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**COVER NOTE**

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| From: | General Secretariat of the Council |
| To: | Delegations |
| No. prev. doc.: | CM 2806/23; 8550/23; 7517/23 |
| 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)<br>- compilation of replies by Member States |

Following the request for written contribution on the above-mentioned proposal (CM 2806/23), delegations will find in Annex a compilation of the replies as received by the General Secretariat.

**ANNEX**

# Written replies submitted by the Member States

## AUSTRIA

**Art. 12 para 2:**

Initially, Austria would like to suggest a minor adjustment in Art. 12 (2), where it says „*or that of family members from whom he/she claims benefits*". In our view, it should read as follows: *"... for whom he/she claims benefits*".

**Art. 16 para 3 and deletion of para 4:** Reservation (to the latter)

Austria welcomes the reinstatement of the possibility to manage the labour market situation by reinserting a wording alongside (Art. 14 (3) of) the current Directive 2003/109/EC and the deletion of the former recital 34. However, the deletion of Art. 16 (4) and the quota is seen very critically. Austria wants to retain quotas. After all, mobility could also take place for other purposes than gainful employment. Moreover, here the question arises whether the elimination of quotas would be expedient, since one of the main Commission's arguments – labour shortage and therefore facilitating mobility – does not apply to this group. Furthermore, a room for manoeuvre should be left to the Member States, also with a view to the future, so that Member States can react if the labour market situation changes.

**Art. 17 para 2 letter a (and Art. 18 para 4 letter c):** Reservation

Austria welcomes the deletion of *also made available by a third party* in principle. However, the fact that the consideration of income by third parties is not linked to any further requirements is seen critically. For Austria it is essential to provide that a mere promise by the third party to provide income is not sufficient. [in this sense also the remarks on Art. 5 (1) (a)].

**Art. 17 para 4 and recital 36:** Reservation

Austria refers to a necessary addition in relation to Art. 12 (3) (a) and recital 20: Recital 20 and Art. 12 (3) (a) do not apply directly to the conditions for residence in a second Member State. Chapter III provides separate provisions on this topic. However, these are not in line with recital 20 and Art. 12 (3) (a) (or are at least ambiguously worded). In this context, it is necessary to ensure consistency. The rights of a third country resident to access employment in a second Member State based on a long-term residence in one Member State cannot exceed those rights applicable to the profession in the Member State of his long-term residence. The last sentence of the new Recital 20 ("*This Directive should be without prejudice to the conditions set out under national law for the access to and the exercise of regulated professions.*") (expanded in the sense of Austria's written contribution following IMEX 28th March 2023) should also be expressly included in Recital 36. Additionally, the proposed Article 17 (4) should be supplemented by the sentence "*Article 12 (3) (a) applies*". Both recital 36 and Art. 17 (4) are insufficient in their current version because the reference to applicable Union and national law, at least according to the wording, only covers cases of recognition of professional qualifications in accordance with Directive 2005/36/EC, but not the access to and the conditions for the exercise of regulated professions.

Furthermore, Austria takes a critical view of the recognition of professional qualifications of third-country nationals identical to those of EU, EEA and Swiss citizens, as there can be major differences between EU and non-EU countries in the education system. Austria is in favor of facilitating the recognition process of qualifications of third country nationals to enable their fast admission to regulated professions; however, the conditions for such recognition should remain within the competence of the Member States.

**Art. 17 para 5 and recital 35:**

Austria welcomes the transition to a „*may-clause*" in Art. 17 (5) and the deletion of the last sentence in recital 35.

**Art. 21 para 1 and para 4:** Reservation

Austria does not yet have a conclusive position on time limits but is critical of the reduction to 90 days; the persons concerned already have a secure legal status in the first Member State, which means a reduction of the time limit for a faster clarification of the right of residence in the second Member State is not seen necessary; with regard to Art. 21 (4), the considerations of the Presidency in the discussion document are comprehensible;

**Art. 24 para 2:** Reservation

Art. 24 and 26 (discussion paper point 6. and 7.)

We support the suggestion of the Presidency to reintroduce paragraph 3 of Article 21 so that family members of EU long-term residents in the second Member State would receive the same (more limited) rights as in the first Member State listed in Article 14 of the Family Reunification Directive. There seem to be no objective reasons why family members shall have more rights in the second Member State than in the first Member State.

