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Subject :	Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents

At its meetings on 6/7 and 17 September 2001, the Working Party on Migration and Expulsion continued and completed a first reading of the above proposal.

The Working Party held an initial exchange of views on **Chapter III** of the Directive, which concerns the right of residence of third-country nationals who are long-term residents in other Member States.

The Commission representative pointed out that Chapter III constituted the most innovative aspect of the Directive and its true added value. He also stressed that the provisions in this chapter had a dual objective, on the one hand to ensure greater flexibility in the labour market (e.g. for those seeking employment) and on the other to create an area of freedom within the Union.

While agreeing with the aim of ensuring greater mobility for third-country nationals within the Union, **the German delegation** did however wonder how such an objective could be achieved. It pointed out that, according to the conclusions of the Tampere European Council, the desired objective was to approximate national laws and not to accord third-country nationals treatment identical to that given to citizens of the Union, and it stressed the need to leave the Member States some leeway, particularly in their policies for the labour market. On this point, it said that Germany's aim was to encourage the entry and residence in Germany of highly qualified third-country nationals.

The Austrian delegation said that its labour legislation was currently undergoing reform but that it agreed with the German delegation's position. It indicated that Austria was inclined to give preference to qualified workers and that the entry and residence of unqualified persons remained subject to stricter conditions and was in principle authorised only for seasonal work. It also stressed that, as a result of this Directive, which would accord third-country nationals treatment comparable to that given to citizens of the European Union, there was a danger that the situation on the Austrian labour market could deteriorate considerably owing to the high level of unemployment among Austrian citizens. Moreover, it wondered whether Article 63(4) of the Treaty was an appropriate legal basis for the Directive, in particular for granting the right to work to third-country nationals. As regards mobility within the European Union, it wondered whether the provisions of the Directive were compatible with the quota system which applied in Austria and governed the entry and residence of third-country nationals. It entered a reservation on both the right to work and the social rights which would be granted by the Directive to third-country nationals who were long term residents.

The Finnish delegation supported the objective of greater mobility for third-country nationals who were long-term residents in the European Union but pointed out certain difficulties arising with social rights.

The Swedish delegation also agreed with the objectives of the proposal for a Directive. It did however say that the competent bodies in Sweden were still examining the text.

Although it said that it agreed with the Commission's objectives, **the Italian delegation** was not yet able to indicate a definitive position on this Directive since aliens legislation in Italy was currently undergoing reform.

The Greek and Netherlands delegations entered reservations on the whole of Chapter III.

On the question of the legal basis, which was raised by **the Austrian delegation** and **the Spanish delegation**, **the Commission representative** confirmed that the provision decided on was the right one (Article 63(3) and (4) of the Treaty). In this connection he referred to Article 45 of the Charter of Fundamental Rights of the European Union under which freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

In response to a question from **the Austrian delegation**, he thought that granting the right of residence should involve the possibility of access to the labour market.

The text of Articles 15 to 32 of the proposal is given below. Delegations' comments on those Articles are indicated in the footnotes.

COUNCIL DIRECTIVE
concerning the status of third-country nationals who are long-term residents

Chapter III ¹

Right of residence in the other Member States

Article 15

Principle

1. A long-term resident may exercise the right of residence in the territory of Member States other than the one which granted him the status, for a period exceeding three months, as provided by this Chapter.
2. This Chapter does not concern the residence of long-term residents in the territory of the Member States: ²
 - (a) as employed workers posted by a service provider for the purposes of cross-border provision of services; or
 - (b) as providers of cross-border services.

¹ General reservation by **A**.

² **D**, supported by **L** and **A**, wanted a new subparagraph (c) added, containing an express reference to cross-border workers.
Cion was willing to examine this point in some detail.

Article 16

Conditions

1. The exercise of the right of residence in a second Member State by a long-term resident shall be subject to compliance with the following conditions: ¹

¹ **L** raised the matter of the situation of such persons in the second Member State while the application was being examined. **Pres**, noting that there were no provisions in the Directive to cover this point, wondered whether in such cases the person concerned would have an implicit right to remain.

Cion stressed that under the system provided for in the Directive, a person who had obtained the status of long-term resident in a Member State under the provisions of the Directive could enjoy the rights referred to in Article 12. When moving to another Member State, such a person was entitled to start work after a residence permit had been issued, but this was subject to a certain number of conditions. Admittedly, problems might occur during the transitional period, particularly when a person made an application at the end of the period, but the second Member State would in any case retain the right to check the conditions laid down by the Directive. On the particular point raised by **Pres**, the Commission noted that the matter was not covered in the Directive. While it reserved its position on the approach to take – either leave Member States free to settle such cases or include a provision in the Directive expressly covering this point – it thought that the matter should be examined in greater detail.

(a) exercise of an economic activity¹ in an employed or self-employed capacity^{2 3}; or

¹ **D** wanted it made clear that a long-term resident must be entitled to exercise an activity ("berechtigt zur Ausübung einer Tätigkeit").

A thought that the provision should clearly indicate what type of work was eligible for the purposes of the Directive (e.g. full-time, part-time etc.) It specifically mentioned the example of persons working less than ten hours a month, who in Austria were not obliged to pay social security contributions.

Pres also thought that this provision should be amplified further.

Cion pointed out that Community case law concerning European Union citizens existed in this area, and this should be looked into. In its view, Member States should have the right to ensure that the activity exercised by the person concerned enabled that person to subsist without cost to the State. The Commission would, however, prefer to adopt the criterion of level of resources rather than number of hours worked.

² **D** and **A** contended that Member States should have a degree of discretion when it came to granting third-country nationals who were long-term residents the right to work.

