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To:	Delegations
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Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL extending Directive [XXXX] to third country nationals legally residing in a Member State - Letter to the Chair of the European Parliament Committee on Employment and Social Affairs (EMPL) and the Chair of the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE)

Following the Permanent Representatives Committee meeting of 15 March 2024 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annex, to the Chair of the European Parliament Committee on Employment and Social Affairs (EMPL) and the Chair of the European Parliament Committee on Civil Liberties, Justice and Home Affairs (LIBE).

Council of the European Union

SGS 24 / 001488

Brussels, 15/03/2024

Mr. Juan Fernando LÓPEZ AGUILAR
Chair, European Parliament Committee on on Civil Liberties, Justice and Home Affairs
Mr Dragoş PÎSLARU
Chair, European Parliament Committee on Employment and Social Affairs
European Parliament
Rue Wiertz 60
B-1047 BRUSSELS

Subject: Proposal for a Directive of the European Parliament and of the Council extending Directive [XXXX] to third-country nationals legally residing in a Member State

Dear Mr LÓPEZ AGUILAR, dear Mr PÎSLARU,

Following the informal negotiations on this proposal between the representatives of the three institutions, today the Permanent Representatives Committee agreed with the final compromise text.

I am therefore now in a position to inform you that, should the European Parliament adopt its position at first reading, in accordance with Article 294(3) TFEU, in the exact form of the text set out in the Annex to this letter (subject to revision by the lawyer-linguists of the two institutions), the Council, in accordance with Article 294(4) TFEU, will approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the position of the European Parliament.

On behalf of the Council, I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely

Pierre CARTUYVELS
Chair of the
Permanent Representatives Committee (Part 1)

Copy:
- Ms Helena DALLI, Commissioner
- Ms Alice KUHNKE, European Parliament rapporteur, LIBE Committee
- Mr Antonius MANDERS, European Parliament rapporteur, EMPL Committee

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ANNEX

2023/0393 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

extending Directive [XXXX] to third country nationals legally residing in a Member State ▌

▌

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 79(2), point b thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Deletion

Deletion

Acting in accordance with the ordinary legislative procedure,

Whereas:

1

(1) In order to ***strengthen*** the exercise of ***the free movement*** rights ***of persons with disabilities and enhance the possibilities for*** persons with disabilities ***to travel*** to or ***visit*** another Member State for a short ***stay***, Directive ***(EU) […./…] of the European Parliament and of the Council1*** established the framework, rules and common conditions, including a common standardised ***and accessible format***, for a European Disability Card as proof of recognised disability status ***or entitlement to specific services based on a disability***, for accessing, ***on equal terms and conditions, any*** special conditions or preferential treatment offered by private operators or public authorities in a wide variety of services, activities and facilities, including when not provided for remuneration, and for a European Parking Card for persons with disabilities, as proof of their recognised right to ***any*** parking conditions and facilities reserved for persons with disabilities[2] ***in a Member State other than the Member State in which they reside***.

(1a) ***Article 79 TFEU provides that the Union's action is to be aimed at ensuring, inter alia, the fair treatment of third-country nationals who reside legally in Member States. Therefore a set of rules should be laid down specifying the rights in respect of which equal treatment between the beneficiaries of Directive (EU) […./…] and such third-country nationals is provided for.***

(1b) ***In accordance with Article 67(2) of the Treaty of the Functioning of the European Union (TFEU), stateless persons should be treated as third-country nationals for the purpose of this Directive.***

2

(2) ***In order to strengthen the*** respect ***of equal treatment, inclusion and non-discrimination, including in relation to the relevant*** obligations ***under international law, with regards to*** persons with disabilities who are third-country nationals legally residing in ***the*** territory ***of a Member State and who are not beneficiaries of*** Directive ***(EU)*** […./…], and ***to*** guarantee the recognition of their disability status ***or entitlement to specific services based on a disability across the*** Union***, thus also*** ensuring ***effective and full*** participation and inclusion in society of ***such*** persons ▌ on an equal basis with Union citizens, it is necessary to ***apply*** the rules, rights and obligations laid down in Directive ***(EU) […./…]*** to persons with disabilities who are ***third-country*** nationals legally residing in the territory of a Member State ***and*** whose disability status ***or entitlement to specific services based on a disability*** has been recognised by that Member State, ***as well as, where applicable, to persons accompanying or assisting them, including their personal assistants, or assistance animals. For instance, third-country nationals*** who are ***beneficiaries of temporary protection under Directive 2001/55 or beneficiaries of international protection under Directive 2011/95EC should be covered by this Directive, as they are legally residing in the territory of a Member State, provided that their disability status or entitlement to specific service based on a disability has been recognised by that Member State***.