Austria supports the Presidency's approach to equal treatment of family members in the discussion paper and therefore the re-inclusion of Art. 21 (3) of the current Directive. There are no objective reasons seen, why family members should have more rights in the second Member State than in the first Member State.

The possibility to restrict access to employed activities for long-term residents and their family members during the first 12 months in the second Member state should be preserved by reinserting a wording allowing the Member States to apply their national instrument of labour market assessment, for example alongside the text of Art. 21 (2) subpara. 2 and (3) of the current Directive 2003/109/EC: *"Member States may provide that the long-term residents referred to in Article 16 (2) point (a) shall have restricted access to employed activities different than those for which they have been granted their residence permit under the conditions set by national legislation for a period not exceeding 12 months. As soon as they have received the residence permit provided for by Article 21 in the second Member State, members of the family of those long-term residents shall in that Member State enjoy the rights listed in Article 14 of Directive 2003/86/EC."*

Accordingly, the second subparagraph – *„Member States may provide that the EU long-term residents and their family members who exercise an economic activity in an employed or self-employed capacity communicate to the competent authorities any change of employer or economic activity. Such requirement shall not affect the right of the persons concerned to take up and carry out the new activity.“* – and the second phrase of recital 40 – (starting with *„The communication procedure*…“) – should be deleted.

Reasoning:

Since the LTR Directive, unlike the Blue Card Directive, applies to larger numbers of workers and also to less qualified workers and their family members, it is especially important for Member States to be able to apply the instrument of labour market assessment not only for entering the labour market, but also for cases of changing employer or employment during the first 12 months of their stay in order to keep possible negative impacts on the labour market manageable.

**Art. 25 para 1 letter c:** Reservation

AT asks for examples of why "where the third country national is not lawfully residing in a MS" was deleted from Art. 25 (Art. 25 para. 1 lit. c).

**Art. 26 para 2, 3 and 4:** Reservation

Austria is still without a conclusive position. In principle, Austria is critical to the reduction from five to three years. There are a number of open questions, such as which integration requirements could be demanded in the second Member State, e.g., whether language skills could be demanded as regarding the first-time acquisition of the LTR-status in the first Member State? Furthermore, Austria continues to see discrimination or preferential treatment compared to EU citizens. An EU citizen would also have to reside in the second Member State for five years, meaning in order to acquire the permanent right of residence according to Directive 2004/38/EC, the EU citizen has to fulfill the conditions set out in Art. 7 (1) of that Directive for five years (whether for a third country national three years would be sufficient according to the proposal). In this context Austria would like to ask again, what concrete measures would prevent this preferential treatment?

Furthermore, Austria supports the Presidency's suggested clarification in Art. 26 (3) that this provision is derogating Art. 24 (1).

Regarding Art. 26 (4), Austria wants to point out that the terminology is mixed up when terms from Directive 2004/38/EC are used ("*sufficient resources*" and a "*comprehensive sickness insurance cover*" which apply to EEA citizens and their family members, rather than "*stable and regular resources*" and "*sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned*" regarding the LTR).

**Art. 28:** Reservation

Austria welcomes the recasted version of the Report and rendez-vous clause in general. Nevertheless, it has to be noted that the term "*assess the impacts of the required residence period set out in Art. 4 (1) on the integration of third-country nationals, 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.

## BELGIUM

**Belgium has not yet established formal political positions on all aspects of the recast proposal.**

As a general remark, we thank the SE PRES for their most recent compromise proposal (ST 8549/23), as **the changes made in this text correspond almost entirely with the Belgian political positions, in particular by reinserting provisions that had been deleted in the COM recast proposal and by transforming mandatory into optional provisions**. Hereafter we comment only on the aspects of the text on which we do not yet have a position or disagree with the current text.



Article 17, para 4

Belgium still holds a study reservation regarding the equal treatment provision in the context of the exercise of an economic activity in a regulated profession. We are still examining what this provision means in practice.

Article 21, para 1

Belgium thanks the PRES for adding the reference to a complete application.