A in particular felt that Member States should be entitled to monitor the employment of such persons, in order to see whether their intended activity and the conditions under which it would be exercised complied with the relevant national provisions.

These delegations also emphasised the need to prevent third-country nationals coming from other Member States from competing with persons already resident on the territory of the Member State concerned, who should be eligible for preferential treatment.

EL endorsed this view. These delegations wanted the Directive to include a system of prior authorisation for granting the right to work to long-term resident third-country nationals moving from one Member State to another.

Cion did not favour the introduction of a prior authorisation scheme, although it agreed that the matter should be looked into. It commented that persons who had settled in one of the Member States after a five-year period of residence on its territory should be eligible for preferential treatment when moving to another Member State.

Pointing out that currently third-country nationals moving to a Member State other than the one in which they had been resident were treated in the same way as immigrants entering the territory of a Member State for the first time, the Commission considered that introducing a prior authorisation scheme would result in the status quo being maintained without any improvement to the situation of such persons.

Pres thought that the text of this provision could be amended to take account of the concerns voiced by **D** and **A** in particular. The latter two delegations said that they would prefer a more carefully worded text since the rights granted to third-country nationals were not the same as those enjoyed by European Union citizens.

NL emphasised that third-country nationals who were long-term residents should be granted rights as close as possible to those of European Union citizens.

Replying to a request for clarification by **S**, **Cion** said that third-country nationals who were long-term residents would not be allowed access to the labour market in the second Member State until a residence permit had been granted. This arrangement was different from the one provided for in Community law in the case of European Union citizens, who had immediate access to employment, with their residence permits a mere administrative formality. Nonetheless, issuing residence permits to European Union nationals remained subject to certain conditions, such as having a job. Furthermore, the changes to Community law on the free movement of Union citizens currently being examined by the Council's bodies entailed a number of innovations regarding right of residence, but a number of conditions nevertheless had to be fulfilled. As part of the new approach, a Union citizen would no longer be obliged to prove in advance that he had a job and adequate resources, but would be entitled just to declare that he fulfilled those conditions.

Finally, **Cion** pointed out that as part of the revision exercise it had been proposed that residence permits be abolished for Union citizens. Issuing a residence permit would only be appropriate when a Union citizen had obtained the right to permanent residence after four years of residence in the Member State concerned.

³ In **A's view**, this subparagraph should also state that persons exercising an economic activity must have adequate resources.

- (b) pursuit of studies or vocational training ¹, and possession of adequate resources to avoid becoming a burden on the second Member State during the period of residence and sickness insurance covering all risks in the second Member State; or
- (c) possession of adequate resources ² to avoid becoming a burden on the second Member State during the period of residence and sickness insurance covering all risks in the second Member State. ³

2. Long-term residents exercising the right of residence in a second Member State as worker in an employed or self-employed capacity shall retain their status as workers if:

- (a) they sustain a temporary incapacity for work as a result of illness or accident;

¹ **EL** suggested adding "*and/or unemployment benefits*" after "*adequate resources*". **Cion** was against such an addition. On the question of studies, **A** pointed out that in Austria several types of study had restricted access (e.g. "numerus clausus") and stressed the need to prevent any possibility of the existing rules being by-passed through application of this provision. The same applied to vocational training. As regards studies, **NL**, recalling the discussion on this point during the examination of Article 5, entered a scrutiny reservation.

² **D** and **A** thought that possession of adequate resources should not be the only criterion for the purposes of this provision. The resources concerned should be stable and belong to the person concerned (**A**). **NL**, entering a scrutiny reservation on subparagraph (c), thought that the resources should be adequate and independent. **Pres** wondered whether the text in Article 6 should not be used here. **Cion** pointed out that Article 16(c) – unlike Article 6 – did not seek to lay down a rigid framework for resources, as it was thought preferable to leave the second Member State a certain amount of leeway when it came to setting the level of resources required.

³ **D** thought that the provision should also contain a condition that the person concerned must have appropriate accommodation.

- (b) they are unemployed and entitled to unemployment benefits ¹; in this case, the status of worker shall be retained as long as such entitlement subsists;
- (c) they embark on vocational training. Unless they are in a state of involuntary ² unemployment, the retention of worker status depends on the existence of a relation between the previous occupational activity and the training concerned.

¹ **EL** entered a reservation on the right to unemployment benefits.
D took the view that when it came to unemployment benefits the provision should make clear that these were rights which the person concerned had acquired in a single Member State. It noted that under Regulation No 1408/71, Union citizens' unemployment benefit rights acquired in different Member States were liable to cumulation and wanted such a possibility to be ruled out in this Directive.
FIN emphasised the importance of the social aspects.
Cion stressed that the aim of this provision – just as the whole of paragraph 2 – was to ensure that unemployed persons were protected, and felt that the question of determining unemployment benefit rights was a matter of social security and should be examined by the relevant Council bodies.
On the question of the unemployed, **A** mentioned the pressures on the labour market and argued that Member States should be able to retain the option of giving priority to their own nationals.

² **A** thought that subparagraph (c) should make no reference at all to involuntary unemployment but should refer to cases where a right to employment already existed.
Pointing out that this provision was taken from Community law and incorporated a number of elements from Community case law, **Cion** said that the purpose of the provision was not to cover rights which workers already enjoyed.

Article 17

Checks on conditions for the exercise of the right of residence ¹

1. No later than three months after entering the territory of the second Member State, the long-term resident shall apply to the competent authorities of that Member State for a residence permit. ²

¹ In reply to a question from **P**, **Cion** said that the list of checks referred to in Article 17 was exhaustive and Member States were not entitled to ask for further proof or documents. On the same point, **F** stressed the need to adhere to the checks laid down in the Directive and not to introduce new conditions and requirements.

