



**COUNCIL OF  
THE EUROPEAN UNION**

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**LIMITE**

**MIGR 54**

**OUTCOME OF PROCEEDINGS**

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of :	Working Party on Migration and Expulsion
on :	21 June 2001
No. Cion prop. :	8237/01 MIGR 33 - COM(2001) 127 final
Subject :	Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents

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The Commission representative presented the above proposal which is based on Article 63(3) and (4) TEC.

One of the objectives of the proposed Directive is to provide new means for the integration of third-country nationals, which is a priority for Community action in the area of migration, as outlined in the Tampere European Council conclusions. At the same the Directive seeks to facilitate the possibility for third-country nationals to move within the European Union from the Member State where they initially resided to other Member States.

The Commission representative recalled that the issue of long-term residents has been addressed in a Council Resolution adopted in 1996 as well as, in the framework of the Council of Europe, in a recommendation on long-term residents adopted by the Council of Ministers in December 2000.

Moreover, he noted that before submitting its initiative the Commission had launched studies on the legislation of the Member States. The outcome of this research was contained in a comprehensive report by the University of Nijmegen which has been presented inter alia in the framework of a seminar on the integration of migrants organised during the French Presidency in Paris in October 2000.

The Commission representative stressed that the proposal, together with the proposal for a Directive on the right to family reunification formed part of the efforts being deployed by the Commission with a view to establishing a structured Community migration policy, as outlined in the Commission's communication on a Community immigration policy (11529/00) and reflected in its scoreboard.

He recalled that a number of important relevant instruments have already been adopted, viz:

- the Charter on fundamental rights (December 2000);
- a Directive on the fight against discrimination based on race and ethnic origins (June 2000) and a Directive on the fight against discrimination in the area of employment (October 2000) (both based on Article 13 TEC).

He also announced that Commission would submit in the near future other proposals for Directives:

- concerning the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activity;
- concerning the conditions of entry and residence of third-country nationals for the purpose of studies or vocational training.

Furthermore, the Commission had launched a major reform of the legislation in the area of free movement of EU citizens, which is a recasting of the existing provisions. A proposal for a European Parliament and Council Draft Directive on the rights of the citizens of the European Union and members of their family to free movement within the territory of the Union had been forwarded to the Council in May 2001.

Several delegations welcomed the Commission proposal and expressed favourable views on its objectives and content.

The Austrian delegation, for its part, objected that the provisions of Chapter III of the proposal were not compatible with the quota system operated in Austria.

The German delegation, which entered a scrutiny reservation on the entire Draft Directive, emphasised the need to examine this instrument in close co-ordination with the new proposal recently submitted by the Commission concerning the right to free movement of the EU citizens and of the members of their families. Moreover, it considered that reliable statistical data concerning persons who are legally resident, broken down by purpose of residence, country of origin, status granted and gender, could be extremely useful when examining the issues relating to long-term residents, taking also into account that some Member States have provisions on naturalisation. Stressing that there is a lack of such data, it invited the Commission to launch a study on migration flows in the whole European Union or in some regions. Finally, it drew the attention to the fact that an independent commission had been invited to address in a comprehensive way issues concerning immigration, which was currently one of the most important topics on the political agenda in Germany. This commission will submit a report at the beginning of July 2001 on the basis of which, a major structural reform of the German legislation in this area is foreseen.

The Finnish delegation, which drew the attention to the reform of its law on foreigners, insisted on the need to ensure appropriate co-ordination between this Directive and the new Commission proposal concerning the rights to free movement of EU citizens.

The French delegation, while generally supporting the proposal, considered that some problems could arise relating to the question of the free movement of third-country nationals who are granted the status of long-term residents status, which would probably need to be discussed at some stage at political level.

The Swedish delegation expressed some concern at the exclusion of persons enjoying subsidiary protection from the scope of this Directive as well as at the proposal to grant children a different status to that of their parents. Moreover, it took the view that some provisions are too complex and should be simplified.

The Greek delegation, while welcoming the proposal, expressed some concern at the duration of the period after which third-country nationals are granted long-term resident status.

The United Kingdom delegation felt that some difficulties might arise from the rights to be granted in Member States other than the Member States where long-term resident status is acquired. It also recalled the special position of United Kingdom and Ireland concerning measures falling within Title IV of the EC Treaty, as established in the relevant Protocol annexed to the Treaty.

