of Royal Decree 1463/2009<sup>51</sup>, the autonomous region of Catalonia makes

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February 2018 between the Federal State, the Walloon Region, the Flemish Region, the Brussels Capital Region and the German-speaking Community on the coordination between the policy on admission to work and the policy on residence permits and on the standards governing the employment and residence of foreign workers, Belgian Official Gazette, 18 July 2019.

<sup>40</sup> Act of 22 July 2018 amending the Act of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners, Belgian Official Gazette, 24 December 2018; Royal Decree of 12 November 2018 amending the Royal Decree of 8 October 1981 on access to the territory, residence, establishment and removal of foreigners with a view to issuing a combined permit authorising third-country nationals to reside and work on the territory of the State. Belgian Official Gazette, 24 December 2018.

<sup>41</sup> Decree of the Government of the Brussels-Capital Region of 5 July 2018 amending the Royal Decree of 9 June 1999 implementing the law of 30 April 1999 on the employment of foreign workers, as regards the introduction of a single procedure and a single permit. Belgian Official Gazette, 8 July 2020; Royal Decree of 2 September 2018 of the Walloon Government implementing the law of 9 May 2018 on the occupation of foreign nationals in a particular residence situation. Belgian Official Gazette, 17 September 2018; Decree of 7 December 2018 the Flemish Government implementing the Act of 30 April 1999 on the employment of foreign workers. Belgian Official Gazette, 21 December 2018; Government Decree of 7 June 2018 amending the Royal Decree of 9 June 1999 implementing the Law of 30 April 1999 on the employment of foreign workers. Belgian Official Gazette 27 June 2018.

<sup>42</sup> Eurostat, [Single Permits issued by type of decision, length of validity](#), last updated 23 March 2023, consulted on 1 July 2023.

<sup>43</sup> Ibid.

<sup>44</sup> The data is also available disaggregated by regions: 33% in Brussels Capital Region, 19% in Flanders & 29% in Wallonia. Myria, La Migration en chiffres et en droits 2022, [Migration économique, libre circulation et étudiants](#), pp 9-11.

<sup>45</sup> Data on file with author, provided by Association for Integration and Migration – SIMI.

<sup>46</sup> Spanish Ministry of Labour and Social Economy, supra n. 33.

<sup>47</sup> Myria (2022), supra n. 44, pp 9-11.

<sup>48</sup> Data on file with author, provided by Association for Integration and Migration – SIMI.

<sup>49</sup> Spanish Ministry of Labour and Social Economy, supra n.33.

<sup>50</sup> Pi-Suñyer, C. V., *The Transition to a Decentralized Political System in Spain*, Ottawa, Forum of Federations, 2010, p. 4.

<sup>51</sup> Royal Decree 1463/2009, of 18 September, on the transfer of functions and services to the Generalitat of Catalonia in matters of immigration: initial authorisations for self-employed or employed work for foreigners whose employment relationship is in Catalonia. B.O.E., 22 September 2009.

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the decisions as to the right to work, as they have jurisdiction over the application of labour legislation<sup>52</sup>.

### Imminent changes to the Spanish system following legal reform

Since the transposition of the Directive in Spain, the procedure for obtaining the single permit - also known as the Temporary Residence and Work Visa – has been governed by Royal Decree 557/2011<sup>53</sup>. However, in 2022, a Royal Decree<sup>54</sup> has been adopted that introduces changes to the Spanish legislation with a view to strengthening compliance with the Directive. The aim of this reform is to provide a rapid response to the growing imbalances in the Spanish labour market linked to the shortage of migrant workers, as well as to pre-existing situations that have not been resolved within the national legal order. In this context, the reform aims to improve the processing of cases by creating a new administrative unit. Under normal circumstances, the average time taken to process a residence and work permit is approximately three months. However, this timeframe has been extended due to the limited capacity of foreigners' offices to respond quickly and efficiently to applications, both for initial permits and for renewals. This current shortcoming in Spain needs to be addressed with a view to guaranteeing not only the legitimate interests of companies but also those of workers from third countries. This reform will make it easier for companies to obtain authorisations without major bureaucratic difficulties and will also provide greater legal certainty for workers. To achieve this objective, Royal Decree 629/2022 provides for a strengthening of job descriptions, an improvement in the attractiveness of posts, adequate funding for these posts and measures to retain talent, and the creation of a flexible, centralised unit to support offices in processing applications<sup>55</sup>.

The Directive states that the single administrative act combining a residence and a work permit is constituted upon the decision to issue, amend or renew the single permit (Article 4(2)). The Belgian and Spanish division of administrative competences between different state entities illustrates that despite the aim of the Directive to deliver a “single administrative act”, there are nevertheless challenges linked to the division of competences such as the ability to issue single permits in a timely manner (Recital 4)<sup>56</sup>. In Spain, the administrative handling of single permit applications has been considered as an obstacle as it prevents a “comprehensive view of an admissions policy; it presents barriers to market unity and creates horizontal overlapping at State and Regional Government levels”<sup>57</sup>. In this regard, the Spanish division of competences is regarded as increasing the bureaucratic burden and making it difficult to maintain homogeneous criteria in the management of labour migration throughout the territory of the Spanish State<sup>58</sup>. In Belgium, the way in which the division of competences is organised between federal and regional authorities has been raised as a barrier to combatting social fraud, and in some cases human trafficking for the purposes of labour exploitation.

<sup>52</sup> Commission for the Reform of Public Administration, “Reform of the Public Administrations”, available on [www.transparencia.gob.es](http://www.transparencia.gob.es), p. 119.

<sup>53</sup> Royal Decree 557/2011, of 20 April 2011, approving the Regulations of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, following its reform by Organic Law 2/2009, B.O.E., 30 April 2011.

<sup>54</sup> Royal Decree 629/2022 of 26 July 2022 amending the Regulation of Organic Law 4/2000 'on the rights and freedoms of foreigners in Spain and their social integration' following its reform by Organic Law 2/2009 approved by Royal Decree 557/2011, B.O.E., 27 July 2022.

<sup>55</sup> Chapter IV “Residencia temporal y trabajo para cuenta ajena de duración determinada” dealing with the single permit, of the new Royal Decree 629/2022 entered into force and modified the *Ley de Extranjería*. However, a final part concerning the suppression of the articles integrating Chapter IV “Residencia temporal y trabajo por cuenta ajena de duración determinada will only enter into force on 26 July 2023 and constitutes the final step of the current Spanish reform.

<sup>56</sup> European Commission, [Fitness check on EU Legislation on legal migration](#), Brussels 29.3.2019 SWD(2019)1055 final, p.20; De Lange, T., et al, (2022), supra n. 20, p.17.

<sup>57</sup> Commission for the Reform of Public Administration, supra. 52, p. 120.

<sup>58</sup> Noticias Jurídicas, “El Gobierno establecerá un permiso de trabajo para extranjeros único en toda España”, available on [www.noticias.juridicas.com](http://www.noticias.juridicas.com), 25 June 2013, consulted on 1 July 2023.



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This has been especially relevant to recent scandals involving large-scale alleged human trafficking and abuse of single permit holders in Flanders<sup>59</sup>.

Whilst the Czech Republic does not have such a division of competences between different levels of national state governance, there have, nevertheless, been 69 legislative measures enacted to implement the single permit nationally<sup>60</sup>. This is because the single permit legislation was accompanied by an overhaul of the long-term visa system for foreign workers, whereby the Act on Employment (No. 435/2004 Coll.) was amended to replace the visa for a stay of over 90 days for the purpose of employment, a long-term residence permit for the purpose of employment and a Green Card. Since 24 June 2014, with the entry into force of the Act on the Residence of Foreign Nationals (No. 326/1999 Coll.), these three types of residence permit were replaced with the Employee Card (i.e., a single permit), which is now issued to third country nationals who wish to work longer than 90 days<sup>61</sup>.

### 3.1. Application for a single permit

Despite the different mechanisms that come into play once an application for a single permit has been submitted, in **Belgium**, there is only one application to be submitted to the competent *regional* authority<sup>62</sup>. The application must be submitted online via the “Working in Belgium” portal by the employer who is offering the job; workers are not able to apply themselves. If the prospective employee does not have a residence permit at the time of applying, they must not be present on Belgian territory. Where the prospective employee has a residence permit, the application must be submitted before it expires. The said application for a work permit is equivalent to an application for a residence permit (and vice versa)<sup>63</sup>. This means that this application also has to be completed with the necessary documents for the residence part<sup>64</sup>. The single permit is applicable to all third country nationals who wish to work for more than 90

days in Belgium. Importantly, the single application procedure (the one-stop counter) is required even for categories of workers who are, under the EU Directive, excluded, e.g., seasonal workers, high-skilled workers (Blue-Card) and intra-corporate transferees. Currently, only au-pairs are not required to submit their application via this online system.

In the **Czech Republic**, applications for Employee Cards can be submitted in person by the worker at the embassy or in the Czech Republic at an office of the Ministry of the Interior. An Employee Card entitles the holder to both reside and work, in a job for which the Employee Card was issued or with another employer, with the consent of the Department of Asylum and Migration Policy of

<sup>59</sup> [Commission de l'Intérieur, de la Sécurité, de la Migration et des Matières administratives](#) Compte Rendu Analytique / [Commissie voor Binnenlandse Zaken, Veiligheid, Migratie en Bestuurszaken](#) Beknopt Verslag, CRABV 55 COM 1010, 1 March 2023, pp 1-11 ; Commission Spéciale chargée d'évaluer la législation et la politique en matière de traite et de trafic des êtres humains, [Rapport fait au nom de la commission spéciale par Mmes Sophie De Wit et Els Van Hoof et MM. Simon Moutquin, Emmanuel Burton et Ben Segers](#), 12 juin 2023/ Bijzondere Commissie belast met de evaluatie van de wetgeving en het beleid inzake mensenhandel en mensensmokkel, Verslag namens de bijzondere commissie uitgebracht door de dames Sophie De Wit en Els Van Hoof en de heren Simon Moutquin, Emmanuel Burton en Ben Segers, 12 juni 2023, p.20.

<sup>60</sup> EUR-Lex, National transposition measures communicated by the Member States concerning: Directive 2011/98/EU, available on <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32011L0098>, consulted 20 May 2023.

<sup>61</sup> The EU Blue Card remains in place.

<sup>62</sup> Article 18, § 1, Cooperation agreement of 2 February 2018 between the Federal State, the Walloon Region, the Flemish Region, the Brussels Capital Region and the German-speaking Community on the coordination between the policy on admission to work and the policy on residence permits and on the standards governing the employment and residence of foreign workers, [Belgian Official Gazette](#), 24 December 2018 (hereinafter, Cooperation Agreement, 2018).

<sup>63</sup> Article 21, Cooperation Agreement, 2018.

<sup>64</sup> Article 18, § 3, Cooperation Agreement, 2018.

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the Ministry of Interior<sup>65</sup>. The Employee Card is not applicable to those third country nationals who are listed in Section 98 Act on Employment, No. 435/2004 Coll nor to third country nationals who have been issued with a long-term visa on the basis of leave to remain or for the purpose of seasonal work<sup>66</sup>.

In **Spain**, the procedure for obtaining the Temporary Residence and Work Visa depends on the type of permit that is being requested, where residence and work permit is being requested for an employed person (*por cuenta ajena*), then the individuals cannot apply directly for the permit themselves. Instead, the application must be submitted by the employer who is offering the job. The residence and work permit for employed work is the most

common type of permit requested and it is the responsibility of the employer or an authorised representative to submit the application on behalf of the employee<sup>67</sup>. Where the Temporary Residence and Work Visa is for the purpose of self-employment (*por cuenta propia*), then the individual must make the application themselves. The application can be made via a digital platform “Mercurio” by the applicants and their legal representatives, depending on the type of procedure. However, access to the platform requires the installation of a digital certificate and the Autofirma Application, that has presented some applicants with technical difficulties.

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<sup>65</sup> Section 89(2) and 89(4) and Sections 95, 96 and 97 of the Act on Employment No. 435/2004 Coll, Urad Prace CZ, “Employee Cards for foreigners in the Czech Republic”, available on <https://www.uradprace.cz/>, consulted on 1 July 2023.

<sup>66</sup> Full list of exceptions listed in Section 98 of Act on Employment No. 435/2004 Coll, available at: <https://www.uradprace.cz/web/en/free-entry-to-the-labour-market>, consulted on 1 July 2023.

<sup>67</sup> Article 67, Royal Decree 557/2011.