² **P** wondered why this provision did not allow for penalties where the person concerned failed to apply for a residence permit within the set time limit.
D, supported by **A**, was against the three-month time limit for applying for a residence permit. It took the view that a person wanting to take up long-term residence in another Member State should apply for a permit immediately and therefore suggested redrafting the text of this provision in order to delete the reference to three months. **A** made the point that there was a danger – particularly where the time limit was extended when all the required documents had not been submitted within the initial three-month time limit, or an appeal was lodged against a negative decision – of a person finding himself in something of a legal vacuum on the territory of the second Member State.
F, pointing out that the relevant Community law granted Union citizens a three-month time limit to apply for a residence permit, wanted this Directive also to retain a degree of flexibility.

Cion emphasised that the persons covered by this Directive were a highly specific category of third-country nationals who were already living in a Member State, and in whose interests it was to apply for a residence permit as quickly as possible when moving to another Member State with a view to permanent residence. Given the nature of such persons and their interest in applying as soon as they entered the territory of the second Member State, the risk of abuse appeared very limited and referring to penalties in this provision had not been thought appropriate. It noted finally that the treatment of third-country nationals moving from one Member State to another was scarcely more favourable than the treatment of Union citizens who exercised their right to freedom of movement. Although the current rules stipulated that Union citizens had to apply for a residence permit no later than three months after entry, it had been proposed in the review to increase that time limit to six months. Following a comment by **D**, it thought that obliging third-country nationals who were long-term residents to declare their presence to the authorities of the Member State to which they had moved would not be appropriate, even if such a declaration could be required by Member States under the relevant rules from Union citizens exercising their right to freedom of movement. Such a declaration, which had to be made within fifteen days following entry, was purely a matter of notification and should not be confused with the time limit for applying for a residence permit. If a degree of flexibility was required, one way of achieving this might be to allow for the possibility of making an application from the first Member State.

Pres suggested that a text such as: "*at the earliest possible opportunity and no later than three months*" might be considered as a way of meeting the points raised by **D** and **A**.

2. To check for compliance with the conditions provided for by Article 16(1)(a), the second Member State may ask the persons concerned to present with their application for a residence permit:

- (a) their long-term resident's permit and an identity document ¹; and

¹ **NL** thought it pointless requiring an identity document as well as a long-term residence permit.
L suggested replacing "identity document" in subparagraph (a) of paragraphs 2, 3 and 4 by "valid travel document".

(b) evidence that they have an employment contract ¹ or a statement by the employer that they are hired ², or that they exercise an economic activity in a self-employed capacity ³, or that they have the resources needed to exercise an economic activity in a self-employed capacity ⁴, together with a detailed description of that activity. ⁵

¹ **A** entered a reservation on subparagraph (b) and on the whole of paragraph 2 on the grounds that this provision merely required evidence that a contract existed without any insistence on compliance with the conditions of employment as defined in the law of the Member State concerned. In its view, the Member States' authorities should be given a number of details on the employment concerned so that it could ensure that workers were protected and not in any danger of exploitation. **FIN** also stressed the need to protect workers and thought that this provision was not sufficiently clear on this point.

Noting these comments, **Cion** wondered whether it was necessary in this Directive to provide for additional assistance to third-country nationals who were long-term residents. It thought that the problems raised by **A** could affect both nationals and third-country nationals in the same way. Just as citizens of a Member State could invoke the provisions of national social and labour legislation in order to secure their rights, third-country nationals exercising their activity on the territory of that Member State should enjoy the same protection.

² **P** suggested "*contract proposal*" instead of "*statement by the employer that they are hired*". **D** and **A** entered reservations on such an employer's statement on the grounds that this was purely a preliminary document offering no guarantee that the employment contract would ultimately be concluded, a situation which could give rise to abuses. **Cion**, which emphasised the need for flexibility, took the view that when applying for a residence permit persons should merely have to provide evidence that they possessed a statement of employment. Clearly though, should such a statement not be followed by the conclusion of a contract of employment, such persons would not fulfil one of the conditions laid down in the Directive and be eligible for return to the first Member State under Article 25.

³ **L** made the point that self-employed activities were often subject to establishment permits issued by the competent authorities.

Cion replied that Member States were entitled to require evidence that a person possessed an establishment permit, provided the requirement was made under the same conditions of both nationals and third-country nationals for the exercise of a given economic activity. In reply to a question from **F**, **Cion** said that under the free enterprise principle, self-employed activity should not be assessed from the standpoint of its economic viability but rather be based – depending on the type of work involved – on an estimate of the amounts needed to exercise such activity over a certain period.

Pres commented that the economic viability of self-employed work was examined in the case of first-time immigrants.

⁴ **A** considered that this provision should state that the resources required to undertake a self-employed activity should be regular, so as to avoid the possibility of payments from third parties being taken into account. The same point applied to paragraph 3(c).

Cion stressed that it had been thought preferable to leave Member States some leeway when it came to setting the level, nature and regularity of the resources required.

⁵ In the discussion of this subparagraph, **D** renewed its request to **Cion** for statistics on the groups of third-country nationals who would be covered by this Directive in the various Member States. Noting that there were some third countries which were a source of unskilled labour, **D** pointed out that Germany wished to encourage the movement only of the most highly skilled persons.