The Belgian delegation said that this Directive would be a priority of the future Belgian Presidency. It affirmed its commitment:

- to ensure co-ordination, insofar as possible, with the examination of the Commission proposal concerning the free movement of the EU citizens and of the members of their families within the European Union;
- to find appropriate solutions for the question of the compatibility of the Directive with the Austrian quota system.

Following this first exchange of views, the Working Party on Migration and Expulsion began its first reading of the above proposal.

Delegations will find hereinafter the text of Articles 1 to 5 with the comments made by delegations shown in footnotes.

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**Draft**  
**COUNCIL DIRECTIVE**

**concerning the status of third-country nationals who are long-term residents<sup>1</sup>**

**Chapter I**

**General provisions**

**Article 1<sup>2</sup>**

**Subject matter**

This Directive determines:

- (a) the terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto; and<sup>3</sup>
- (b) the terms on which third-country nationals enjoying long-term resident status have the right of residence in Member States other than the one which conferred that status on them.<sup>4</sup>

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<sup>1</sup> D entered a scrutiny reservation and NL a parliamentary scrutiny reservation on the entire proposal.

GR and I entered linguistic reservations concerning the translation of the words 'reside/residence' into their language versions.

<sup>2</sup> GR entered a reservation and A a scrutiny reservation on this Article.

<sup>3</sup> A, noting that the implementation of point a) would result in an infringement of its constitutional rules concerning the competence of the Austrian Länder, entered a reservation.

<sup>4</sup> E entered a reservation, considering that Article 1b) and Chapter III of this Directive are not consistent with Article 63(4) of the Treaty which provides for measures defining the conditions under which third-country nationals may reside in other Member States and does not establish a right to free circulation in other Member States. It recalled furthermore that the Tampere European Council conclusions did not call for third-country nationals to be granted the **same** rights as EU citizens but for them to be granted rights and obligations **comparable** to those of EU citizens. Cion, observing that the objective of this provision is to implement Article 63(4) of the EC Treaty, stressed that, although in certain areas, as established in Article 12 of the Directive, third-country nationals are granted the same rights of EU citizens, they do not enjoy an entirely equal treatment.

## Article 2

### Definitions

For the purposes of this Directive:

- (a) “*third-country national*” means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;
- (b) “*long-term resident*” means any third-country national who has long-term resident status as provided for by Article 8;
- (c) “*first Member State*” means the Member State which granted a third-country national long-term resident status;
- (d) “*second Member State*” means any Member State other than the one which for the first time granted a third-country national long-term resident status and in which that long-term resident exercises the right of residence;

- [e) “*family members*” means the applicant's spouse or unmarried partner, minor children and relatives in the ascending line and adult dependant children admitted to the Member State concerned and residing there in accordance with Council Directive .../.../EC on the right to family reunification The family members of citizens of the Union are defined by the Community legislation relating to free movement of persons in accordance with Article 4 of that Directive;]<sup>1</sup>
- f) “*refugee*” means any third-country national enjoying refugee status within the meaning of the Geneva Convention on the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967<sup>2</sup>;
- (g) “*long-term resident’s EC residence permit*” means a residence permit issued by the Member State concerned upon the acquisition of long-term resident status.

<sup>1</sup> The Working Party agreed to postpone consideration of this definition pending further work on the draft Directive on family reunification.

<sup>2</sup> Some delegations (E and A, which entered reservations, as well as GR, which entered a scrutiny reservation), took the view that refugees should remain outside the scope of this Directive. Those delegations, recalling that the same question was extensively examined in the framework of the Directive on the right to family reunification, felt that refugees, since they are granted a special status, should be covered in a specific instrument. In particular E affirmed that refugees should be included, rather than in the Article on definitions, in Article 3(2), where are listed all the categories of persons falling outside the scope of this Directive. Moreover, GR argued that 63(4) of the EC Treaty is not the appropriate legal base, insofar as refugees are expressly addressed only in Article 63(2) of the EC Treaty. On the contrary, B, F and I wanted refugees to remain within the scope of the Directive. These delegations considered that after a certain period of time refugees become long-term residents and they should accordingly enjoy the rights conferred by this Directive. Pres noted that, irrespective of the status they were granted, after five years third-country nationals should be granted the right to free movement. Opposing the remarks from GR concerning the legal basis, Cion explained that refugees need to be covered for two reasons. The first reason is that this Directive, which simply grants an additional status, does not affect the refugee status. The second reason is that refugee status itself does not allow persons to move to other Member States: refugees who are granted the additional status of long-term residents will be offered such a possibility. Drawing attention to the fact that this Directive should address all third-country nationals in a horizontal way, it opposed covering refugees in a separate instrument. NL, stressing that some difficulties may arise for national administrations from the fact that the persons concerned may be granted a double status- as a refugee and as a long-term resident, entered a reservation. D, while sharing the same concern, took the view that refugees should be covered in order to avoid any risk of discrimination.