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The following table outlines the conditions and the documents required to submit an application for the specific permit discussed, in all three Member States<sup>68</sup>.

	Belgium	Czech Republic	Spain
<b>Application form in hard copy</b>		X	
<b>Application form in electronic format</b>	X		X
<b>Proof of qualifications</b>	X	X	X
<b>Contract of employment</b>	X	X	X
<b>Extract of criminal record</b>	X	X	X
<b>Health insurance</b>	X	± <sup>69</sup>	
<b>Information about employer</b>	X	X	X
<b>Medical certificate (prevention of infectious diseases)</b>	X	X	
<b>Applications from within territory when regularly present allowed</b>	± <sup>70</sup>	X	X
<b>Passport</b>	X	X	X
<b>ID Photo</b>			X
<b>Proof of solvency</b>	X		X
<b>Proof of accommodation</b>		X	
<b>Salary threshold</b>	± <sup>71</sup>	X	
<b>Fees</b>	X	X	X

Table 2: Conditions for a single permit and documents needed for an application

### 3.2. Assessment of an application

In **Belgium**, when the file is complete, the concerned Region examines the documents to decide on the work permit (decisions are mutually recognised by the Regions) while the federal Immigration Office carries out a security check to find out whether the applicant can obtain a residence permit before deciding on the residence permit itself<sup>72</sup>. When the regional authority makes a positive decision, the file should be transferred to the

federal authority. The latter will notify the two positive decisions to the applicant, and they will be issued with an Annex 46. If the federal authority takes a negative decision, the employer, the applicant, and the regional authority are notified<sup>73</sup> whereas if the regional authority is the one to render a negative decision, it should only notify the applicant and the federal authority<sup>74</sup>. If four months after the application is submitted, the Region and Immigration office have not made a negative decision, the application will be accepted, and

<sup>68</sup> Belgium: Article 61/25-2 § 1 Act of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners, Belgian Official Gazette, 31 December 1980, inserted by Article 8, Act of 22 July 2018 amending the Act of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners, Belgian Official Gazette, 24 December 2018. Czech Republic: Section 90 & 91, Act on Employment No. 435/2004 Coll. Spain: Articles 64 & 67, Royal Decree 557/2011.

<sup>69</sup> In order to be issued a long-term visa for the purpose of entering the Czech Republic and to collect an Employee Card, the foreign national must present proof of payment of medical travel insurance. Only upon receipt of the Employee Card they will then be covered by the Public Health Insurance Act.

<sup>70</sup> Except for bottleneck professions where third country national applicants must not be present on territory at time of application.

<sup>71</sup> Except for bottleneck professions.

<sup>72</sup> Article 14, § 1 & 2, Cooperation Agreement, 2018.

<sup>73</sup> Article 26, § 3, Cooperation Agreement, 2018.

<sup>74</sup> Article 27, Cooperation Agreement, 2018.

the applicant will receive an Annex 47, the employer and the regional authority will be informed by the federal authority.

In the **Czech Republic**, upon submission of the application, the Ministry of the Interior will assess it and decide whether to grant it. An Employee Card will be issued subject to the provision of an employment contract or a letter of intent stipulating the parties' commitment to conclude an employment contract or a contract for work within the specified date. These documents must refer to monthly wage, salary or remuneration that must not be lower than the basic rate of the monthly minimum wage regardless of the extent of work and the weekly working hours must be at least 15 hours.

In **Spain**, an application will be assessed within approximately three months from the date of submission by the relevant immigration authority, either the Office of Immigration or the Directorate General of Migration. Where the administration fails to notify the applicant of a decision within this period, it may be considered as a rejection.

### 3.3. Receipt of a single permit and requisite visa procedures

In **Belgium**, where an application was submitted from outside the Belgian territory, the applicant will be required to apply for a D visa for long-term residence at a Belgian diplomatic or consular post, providing a valid passport and the Annex 46 or 47 granting the single permit. Within eight working days of arrival in Belgium, the single permit holder must apply for registration in the foreign nationals register at the local authority of their place of residence. Where an applicant was already residing in Belgium, they will receive a decision to grant a single permit (Annex 46 or 47) and within eight working days upon receipt of the decision must apply for registration in the foreign nationals register at the local

authority of their place of residence. Applicants will receive an Annex 49 that is valid for 45 days (renewable twice), whilst their residence check (a physical control by the local police to prove residence) is pending. Where the residence check is positive, they will receive an A card (a residence permit that refers to the individual's access to the labour market).

In the **Czech Republic**, once approved, the applicant will receive a visa for residence over 90 days, which will allow them to collect their Employee Card from the Department of Asylum and Migration Policy of the Ministry of the Interior for a fee of CZK 2,500 (approx. 100 EUR). Employee Card holders will also be required to provide biometric data and register their stay at the Foreigner's Police Inspectorate within three business days of entering the country<sup>75</sup>.

In **Spain**, once the application is approved, the applicant will be granted a Temporary Residence and Work Visa<sup>76</sup>. The third-country national will then be able to travel to Spain and within three months must be registered in the corresponding Social Security Regime to make the initial authorisation for temporary and residence and work effective, further within one month of the worker's registration in the Social Security regime they must request, in person, the Foreigner Identity Card from the corresponding Immigration Office of police station. This document will be used to prove the identity and the validity of residency of the person concerned<sup>77</sup>.

### 3.4. Duration of a single permit

**In all three countries**, the minimum duration of the single permit is 90 days. The maximum duration, however, does vary. In **Belgium** the maximum duration is 1 year (if the single permit is limited). However, for some specific workers, single permits may be unlimited depending on the duration of employment and residence in Belgium, nationality and (in

<sup>75</sup> Article 27, Cooperation Agreement, 2018.

<sup>76</sup> Article 70, Royal Decree 557/2011.

<sup>77</sup> Article 70 (7) & (8), Royal Decree 557/2011.

Flanders) where the worker has the right to long-term residence in another EU Member State. In the **Czech Republic**, the single permit (Employee Card) is valid for the duration of the employment term stated in the employment contract, but it can last up to a maximum of two years<sup>78</sup>.

In **Spain**, the Temporary Residence and Work Visa is valid for one year. The Spanish legal framework relating to the duration of a Temporary Residence and Work Visa upon renewal was revised in 2022 and is favourable towards securing the stability of the migrant worker without placing too restrictive conditions. The Temporary Residence and Work Visa is renewable if the migrant worker has worked for a minimum of three months (instead of six months) during the first year of residence and can demonstrate active job-seeking efforts. Successful renewal grants a total validity of four years (up from two years)<sup>79</sup>.

### 3.5. Changing employer

The Directive does not include any provisions related to the right of single permit holders changing employer. The three countries have very varied procedures. In **Spain** a change of employer during the period of validity of the Temporary Residence and Work Visa, as well as during the renewal period, is permitted under the Spanish regulation<sup>80</sup>. In **Belgium**, workers are not able to change employer on their existing permit, a new application is required from the new employer<sup>81</sup>. In the **Czech Republic**, workers can change employer on their Employee Card, but only after the first six months of their first Employee Card, and they must notify the Ministry of

Interior of the change at least 30 days in advance, subject to certain conditions<sup>82</sup>.

### 3.6. Renewal of a single permit

In **Belgium**, a renewal of the permit must be lodged with the relevant regional authority 60 days before the expiration date<sup>83</sup>. In the **Czech Republic** a renewal of the permit must be lodged at the earliest 120 days before the expiration date and at the latest on the expiration date<sup>84</sup>. In **Spain**, Temporary Residence and Work Visas may be renewed when the worker concerned proves that he/she still meets the necessary requirements<sup>85</sup>. Requests for a renewal must be submitted to the Government Delegation or Sub-delegation in the province where the activity is carried out during the 60 days prior to the expiry date of the validity of the authorisation.

### 3.7. Unemployment and the end of a single permit

In **Belgium**, if a single permit holder loses their employment or their employment contract ends, their residence permit remains valid for 90 days. During this time, they are not allowed to work but may seek alternative employment and in the event of receipt of a job offer the new employer must submit a new application. If in the 90-day period, new employment has not been found or the application for a new single permit has not been completed, then the validity of the single permit will expire<sup>86</sup>.

In the **Czech Republic**, an Employee Card will remain valid for 60 days following the end of an employment relationship. The Employee Card will remain valid beyond this timeframe if the holder informs the Ministry of

<sup>78</sup> Urad Prace CZ, "[Employee Cards for foreigners in the Czech Republic](#)", consulted 1 July 2023.

<sup>79</sup> Royal Decree 629/2022 of 26 July 2022 amending the Regulation of Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration following its reform by Organic Law 2/2009 approved by Royal Decree 557/2011, B.O.E., 27 July 2022.

<sup>80</sup> Article 71.2, (b), 1°, 2°, and 3°, Royal Decree 557/2011.

<sup>81</sup> Article 36, § 2, Cooperation Agreement, 2018.

<sup>82</sup> Section 42g, part. 7-11, Act on the Residence of Foreign Nationals, No. 326/1999 Coll.

<sup>83</sup> Article 21, Cooperation Agreement, 2018.

<sup>84</sup> Section 47 (1), Act on the Residence of Foreign Nationals, No. 326/1999 Coll.

<sup>85</sup> Article 40, Royal Decree 557/2011.

<sup>86</sup> Article 36, § 2, al. 1 and §3 al. 3, Cooperation Agreement, 2018.

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the Interior of a change of employment (in accordance with the conditions listed above, see section 3.1). When an Employee Card expires, the holder will be obliged to leave the territory of the Czech Republic and issued with a departure order from the Ministry of the Interior. It is also possible for the Employee Card to be revoked where the holder has been convicted of the perpetration of an intentional crime, the Employee Card does not serve the purpose for which it was issued, holder applies for cancellation of his or her Employee Card, or if the foreign national professional qualifications of the worker were not recognised by the relevant recognition authority<sup>87</sup>.

In **Spain**, the Temporary Residence and Work Visa retains its validity for the time

period it was issued, including if the person loses their employment. However, if the employment is terminated before the worker completes the three-month threshold per year (see section 3.4), or if the permit expires and the individual does not have a new job, they will not be able to renew their permit. The right to reside in Spain is directly linked to the purpose of the visa. If an individual no longer has a valid employment contract and does not meet the requirements for another type of residence permit, their right to reside in Spain may be affected. In such cases, they would need to explore alternative options or apply for a different type of residence permit to continue their regular residence in the country.

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<sup>87</sup> Ministry of the Interior of the Czech Republic, [Employee Card: Cancellation and cessation of an Employee Card](#), consulted on 1 July 2023.

## 4. Seeking employment in the EU

Given the procedural elements outlined above for all three Member States, we will now move onto the experiences of prospective, current and former single permit holders in seeking employment. The profile of the cohort of research participants will be presented in relation to their socio-demographic details and (previous) professional experience (4.1), their motivation to migrate (4.2) and the experience of the recruitment process (4.3). We will then address the experiences related to applying for and renewing a single permit under the single application procedure (4.4).

### 4.1. A snapshot of single permit holders in Belgium, the Czech Republic and Spain

A total of 31 third country nationals (hereinafter research participants) were interviewed in the study. From the outset, we must underline that the migratory and professional trajectory of the research participants was extremely complex and truly underscored the reality of migrant workers who seek to establish a stable and secure position within the EU Member State of employment. Whilst the emphasis in the present report will be limited to experiences directly linked to the single permit, we must nevertheless acknowledge the complex background of the research participants and the effect that this has on their long-term perspectives. For instance, research participants who had resided in the EU for a long period e.g., more than five years, had experienced significant fluctuation between migration statuses (e.g., student, residence permit, international protection, subsidiary protection, undocumented). In this context, the single permit was used as an avenue for a recurring right to reside/work, often with multiple renewals. It is also significant that some research participants have not yet secured long-term residence and/ or citizenship, despite the lengthy duration of their stay in the EU (CZ06, CZ07, CZ10, ES08, ES11, ES12).

Indeed, from the cohort involved in the study – although limited in size- it is striking that the majority did not arrive in the EU with a single permit but rather arrived with a short-term visa (e.g., tourist visa, student visas) or with an irregular migration status (see Figure 1 below). This is particularly so since the Directive itself envisages the issuing of a single permit “to allow initial entry” onto the territory of EU Member States (Recital 4).