3. To check for compliance with the conditions provided for by Article 16(1)(b), the second Member State may ask the persons concerned to present with their application for a residence permit ¹:
- (a) their long-term resident's permit and an identity document; and
 - (b) evidence of enrolment in an accredited establishment ²in order to pursue studies or vocational training;
 - (c) evidence that they have adequate resources and sickness insurance covering all risks in the second Member State.

¹ Noting that the introductory clause of paragraph 3 allowed a Member State to ask persons concerned to comply with the requirements of (a), (b) and (c), **NL** wondered whether these conditions were cumulative.

Pres thought that they were indeed cumulative, but Member States remained free to require or not require all of the documents or evidence in question.

² **F** made the point that the term "accredited establishment" was not used in French law. **Cion** replied that the term had been taken from Community law and must be interpreted in the sense given to it by Community law.

4. To check for compliance with the conditions provided for by Article 16(1)(c), the second Member State may ask the persons concerned to present with their application for a residence permit:

- (a) their long-term resident's permit and an identity document; and
- (b) evidence that they have adequate resources and sickness insurance covering all risks in the second Member State.

Article 18

Family members ¹

1. Members of the family, as already constituted in the first Member State, shall have the right to accompany or join a long-term resident who has exercised his right of residence in a second Member State. No later than three months after entering the territory of the second Member State, ² the family members shall apply to the competent authorities of that Member State for a residence permit.

¹ **A**, which entered a reservation on Article 18, thought this provision should refer only to the nuclear family.
D stressed the problem of the compatibility and consistency between the text of paragraph 1 of this Article and the definition of family member in point (e) of Article 2.
Pres stressed the link between the definition included in this Directive and the concept of family member referred to in the draft Directive on the right to family reunification.
Cion stressed the difficulties experienced when the definition of family member was discussed in the context of the examination of the draft Directive on the right to family reunification. Without prejudice to the outcome of the negotiations on that Directive, it thought that, if it proved possible to make a distinction between family members whose admission was mandatory and those whose admission was optional, it might prove necessary to specify in this provision that the second Member State was not obliged to authorise the entry and residence of the latter. In response to a question raised by **B**, it said that family members would not be obliged to accompany the person concerned but would have the period of three months referred to paragraph 1 in which to follow him. It also made clear that the family members would have to submit the application for grant of a residence permit at the same time as the person concerned. Finally, it had misgivings regarding **B**'s request that family members be obliged to produce, as part of the documentary evidence, a paper stating that the family links still existed. While admitting that this question required further study, it thought that requiring such proof could render the procedure laid down in the Directive more cumbersome and lengthy.

² According to **D**, which suggested deleting the three-month period, the family members should submit their applications as soon as they entered the territory of the second Member State.
Cion pointed out that, under the applicable Community legislation, nationals of third countries could reside in the territory of the Member States for three months and, in an effort to retain a certain flexibility, felt that family members should be allowed this period of time to submit their applications.

2. The second Member State may ask the family members concerned to present with their application for a residence permit:
 - (a) their long-term resident's permit or residence permit and an identity document ¹; and
 - (b) evidence that they have resided as members of the family of the long-term resident in the first Member State; and
 - (c) evidence that they have adequate resources ² and sickness insurance covering all risks in the Second Member State or that the long-term resident has such resources and insurance for them.
3. Where the family was not already constituted in the first Member State, Directive .../.../EC [on the right to family reunification] ³ shall apply. ⁴

¹ L suggested replacing "identity document" with "valid travel document".

² On a suggestion from D that the condition of having appropriate accommodation be added to the conditions to be met by the family members concerned over and above that of adequate resources, Cion said that further study would need to be given to the introduction of this additional requirement.

³ OJ L

⁴ In response to a request from A for clarification, Cion specified that paragraph 3 referred to cases such as, for instance, that of a third-country national who was a long-term resident and was moving within a Member State other than that in which he had previously resided and who during his stay had married the national of a third country living in another Member State. In such cases, the provisions of the Directive on family reunification would apply.

Article 19

Public policy and domestic security ¹

1. Member States may refuse applications for residence from long-term residents or family members where the personal conduct of the person concerned constitutes an actual² threat to public order or domestic security.
2. Criminal convictions shall not in themselves automatically warrant the refusal referred to in paragraph 1. ³ Such a refusal may not be founded on economic considerations. ⁴

¹ **D/A** and **S** entered reservations on this Article. **D** in particular wanted the inclusion of general preventive grounds for expulsion ("generalpräventive Ausweisungsgründe"). **S** felt other cases of refusal should be specified. **F** noted that the level of protection provided by this provision was less than that provided in Article 13.

² **F** referred to its reservation regarding Articles 7 and 13 and opposed the use in the French text of the adjective "actuelle" to qualify "threat". **Cion** preferred to abide by the existing wording.

³ **A** thought paragraph 2 should be reconsidered. **E** entered a scrutiny reservation and stressed that this provision should incorporate a proportionality criterion making it possible to assess cases in the light of the type of offence committed and the sentence received and wanted the concept of criminal convictions to be better defined.

Cion explained that paragraph 2 was based on the case law of the Court of Justice for citizens of the Union. The provision was designed to ensure that every criminal conviction did not automatically lead to the situation of the person concerned being reviewed or to his expulsion. Its purpose was in fact to ask Member States to make an additional examination, which could be an extremely summary one. It was moreover clear that, for instance, if the person concerned had committed terrorist acts for which he had been sentenced and had not renounced his beliefs, he could be expelled.

⁴ **E** thought the concept of "economic considerations" was not very clear and entered a scrutiny reservation.

In response to a question from **A**, **Cion** stressed that the fact that a work contract contained clauses which were in breach of social and labour legislation would not constitute economic considerations but would rather be an infringement of public policy.