(2a) ***All the provisions in Directive (EU) […./…] should, by virtue of this Directive, be applicable to third-country nationals under the scope of this Directive.***

2b ***In particular, while this Directive should not affect the applicable Union rules governing mobility across the Union of third country nationals legally residing in a Member State, by providing mutual recognition of their disability status across Member States, […] this Directive could facilitate the exercise of the right of those persons to move or travel across the Union […] provided that they already have such a right to mobility. Thus, when such third-country nationals holding a European Disability Card and a European Parking Card for persons with disabilities move or travel legally across the Union, they will benefit from the mutual recognition rights under this Directive.***

(3) Therefore, Member States ***should take all*** the necessary measures to ensure that the rules ***set out in Directive (EU) [..../...] governing*** the European Disability Card and the European Parking Card for persons with disabilities as proof respectively of a disability status or ***entitlement to specific services based on a disability, or*** of a right to parking conditions and facilities reserved for persons with disabilities, ***providing*** access, on equal terms and conditions, to any special conditions or preferential treatment with respect to services, activities or facilities, including when provided not for remuneration, ***and to*** parking conditions and facilities offered to or reserved for persons with disabilities, ***as well as, where applicable, to persons*** accompanying or assisting them, including their personal ***assistants regardless of their nationality, or assistance animals***, equally apply to ***third-country*** nationals legally residing in the Union. ***Granting rights to such third-country nationals to access special conditions or preferential treatment, and/or parking conditions and facilities reserved for persons with disabilities in the same way as those provided for the beneficiaries of Directive [..../...] does not affect rules on the admission of third country nationals to the territory of Member States***.

(3a) Member States are encouraged to provide information in accordance with article [XX] of the main Directive to third-country nationals with disabilities in a language that they can understand or that they are reasonably expected to understand.

(3g) Third-country nationals with disabilities are at a heightened risk of being subject to multiple forms of discrimination. The UNCRPD states that women and girls with disabilities are subject to multiple forms of discrimination, and provides for States Parties to take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. It also recognises the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.

3j ***The obligations of the Commission pursuant to Article [16] of the main directive should cover third-country nationals under the scope of this directive. In that context, the Commission report should include an analysis of specific situations of disadvantage resulting from intersectional discrimination, which is understood as discrimination based on a combination of disability and any other grounds protected under Directives 79/7/EEC, 2000/43/EC, 2000/78/EC or 2004/113/EC, with a particular focus on women and girls with disabilities.***

▌ ***Deletion***

(5) ***Moved up.***

(6) In accordance with Articles 1 and 2 ▌ of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union (TEU) and to the Treaty on Functioning of the European Union (TFEU), and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

Deletion

Deletion

(7) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(8) Since the objective of this Directive, namely to ***extend the rules, rights and obligations of the main directive to*** persons with disabilities ▌ who are third-country nationals legally residing in the territory of a Member State and who are ***not beneficiaries of Directive […/…] as well as for persons accompanying or assisting them, including their personal assistants or assistance animals, thus also facilitating their possibilities*** to move, or travel to other Member States ▌ , cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the action establishing a framework ***of*** rules and common conditions, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The rules, rights and obligations laid down in ▌ Directive (EU) ***[…./…]*** ***shall*** apply to ***third-country*** nationals ***legally residing in the territory of a Member State who are not beneficiaries*** of that Directive ***and*** whose disability status ***or entitlement to specific services based on a disability,*** and/or rights to parking conditions and facilities reserved for persons with disabilities, have been recognised by the Member State of their residence, as well as to persons accompanying or assisting them, including personal ***assistants, or assistance animals,*** within the meaning ***of*** Article 3 ▌ of that Directive.

Article 2

This Directive shall not affect ▌ applicable ▌ rules governing mobility across the Union ***of third-country*** nationals legally residing in the territory of a Member State.

Article 3

For the purposes of this Directive "***third-country*** national" means any person who is ***not*** a Union citizen within the meaning of Article 20(1) TFEU ▌ .

Article 3a

Member States may take measures to accommodate specific language needs of third country nationals, including through language facilitation as appropriate.

Third country nationals under the scope of this Directive shall be covered by Article [16] of [Directive XXXX].

7

Article 4

1. ***By*** *…* ***[30 months from*** the date of ***entry into force of this*** Directive***], Member States shall adopt and publish*** the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those ***measures.***

They shall apply those ***measures from*** *…* ***[42 months from*** the date of ***entry into force of this*** Directive ▌].

When Member States adopt those ***measures***, they shall contain a reference to this Directive or ***shall*** be accompanied by such a reference on the occasion of their official publication. ***The methods of making*** such reference ***shall be laid down by Member States***.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the ***matters*** covered by this Directive.

Article 5

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

8

Article 6

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*