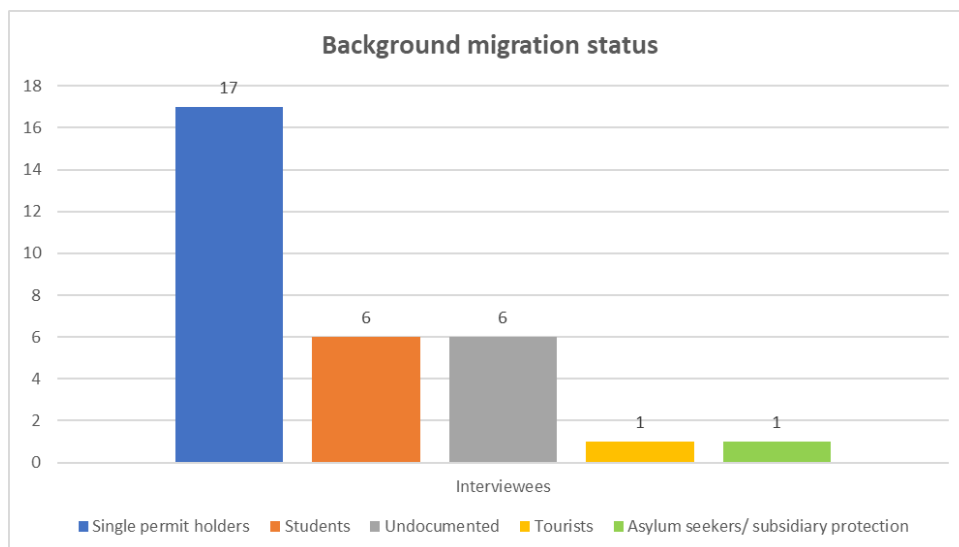


Figure 1: Previous migration status of all research participants

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For the interviewees in this study, an application for a single permit is not always the first admission procedure they engage with<sup>88</sup>. The wording of Article 4 of the 2011 EU Single Permit Directive leaves Member States a margin of discretion regarding the location from which an application must be made, in accordance with national law, in practice, however, Member States (including all three under study) allow for applications for a single permit to be made from within the territory, subject to certain conditions (see Section 3.1 above). This standard practice of allowing in country applications should be reflected in the recast Directive by removing the discretion afforded to Member States so as to avoid situations where third country nationals who are present on the territory then have to leave to apply for or renew a single permit (BE03).

Crucially, the fluctuating nature of an individual's migration status also has repercussions on their employment status: at the time of the interviews, whilst the majority of the participants were employed, some were unemployed and/or working in the informal economy<sup>89</sup>. It is also important to note here that COVID-19 often had an impact in relation to loss of employment (BE06, ES06, ES03), a need to change jobs (CZ05), a need to change jobs and single permit (CZ02), a reduction in hours or temporary unemployment (BE06, CZ04, CZ03, CZ05, ES04), a reduction in salary (CZ03) and delays in the procedure for obtaining a single permit (BE06, CZ04, ES05). As we will demonstrate below (see section 4.4), the research participants characterise the procedure for obtaining the single permit as being long and arduous. The COVID-19 pandemic added to the cumbersomeness of the procedure for obtaining a single permit, slowing it down even further (BE06, CZ04). In Spain, the procedure was not only slowed down but frozen, forcing one participant to turn to intermediaries to obtain a work permit (ES05).

The research participants also demonstrate a significant diversity in relation to their skills and qualifications and the sectors and professions in which they work (see Table 3). Overall, there is a diversity also in the nationality, gender, age and marital status of the single permit holders interviewed in this study. In particular, the majority of the research participants were in the age group 30-39 (35.5%), followed by the age group 20-29 (29%).

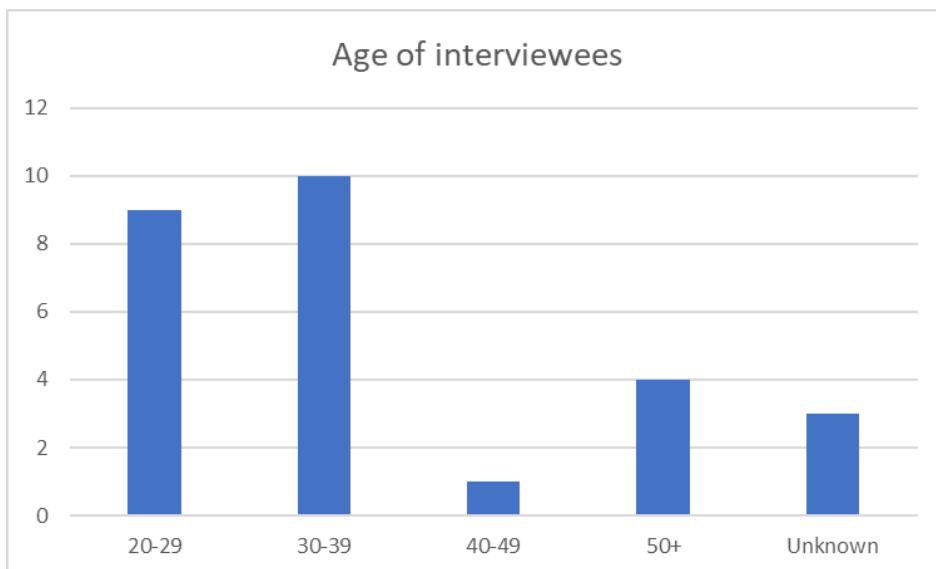


Figure 2: Age of all research participants

<sup>88</sup> This finding is contrary to the Flemish study where all research participants had been admitted to the EU on the basis of a single permit, Weatherburn, et al., (2022), supra n. 31.

<sup>89</sup> In this regard, it is important to reiterate that the study includes a diverse cohort of interviewees e.g., prospective, current and former single permit holders.

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Sector (ISCO-08)	Profession	No. of Research participants
<b>1. Managers</b>	Account Manager	1
<b>2. Professionals</b>	Business Analyst; Mechanical Engineer; Geologist; Academic; Optometrist; Policy Officer	6
<b>3. Technicians and associate professionals</b>	Massage Therapist; Dental Assistant; Chef; Nail Technician	4
<b>4. Clerical support workers</b>	Receptionist; Medical Secretary	2
<b>5. Service and sales workers</b>	Cashier X 2; Hospitality X 2; Care Worker X 3	7
<b>6. Skilled agricultural, forestry and fishery workers</b>	Agriculture Worker	1
<b>7. Craft and related trades workers</b>	Butcher X 3; Baker Electrician; Construction Worker; Mechanic; Pipefitter	8
<b>8. Plant and machine operators, and assemblers</b>	Truck Driver	1
<b>9. Elementary professions</b>	Cleaner	1

Table 3: List of professions and sectors according to ISCO-08 classification category<sup>90</sup>

This data reflects the aforementioned statistics for single permits in the three countries demonstrating that the single permit holders interviewed were relatively young, and thus either had very limited professional experience (neither in their country of origin nor elsewhere) or were recent graduates from higher education. For most graduate research participants, there was a sense that it was not feasible to return to their country of origin to pursue their professional trajectory and indeed, this had also been a motivating factor behind the original decision to study abroad at graduate or postgraduate level in the first instance (BE05, BE06, BE07, BE08, CZ02, CZ04, CZ06, CZ09).

***The corruption was really bad, you were a good student, but after finishing you had no perspective, good perspective nor a good job.*** (Female Mechanical engineer from Kosovo working in the Czech Republic)

Of those who had previous professional experience in their country of origin, they reported a range of income and job satisfaction levels. Many experienced low wages that sometimes led to decisions to work abroad or led to dissatisfaction with their jobs (CZ04, CZ07, ES09, ES04, ES08). Certain interviewees reported challenging working conditions, ranging from pollution in the work environment to poor working conditions, which can significantly impact satisfaction (CZ03, ES09, ES05). A general underlying theme that emerged from several of the participants was the lack of perceived promising career prospects in their country of origin (CZ04, CZ07, ES05).

<sup>90</sup> ILO, International Classification of Occupations (ISCO) ISCO=08, 2008, consulted on 1 July 2023.



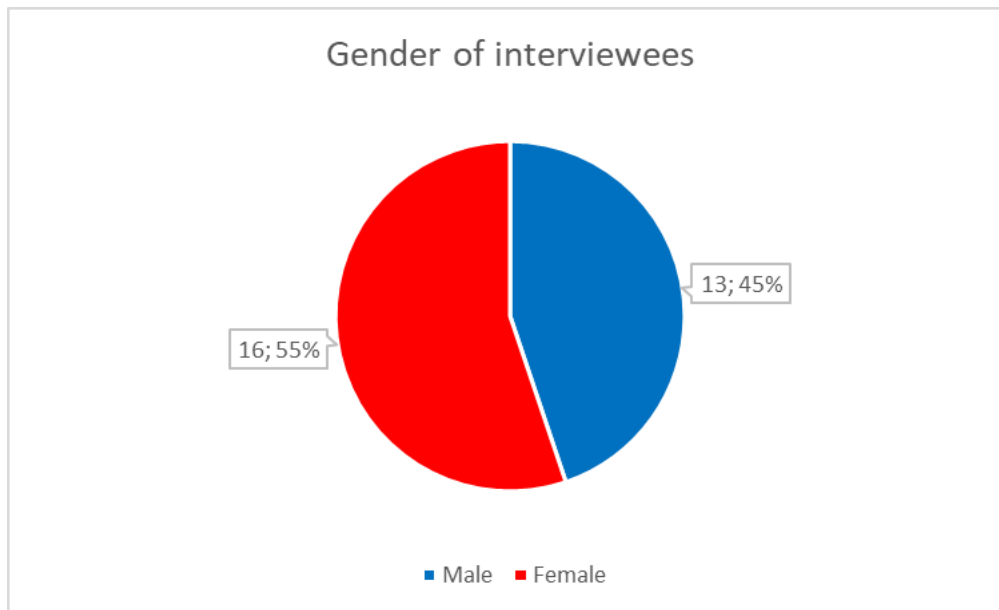


Figure 3: Gender of Research Participants

Unlike the national data on the gender distribution amongst single permit holders (see Table 1), our sample included a majority of female single permit holders. Some of whom were working in professions that are not limited to those that are deemed to be “feminised” (including engineer, mechanic, policy officer, chef). However, the overall majority of the female interviewees were employed in services, hospitality, cleaning or care sector, which are often considered to be low-paid, and low-skilled sectors that are often dominated by migrant workers<sup>91</sup>.

#### 4.2. The motivation to migrate

Third country nationals decide to embark upon a migration trajectory towards Europe for a wide range of (concurrent) reasons: for economic reasons and to find better job opportunities outside of their country of origin; for political reasons e.g., conflict, instability, corruption; for studies and personal interest; and for family reasons e.g., join family in country of employment, offer better future to the family. A recurring theme, regardless of the motivation, was that Europe was perceived as a place of safety, where a certain quality of life would be guaranteed. For the majority of the research participants, the country of employment was their “first choice”. The reasons for this varied between, the presence of existing (extended) family connections (BE07, ES01, ES3, BE07, ES12), pre-existing professional connections (CZ02, CZ06), the geographical proximity to their country of origin (ES05) or current country of residence (BE09) and (perceived) linguistic accessibility (CZ09, ES04).

Regarding the personal considerations related to their motivation to migrate, the main aspects are social/familial, financial, work-oriented (job opportunities), and personal interest. The will to obtain better opportunities is not only personal, but it also involves better opportunities for their family (for their children, for example) (BE05, CZ08, CZ10, ES12). For the financial aspect, it was clear from the interviews that this is a major element of motivation (BE05, CZ01, CZ03, CZ04, CZ08, CZ10, ES08). Nevertheless, the interviewees also expressed that the bigger salaries offered in Europe come with a

<sup>91</sup> Lim, D., ‘The indirect gender discrimination of skill-selective immigration policies’, (2019) *Critical Review of International Social and Political Philosophy*, 22:7, 906-928; Réa, A., Roblain, A., et Giladi, M., ‘NEWCOMERS: L’intégration socio-professionnelle des primo arrivants en Belgique’, octobre 2022, p. 14.



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bigger cost of living. From a more personal perspective, some were simply curious about discovering a new culture and living abroad (CZ02, ES05). Some additional aspects were also raised that demonstrate the complexity of the considerations related to their choice to migrate and obtain a single permit. In one case for example, the effects of climate change on the quality of life in the country of origin was a significant motivating factor (CZ05).