Article 20

Public health ¹

1. The only diseases or infirmities that may justify a refusal to allow entry or the right of residence in the territory of a Member State shall be the quarantinable diseases referred to by the World Health Organisation's International Health Regulation No 2 of 25 May 1951 and such other infectious or contagious parasite-based diseases as are the subject of protective provisions in relation to nationals in the host country. ² Member States may not introduce new more restrictive provisions or practices.

¹ **D/EL** and **NL** entered reservations on Article 20. Entering a scrutiny reservation, **F** deplored the fact that persons who had already obtained the status of long-term residents in a Member State could be forced to undergo further medical tests when moving to another Member State. Seconding **F/L** pointed out that medical checks were required for immigrants on first arrival and wondered whether it was appropriate to subject persons coming from other Member States to such tests. It wondered however if it might not be useful to test persons who had never undergone such checks.

Cion pointed out that this provision was based on the freedom of movement rules applicable to citizens of the Union. While understanding the **F** delegation's concern, it said that this provision followed the same approach as was adopted in those rules; the possibility of subjecting citizens of the Union to checks when they moved into another Member State had been retained when the rules were recast.

In answer to a request for clarification from **A**, which did not apply a system involving the issue of medical certificates, it pointed out that the Directive did not oblige Member States to make out any such certificates. It thought this issue could be given further study in the context of the future Directives the Commission would be submitting on the initial admission of third-country nationals (for study and other purposes).

² According to **D**, it should also be possible to refuse entry and right of residence in cases of as yet unknown diseases. **Cion** thought it should be possible to take account of diseases other than those listed in the International Health Regulation, particularly since that Regulation had not been updated for some years now.

2. Diseases or infirmities contracted after the first residence permit was issued shall not justify a refusal to renew the permit or expulsion from the territory ¹.
3. ² A Member State may impose a medical examination, performed free of charge ³, for persons to whom this Directive applies, in order to certify that they do not suffer from any of the diseases referred to in paragraph 1. Such medical examinations may not be performed on a systematic basis.

¹ **D** entered a reservation on paragraph 2, particularly in view of the fact that, in specific cases, it should be possible to remove a person whose behaviour constituted a threat to public health (e.g. a person who failed to comply with the health instructions he was given). **Cion** thought that situations such as mentioned by **D**, which might for instance arise in the case of a drug addict, would rather constitute a threat to public policy. The same was true of another instance given by **D**, namely that of a prostitute with Aids. It also added that national legislation contained alternatives to expulsion such as the obligation to undergo treatment. Finally, it said that consideration might be given to adding endangering public health to Article 25 as one of the grounds for a Member State to expel the person concerned.

² **D/EL** and **A** entered reservations on paragraph 3. According to **D**, the authorities in the Member State concerned should be able to require the person concerned to produce evidence that he was not suffering from the diseases in question.

³ **EL** and **P** entered reservations on the fact that the tests were free of charge.

Article 21

Examination of applications and issue of a residence permit

1. The competent national authorities shall examine¹ applications within three months² after they are lodged. If an application is not accompanied by the documentary evidence listed in Article 17(2), (3) and (4) and Article 18(2), the competent national authorities shall inform the third-country national concerned and allow additional time. In this event the three-month period shall be suspended and shall run again from the time when the additional documentary evidence is provided³.

¹ UK suggested substituting "*decide on* " for "*examine*".

² NL and A thought three months was too short a period.

B wondered whether the fact that no decision had been taken after three months was to be interpreted as a positive or a negative decision or if this time limit was purely indicative. EL also wondered what the legal implications were of exceeding the time limit. In this context, A wanted a clause added specifying that if a decision had not been taken within the time laid down here, the consequences were to be determined in the light of the provisions of the law on administrative procedure in the Member State concerned. In reply to the EL question and with reference to A's suggestion, Cion indicated that, even if the deadline were not simply indicative, it was for the Member State concerned to decide, on the basis of its rules on administrative procedure, on the measures to be taken if the period in question were exceeded, since the Community had no powers in this respect.

In response to a question from A, which pointed out that third-country nationals could find themselves in a more favourable position than citizens of the Union, inasmuch as the time limit laid down for the latter in the current legislation on freedom of movement was six months, it said that during the recasting proceedings it had been proposed that the limit be reduced to three months.

³ S suggested replacing the last two sentences of paragraph 1 with the text of the second subparagraph of Article 6(4) of the draft Directive on the right to family reunification. Seconding S/D observed that the Directive should not contain such detailed provisions.

2. If the conditions provided for in Articles 16 and 18(1) are met, then, subject to the provisions relating to public policy, domestic security and public health in Articles 19 and 20, the second Member State shall issue the long-term resident with a renewable residence permit. The period of validity of this permit shall correspond to the foreseeable duration of residence. The long-term resident shall inform the Member State which granted him long-term resident status.¹

¹ **D/EL and A** were opposed to the person concerned being given the task of informing the first Member State that he had been granted a residence permit in the second Member State since this could give rise to abuse. Underlining the need for broad cooperation between national administrative authorities, these delegations thought that the Member States concerned should pass on this information in the context of cooperation of this nature. Other delegations, in particular **FIN/L and S**, also stressed the need for enhanced cooperation between national administrations in the areas covered by the Directive. With more particular reference to Article 21, **L** said that, as in Article 27(2), which provided for the second Member State to inform the first Member State of any withdrawal of status, the information should be communicated to the first Member State by the second. Most delegations supported the approach suggested by **L** as well as the latter's idea that, where it proved necessary, a mechanism be set up for the exchange of information between national administrations, together with provisions on data protection. Noting that in several Member States third-country nationals, in the same way as nationals, were obliged to apply to the relevant administrative authorities when submitting applications – for instance when registering with a commune – , **L** also made the point that the existence of a mechanism of this type should not completely relieve the person concerned of the obligation to inform the relevant authorities. **A** also thought that, when setting up this mechanism for the exchange of information, it was important to ensure not only that the second Member State would inform the first but also that the second Member State was able to obtain information about the person concerned from the first Member State.