**Belgium rejects a total processing time of 90 days**, this is insufficient in the context of striving for realistic processing times. Belgium requests to provide a total processing period of at least 4 months without the possibility to extend this period, this would follow the same reasoning as in the single permit directive and is the best option in the context of administrative simplicity. Most LTR who come to Belgium via intra-EU mobility apply for residence based on an economic activity in an employed capacity. These applications are being dealt with following the same administrative procedures as the applications for a single permit. Since these persons currently do not have the right profiles to fill the shortages in our labor market, we think a more favorable treatment is not justified.

Article 24 para 1

Belgium still holds a study reservation regarding the equal treatment provisions applicable to family members of LTR, we are still examining which level of equal treatment is most appropriate. We can support the findings that legal inconsistency throughout the directive should be avoided and more coherence should be sought.

Article 24 para 2:

**Belgium requests the reinsertion of the text which was deleted in COM recast proposal, which gives the MS the possibility to restrict the access to employed activities of TCN for a period not exceeding 12 months**. This provision is common practice in our country, as it is considered to be a tool to control the access to the labor market of TCN.

Furthermore, this reinsertion would be only logical after the almost unanimous support of the MS at the May 3 IMEX Working Party for the reinsertion of article 16 para 3, which gives MS the possibility to examine the situation of their labor market whenever a LTR applies for a residence permit on the basis of exercising an economic activity. Not reinserting the possibility to restrict the access to employed activities of TCN during the first 12 months of their stay would render the labor market test pointless. After all, according to the current text we could end up in situations a second MS approves an application for a residence permit after conducting a labor market test and this person could change employer (and occupational sector) immediately after receiving right of residence.

Article 26 para 2:

**Belgium can accept the shortening of the period from 5 to 3 years**. In order to apply paragraphs 3 and 4 in practice, we propose to indicate on the residence document of an LTR whether the status was granted on the basis of article 4 or article 26 of the directive.

## CYPRUS

ST 7517/23 -Presidency Compromise Text/Discussion Paper

**Cyprus Written Contributions on Articles 16-33**

Article 16

**Scrutiny reservation.**

The current LTR Directive allows Member States to examine the situation on their labour market before an EU long-term resident is allowed to move there from another Member State for work or in a self-employed capacity. It also allows Member States to give preference to Union citizens and third-country nationals already residing in the Member State concerned. In its recast proposal, the Commission proposed a deletion of these possibilities.

**CY has serious concerns regarding the abolition of the paragraph which refers to a carry out check of the labor market situation when examining applications submitted by EU long-tern residents for the exercise of an economic activity in an employed or self-employed capacity**. It is considered as a national right to protect EU citizens from any sort of unfair competition practices in the labor market. Our objective should be to create a sustainable labor market for all EU residents.

Article 17-18

**CY expresses serious concerns regarding paragraph 2a of the article 17 which refers to the provision of any source of income by third parties.** Technical questions remain open regarding who are considered entitled providers of legal income. There is also a fundamental risk for any sort of **illegal behaviors.**

There is still **great reservation** regarding the amendment in **Art.18 5(c).**

This proposal is related to the amendment Art.17 2(a). We have similar concerns regarding the fundamental risk of illegal behavior by any sort of potential source/supplier of income.

Article 21

In Article 21 paragraph 1 of the Commission's recast proposal, the time to take a decision on an application has been reduced from four months to 90 days. At the same time, the possibility to extend this time period has been reduced from three months to 30 days. In its compromise proposal, the Presidency has clarified that the time allowed to take a decision start running from the submission of a *complete* application.

**Cyprus has no objection regarding the aforementioned whilst, it welcomes the Commission's intention to encourage exchange of information among the Member states as mentioned in article 21(4). However, Cyprus raises substantial reservation regarding the practical application of this amendment as well as the verification of information submitted by the applicant of LTR.**

Article 24

In Article 24 paragraph 2 of the Commission's recast proposal, the possibility to restrict access to employed activities during the first 12 months has been deleted. Instead, the Commission has proposed a possibility for Member States to provide that any change of employer or economic activity should be communicated to the competent authorities.

**There is scrutiny reservation concerning the access to the labor market for both the EU long term residents and their family members residing in a second Member state and scrutiny reservation to the deleted part of article 24(2). It should be noted that, in order to be able to have a stronger position regarding access to the labor market by Long Term Residents, we must deliberate with other competent authorities of the Republic of Cyprus.**

Article 26

According to Article 26 paragraph 2 of the Commission's recast proposal, an EU long-term resident can acquire LTR status in the second Member State after three years of legal and continuous residence in that Member State. This is a major change compared to the current Directive, where five years of legal and continuous residence is required. It could, as argued by the Commission, speed up integration and make LTR status more attractive. However, some Member States have argued that three years is too short a period to sufficiently put down roots in another Member State.