In the cases where the main motivation was to leave the country of origin, rather than the opportunities offered by the country of employment, a convergence across the interviews highlighted the following factors: the lack of opportunities for studies and work, politics, and the lack of safety. The possibility to study abroad was a starting point for some of them (BE05, BE06, BE07, CZ04, CZ06). For others it was the possibility to develop new skills and to develop professionally – opportunities that were not available to them in their country of origin (BE03, BE08).

The factors relating to politics and safety in the country of origin, in some cases, highlighted serious concerns for their survival in their home country and the problems of violence from the authorities, added to the corruption and the lack of job opportunities connected to this (BE01, BE04, BE09, CZ04, CZ10, ES07, ES11, ES12).

### 4.3. The recruitment process

The most striking aspect of the process of seeking employment in the EU was that both the job vacancies and recruitment process were very much characterised by informality. In the majority of cases, research participants knew about job vacancies by word of mouth through family, friends and acquaintances such as colleagues (CZ02, CZ03, CZ05, CZ10, BE01, BE03, BE06, BE08, ES01, ES02, ES03, ES04, ES05, ES06, ES08, ES07, ES09). For the research participants who were not yet present in the EU, these personal acquaintances were often already present in the country (ES01, ES02, CZ01) or would pass on the contact details of intermediaries and/or labour providers who could provide further assistance. This latter method of recruitment only arose amongst the participants working in the Czech Republic (CZ01, CZ03, CZ07). Where (extended) family were already present in the country, they would also initially rely on them for assistance upon arrival, mostly in providing them (temporary) accommodation (BE06, BE07, ES02, ES03, ES04, ES12).

In other circumstances, research participants demonstrated a very proactive stance to finding a job, by contacting companies and sending their CVs (CZ03, CZ04, CZ07) or following up previous professional relationships e.g., an internship whilst as a student (BE06) or a part-time student job (CZ09).

***As I studied physiotherapy, a friend of my mother's told me about a small company that is dedicated to finding girls with experience and training to care for the elderly.***  
(Female Carer from Bolivia working in Spain)

***Yes, not through the labour office, not through the Internet. As I walked around Prague, I was in the store, I was in Lindex, in Zara, in some restaurants. I just said, call the manager, who's in charge.*** (Female Chef from Ukraine working in the Czech Republic)

For some participants in the Czech Republic and Belgium, they were already employed under a different migration status (e.g., student visa or orange card<sup>92</sup>) and sought to continue in the same job by applying for a single permit (BE07, BE09, CZ02 CZ06, CZ09).

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<sup>92</sup> Belgium: The registration certificate, commonly known as the "orange card", is listed in Annex 4 of the Royal Decree of 8 October 1981. It is a temporary residence permit issued to a foreign national from a country outside the European Union. It certifies that an application for a residence permit or international protection submitted in Belgium is being processed.

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Once they were aware of job opportunities and passed the first stage of the recruitment process (intermediaries, employment agency, self-initiated), workers then had to go through an application process. Typically, workers went through an interview process (CZ02, CZ03, CZ04, ES06, ES08, ES09), sometimes accompanied by an online application (CZ04, CZ06). This application process could also take place informally. In fact, some workers were introduced through a professor (CZ02) or a personal acquaintance (BE03).

Furthermore, in the case of migrant workers with a higher level of education in the Czech Republic, they believed that the possession of a degree would facilitate their access to the labour market and in a profession that matched their qualifications (CZ04, CZ06).

***I definitely was looking for jobs as a CFD [Computational Fluid Dynamics] engineer and we knew that we could somehow manage as we knew that there is a demand and we saw like the trend. So, I definitely wasn't looking for a job that is not what I studied for.*** (Female PhD Student/Researcher and Computer aided engineer from Kosovo working in the Czech Republic)

In Belgium, a slightly different picture emerged as students who wished to seek employment via a single permit at the end of their studies had difficulties in having their qualifications recognised (BE06) or matched (BE07). Crucially, in both cases the applications for a single permit were with a view to working in professions that would address labour market shortages, either officially recognised (Butcher) or perceived by the research participants as a member of that profession (Optometrist)<sup>93</sup>. In addition to this, their experiences of applying for a single permit was not straightforward and, in both instances, difficulties were encountered in the application process, with one leading to a lengthy and (ultimately) unsuccessful appeal process (see below in section 4.4.3).

After having applied for the jobs, most participants were invited to an interview (either in person or online). Significantly, and linked to the need to ensure that migrant workers are provided with information about their rights and obligations including by the employer<sup>94</sup>, where a job offer was made, only a handful of participants were informed about the terms and conditions of the job, including the salary, number of hours/days to be worked etc (CZ03, BE08, ES07). Given the deficit of information, it is clear that migrants with an existing support network (family and/or friends) had an easier time obtaining the information they needed to follow a smooth recruitment process (ES03).

***Yes, if it wasn't [for] my mum, it would have been very hard, very difficult, and I didn't know anyone. But she got me a job, she told me where to do the documents [...].*** (Female Care worker from Bolivia working in Spain)

Where job offers were made, several challenges arose that are linked to the reliance on a single permit for the participants to access the labour market. In some instances, employees struggled to fulfil the conditions of a single permit (BE05) and to have their qualifications recognised (CZ06). In some instances, employers were deterred from going through with the final stages of recruitment when it became apparent that they would have to request a single permit on behalf of the applicant, and thus rescinded the job offer or were not willing to make an offer (CZ02, CZ08). Finally, there was a general

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<sup>93</sup> The labour shortage occupation lists vary according to the Region in Belgium, and it is a regional competency to determine which occupations are open to third country national workers. However, in Flanders, it is to be noted that there is a large discrepancy between the number of professions on the labour shortage occupation list (234 in 2023) and only 22 are open to prospective single permit holders, see more in Weatherburn, et al, (2022), supra n. 31, pp 13-16.

<sup>94</sup> Article 33, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

sentiment that, in some circumstances, the participants had no other alternative but to accept jobs for which they are overqualified<sup>95</sup>, either as a way to prolong their residency in the EU (CZ02, CZ04) or as a trade-off for entering the EU labour market.

***Even for the job I took then, I was [...] much more overqualified for that job. But I just took the job because I had my current working permit and because I don't want the permit to expire due to this. So I needed to just get a job.*** (Male Business Analyst from Nigeria working in the Czech Republic)

In Spain, a recurring feature related to the job market and the recruitment process was that research participants were often given a job offer but were unable to accept it due to the location being too far away or remote from the current place of residence (ES07, ES08, ES11). Three of the Spanish participants recounted this situation where they had to turn the job down due to a lack of public transport (the participant did not have a driver's license) (ES08) and the lack of accommodation in the vicinity of the job (ES07).

***It was a one-year contract. Same as the one I'm going to start. But we were unable to find accommodation.*** (Male Pipefitter from the Ivory Coast working in Spain)

These findings need to be situated into the context of recent legal reform in Spain, that was adopted with a view to facilitating access to the labour market for unaccompanied foreign minors<sup>96</sup>, however, the findings reveal that even where provisions have been made to make it easier to grant access to the labour market, further efforts are still required. For instance, it is necessary to provide measures for social inclusion and empowerment of migrant workers<sup>97</sup>, with an emphasis on minimising any challenges in finding accommodation on the private rental market and offering the opportunity to develop other life-skills, such as learning to drive.

#### 4.4. The obtention and retention of a single permit

Once a job offer has been received, the EU Member State of employment has to grant the right to work and to reside. The following section will outline the experiences of the research participants in applying (4.4.1) for and renewing (4.4.2) a single permit. Finally, given the interconnectedness of the permit between employment and right to reside – the impact of the procedure on the migrant workers situation, not just professionally but also in relation to their private and family life (4.4.3).

##### 4.4.1. The application procedure

As outlined above, the application process will determine the prospective single permit holders' a) right to work and b) right to reside. Whilst the Single Permit Directive seeks to streamline and simplify

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<sup>95</sup> A key feature amongst migrant workers with higher levels of education is that they may resort to continuous work in lower-skilled and low-paid jobs that do not account for their higher skills and a receive lower returns to these endowments. Amo-Agyei, S., [The migrant pay gap: Understanding wage differences between migrants and nationals](#) (Geneva, ILO, 2020), p.136.

<sup>96</sup> Royal Decree 903/2021 amended the Regulation of the Aliens Act by removing the requirement for former unaccompanied children, with a residence permit, to find a full-time job for at least one year before being granted a work permit and access to the labour market provided that they have evidence of a monthly income, from subsidies and other sources, of 470 EUR. Royal Decree 903/2021, of 19 October, amending the Regulation of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, following its reform by Organic Law 2/2009, approved by Royal Decree 557/2011, of 20 April 2011. See more in PICUM, [Spain adopts law to facilitate regularisation of young migrants](#), 18 November 2021.

<sup>97</sup> PICUM, [Designing labour migration policies to promote decent work](#), 2021, p.26.

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the process, in reality, the process is lengthy, complex and costly creating significant disruption and uncertainty for both employers and prospective single permit holders.

In some instances, where delays and backlogs exist in national systems, this can be attributed to macro level happenings such as the impact of COVID-19 and the influx of Ukrainian nationals fleeing war, that have put a strain on the resources of national authorities (CZ04, CZ07, BE08). Nevertheless, the lengthy process is apparent in all countries studied, with application timeframes ranging from six weeks to 18 months.

For those who experienced delays, this was attributed to the complexity of the application process. In the first instance, particularly in the Czech Republic, participants referred to the fact that it is very difficult to find information on the application process and how it should be done.

***[W]hen a person goes to the [Ukrainian] embassy to inquire about something or read up on information, they are usually met with the response that all the information can be found on their website. However, there is hardly anything on the website, and it is quite challenging for an ordinary person to find the information they need. In most cases, they can't even find the basic information they need.*** (Male Construction Worker from Ukraine working in the Czech Republic)

As demonstrated in Section 3.1, the documents required when making an application for a single permit varies from one Member State to another. The conventional documents are the following: employment contract, qualifications, insurance, birth certificate, two pictures, copies of the passport, and medical record. Some participants, particularly in the Czech Republic, noted that the large number of documents that must be provided can be an administrative obstacle. Furthermore, it is necessary to have these documents translated and notarised, which can add to the overall timeframe of the procedure (CZ02, CZ04, ES08). These findings are consistent with previous scholarship that highlighted that the need to gather several documents – in original format – can contribute to the lengthy process for obtaining a permit<sup>98</sup>. Importantly not all participants described the process as being complex, however, as for some participants who felt that the process had been quite smooth, with very few administrative obstacles (CZ04, CZ08, CZ10, ES01, ES02).

***They gave me a contract, then I had to go to the labour office, where they allowed me to work, I gave them the documents, they allowed me to sign the employment contract, and then I received the card.*** (Female Mechanic from Ukraine working in the Czech Republic)

The process is however strongly employer led. In some cases, this made the experience easier because the employer knew how to apply for the single permit and had a good grasp on the documentation that was needed (BE03, CZ08, CZ10, ES01, ES02).

***Well, as far as the Employee Card is concerned, it was quite simple. As I mentioned before, the employer applied to the city for a spot in the queue under the Ukraine programme. Once the spot was secured, all that was left was to gather the necessary documents, fill out the application, and bring it in. However, it was difficult for an ordinary person to find out exactly how to fill out the application.*** (Male Construction Worker from Ukraine working in the Czech Republic)

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<sup>98</sup> Mohimont (2018), supra n. 36, p. 11.

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In other circumstances, however, the reliance on the employer led to numerous challenges, ranging from uncertainty due to lack of knowledge about the application process on the part of the employer to intentional misinformation and exploitation of workers by employers (see Focus Point on the Role of the Employer).

The impact of the complex and lengthy procedure on the individuals was tangible, with a range of effects including a delay to start of the job (BE06, BE08, BE09, CZ03), working on an informal basis for the employer whilst awaiting the final outcome (CZ02, CZ03, ES05) or in some cases remaining unemployed (BE08) or in legal limbo between two statuses (CZ09 – their student visa expired two weeks before single permit was granted). Critically, throughout the process, some participants living in Belgium highlighted a general sense of being kept in the dark and not well apprised of the status of their application (BE05) with a significant reliance on the employer to provide them with information and assistance (BE05, BE07, BE08, this also applies to CZ08).