In this connection, **A** again suggested , as it had done with regard to Article 10, that a computerised data bank be established at Union level.

FIN/L and S, as well as **Cion**, thought the creation of a data bank was disproportionate and excessive given the objectives of the Directive.

Cion noted that most delegations would favour adopting the approach whereby the second Member State informed the first that it had issued a residence permit to a third-country national. The Commission had adopted a different approach in the proposal since it was thought that it was in the person's own interest to supply the information. While it was not opposed to the new approach, it wanted the mechanism for the exchange of information set up to be sufficiently flexible.

3. The second Member State shall issue members of the long-term resident's family with renewable residence permits valid for the same period as the permit issued to the long-term resident ¹.
4. Permits shall be issued free of charge ² or against payment of a sum not exceeding the charges required of nationals for the issue of identity cards.

Article 22

Procedural guarantees

1. Reasons shall be given for any decision rejecting an application for a residence permit. It shall be notified in writing to the third-country national concerned. ³ The notification shall specify the redress procedures available and the time within which he may act.
2. Where an application for a residence permit is rejected, or the permit is not renewed or is withdrawn ⁴, the person concerned shall have the right to apply to the courts of the Member State concerned. ⁵

¹ **D** reiterated its reservation on Article 9(1) as regards renewable permits and suggested adding to Article 21(3) "*or with permits of unlimited validity*".
Cion said that this provision did not preclude the issue of unlimited permits by the Member State concerned since it referred to residence permits to be issued to family members which were not linked to the grant of the status of long-term resident.
Pres considered that the period of validity of the residence permits referred to in this provision should be determined by Member States' legislation.

² **EL and P** entered reservations on the possibility of issuing a permit free of charge.

³ **D** wondered how the decision referred to in this paragraph was to be notified to the person concerned if he was no longer in the Member State's territory.

⁴ **D and A** entered linguistic reservations.

⁵ **A** indicated that in Austria the Administrative Court ("Verwaltungsgericht") was the only court with jurisdiction in such questions. It had the power only to assess the facts and check whether administrative decisions complied with all the procedural requirements; it was not empowered to rule on the substance of such decisions. It wondered if that Court's powers would be compatible with this provision.

Article 23

Maintenance of status in the first Member State

1. Long-term residents exercising their right of residence in a second Member State shall retain their long-term resident status in the first Member State for as long as they do not acquire that status in the second Member State.^{1 2 3}

¹ **D** wanted a time limit introduced into this provision after which the person concerned would lose the status of long-term resident he had acquired in the first Member State. Stressing the need to avoid too long a transitional period during which the person concerned would hold two residence permits, which could result in abuse, it suggested adopting a maximum limit of five years. It also thought that, if no limit were adopted, the person concerned might prefer to keep his status of long-stay resident in the first Member State rather than obtaining it in the second since he was also given no encouragement to submit an application for naturalisation in the latter Member State.

EL and A, supporting **D**, stressed the need to oblige the person concerned to decide after a specific period whether he wanted to stay permanently in the second Member State or return to the first. **F and L** underlined the fact that the aim of the Directive was to promote and facilitate the free movement of third-country nationals on Union territory and expressed misgivings regarding the advisability of laying down an obligation of this nature whereby the person concerned could be forced to abandon his residence permit in the first Member State even although he expected to return there. In this context, **A** also thought that a person who had left the territory of a first Member State to take up residence for a relatively long period in the territory of a second Member State, but with the intention of returning to the first, should maintain regular contact with the administrative authorities in the first Member State. In response to this comment, **B** made the point that, under Article 9, the person concerned needed in any event to contact the administration in the Member State concerned when renewing his residence permit. **B**'s comment prompted **D** to remind the meeting of the reservations expressed with reference to Article 9 where renewable permits were concerned.

Pres thought that the question of including a time limit in this provision required further study.

Cion pointed out that the purpose of maintaining the status in the first Member State was, *inter alia*, to ensure that the third-country national concerned would still have a residence permit if he was not issued one in the second Member State, and said that further thought would have to be given to this matter. Emphasising that the approach adopted in this provision had seemed the simplest, it was prepared to examine the suggestion put forward by **D** in particular.

² **D** wanted it specified that the Member State concerned could issue the person in question immediately with a residence permit of unlimited duration.

Cion noted that the Member States could issue residence permits of unlimited duration immediately but indicated that the permit in question would not in any event be the one granted under this Directive to persons who had obtained Community status and would therefore remain subject to the rules of national legislation.

³ **A** said that, when exercising his right of residence in the second Member State, the person concerned could not retain some of the rights which attached to the status of long-term resident, such as the right to accommodation, which in its view was not a social right. It thought that if the third-country nationals concerned were to be granted all these rights, third-country nationals who were long-term residents could receive more favourable treatment than that given to nationals and citizens of the Union.

Cion drew attention to the principle of equal treatment with nationals referred to in Article 12 and noted that if a Member State guaranteed that its nationals retained certain rights while residing abroad, it would be obliged to grant the same treatment to third-country nationals who were long-term residents.

