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**NOTE**

From:	Presidency
To:	Working Party on Integration, Migration and Expulsion (Admission)
Subject:	Proposal for a Directive of the European Parliament and of the Council concerning the status of third-country nationals who are long-term residents (recast) – Written replies by the Commission services on Articles 15-33

Delegations will find attached the written replies by the Commission services to Member States' questions on Articles 15-33 of the above-mentioned proposal

- Art. 15:
  - It remains unclear whether this covers only children born on the territory of the MS after the sponsor acquired long-term residence or before acquiring long-term residence? This should be further clarified.

**ANSWER: Article 15(1) concerns children born or adopted in the territory of the Member State that granted the parent(s) the EU long-term resident status regardless of whether they were born or adopted before or after the parent was granted the status. As explained in the Explanatory Memorandum, the rationale of this provision is to ensure and protect family life of EU long-term residents as the protection of family life is an essential element of the integration of EU long-term residents.**

- We ask the Commission to please explain whether and how it could be ruled out the abuse of adoptions for the sole purpose of acquiring long-term resident status if the proposed provision is adopted.

**ANSWER: As regards the risk of potential abuses in the context of adoption, the Commission would like to recall that such procedures pertain to national law. Member States are thus expected to ensure that the adoption follows the stringent procedures laid down by national law to prevent the risk of abuses. Therefore, the recast of the Long-Term Directive is not the appropriate forum to tackle these potential abuses.**

- We ask the Commission for clarification that Article 15 (1) does not place children of third-country nationals in a more favourable position than children of persons holding the right of freedom of movement

**ANSWER: As explained in the Explanatory Memorandum, the objective pursued by this new provision is to protect and ensure family life by granting automatically the status of EU long-term residents to children of EU long-term residents born or adopted in the territory of the Member States that granted the status to the parent(s). Children of EU citizens are normally EU citizens themselves. The innovations proposed in the recast proposal do not provide more favourable treatment than those warranted to EU mobile citizens, and safeguards have been put in place to this end in Article 26.**

- The reference to the territory of the Member State that issued the long-term resident the EU long-term residence permit seems very unusual. Why was this condition chosen?

**ANSWER: This facilitated acquisition of the status, whose purpose is protecting family life, is granted only in specific situations and aims at providing for a key integration element as well as making the status more attractive.**

- It should also be clarified in the context of the child's coming of age whether the reference point is the date on which the application to become a resident was lodged or whether this is irrelevant and children of residents can also apply for a permit once they have come of age. In order to lift doubts, either a reference to Directive 2003/86/EC or alternatively a definition of a child should be included.

**ANSWER: This Article refers to children born in the territory of the Member State regardless of when the LTR status was granted to the parent. No time limit is foreseen in the recast Directive.**

- What happens if the parents LTR status is withdrawn – shall the child still keep his/her LTR status?

**ANSWER: The child's permit grants him/her an autonomous status and is not connected to the one of the parent(s). The status can be withdrawn when the conditions laid down in Article 9 are met.**

- Is this provision at all necessary? Directive 2003/86/EC would be applicable anyway which would make it possible for the child to be granted a residence permit. The long-term resident would also be able to use the mobility rights in the LTR Directive by bringing his/her family to the second MS as family members, without granting a child in this specific situation an LTR status.

**ANSWER: Directive 2003/86/EC regulates the conditions of entry and stay of family members of third-country nationals that join the sponsor from outside the EU. Article 15(1) of the recast Directive has another scope: it regulates the status of children of LTR permit holders born or adopted in the EU.**

- Art. 17(1): Does the possibility to lodge application while residing in the second MS mean that a person can submit application e.g. 6 – 12 months before? Without any time limits, residence permits could be acquired in advance without employment guarantees as the employers usually do not have the time to wait for a long period for a foreigner to arrive. This can lead to the misuse of the residence permit. In addition, if the residence permit is received long time before arrival, it causes additional administrative burden to the receiving MS, i.e. through the need to check whether a foreigner has an employer and sufficient resources for his/her upkeep.
- Art. 17(1) subparagraph 2: does this provision mean that second MS should ensure the possibility to apply for residence permit in the first MS?
  - **ANSWER: Article 17(1) paragraph 1 is not a novelty introduced by the recast proposal, and a similar provision is also enclosed in Article 21(3) of the revised Blue Card Directive. Article 17(1) paragraph 1 foresees that the third-country national should apply as soon as possible for a residence permit in order to regularise his/her status. He/she should do so at the latest three months after entering the territory of the second Member State. Paragraph 2 of Article 17(1) foresees that Member States shall allow this application to the authorities of the second Member States while the third country national is still residing in the first Member State. Member States can require that the conditions in Article 17(2) and 17(3) are fulfilled for the application to be successful. In any case, the application shall be accompanied by the documentary evidence listed in Article 17(4), including evidence about the exercise of an economic activity if relevant.**