## Article 3

### Scope

1. This Directive applies to third-country nationals residing legally in the territory of a Member State.
2. This Directive does not apply to third-country nationals who:
  - (a) are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status<sup>1</sup>;
  - (b) are authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or have applied for authorisation to reside on that basis and are awaiting a decision on their status<sup>2</sup>;
  - (c) have applied for recognition as refugees and whose application has not yet given rise to a final decision<sup>3</sup>;

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<sup>1</sup> In reply to a question from A, Cion explained that, if a person authorised to reside on the basis of temporary protection has changed his/her status, the time during which he/she enjoyed this status will be fully taken into account for the calculation of the period of residence of five years. B and A, noting that in the case of students only half of the period during which they have resided may be taken into account, wondered why persons enjoying temporary protection should be granted more favourable treatment.

<sup>2</sup> S wanted persons enjoying subsidiary protection to be covered by this Directive. Drawing attention to the fact that in Sweden a large number of such persons are awaiting the regularisation of their status, it considered that the period of residence in the Member State concerned should be taken into account entirely, irrespective of the reasons for which those persons have been authorised to enter its territory. Cion said that the exclusion of this category is due to the fact that the notion of subsidiary protection is not yet harmonised at Community level. It added that the Commission will submit a proposal for a Directive on this specific issue and that it will ensure appropriate co-ordination between the Directive on the status of long-term residents and the future Community instrument.

<sup>3</sup> E and A wanted the text which appears in Article 2(f) to be moved to this point.



(d) <sup>1</sup>reside<sup>2</sup> in order to pursue studies, with the exception of studies for a doctorate<sup>3</sup>, or vocational training, or as *au pair* or seasonal worker, or as workers posted by a service provider for the purposes of cross-border provision of services, or as cross-border providers of services;

(e) enjoy a legal status governed by the Vienna Convention on diplomatic relations of 1961, the Vienna Convention on Consular Relations of 1963, the Convention of 1969 on Special Missions or the Vienna Convention on the Representation of States in their Relations with International Organisations of a Universal Character of 1975.

3. Third-country nationals who are members of the family of citizens of the Union who have exercised their right to free movement of persons may not acquire long-term resident status in the citizen of the Union's host Member State until they have obtained the right of permanent residence in that Member State within the meaning of the legislation on the free movement of persons<sup>4</sup>.

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<sup>1</sup> P entered a reservation and S a scrutiny reservation on this point. GR entered a scrutiny reservation concerning studies. A, which entered a reservation, drew the attention to the specific problem of a large number of pupils from third-countries who pursue studies in Austria while their parents remain in their country of origin. Cion said that the question raised by A should be further examined. E queried the link of this provision with Article 5: while Article 3(2)(d) seems to exclude students from the scope of the Directive, according to Article 5 half of the time spent for studies in a Member State can be taken into account for the calculation of the five year period. Cion clarified that the period during which the person has pursued studies is taken into account only insofar as the person concerned has remained in the territory of the Member State under a different status (e.g. as employee).

<sup>2</sup> E and P entered linguistic reservations concerning the translation of the word 'reside' into their language versions.

<sup>3</sup> B, D and F entered a reservation concerning doctorates.

<sup>4</sup> D and NL, which entered a scrutiny reservation, wondered why Member States should grant the status of long-term resident in accordance with this Directive to persons who already obtained a right to permanent residence. Cion stressed that, since Article 63(4) of the EC Treaty does not allow free movement of third-country nationals, in order to be able to move to another Member State and to reside there they need to be granted an additional status. In reply to a question from A, it also observed that the members of the family of an EU citizen who have not exercised their right to free movement are covered by the Directive. F took the view that the wording of the provision is hardly understandable and invited Cion to revise the text.

4. This Directive shall apply without prejudice to more favourable provisions of:
- (a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;
  - (b) the European Convention on Establishment of 13 December 1955, the European Social Charter of 18 October 1961 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.
5. This Directive shall apply without prejudice to the obligations imposed by Article 33 of the Geneva Convention of 28 July 1951 on the Status of Refugees, as amended by the New York Protocol of 31 January 1967, and Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.<sup>1</sup>

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<sup>1</sup> F wondered why a reference to the principle of 'non-refoulement' should be included in the body of the Directive. Recalling that in the case of the Directive on temporary protection, it was agreed, after long debates, to insert a similar text as a recital in the preamble, it suggested following the same approach in this Directive. Cion, observing that Article 3(5) is essentially a safeguard clause for refugees, felt that this issue needed to be further examined.