***So, I'd like to mention that throughout the procedure you have no contact with the region or the regional authority, it's the employer who is your guardian, or else it's the employer who manages the whole file.*** (Female Account Manager from Tunisia working in Belgium)

Another issue relating to the temporary nature of the permit means that where a decision has been made, the permit is then backdated to the to the date that the application was made. For participants in Belgium and the Czech Republic, this meant that their already temporary fixed term employment contract was drastically shortened (from 12 months to six months in the case of BE08). Furthermore, in practical terms given the lengthy process, as soon as they received their permit, they are then required to start the renewal process as the formal advice is to allow five months for renewal (CZ06, BE08).

### 4.4.2. Costs associated with obtaining a single permit

The Single Permit Directive gives Member States the discretion to charge fees, where appropriate, for handling applications. However, the fees must be proportionate and may reflect the actual costs of services provided for the processing of applications and issuance of permits (Article 10). A distinction must be made between the costs of visa applications and any recruitment fees charged to migrant workers. Under the ILO fair recruitment principles, workers shall not be charged directly or indirectly, in whole or in part, any fees or related costs for their recruitment<sup>99</sup>.

Whilst all Member States comply with Article 10 of the Directive, there is however wide variation amongst the research participants regarding the extent to which recruitment fees were charged and whether any other related costs were borne by the worker or by the employer. The research participants recalled costs for recruitment services, application fees, visa fee, medical costs, travel costs and insurance costs. In some cases, the individuals themselves had to cover these costs (BE05, BE08, CZ08) and in others, the individuals made the initial payment but were then subsequently

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<sup>99</sup> ILO, General principles and operational guidelines for fair recruitment & Definition of recruitment fees and related costs. International Labour Office - Fundamental Principles and Rights at Work Branch, Labour Migration Branch – Geneva: ILO, 2019, Principle 7. On the elimination of charging recruitment fees see R203 - Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)– Article 4 (i) -coordination between states and government agencies to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers; Article 8(a) - 8. Members should take measures to eliminate abuses and fraudulent practices by labour recruiters and employment agencies, such as eliminating the charging of recruitment fees to workers and C97 - Migration for Employment Convention (Revised), 1949 (No. 97) – Article 7(2) – services rendered by its public employment service to migrants for employment must be free.

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reimbursed by the employer (CZ03). Alternatively, the employer would cover all costs without putting any financial burden on the applicants (BE08, BE09, CZ05, ES03, ES05). Of the individuals that had to pay a part of the expenses themselves, none enjoyed complete reimbursement, nor fully paid themselves all the costs created by the procedure for obtaining the permit. Finally, in a couple of cases, the employer covered the costs and then qualified the amount as a debt to be deducted from salaries (BE05, CZ07). In some instances, the costs were inflated and illegitimate (CZ07).

*They took money from me for documents they made for me. Then I found out that it costs 10,500 CZK. But I didn't know that I thought it cost 25,000 CZK. At the beginning they told me that it would be 17,000 CZK, then they said that it would be 20,000 CZK, because they made it more expensive, then I worked on it a bit and I was said that it would be 25,000 CZK - they increased the price of the documents again. Then they added up to 30,000 CZK, then still reduced it to 25,000 CZK. (Female hospitality worker from Ukraine working in the Czech Republic)*

Fraudulent and illegal practices making deductions from salaries have also been reported for other reasons related to the employment and will be discussed further in the next section.

### FOCUS POINT – THE ROLE OF THE EMPLOYER

The Single Permit Directive grants discretion to Member States as to who is the lead applicant in the application procedure (Article 4(1)). A key feature of the national labour migration policies, and implementation of the single permit, is that the process is often employer-led. The use of labour migration, and single permits within this, has been premised upon assisting specific businesses and sectors who are experiencing difficulties as they are unable to fill vacant posts from the existing EU workforce. From this logic, employers are seen as the primary actors and applicants for work permits. As a result, an emphasis has been placed on tying workers' status to a particular job and by consequence a prospective single permit holder is heavily reliant on the employer for making the request both in the first place and upon renewal. In what follows, we will discuss two findings that have emerged that underline to what extent it is problematic to place the employer at the centre of the process as it can be to the detriment of the migrant workers who rely so heavily on them.

A significant finding that emerged from the study across all three countries is that despite the role of the employer being central to the application and renewal process for a single permit – premised on a rationale that the permit will be used to facilitate employers in filling vacancies in a timely manner – there is in fact a lack of willingness on the part of employers to engage in such a process (CZ02, CZ07, CZ08, ES04, ES05). The reasons given by employers replicate the experiences described by the research participants of a system that is too lengthy, complicated and costly. In some instances, a job offer is granted but the lengthy duration of the single permit application procedure leads to the business backtracking and in some instances rescinding the job offer.

*Before that, I got a job which was like very nearly a job in a pharmaceutical company. They were willing to do the working permit thing but again during the process. I think they stopped the whole thing. [...] it was supposed to last like 90 days. The whole processing, but it lasted more than 90 days. And so, there was like, some hiccups with the company waiting for me. So I guess that's also put off, you know, many potential employers in terms of hiring someone like me. (Male Business Analyst from Nigeria working in the Czech Republic)*



Where employers are willing to proceed, they are nevertheless hesitant on the basis of previous experience as to the lengthy process (BE08). A key aspect that has emerged in relation to the willingness of the employer to apply for the single permit is that they may have very limited experience of how to request a single permit and are thus not fully aware of what is needed (CZ09). Similarly, where employers have engaged and been willing to facilitate the application process, they have ended up also being involved in lengthy appeal processes that require additional costs for legal fees (BE07, BE09). Of course, bigger companies may be better resourced and able to absorb any additional financial incurrences or even outsource the process to an intermediary. However, the involvement of the employer (including legal services) still does not guarantee that the conditions of the application will be accepted by state authorities (BE07).

*Yeah, and what is great at my current company, they have [a] dedicated company who takes care of visas for the foreign employees. So now I have a full-time job there and they have appointed that company to handle my visa process.* (Female Mechanical Engineer from Kosovo working in the Czech Republic)

A key aspect of the central role of the employer is not only that it increases reliance, but it also leads to a sense of gratitude or loyalty towards them, which in some cases deters them from seeking better working conditions elsewhere (ES05).

This is a worrying practice when taking into account the second finding that emerged in all three countries: the fraudulent practices of the employer. Before outlining in more detail how the practices of the employer were detrimental to the migrant workers status in the EU, it is important to highlight that whilst most research participants were more or less satisfied with their working conditions, some research participants mentioned circumstances whereby employers engaged in fraudulent practices that had a direct impact on their migration status as single permit applicants and/or holders, and in some instances even led to a refusal of their permit being renewed. In the Czech Republic this problem has been (partially) tackled by introducing the notion of an “unreliable employer in the Act on the Residence of Foreign Nationals. The fact that an employer is unreliable is a reason not to issue an Employee Card to a foreign national, referred to in Section 46(6)(d) of the Act on the Residence of Foreign Nationals, or a reason not to grant consent with a change of an employer, referred to in Section 42g(7) of the Act on the Residence of Foreign Nationals. The unreliability of employer is an obstacle in case of the application for an extension of the validity of the Employee Card as well<sup>100</sup>. As it stands, where a migrant worker’s employer is deemed to be unreliable, the validity of the permit is not extended to allow them to seek employment elsewhere. This presents a significant challenge for migrant workers who experience serious violations of their rights and lose their permit because of the employer’s conduct. Member States should guarantee procedural safeguards to allow continued access to the labour market so that affected workers are not penalised and may seek alternative employment<sup>101</sup>. This is particularly important as fraudulent and exploitative means are primarily used by employers to exercise control over their employees with a view to forcing them to

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<sup>100</sup> Section 178f, Act on the Residence of Foreign Nationals in the Territory of the Czech Republic, No. 326/1999 Coll.. An employer is an unreliable employer in the following cases: The employer is not a party that is free of debt; A fine for allowing performance of an illegal work was imposed on the employer; The employer does not carry out any economic activity; The employer failed to comply with the obligation to register a foreign national for insurance; The employer is in liquidation; The employer’s registered office is not real.

<sup>101</sup> See for example the Finnish residence permit or certificate due to exploitation by the employer (Article 54b, Aliens Act 301/2004 as amended in 2019); see also PICUM, [Labour migration policies Case study series Finland](#), 2022; Weatherburn, A., [Enhancing the labour rights of exploited migrant workers: the role of migration policies in guaranteeing access to justice](#), HEUNI Guest Blog, 14 July 2023.

have no other alternative but to accept underpayment and poor working conditions<sup>102</sup>. Such working conditions can be further exacerbated by employment relationships that are tied to the migration status of the worker<sup>103</sup>. Indeed, in the present study, of the fraudulent practices reported by the research participants, a distinction can be made between those used during the application process to obtain a single permit and those that are used to during employment to maintain a single permit.

The first set of fraudulent practices reported concern the application process, whereby there are incorrect details given in the application e.g., employment contract states wrong company, or wrong salary, place of residence is incorrect and employment agencies charged fees to obtain visas that are then deducted from salaries once in employment (BE05, CZ07, CZ08, CZ10). The employers would also provide the same false information to the applicants, who would then later discover that their working conditions were, in reality, not as promised at the point of recruitment (BE05).

**[...] only promises, only words, we have nothing on paper, nothing clear, nothing legal, nothing normal for someone who works.** (Female Account Manager from Tunisia working in Belgium)

Employers also engaged in fraudulent practices during employment that would be imposed on permit holders, leaving them with limited options but to comply if they wished to maintain their status. In some cases, the employers request additional payments (in cash) for tax contributions as part of a bogus self-employment scheme (BE03) or to reimburse the health insurance that the employer is obliged to pay for (CZ08)<sup>104</sup>.

### 4.4.3. Requesting a renewal

The documents required for renewing the single permit are very similar to that of the application process, and once again relies heavily on an ongoing employment relationship. The dependence that this creates on one particular employer has significant impact on the workers and affects them in a variety of ways. These impacts include, for example, employees being less eager to seek alternative employment as it would require an employer who is willing to apply for a single permit (BE08, CZ07) or the process of obtaining a new single permit might not be completed before the current one expires (BE08, ES04, CZ09), a loss of access to healthcare insurance where it is employer provided (CZ07), a successful renewal being heavily dependent on the practices of employer (CZ07, BE05). Whilst the majority of participants referred to delays in relation to obtaining a permit for the first time, the procedure for renewal can be lengthy as well (CZ04, CZ08). On average, the research participants reported that process of renewal took approximately six months. This was in certain cases, extended further to seven or nine months with the COVID-19 pandemic and the arrival of people fleeing war in Ukraine. Given that the single permit is often granted for a limited duration, these findings underscore the fact that individuals must start thinking about the renewal application well in advance, and in some cases, only two months after their arrival.

<sup>102</sup> Weatherburn, A., *Labour exploitation in human trafficking law* (Intersentia, 2021), pp 211-216.

<sup>103</sup> Niezna, M., 'Paper chains: tied visas, migration policies, and legal coercion' (2022) *Journal of Law and Society*, 49, pp 362– 384.

<sup>104</sup> It is important to briefly note that some of these practices replicate those that were also encountered by the research participants in previous employment relationships not linked to the single permit. Several research participants in Spain outlined practices such as not providing them with an employment contract, not registering them with social security, making them work full-time hours even though they were only permitted to work part-time hours, required to pay back costs of travel to the country that had been paid for by the employer (ES07, ES11, ES12).



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*I have to say, this is not early days at all because I was informed by the [local authority] that the application for the renewal of the single permit has to be done preferably four months in advance, meaning that in my case it should be done next month.* (Female Policy Officer working in Belgium)

The link to a specific employer also means that those whose roles rely on external funding sources may not always be able to guarantee that there is a job available for them on a more long-term basis. This uncertainty not only impacts on their right to reside in the EU but also their long-term career prospects (CZ06, BE08).

*I have a contract which is a regular contract, without any limit on the end, [...] but I'm guaranteed for the job as long as we have running projects which are financed by external bodies like the Czech Development Agency or any grant agency.* (Male Geologist from Ethiopia working in the Czech Republic).

### FOCUS POINT - REFUSALS AND APPEALS

As mentioned above, four participants in Belgium had been refused a single permit (BE05, BE06, BE07, BE09). A significant issue that emerged in these Belgian cases is that the appeal process that follows the rejection, unlike the application and renewal processes, does not have a statutory time limit. Therefore, applicants are required to wait a significant period, often without any information or indication as to when a decision will be made. In one case, the grounds for refusing the application were highly contested and overly arbitrary given that the individual's professional circumstances filled all the necessary criteria (BE07).