- Art. 17(4):

- These provisions should be clarified as it is not clear whether reference is made to the professional qualifications acquired in the EU and EEA countries only or to the professional qualifications acquired in third countries as well. It should be clarified whether the application of Directive 2005/36/EC to long-term residents would be limited to the situations in which the professional qualifications acquired outside the EU and EEA countries have been already recognized in one Member State in which the professional has been working for 3 years before moving to another Member State.

**ANSWER: Article 17(4) establishes that EU long-term residents shall enjoy equal treatment with Union citizens as regards recognition of professional qualifications. It concerns not only those acquired in the EU and EEA countries, but also those obtained outside the EU, when applicable. To this extent, we refer to recital 20 for further clarifications. Equal treatment means that the qualifications obtained in or outside the EU by third-country nationals should be recognised the same way as for Union citizens, according to Directive 2005/36/EC and national law.**

- Request clarification on the suggested scope of analogous application of Directive 2005/36/EC, which is applicable to citizens of EU-member states only. This point remains unclear.

**ANSWER: See previous answer. Directive 2005/36/EC is applicable indeed to citizens of EU Member States. Article 17(4) specifies that the qualifications obtained in or outside the EU by third-country nationals should be recognised the same way as for Union citizens, according to Directive 2005/36/EC and national law.**

- Article 17 (4) refers to Directive 2005/36/EC, which stipulates that the procedure for examining an application for authorisation to practise a regulated profession must be completed within three months (or in certain cases four months) after submission of the application (Article 51). According to our understanding, the 30-day period after the submission of the application for commencing work laid down in Article 17 (5) would not apply in these cases, as the provisions of Directive 2005/35/EU or national legislation prevail. Does the Commission share this view? Unlike the Blue Card Directive, the proposal lacks a comparable clarification on the relationship between commencing work and practising a regulated profession (see recital 48 of the Blue Card Directive: “This Directive should be without prejudice to the conditions set out under national law for the exercise of regulated professions”).

**ANSWER: Article 17(5) should be read jointly with recitals 35 and 36. This provision does not constitute a derogation to Directive 2005/36/EU. Pursuant to the Commission's proposal the EU long-term resident shall be granted access to employment after 30 days from the submission of a complete application. In such cases, as per Article 17(4)(a)(ii), the required documentation for the exercise of the regulated profession would have to be submitted in order for the application to be complete.**

- In addition, request for clarification if a third country national who has a long-term residence in another Member State and moves to the Republic of Croatia, when recognizing regulated professions, has to be issued with a document confirming the fulfilment of the conditions for performing a regulated profession. The above is particularly important in the context of paragraph 5, in order to assess whether the request is complete.

**ANSWER: Article 17(4) last paragraph is solely an equal treatment provision. For practical concerns relating to the recognition procedures, Member States shall refer to Directive 2005/36/EC and to their applicable national law.**

- Art. 17(5): In practice, it is very difficult to calculate and select different groups of foreigners who would be allowed to start employment while their application of the residence permit is still being processed. For example, how to consider that the application is complete (sometimes information is needed for additional checks even though during the initial submission of application a person may seem to meet all the necessary conditions)? Or how to inform employers and the applicant that he/she may work, who and when is allowed to work, etc? Subsequently, it would also create additional administrative burden for the MS competent authorities (e.g. issuing additional certificate to prove that the person may start to work after 30 days).