2. Members of the family of a long-term resident exercising his right of residence who are not themselves long-term residents shall retain the residence permits issued in the first Member State until they expire ¹.
3. If the family members have not yet acquired an autonomous residence permit as provided for by Article 13 of Directive .../.../EC [on the right to family reunification], their period of legal residence in the second Member State shall be taken into account in the first Member State for the purposes of acquiring the autonomous residence permit.

¹ **D**, which wanted a maximum limit laid down, entered a reservation on paragraph 2. In support of **D/A** entered a reservation and **EL** a scrutiny reservation. **A** also wondered how such an Article was to be implemented, in particular the arrangements for transferring the right of residence from one Member State to the other, where the person concerned no longer had a lawful right of residence in the territory of the first Member State.

Article 24

Rights in the second Member State ¹

1. As soon as they have received the residence permit provided for by Article 21 in the second Member State, long-term residents shall in that Member State enjoy the rights enumerated in Article 12, with the exception of social assistance and study grants ².

¹ **D/EL** and **A** entered reservations and **FIN** and **NL** entered scrutiny reservations on this Article.

² **D** pointed out that this provision was linked to Article 12, which stipulated equal treatment for third-country nationals who were long-term residents; **D** wondered whether, given that social assistance and study grants were specifically mentioned in that Article, they were in effect excluded from the rights attaching to Community status which the person concerned could receive in the second Member State. The current wording was not clear enough as to whether these were genuine exceptions; problems of interpretation also arose from the text of the explanatory memorandum on the Article. **S** supported **D**'s request for the text of the provision to be clarified. In this connection **Pres** stated that a distinction should be drawn between the two provisions, since Article 24 did not refer to the study grants mentioned in Article 12(1)(b), only to maintenance grants.

D was also against the right to social assistance being "exported" from the first to the second Member State by means of this Article.

S, on the other hand, wondered whether Article 24 was a binding provision that would prevent Member States from giving the person concerned social assistance or study grants even if they so wished.

L thought this provision was indeed binding in nature, in that it provided that the person concerned should remain the responsibility of the social services of the first Member State. It also drew attention to the potential consequences of this provision, as an unemployed person resident in the second Member State could be eligible for social assistance from the first Member State for an unlimited period, even though he was not in the territory of that State.

Cion stated that social assistance and maintenance grants were indeed an exception to the principle of equal treatment in the second Member State; these restrictions reflected the current arrangements, which were the result of the legislation and jurisprudence on the subject, with which Article 24 was in compliance. In this connection, however, the question of maintenance grants for the children of third-country national workers who moved with their parents and were themselves long-term residents would have to be reviewed.

It pointed out that the duty to provide social assistance was incumbent solely on the first Member State. However, referring to **S**'s question, this did not prevent Member States from giving social assistance or maintenance grants to the persons concerned if they were entitled to receive them under the legislation of the Member State in question.

Lastly, referring to the situation raised by **L**, it noted that since the person concerned did not comply with one of the conditions laid down by the Directive, notably the exercise of an economic activity, he could be returned to the first Member State pursuant to Article 25, in order to be able to receive social assistance there.

2. As soon as they have received the residence permit provided for by Article 21 in the second Member State, members of the family of the long-term resident shall in that Member State enjoy the rights listed in Article 12(1) and (2) of Directive .../.../EC [on the right to family reunification] ¹.

Article 25

withdrawal of residence permit ²

1. During a five-year transitional period ³, the second Member State may take a decision to expel a long-term resident and/or family members ^{4 5}:
- (a) on grounds of public policy or domestic security as defined in Article 19 ⁶;
- (b) where the conditions provided for by Articles 16 and 18 ⁷ are no longer met.¹

¹ OJ L

² NL entered a scrutiny reservation on Article 25.

Pres stated that there should be consistency between the title of the Article, which referred to withdrawal of the residence permit, and the wording of the Article, which referred to the adoption of decisions on expulsion.

S supported the Pres comment.

³ A thought the five-year period too short.

B thought it was perhaps inappropriate to provide for a transitional period of five years, and suggested that the current wording be replaced by something along the lines of "*until the third-country national has obtained long-term resident status*".

Cion noted that the transitional period and the five-year deadline should be considered in conjunction with the period within which the person concerned could apply for long-term resident status in the second Member State.

⁴ In reply to a comment by D, which suggested that the provision might set several deadlines, particularly in order to cater for specific situations, such as when a person changed his status, Cion stated that change of status did not come under the rules of the Directive.

⁵ Noting that points (a) and (b) referred to completely different situations, F thought it might perhaps be better for them to be covered by two separate Articles.

Cion stated that F's suggestion should be given further consideration.

⁶ S entered a reservation on (a).

⁷ A wondered why Article 17 was not among the provisions referred to in (b).

Cion observed that for the purposes of legislative drafting, it had not been thought appropriate to refer to Article 17, which covered checks on conditions for the exercise of the right of residence, as the conditions in question were defined and set out in Article 16 for long-term residents and in Article 18 for members of their families.

2. Expulsion decisions may not be accompanied by a permanent ban on residence ².

¹ **F** entered a reservation on (b), linked with its reservations on Article 16 and 17.

P took the view that anyone who did not comply with the conditions referred to in Articles 16 and 18 should be subject to an expulsion decision.

² **A** took the view that Member States should be able to adopt different measures depending on the seriousness of the offence and that it should also be possible for an expulsion decision to be accompanied by a permanent residence ban.

Cion stated that there was nothing in the provision to prevent Member States from varying the measures they adopted to suit the case; however, a permanent ban on residence would still remain out of the question.

Article 26
Obligation to readmit ¹

1. If the residence permit is withdrawn by the second Member State, the first Member State shall immediately ² readmit the long-term resident and his family members ³.