*My application was rejected by the [immigration] office on the grounds that my contract called for me to be a multi-skilled sales assistant. But that's the contract they made everyone sign. In the shops, the managers sign a contract as manager, the director, but the rest of the contract is the same, it's multi-skilled salespeople. [...] And the second reason was that they said that the wages I was paid in relation to the number of hours I worked, which was 28 hours a week, were insufficient. I couldn't reach the minimum threshold, the minimum wage that was in the collective agreement for the type of company [...].* (Male Butcher from Angola working in Belgium)

Conversely, in the Czech Republic, one applicant (CZ04) had appealed the refusal to renew her single permit in 2020 (renewed without problems since 2016) and was advised to request a student visa as an interim solution so as to avoid being expelled from the country. She had her application for renewal rejected on the basis that she had not provided the correct documentation relating to her place of residence and education qualifications. She was informed in person that her application had been rejected when she went to have her temporary residence documents renewed. She was given 15 days to appeal, and was assisted in writing the appeal letter by a civil society organisation. She referred to the mix up arising due to language barriers. The outcome of the appeal is still pending after two months.

Where applicants are required to appeal a refusal, the findings reveal that it is imperative that these individuals have access to legal services and assistance. In some cases, the applicants were able to rely upon the in-house legal services of the company (BE05, BE07). This however is dependent upon the size and resources of the employer. Where such services were not available, trade unions and civil society organisations played a crucial role in providing support and assistance. Still, given the

lack of formal rules governing the time limit of an appeal (unlike the four-month time limit for the assessment of an application), it was noted that after waiting for months for a decision, it even came to the point where support organisations were also unable to provide any further clarity and/or expedite the appeal process (BE07).

#### 4.4.4. The impact of the single permit application and renewal process on migrant workers

The complexities and difficulties that are encountered during the application and renewal process (see above) are further exacerbated by the temporary and short-term nature of the single permit, which has a significant impact on applicants' and/or holders' professional and private lives. The first aspect that has a significant impact is that the single permit itself is not only limited but also the employment contracts, therefore, some individuals must first ensure that there is the possibility to extend their contract of employment before seeking to request a renewal (CZ06, BE08). The fact that employment is a pre-requisite for the right to reside and remain on the territory, can add significant stress to the individual who must find a new job and, in some cases, ensure a new application is submitted, within the designated time period, if they wish to remain in the country following loss of employment. If they cannot find an eligible job, they may seek an alternative mechanism to regularise their status e.g., through international or subsidiary protection (BE01, BE02, BE04, BE09) or as a student (CZ04). This then has implications on personal aspects of the individual's private life to find housing and accommodation and open bank accounts. Furthermore, we have seen the ramifications of lengthy appeal processes on personal circumstances, such as, family unity and the possibility to make long-term plans for the future (BE07, CZ04).

Overall, for those who have encountered complications in the application process, they have suggested that the process can be dehumanising as there is a lack of consideration for the individual who is left waiting with no alternative means of subsistence.

***Well, if [they'd] said we wouldn't give you the permit, I could have done something else. I'd go back home and do something else. But that's for dragging it out... There's no consideration, a work permit application, to respond to these appeals will take more than seven months. They don't give a damn about us, there's no consideration, there's no humanism.*** (Male Butcher from Angola working in Belgium)

Similarly, another participant in Belgium explained that the combination of the temporary, limited nature of the single permit stunted the possibility for professional development. In addition, the lack of consideration for an individual who encounters significant delays in their application, leaves them with a lack of recognition as contributing member of the active labour population in this country, which leaves them feeling humiliated.

***[...] knowing that the work permit significantly narrows down the room for professional, I don't know, growth and also the opportunities for employment. [...] And obviously the factor of having gone through a very difficult - sometimes I would even say I would pick this strong word - humiliating experience of, you know, waiting for the approval, proving that you are worth enough to stay and work and pay in taxes in a certain country is quite a draining at times.*** (Female Policy Officer working in Belgium)

## 5. Working and living in the EU

The second part of the study explores the experiences of both working and living in the EU, taking into account the extent to which the working conditions of the research participants were in conformity with labour and social standards, with particular consideration of the right to equal treatment of single permit holders (5.1). Given the intricate relationship between their employment status and the residence status by virtue of the single administrative act of the single permit, it was also important to assess their experiences of living in Europe (5.2), with specific focus on their ability to socially integrate and how they saw their long-term prospects (5.3).

### 5.1. Working conditions

As discussed above in Section 4.1, the research participants held a wide variety of occupations, requiring different skill levels and qualifications. It is important to reiterate that the Single Permit Directive aims at ensuring not only access to the labour market but also equal treatment with nationals of the Member State and EU citizens<sup>105</sup>. The transposition of the equal treatment provisions has been problematic and has led to the condemnation of Italy in relation to its non-implementation following requests from Italian courts on the application of the right to equal treatment from the Court of Justice of the European Union<sup>106</sup>. It is this principle of equal treatment that is the premise upon which the findings are measured against. In particular, it is important to recall that Member States may not restrict equal treatment when it comes to working conditions, including pay and dismissal as well as health and safety in the workplace (Article 12 (1)(a)) and freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation (Article 12(1)(b)). For the latter, very few research participants were affiliated with a trade union (only BE07 was affiliated at the time of the interview and BE05 had been affiliated in a former job). Importantly, it was those who had trade union affiliation who were able to seek assistance when it came to workplace grievances and, by consequence, problems with their single permit.

When it comes to the working conditions, the level of satisfaction amongst the research participants was mixed. In most instances, research participants worked normal hours and were paid their salaries correctly (BE03, BE06, BE08, CZ04, CZ05, CZ06, ES01, ES03, ES09). For these workers, the income level was satisfactory and permitted those who needed to send remittances back to their families in their country and to meet their own costs of living (BE04, BE05, BE06, BE08, CZ03, CZ04, CZ05, CZ06, ES03, ES04, ES07, ES08, ES11). It is noteworthy however to underline that a couple of participants (particularly those in the Czech Republic) noted that their wages were increasingly being stretched due to inflation and the increase in costs of living (CZ02, CZ04, CZ07, ES02). In other circumstances, some participants emphasised that they were not able to make any provision for saving (ES04). In some instances, the inability to save was a concern as it was necessary for contingency planning because of job insecurity. For example, should there be a period of unemployment, then it would be necessary to have some financial resources available, particularly for instance, where costs currently covered by the employer would be on the individual e.g., health insurance (CZ07), as well as to cover basic living costs. Conversely, where research participants had experienced bad working conditions, the most frequent complaints concerned lower than agreed or non-payment of wages, unpaid overtime, and excessive working hours (BE05, CZ03, CZ07, ES04). A significant feature of the

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<sup>105</sup> Article 12, Directive 2011/98/EU.

<sup>106</sup> Case C-449/16, Martinez Silva, [2017], EU:C:2017:485; Case C-302/19, W.S., [2020], EU:C:2020:957; Case C-462/20, B.M., [2021], EU:C:2021:982; For detailed examination of the case law relating to Article 12 see, De Lange, T., et al, (2022), supra n. 20, pp 107-112.

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wage theft experienced by the research participants was the deduction of illegitimate or (previously) undisclosed costs (BE03, CZ07, CZ08, ES08). In the Czech Republic, the employer is required to ensure that the worker has comprehensive health insurance. In some cases, it was noted that the employer would subsequently deduct these costs from the salary (CZ07, CZ08). In one case, the deductions were made even when the worker was not working:

***They told me that it was for health insurance and to process the document. (..) I also had to pay money every month [when out of work] I paid 3 thousand each. When I worked, they took 5 thousand each.*** (Female hospitality worker from Ukraine working in the Czech Republic)

Other deductions include the costs of accommodation, food, and housing (CZ07, CZ08), and fraudulent deductions for tax contributions (BE03) and non-payment of social security contributions (ES08)

***I worked one year for the office, but again I was exploited because it was... I started working with him and after one month he said, "Hey, your taxes here are really high. I need you to give me money under the table, in the black. So you help me pay your taxes." And I did this for three years. I gave that guy a lot of money in total, just money. It was around 40,000 [Euros] in three years.*** (Male Dental Assistant from Brazil working in Belgium)

***Well, they stole it from me, they charged me and my colleagues. The company said, "we have taken it off the payroll because it has to go to the tax office".*** (Male Agricultural Worker from Morocco working in Spain)

One participant (CZ03) experienced significant changes to their salary during the COVID-19 pandemic. In the first instance, they did not receive the income support that was provided by the government, it was kept by the employer and when they requested the payment of salaries for work done prior to the imposition of lockdown, they were offered loans to cover subsistence costs that would need to be repaid instead of their salary arrears.

***"Can we get the days that we worked?". The manager said that we cannot get it. But [he said] that we can borrow the money. So, they give us money like 1500 or 2000 CZK, but it's borrowed money. We need to give it back to them. It's just borrowed money.*** (Female Massage Therapist from the Philippines working in the Czech Republic)

Once the restrictions were lifted, they resumed their role as a massage therapist, but because some of their colleagues had been laid off, they also had to take on their workload too (cleaning) but with a reduced salary, compared to pre-pandemic levels.

***So when July comes, when the shops slowly open, our manager said that they [are going to] lay off some employees. These employees, they worked in cleaning. Because we are just therapists, all we do is massage. So we [started to] do their work [as well] like we clean, we fix things. We do this and then they cut our salary to 10,000 CZK.*** (Female Massage Therapist from the Philippines working in the Czech Republic)

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The Directive provides for equal treatment in the provision of education and vocational training (Article 12(1)(c)), although it may be restricted in certain circumstances (Article 12(2)(a)). Despite this, there was very limited reference to the provision of training and professional development of the research participants. In Spain, amongst the research participants who were former unaccompanied foreign minors, there was reference to training and skills development that then facilitated their access to the labour market in those sectors (ES08, ES09). Despite the lack of professional development reported by the interviewees, there was nevertheless the sense that there were overall more opportunities in Europe than in their countries of origin. This particularly was highlighted by those who discussed about the desire to return to their country of origin to start their own business, but that in reality it is a very difficult prospect that was currently unattainable (CZ06, ES07).

The respect and fulfilment of the right to equal treatment of single permit holders is critical when seeking to guarantee the integration of migrant workers. The lived experiences of workers reveals that the extent to which this is realised in practice is heavily determined by the procedural safeguards that are integral to the rights that are granted to them on the basis of the single permit. For instance, in cases where they encounter difficulties in the workplace, provisions such as the right to change employer and the right to access a complaints mechanism are essential to guaranteeing not only the provision of work or services in a safe and secure environment but also the respect for the socio-economic rights of migrant workers, as will be discussed in the next section.

### 5.2. The impact of the single permit on migrant workers' working conditions

As with the discussion above related to the impact of the single permit administrative procedure, the experiences of the single permit holders in the workplace highlight that they are not always treated on a level playing field with other co-workers (contrary to their entitlement to equal treatment). The research participants perceived a difference in treatment and, in some cases, took it upon themselves to try to "prove themselves". In one example the single permit holder voluntarily worked overtime so that it would be noticed by their employer.

***[...] my own [...] approach was that "OK let me just make sure they have nothing to complain about based on facts and figures." So, you overwork. I mean then on weekends I was working, even though other colleagues weren't doing those things. I was doing other people's job. I wasn't forced [to]. It was voluntary. It was coming from the fact that, OK, I want to prove myself to these particular people, in order for me to get an [Employee Card] renewal [...]*** (Male Business Analyst from Nigeria working in the Czech Republic)

As mentioned in the above quotation, one of the reasons why the single permit holder put himself in this position was the necessity to ensure that the employer would agree to renew the permit. This is a second feature that demonstrates that single permit holders are not guaranteed equal treatment, as their sense of job (in)security is entirely dependent on the employer. As a result, and despite the possibility for equal treatment in specified areas noted above, workers may hesitate to assert their demands due to fear of job loss, a lack of bargaining power when it comes to their working conditions and even experience workplace harassment that cannot be challenged due to fear of losing their job.

***I can describe it as moral harassment, psychological harassment, psychological manipulation. [...] he invited me twice to meet outside the company and I always tried to find diplomatic answers. Well, I didn't want to do that because I wanted to say 'No'.*** (Female Account Manager from Tunisia working in Belgium)

Another example of the dominant role of the employer, is the sense of gratitude or loyalty that some workers felt towards their employer because they had facilitated their access to Europe by agreeing to apply for the single permit in the first place (ES02, ES05), leaving them with a dilemma when wanting to seek alternative employment.