**ANSWER: Pursuant to Article 17(5), once the third-country national has submitted the required documents, he/she shall be granted access to studies or to the labour market within 30 days, even if the application is still being assessed.**

**The Directive sets an obligation of result. It is up to the Member States to design the required procedures, including on how to inform the employers.**

- For what specific reasons does the Commission consider it necessary to include the term “study” in Article 17 (5) here (see also Article 24, which refers only to access to the labour market)? Directive (EU) 2016/801 also exclusively addresses residence and does not refer specifically to the commencement of studies. We do not consider this necessary for the purpose of this proposal either.

**ANSWER: Directive (EU) 2016/801 lays down the conditions of entry and residence in the territory of the Member States of third-country nationals, and where applicable of their family members, for the purpose of research, studies, training or voluntary experience. Here it is another situation: a third-country national is mobile between two Member States.**

**As EU long-term resident may move from one Member State to another notably for continuing their studies, the recast proposal regulates also this matter.**

**Article 24(1) does not solely refer to access to the labour market as in its first paragraph it encloses a reference to Article 12, which, among others, stipulates equal treatment also with regard to education. Article 24(2) refers to something more specific: it provides that long-term residents and their family members shall have unrestricted access to the labour market (in the current text, the access is restricted). A similar provision with regard to access to studies is not needed.**

- We are also interested in whether the complete application (in para 5) also refers to the submission of evidence of a regulated profession?

**ANSWER: Yes, the complete application refers also to documentary evidence needed in case of exercise of an economic activity in regulated professions.**

- Art. 21(4): Isn't this provision more generous than what applies for family members of EU citizens? For family members to acquire the (independent) right of permanent residence according to directive 2004/38/EC the family members need to reside legally within MS2 for a period of five consecutive years with no possibility to cumulate periods. Also, there is no consistency in the proposal as to the time-periods compared to the sponsor with LTR-status. The proposal also raises questions regarding exchange of information. Furthermore, the placement of the provision seems off.

**ANSWER: Article 21(4) of the proposal maintains five years of residence, but third-country nationals can cumulate residence periods in different Member States. Third-country nationals who are family members of EU mobile citizens do not have less favourable conditions as they can cumulate both statuses, under Directive 2004/38/EC and under the EU Long-Term Residents Directive. This is reflected in recital 6 of the proposal. Article 21(4) is the same provision as in Article 17(7) of the recast Blue Card Directive.**

- Art. 24(1): In relation to family members, we ask for clarification of the scope of equal treatment, i.e. whether equal treatment applies in all areas as provided in Art 12 and does this entails that the scope of equal treatment is the same as for nationals.

**ANSWER: Yes, equal treatment shall apply in all areas referred to in Article 12.**

- Art 12 does not apply to family members in MS1. Wouldn't adding family members here make it more favourable to be a family member in MS2 compared to MS1? How is that justified?

**ANSWER: The spirit of the recast proposal shall be read in view of ensuring and protecting family life. In such context, equal treatment shall be considered applicable to family members of EU long-term resident both in the first Member State, in cases where EU long-term resident does not exercise intra-EU mobility, as well as in the second Member States, in cases where the family members follow a mobile EU long-term resident.**

- Art. 24(3): The provisions of Directive (2003/86/EC) should continue to apply. In addition, clarifications are required on the reasoning for this deletion.

**ANSWER: Article 24(3) has been deleted, as Article 24(1) now provides that family members benefit from equal treatment according to Article 12. The provisions of Directive 2003/86/EC continue to apply with the exception of the derogations to this Directive provided for in the proposed recast Directive on LTR.**

- Article 26, paragraphs 2 and 3:
  - These paragraphs would provide applicants with a LTR EU status in the first Member State with a more favourable position than EEA citizens (nevertheless, EC also seems aware of this when it comes to the more or less perplexing wording in para 3). How should the authorities be able to enforce this? In particular how should they know how long the holder of a long term resident status was actually resident and when his entitlement for social benefits becomes relevant in this case?