¹ **EL** entered a reservation on Article 26 and wanted the addition of a reference to the provisions of the Directive on the mutual recognition of decisions on expulsion. **F** and **Cion** pointed out that the Article was in a quite different context from the Directive. Under Article 26, the person concerned would be readmitted to the first Member State, whilst under the Directive, a Member State could expel a third-country national to his country of origin by way of recognition and enforcement of an expulsion decision taken by another Member State.

² **D** thought that Article 26 should have included a reference to Article 25.

³ **A**, which asked for clarification of what was meant by "immediately readmit", took the view that the provision should have laid down the formal procedure to be followed for readmission.

D did not think there should be an unlimited duty on the first Member State to readmit the person and suggested that a time limit should be set by this provision.

Emphasising the need for the authorities of the first and second Member States to cooperate, it also observed that it would be useful to provide for the residence permit issued by the first Member State to be withdrawn once the person concerned had obtained a residence permit in the second Member State.

2. The obligation to readmit referred to in paragraph 1 shall apply even if ¹:

(a) the long-term resident's EC residence permit has expired;

(b) the family members' residence permit has expired.

¹ S endorsed the principle that the first Member State should readmit the person concerned if his residence permit was withdrawn by the second Member State, but thought the provision should also provide for the option of expulsion to the country of origin. In this context, it thought a distinction should be drawn between points (a) and (b) of paragraph 2. Unlike the persons referred to in (a), the links of the family members referred to in (b), who might not have obtained long-term residence permits, appeared more tenuous.

Referring to S's comment, **Pres** thought there should be a reference to the possibility of expulsion to the country of origin where persons had committed serious offences constituting a threat to public policy. **F** and **EL** supported the **Pres** remark.

Pres also stressed the need to avoid the proliferation of procedures and appeals which might ensue if the person concerned were readmitted to the first Member State and then expelled to his country of origin.

Cion stated that the Directive provided for the person concerned to be readmitted to the first Member State in the cases referred to in Article 26 because he would enjoy greater protection there. It was for the first Member State to judge whether the acts committed by the person concerned were serious enough to warrant expulsion to the country of origin. The second Member State was merely required to return the person concerned to the first Member State on the basis of a succinct analysis of the facts. Nevertheless, it was worth examining the possibility of direct expulsion from the second Member State to the country of origin in some cases, in order to avoid the risk, highlighted by **Pres**, that the person concerned might lodge umpteen appeals against the measures taken against him by the second and by the first Member States, thus considerably prolonging the procedure for enforcing the measures in question. In reply to **B**, which asked whether a family member who had gone directly to the second Member State to join the long-term resident, without going through the first Member State – which could happen under the provisions of Article 18 – could be expelled to his country of origin if he were responsible for serious acts constituting a threat to public policy, **Cion** said that the possibility of direct expulsion should be considered in such cases.

Article 27

Acquisition of long-term resident status in the second Member State

1. After five years' legal residence in its territory ¹, long-term residents who have exercised the right of residence in the territory of the second Member State may apply to that Member States' competent authorities for long-term resident status ².
2. The second Member State shall grant long-term residents the status provided for by Article 8 , subject to the provisions of Articles 6 and 7 ³. The second Member State shall notify its decision to the first Member State, which shall withdraw the status from the person concerned. ⁴

¹ **EL** felt it should be specified that the person concerned had to have a residence permit during the five-year period referred to in the provision.

² **F** regretted that the person concerned was obliged to re-apply in order to obtain long-term residence status in the second Member State; it wanted the procedures adopted to be less cumbersome.

EL felt that the provision should place a duty on the person concerned to transfer his long-term residence status from the first to the second Member State.

D had difficulties not with the acquisition of long-term resident status in the second Member State, but with right of residence in the first; it felt that if the person concerned interrupted his stay in the first Member State in order to go and live in the second, the permit issued by the first Member State should be withdrawn.

Cion stated that further consideration should be given to whether it should be made compulsory to re-apply for long-term resident status in the second Member State.

³ **D** requested clarification of the link between this Article and Article 6(2)(b), which provided that third-country nationals born in the territory of a Member State should receive preferential treatment (they had to prove that they had been legally resident for five years but were not subject to the conditions of having adequate resources and health insurance); **Cion** stated that persons born outside the Union would have to meet all the conditions laid down in the Directive.

In reply to another question from **D**, it stated that it ought to be possible to grant children long-term resident status if their parents met the conditions laid down by the Directive.

⁴ **A** was against the procedures referred to in paragraph 2 and entered a reservation on the provision.

3. The procedure laid down in Article 8 shall apply to the presentation and examination of applications for long-term resident status in the second Member State. Article 9 shall apply for the issue of the residence permit. Where the application is rejected, the procedural guarantees provided for by Article 11 shall apply ¹.

¹ **D** entered a reservation on paragraph 3.

Chapter IV

Final provisions

Article 28

Penalties ¹

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by the date specified in Article 30 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 29

Report

By 31 December 2005 at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may be necessary.

¹ **D** was inclined to doubt whether a provision of this type was appropriate; it felt it should contain details of the penalties referred to and the cases in which they would be applied. While pointing out that Article 28 was a standard provision appearing in a number of Community instruments, **Cion** stated that it was willing to provide details at a subsequent meeting, when it had been able to consider the question in more detail. In reply to a question from **EL**, it also explained that the consequences of failure to comply with the deadlines set by the Directive would not come under this provision, as the relevant rules of Member States' national law would apply in these cases.

Article 30

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2003 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 31

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 32

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President