### FOCUS POINT – THE RIGHT TO CHANGE EMPLOYER

The conditions surrounding a change of employer and possibilities to seek alternative employment vary in the law and policy of the three countries under study<sup>107</sup> which was reflected in the experiences of single permit holders in seeking alternative employment. The restrictive approach in Belgium allows single permit holders who are unemployed to seek alternative employment for a period of 3 months. However, they are unable to work for a different employer on the same permit, the new employer must apply for a whole new permit. This makes any change of employer extremely difficult, given all the various challenges around the application process.

*Because this is one of the things like when you are working for someone here with a working visa, if you lose the job with this person, you need to do all the process again. You cannot just change boss.* (Male Dental Assistant from Brazil working in Belgium)

The findings from the research revealed that single permit holders in Belgium felt very restricted and unable to change employer (BE03, BE05, BE08). Changing employer was not only deemed “impossible” but it was also a significant barrier to the exercise of bargaining power of workers with their employers, which in turn exacerbated their dependence on the employer in relation to their working conditions (BE03) and the administrative procedure to renew their permit (BE03, BE05, BE08). In one situation, the restrictive conditions related to the change of employer also meant that the single permit holder did not feel able to report the harassment she endured by her employer as she knew that it would affect the validity of her permit (BE05).

*If he's guilty, yeah. And [then what happens to] me, what is my fate? That's what I ask every time [...] So I chose not to [make a complaint] because I was told, “Madam, well, if you don't have a work contract, you have to go back.”* (Female Medical Secretary from Madagascar working in Belgium).

In the Czech Republic, it is possible to change employer during the validity of the Employee Card, without having to request a new one, if the authorities are notified, and the employee has worked a minimum of six months for the initial employer. Permit holders can be unemployed for 60 days. A number of the single permit holders interviewed provided examples of where the process of changing jobs had been straightforward where they felt dissatisfied with their employment or had to find a new job because a current contract was coming to an end (CZ02, CZ03, CZ04, CZ09). In some cases however, participants in the Czech Republic were reluctant to change employer as the period of uncertainty and instability of the application process makes the prospect too harrowing, and thus workers are more likely to remain in their current post:

*I wouldn't want to work at the reception desk my whole life or in this area, so I would consider changing it if necessary. But I thought that since the process of getting the card was so long and*

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<sup>107</sup> See section 3.5.



*nerve-wracking, I'd rather wait for a permanent residence permit [...].* (Female Receptionist from Russia working in the Czech Republic)

It is also important to note that even though some single permit holders did seek alternative employment they did not have the possibility to find something that would match their skills and competences as there was a sense of urgency due to the fact that their residence status was reliant upon them being employed as well as the need to be able to meet living costs (CZ02, CZ04). This resulted in a lowering of their human capital (see below) and a sense that employers had an advantage by virtue of their access to over-qualified migrant workers. The time limit to find a new job was also seen as an obstacle to changing employer, even when that would have been the preferred option.

*[...] I just want to change my job. But there are not enough days, 60 days, to find another job and manage to exchange documents at the Ministry of the Interior, at the police.* (Female hospitality worker from Ukraine working in the Czech Republic)

This barrier also arises in situations where the permit is about to expire, and it is necessary to find a new job and an employer who would be willing to submit an application for an Employee Card. While not the case for any of the research participants from the Czech Republic, the tying of the employee to their initial employer for the first six months is also very concerning considering the other findings regarding the high risks of exploitation linked to dependency of permit holders on their employers.

Unlike Belgium and the Czech Republic, there are no restrictions on single permit holders working in Spain to change employers that will affect the validity of their Temporary Residence and Work Visa. This seems to reduce challenges linked to employer dependency. There are however, certain considerations that the interviewees highlighted that impact on the possibility to seek alternative employment. In a couple of cases (ES04, ES08), single permit holders wanted to change profession and find new jobs in a different sector, however, they had encountered some difficulties in doing so due to their lack of experience. Furthermore, it was noted by both interviewees that, up until recently, the duration of the employment contract was, however, a crucial part when it comes to seeking renewal of their permit and led to a black market for fake employment contracts (ES08). Both interviewees welcomed subsequent legal reform that has now reduced the minimum duration of employment to three months in the first year of residence.

A straightforward approach to changing employer is crucial and can only be realised where procedural elements are addressed so that the barriers that currently exist to changing employer are overcome. In addition to ensuring that there are very few administrative obstacles to changing employer and maintaining a residence and work permit, it is also important to bear in mind and address other factors that have arisen in all three countries that restrict the possibility for single permit holders to seek alternative employment.

The importance of an unimpeded right to change employer on the existing single permit, that entails very minimal administrative requirements, is vital as it will minimise the risk of migrant workers finding themselves in a position whereby, they are over-dependent on their employer where the latter may exert undue control over their working and living conditions. Indeed, a number of workers in Belgium and the Czech Republic experienced exploitative working conditions (BE03, BE05, CZ01, CZ03,

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CZ07)<sup>108</sup>. Two single permit holders in Spain referred to an awareness of the risk of abusive working conditions in the care sector (ES03) or precarity due to the system being conducive to abusive circumstances (ES05) but neither described exploitative or abusive working conditions in their own personal experiences. Exploitative experiences included illegal deduction of wages, long working hours, fraud, non-payment of social security contributions or tax, menace of penalty (i.e., non-renewal of permit) if the worker did not agree to overtime. A concern that has been raised in the findings is that the exploitative behaviour of the employer has been directly linked to the loss of a single permit for some research participants working in Belgium (BE03, BE05).

*[...] after that I lost my documents because this guy didn't pay my tax correctly. (Male Dental Assistant from Brazil working in Belgium)*

If the access to complaints mechanisms, the emphasis on labour enforcement and the imposition of sanctions on employers remain key steps in labour migration policy objectives towards tackling exploitation, it is vital that the workers themselves are not punished for the unlawful conduct of the employer. Despite the recognition in the Czech Republic of an “unreliable employer” (see Focus Point – the Role of the Employer), the lack of consideration of the impact of the employer’s behaviour on the single permit applicant or holder (in case of renewal) is a deficiency that must be addressed. Encouragingly, the recent report of the Belgian Special Commission on Human Trafficking and Human Smuggling has not only acknowledged the need to tackle the total dependence of a worker on the employer that can, in turn, lead to situations of exploitation but also taken into account the impact of a revoked permit (due to the conduct of the employer) on the individual and has recommended the need to “facilitate the granting of an extended period of 180 days (instead of 90 days) [...] to look for a new job, on condition that he or she has actually worked in Belgium in the job for which the single permit was granted.”<sup>109</sup> This approach, in conjunction with similar recommendations made at EU level<sup>110</sup>, must be the focus of subsequent legal revisions that seek to minimise the risk of exploitation and guarantee a non-punitive approach to the migrant worker by extending the validity of their permit and ensuring full access to the labour market to seek and find alternative employment.

A final consideration that has emerged from the lived experiences of the individuals in this study, is that in many instances, the impact of working in the EU is a (significant) reduction in their human capital (BE02, BE03, CZ02, CZ07, ES01, ES02, ES03, ES04). Some participants encountered significant barriers in finding employment that matches their professional experience and level of study (BE03, BE07, CZ02). This not only applies to those who come to Europe with prior professional experience, but also those who have studied in an EU Member State and then seek to pursue their career (BE07). However, for students who use the single permit as a way of changing their status, some do find employment in their chosen profession (BE06, CZ04, CZ06). Furthermore, this finding goes hand in hand with an instrumentalisation or commodification of higher skilled workers in lower skilled jobs. In some instances, the individuals themselves are aware of this but see it as part of a

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<sup>108</sup> Migrant workers in Spain also referred to exploitative working conditions but not while they were single permit holders and thus out of scope of the current report (ES07 (whilst working in the Netherlands), ES08 (whilst working as a student).

<sup>109</sup> Commission Spéciale chargée d'évaluer la législation et la politique en matière de traite et de trafic des êtres humains, Rapport fait au nom de la commission spéciale par Mmes Sophie De Wit et Els Van Hoof et MM. Simon Moutquin, Emmanuel Burton et Ben Segers, 12 juin 2023/ Bijzondere Commissie belast met de evaluatie van de wetgeving en het beleid inzake mensenhandel en mensensmokkel, Verslag namens de bijzondere commissie uitgebracht door de dames Sophie De Wit en Els Van Hoof en de heren Simon Moutquin, Emmanuel Burton en Ben Segers, 12 juni 2023, Recommendation 65§5, p.120-121, available at <https://www.lachambre.be/FLVVB/PDF/55/2530/55K2530002.pdf>, last consulted 31 July 2023.

Notably, the recent announcement by the Belgian Secretary of State for Migration confirms that the timeframe to seek employment will be increased to 180 days for workers who have been victims of social rights violations committed by their employer, supra n. 30.

<sup>110</sup> See above in section 4.4.2.



“trade-off” in exchange for the possibility to continue to reside in Europe (BE02, BE03, CZ02, ES03) and make long-term plans. The latter is further discussed in the next section where an emphasis is placed on the ability of single permit holders to integrate and increase their human and social capital.

### 5.3. Social integration and future prospects

The combined nature of the single permit means that the professional and private lives of holders are inextricably interconnected, as the condition for employment and the role of the employer in the application and the renewal process means that the individual’s private circumstances are dependent on ongoing employment. In addition to the implications that this has on their professional circumstances (as discussed above), the research participants were explicit in their awareness of the limitations on their private and family lives. The result is that, in some circumstances, the influence of the employer extends well beyond the workplace. For instance, employer-provided accommodation has significant implications on (further increasing) the dependence on the employer and the increased risk of exploitation<sup>111</sup>. In the current study, the majority of the research participants had sourced housing on the private rental market and thus not reliant upon their employer (except for CZ02, CZ03, and ES01). However, that is not to say that there were no difficulties in finding housing. In some instances, the short-term temporary nature of their permit meant that landlords were reluctant to enter into a rental agreement (BE05, BE08). The migrant workers also experienced discrimination and stigma based on racial stereotypes (CZ02, CZ06, ES07).

A significant factor that has emerged from the current findings is the role that (extended) family and social support networks play in facilitating integration, including notably, in providing accommodation (BE06, BE07, BE09, ES03, ES04, ES11, ES12), finding accommodation (CZ02), navigating access to public services and other administrative tasks upon arrival (BE06, BE07, BE09, CZ02, CZ10, ES03, ES04, ES11, ES12). The reliance on (extended) family members, who in most cases were already living in the country of employment was particularly notable in Spain and the Czech Republic. In relation to direct family, the majority of participants were either single or had met their future spouses subsequently to their arrival in Europe. Some participants in the Czech Republic had applied for family reunification and been joined by their spouses and children without experiencing any significant difficulties (CZ06, CZ08). In one significant case in Belgium, due to the ongoing appeal of the refusal to be granted a single permit, the migrant worker was separated from his wife and infant baby who were currently residing in France (BE07).

The provision of this support network is also vital, as a significant number of research participants encountered language barriers (both in the workplace but also when engaging with everyday tasks) (CZ02, CZ03, CZ04, CZ05, CZ06, CZ07, CZ08, ES03, ES05, ES06). Language barriers were particularly an issue in the Czech Republic due to the difficulty in learning the language and in Spain where, despite preconceptions of being easily able to communicate in the same language, there were nevertheless some differences e.g., between European Spanish and South American Spanish. However, it is important that where learning the language had been prioritised or was seen as a necessity in their professional life, language barriers were (eventually) overcome (BE06, CZ01, CZ06, CZ09).

In addition to language barriers, some participants also referred to cultural differences that were initially challenging and required some adaptation on their part (BE06, CZ02, CZ06). In the Czech Republic, some research participants raised the attitude of the local population towards foreigners (CZ02, CZ06) although direct experience of racism were rarely reported. However, it is worth noting that such instances depended on the national origin of the participants (mainly of African origin), who referred to the sense of homogeneity in the Czech society, which is underscored by

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<sup>111</sup> Weatherburn, et al., (2022), *supra* n. 31.

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participants who did not sense any discrimination or difference in treatment who originate from countries with a similar racial and ethnic composition (CZ04, CZ07, CZ08, CZ09, CZ10). When asked about social integration and the possibility to develop a social life, the research participants experienced many differences. Some felt that they had enough time to enjoy socialising with friends, pursuing hobbies and spending time with family (BE08, CZ09) however, some felt that their professional commitments encroached on their ability to enjoy a social life due to their work schedules and lack of disposable income.