**Article 4**  
**Non-discrimination clause<sup>1</sup>**

The Member States shall give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.

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<sup>1</sup> Cion said that this provision is a standard non-discrimination clause, which is inserted in many Community instruments and is based on Article 21 of the Charter on Fundamental Rights. GR took the view that such a clause seems to be based on Article 13 of the EC Treaty, which allows the Council to take, where necessary, appropriate measures against discrimination, rather than Article 21 of the Charter on Fundamental Rights. Stressing the need to revise this provision, it recalled that in the context of the Directive on temporary protection the issue concerning the introduction of a non-discrimination clause was extensively discussed and agreement was reached on the insertion of the relevant text as a recital in the preamble. F, supporting GR, argued that in the context of this Directive it would be advisable to follow the same approach. Cion, while taking the view that the context of this Directive is different from that of the Directive on temporary protection, felt that this issue should be considered further. It observed that in all circumstances this non-discrimination clause was introduced with a view to ensuring an appropriate implementation of the Directive. It also added that this clause should not be assimilated to non-discrimination clauses contained in Directives based on Article 13 of the EC Treaty.

## Chapter II

### Long-term resident status in a Member State

#### Article 5<sup>1</sup>

##### Duration of residence

1. Member States shall grant long-term resident status to third-country nationals who have resided legally<sup>2</sup> and continuously for five years<sup>3</sup> in the territory of the Member State concerned.

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<sup>1</sup> Scrutiny reservation from D.

<sup>2</sup> In reply to a question from GR concerning the case of illegal entry of third-country nationals, Cion stressed that exclusively the period of legal residence may be taken into account for the purpose of granting long-term resident status. Therefore, if the person who entered illegally has subsequently been regularised, only the period of residence after regularisation is to be calculated.

F considered that legal residence might be proven in particular by the possession of a residence permit issued by the Member State concerned. In this context Cion further noted that the decision whether and in what cases a residence permit should be issued falls under the sole competence of the Member State concerned.

D and GR insisted on the need for clearly stating in this provision that legal residence does not imply illegal entry.

To that end B suggested referring to the notion of possession of a residence permit rather than to that of legal residence. Supporting B, A noted that, if the text were to be revised in accordance with the suggestion from B, this provision would ensure that the period of three months during which persons entering without visas in a Member State are allowed to stay may not be taken into account in the calculation of the five-year period. With reference to the concern expressed by A, Cion said that the Directive does not seek to cover such cases.

<sup>3</sup> GR, P and A, which entered reservations, wanted a longer period of residence to be set (A suggested 8 years). In particular GR wanted this Article to allow Member States some flexibility rather than providing for a fixed period of time.

On the contrary F, supported by E, wondered why the status of long-term resident status might not be granted much earlier than five years.

E took the view that Member States may grant such status before the five-year time limit, since Article 14 allows the application of more favourable provisions.

Cion stressed that the harmonisation of national legislations requires the adoption of the same period of residence.

Concerning the remark from E, it added that the Directive allows maintaining more favourable provisions only as long as such provisions have a national impact.

2. For the purposes of calculating the period of legal and continuous residence referred to in paragraph 1:
  - (a) periods of residence in the territory of the Member State as asylum-seeker or as beneficiary of temporary protection shall be taken into account solely if the third-country national is a refugee;
  - (b) periods of residence for study purposes, with the exception of study towards a doctorate, shall be taken into account as to half only.
3. Periods of absence from the territory of the Member State concerned shall not interrupt the period of legal and continuous residence referred to in paragraph 1 and shall be included for the purposes of calculating that period where they are:
  - (a) shorter than six consecutive months; or
  - (b) related to the discharge of military obligations, detachment for employment purposes, including the provision of cross-border services, studies, with the exception of study for a doctorate, or research, serious illness, pregnancy or maternity; or
  - (c) related to residence in a second Member State as member of the family of a long-term resident exercising the right of residence under this Directive or of a citizen of the Union exercising the right to free movement of persons.
4. Uninterrupted periods of residence of at least two years in the Member State concerned by a family member of a citizen of the Union, who as family member resides in a third state and within a period of three years returned to the Member State concerned, shall be taken into account in the calculation of the period of residence referred to in paragraph 1.

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