**ANSWER: The objective of Article 26(2) is to facilitate access to the long-term residence status to third country nationals having already resided in another Member State.**

**On the other hand, the objective of Article 26(3) is to make sure that more favourable conditions are not warranted to third-country nationals as compared to EU mobile citizens, in particular with regard to the granting of social assistance or maintenance aid for studies. Since Union citizens who are not workers nor self-employed (and their family members) do not have access to these benefits before the completion of 5 years of residence, Member States are not obliged to grant this access after only 3 years of residence to EU long-term residents. They can do it if**



**they apply the same treatment (after 3 years) to Union citizens who are not workers nor self-employed (and their family members). See explanatory memorandum on Article 26.**

**The safeguard also covers the ending of the legal stay of third-country nationals prior to the completion of the five years of residence (Article 26(4)).**

- Once these persons are granted the full status of long-term residence in the MS in accordance with this provision, (in that case they no longer have the right to that status in another Member State), after 3, and before they have completed 5 years, how can certain rights of equal treatment be limited, if the person is already in equal treatment (based on equal treatment as mobile Art 24 and Art 12) that includes some of these rights (especially in relation to, for example, student scholarships)?

**ANSWER: This provision is a derogation to the equal treatment principle provided for in Article 12 and Article 24(1). Member States may apply it in line with the conditions set in Article 26(3).**

- We found this provision to be very complicated, therefore we would like to enter scrutiny reservation and ask for further clarification. Neither the status nor the structure of these persons is clear and will create problems in implementation. It is not clear if this status could be granted without the need to fulfil conditions for acquiring EU long-term residence status from Art 5 (stable and regular resources, integration measures). We believe that general procedures and conditions still apply. Furthermore, it is not clear how to distinguish persons who acquired the status based on three years residence, from those who had that status based on a 5 years residence.

**ANSWER: For the purpose of acquiring the status in the second Member States the general conditions laid down in Article 5 (and in articles 3, 4 and 6) do apply (see reference in Article 26(1)).**

- In addition, considering that paragraph 2 refers to the mobility of long-term residence holders, we would like further clarification as to why family members are mentioned in paragraph 3. Are they included in the exclusion, and if so, according to which provision were they even included in Art 26.

**ANSWER: The same rules apply for family members, as it is the case for mobile EU citizens.**

- Art. 26 (4) :
  - In relation to Art 26, paragraph 4 are the conditions set cumulatively or alternatively? What are the consequences if para 4 is to be applied. How is decision on ending legal stay brought and what is the reference with general conditions on withdrawal or loss of status from Art. 9. Is long-term status also to be revoked?
- ANSWER: The conditions laid down in Article 26(4) are cumulative.
- If the conditions laid down in Article 26(4) are met, the long-term resident status would be withdrawn as per Article 9.
  - We ask the Commission to explain what happens after a legal stay is ended: is the person returned to the first Member State or to the country of origin? Please clarify.
- **ANSWER: In cases of withdrawal of the EU long-term resident status in the second Member State, the first Member State has no obligation to take back the person concerned in its territory.**
  - Is it enough that the condition in Art. 26(4) is fulfilled (not sufficient resources by way of derogation from Art. 13(2)), or shall the rest of the conditions in Art. 13 also be fulfilled to be able to end the legal stay?
- **ANSWER: The guarantees laid down in paragraph 3 have to be taken into consideration by the Member State to terminate the legal stay of the concerned third-country national.**

- Art. 27 : Paragraph 1 – main concerns relates to the use of the term “easily”. How to harmonize the term with the MS legislation? We consider it leaving too much space for interpretation and in effect, leaving the possibility to always claim that published information is not easily available
- **ANSWER: Article 27 is a new Article introduced in the recast proposal which aims to clarify in the text of the Directive an obligation upon Member States to provide relevant information to applicants for EU long-term residents. This provision represents an obligation of result upon the Member States. A similar provision is enclosed in Article 24 of the recast Blue Card Directive.**
  - Art. 28: It has to be noted that the term “impacts of the required residence period set out in Article 4(1) on the integration of third-country nationals, including the possible benefits of reducing this period, taking into account, inter alia, the different factors relevant for the integration of third-country nationals across Member States” needs further clarification and definition as it is not mentioned which – EU-wide and comparable – indicators should be used. The current phrase does not allow a concrete estimation of the resources needed for the intended reporting. Therefore clarification is highly encouraged also to ensure that standardised factors for comparable results are applied throughout the European Union.
- **ANSWER: This is a reporting obligation for the Commission. It is the Commission’s duty to ascertain that the impacts of the required period of residence on the integration of the concerned third-country nationals and the relevant factors are duly and carefully assessed.**