The general outlook of the research participants was intricately connected to their residency status being dependent upon their employment status, which in some cases created precarity due to the temporary duration of the latter. This meant that despite a desire to make plans for the future, long-term prospects were restricted by the lack of certainty created by their migration status.

## 6. Looking to the future for single permit holders in the EU

The EU's vision for the integration of third country nationals into the labour market stems from a necessity to support Member States so that they do not encounter significant disruption due to large scale labour shortages. It is on this premise that the subsequent law and policy focus of the EU legal migration package has been curated around attracting skills and talent. However, the findings of the present study reaffirm the concerns that have been raised about the implementation of the EU Single Permit Directive and that the procedural rules that allow for the admission of third country nationals exacerbates their dependency on their employer that can engender an imbalance of bargaining power and increase the risk of exploitation. To mitigate these concerns, the findings demonstrate that a universal response is required that guarantees fair and just access to the labour market for all, regardless of qualifications and skills. The same applies to ensuring that the rights of all workers are equally accessible, including access to information and support networks and access to long-term residence.

Based on the study's findings, several propositions are posited with a view to taking stock of the real-life implications of the current national legal and policy frameworks that implement the EU Single Permit Directive. These propositions also seek to contribute to ongoing European and national discourse around the revision and update of labour migration policy regarding the Single Permit Directive by making suggestions as to what the future for single permit holders should look like.

### Ensure an adequate duration of single permits

Prospective and current single permit holders often encounter significant insecurity in both their professional and private lives resulting from the limited duration of the permit, particularly in relation to the first single permit issued which is often limited to one year, for example, as in Belgium and Spain. The limited duration of the validity of a permit is further exacerbated by delays in the processing time of applications, renewals and appeals, especially where employment contracts are also at risk of creating precarity due to their fixed term and lack of certainty regarding renewal. Single permits should be granted for a reasonable period<sup>112</sup> and should acknowledge that the renewal of fixed term employment cannot always be guaranteed by employers by

allowing for continued access to the labour market with a view to seeking alternative employment.

### Simplify and make more accessible the application and renewal procedures for single permits

The process to obtain the single permit is often lengthy, opaque, and lacks transparency. Given the temporary nature of the permit, States should consider that access conditions should not impose an unnecessary administrative burden on the applicant (whether they be the employer or the migrant worker themselves)<sup>113</sup>. Where the employer is required to submit the application for a single permit, the findings reveal that there is a lack of willingness on the part of employers to

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<sup>112</sup> PICUM (2021), supra n. 97.

<sup>113</sup> See for instance, recent amendments to the Skilled Immigration Act in June 2023 that will come into force in March 2024 aim at reducing the administrative obstacles to the recognition of professional qualifications with the possibility to start working while the recognition procedure is ongoing. See Die Bundesregierung, [Deutschland wird ein modernes Einwanderungsland](#), 7 July 2023, consulted on 31 July 2023.

engage in a complex, lengthy and uncertain process. It is imperative that future research gauges the experiences of employers' - in particular small and medium enterprises - in relation to the obstacles that they face when recruiting a third country national who requires a single permit.

In addition, the processing time for applications and renewals should be reduced as delays constitute a major obstacle for workers' access to the single permit. Where possible, administrative processes should be streamlined so that decisions on the right to work and reside are made by one authority.

Where an application is refused, it is imperative to make the appeal process more accessible and effective. For example, the introduction of procedural safeguards such as time limits would minimise the risk of applicants facing a legal limbo whilst awaiting the outcome of an appeal where an application (or renewal) has been refused.

### **Reduce dependence on the employer**

The findings once again affirm that migrant workers in all three countries are highly dependent on the employer for the application and renewal of a single permit, for the access to information related to the status of the application, the renewal of short-term employment contracts, the provision of accommodation, the provision of information and assistance, and the opportunity for social integration.

This is concerning given that the findings also reveal a significant number of irregular employment practices linked to obtaining and retaining a single permit. In the Czech Republic, an Employee Card will not be issued or renewed where the employer is identified as unreliable, however as it stands, this provision creates significant issues for the migrant worker who then has no means of

seeking an alternative employer. Indeed, migrant workers in the three countries studied who experience a serious violation of rights due to the conduct of the employer that invalidates or leads to the revocation of their permit, would simply fall into irregularity as there are no provisions for the validity of a permit to be extended and for continued access to the labour market to seek and find alternative employment. As a result, single permit holders who may experience exploitative working conditions dare not leave their job, not only due to the impact on their migration status but also their personal and family circumstances: for instance, where single permit holders are accommodated in employer-provided housing that, even if sub-standard, they would lose if they were to leave their job<sup>114</sup>.

The reliance on the employer should be reduced by allowing individuals to make the applications and renewals directly, and by establishing direct communication channels between state authorities and the migrant worker. The migrant worker should also feel more empowered and have ownership over their future prospects by making the process of changing employer or seeking alternative employment unexacting (see below).

### **Improve and facilitate access to information and support**

A concern that is linked to the complex application procedure and the central role of the employer is the limited awareness of single permit holders of their social and labour rights entitlements. As it stands, given the central role of the employer – for example, to apply for the single permit or request a renewal-, many migrant workers rely on their (future) employers to provide information and - in case of refusal and the need to appeal - access to support such as legal services. The research participants also discussed how employers

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<sup>114</sup> See Weatherburn, et al, (2022), supra n. 31; Weatherburn (2023a), supra n. 27.

themselves are not always familiar with the process and reluctant to engage, that further hampers access to information and support for single permit holders.

Member States must take steps to ensure direct communication channels with single permit holders regardless of who has made the application<sup>115</sup>, this can be done both via online platforms and in person where applicants are required to present themselves and relevant documentation to consulates and embassies in third countries but also upon arrival where it is necessary to make contact with local and state authorities. The provision of information will require the provision of training for administrative staff who have this direct contact with single permit holders to ensure that the information shared is accurate and meaningful. To facilitate the dissemination of information and support mechanisms, Member States should engage in meaningful cooperation with stakeholders such as trade unions, civil society, and worker's rights organisations to establish initiatives that can facilitate the 'soft landing' of third country nationals with a view to providing information in relation to employment, health, education and, social security<sup>116</sup>.

### **Facilitate the ability to change employer or seek alternative employment**

The right to change employer or seek alternative employment was, on the one hand, an aspect that further justifies the need for better information channels as certain research participants were not aware of their right to change employer. On the other hand, the conditions attached to exercising this right in practice meant that research participants expressed a reticence and inability to change employer or seek alternative employment as

the rights granted to a single permit holder are too restricted.

Currently, a critical lacuna that prevents workers from seeking decent or alternative employment, is the unrealistic period of time that they are currently granted to be unemployed and look for a new employer. For instance, in Belgium and the Czech Republic, a migrant worker only has 90 days and 60 days respectively to find a new job and take the necessary steps to notify the authorities (CZ) or apply for a new permit (BE). In the case of the latter, it is clear that 90 days is entirely unreasonable given that the administrative procedure for applying for a permit, in and of itself, very often surpasses this timeframe. Consequently, these timeframes should be extended with a view to facilitating swift re-entry into the labour market and minimising unnecessary uncertainty and precarity. The permit should remain valid (and if necessary be extended) for a reasonable duration so as to ensure that it is enough time to allow the person to find another job.

This underlines also the other main aspect that must be addressed – the administrative procedure to change employer. If permit holders do not have the right to change employer on their permit, it is considered “impossible” for them to do so in practice. A notification procedure, to inform authorities that the migrant workers has changed employer, can significantly reduce administrative barriers, though practical issues with how the notification procedure is designed and implemented must still be addressed. An unimpeded right to change employer on the existing permit, as is the case in Spain, is the most effective in enabling labour market mobility and reducing this aspect of dependency.

Another major barrier that exists is where the single permit holder can only change

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<sup>115</sup> Weatherburn, et al., (2022), supra n. 31.

<sup>116</sup> See the information related to municipal centres for foreigners: International House Leuven in Flanders, Belgium which provides support relating to relocation, social integration, living and working in the region and the

Integration Centres in Czech Republic, there are no such initiatives in Spain. European Migration Network, [Ad Hoc Query on municipal level initiatives in TCN soft-landing](#), January 2023.

employer after a certain period of time during which they are required to work for the first employer (e.g., six months in the Czech Republic)<sup>117</sup>.

### **Improve monitoring and inspection and access to complaints mechanisms**

The findings that highlight the reluctance to denounce employers whose conduct amounts to violations of labour and social rights underline the importance not only of ensuring that workers are aware of their labour and social rights but also that they know who to turn to should they have a grievance or a complaint. The participants in the study had, in some cases, sought assistance from civil society organisations or trade unions, and in some instances actively sought legal advice. Given that the identification of participants in this research was facilitated by local civil society and trade unions, this is not an unsurprising finding. However, it is important to reiterate that in some instances, their past experiences of employment – including when working irregularly – had entailed examples of exploitation that had gone unreported by the migrant workers or even undetected by inspection and monitoring bodies.

Once in employment, it is imperative to ensure that migrants know how to access labour inspectorates and relevant complaints mechanisms should they encounter problems in the workplace. A key obstacle at present is the inaccessibility of complaints mechanisms for migrant workers, such barriers must be eliminated by making them more visible and by allowing third parties to act on behalf of single permit holders. Any recourse to complaints mechanisms must not have consequences in terms of the existing and/or future

employment possibilities and impact on the migration status of workers<sup>118</sup>. In this regard, and as discussed above, a migrant worker who brings serious concerns about their existing employer to the attention of authorities, must have the possibility for continued residence and access to the labour market<sup>119</sup>.

### **Valorise the human and social capital of third country nationals**

The research participants demonstrated significant motivation to improve their circumstances e.g., overcome language barriers (volunteer to learn language), training & professional development, driving licence. Efforts should be made to recognise the skills, qualifications, and expertise of migrant workers and to improve skill matching and, in line with Article 12 of the Directive, provide single permit holders with opportunities to see what options are available to them via state-based employment offices. It is also important for admissibility conditions -discussed above- to reflect the reality of the job market and ensure that labour migration policies are sufficiently cognisant of the skills and professional experience of migrant workers by ensuring that the imposition of salary thresholds and recognition procedures for professional qualifications are not obstacles to accessing the labour market. Finally, it is imperative to give value to the private and family life of migrant workers by better facilitating family reunification procedures.

### **Minimise the risk of exploitation**

The current study reaffirms existing research that signals a concern about employers who take unfair advantage of the single permit holders and (in some instances) impose

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<sup>117</sup> See proposed amendment by the Council of the European Union to this effect introducing conditions to the right to change employer in Article 11 (2)(c) allowing Member States to require a minimum period, not exceeding 12 months, before a single permit is allowed to

change employer. Council of the European Union (2023), supra n. 26.

<sup>118</sup> European Commission (2022), supra n. 24, p.13.

<sup>119</sup> Migrant Justice Institute, [Research and Policy Brief, Avenues for exploited migrant workers to remain in their country of employment to pursue labour remedies](#), 2023.



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working conditions that are tantamount to exploitation. It is necessary to ensure that any legal and policy measures regarding labour migration are cognisant of the risk of exploitation and must not create or further exacerbate its occurrence in both the formal and informal labour markets. The findings of the current study can contribute to this by adopting measures that

- realise the human capital of migrant workers by matching their skills and experience, recognising their qualifications, and not restricting access to the labour market through shortage occupation lists or labour market tests;
- ensure that inspection, monitoring and complaints mechanisms are accessible to and effective to identify, detect and provide remedy for poor working conditions and other labour rights violations. This includes ensuring migrant workers will not face immigration enforcement as a result of complaints, inspections or other investigations. Monitoring mechanisms also

need to be vigilant in spotting the signs of dependency and control by the employer, that could lead to exploitation, such as employer-provided accommodation<sup>120</sup>;

- guarantee that the status of single permit holders is not jeopardised in circumstances where the employer commits violations. Measures should be put in place to guarantee continued right of residence and access to the labour market, by granting a transitional permit, as is the case in Finland<sup>121</sup>;
- extend the scope to those who are currently excluded but have the necessary skills and experience to access the labour market and be guaranteed decent working conditions via the single permit (for instance, as a complementary pathway for undocumented workers (especially those already working in bottleneck professions) and for those seeking international protection).

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<sup>120</sup> PICUM (2021), *supra* n. 97.

<sup>121</sup> PICUM (2022) & Weatherburn (2023b), *supra* n. 102.

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