**Cyprus welcomes this amendment which encourages the speed up of the integration in the second Member State for persons who have already been integrated in another EU Member State. However, Cyprus raises substantial scrutiny reservation concerning the social benefits received by the LTR in case the second Member State decides to provide them, so as not to promote two-speed EU Long Term Residents. (Art. 26-3)**

**We strongly believe that the Member State that should provide any kind of social benefits, should be the member state which is considered as the country of residence of the holder of the LTR status.**

Article 27

**Cyprus welcomes this new Article which introduces an obligation for Member States to facilitate access to information for applicants concerning the acquisition of the EU long-term residence status and the rights attached to it, in line with the most recent legal migration Directives.**

We are pleased to report that Cyprus has already for a long time provided easy access to all kinds of information regarding the acquisition of long-term residence status in the EU.

## FINLAND

Finland retains its scrutiny reservation on the entire proposal and would like to provide the Presidency with the following comments:

**LABOUR MARKET TESTS AND QUOTAS (ART. 16)**

- Finland supports the reinsertion of paragraph 3 which allows Member States to examine the situation of their labour market.

**REQUIREMENTS FOR RESIDENCE IN A SECOND MEMBER STATE (ART. 17/18)**

- Finland can accept the Presidency's compromise proposals concerning sufficient resources and appropriate housing.

- We find the suggested wording ("complete") of Article 17(5) problematic as far as regulated professions are concerned. In the case of regulated professions, it should be taken into consideration that professional activity may be subject to compensatory measures and adequate language skills in order to safeguard customer and patient safety. This means that the recognition process will not be quick, in particular where it concerns professional qualifications/training acquired in a third country, and it may take a long time before the person has the final right to exercise his or her profession.

  Therefore, paragraph 5 should not refer to regulated professions, the pursuit of which may require compensatory measures (such as complementarity studies, training, examinations). Alternatively, paragraph 5 should be modified, in accordance with the explanation given by the Commission (8551/23), in order to clarify that the required documentation for the exercise of the regulated profession would have to be submitted in order for the application to be complete. In other words, in the case of a regulated profession, the person has to have the right to exercise a profession granted by the competent authority in order for the application to be complete.

- Furthermore, we suggest that reference to Articles 2(2) and 3(3) of the Directive 2005/36/EC would be added to Article 17(4). This would clarify the application as regards recognition of professional qualifications. Other option would be to make the relevant reference in Recitals 20 and 36.

**PROCESSING TIMES (ART. 21)**

- Finland can accept the Presidency's compromise proposals concerning paragraph 1.

**AUTONOMOUS PERMITS FOR FAMILY MEMBERS (ART. 21)**

- In principle, we can be flexible with regard to paragraph 4. Although the conditions for obtaining a permanent permit appear to differ, the provision proposed by the Commission does not affect EU citizens' right to family life or the right of citizens of the Union or their family members to move and reside freely within the territory of the Member States. After all, their right to reside in another Member State (and thus to enjoy family life) is determined on a different basis than that of third-country nationals. Paragraph 4, as proposed by the Commission would not, therefore, prevent or restrict the family life of EU citizens or their family members compared to the current legislation.

- This provision and its interpretation seem to be related to recital 6 of the proposal and thus to the relationship between provisions of the proposal in question and those of Directive 2004/38/EC. We hope the relationship between these two directives could be clarified.

**RIGHTS IN THE SECOND MEMBER STATE (ART. 24)**

- Finland can take a flexible approach to this Article. The right of family members to work is not, currently, restricted.

**LTR STATUS IN THE SECOND MEMBER STATE (ART. 26)**

- Finland can examine the Article flexibly. A shorter residence time of three years in the second Member State would be acceptable taking into account the objectives of the proposal (e.g. integration into Europe). In addition, the third-country national in question would have resided in the first Member State for several years already. Comparisons with EU citizens may not be meaningful. The proposal does not affect the status, rights or free movement of EU citizens.

# FRANCE



## Commentaire général

La France remercie la présidence pour le travail réalisé afin d'avancer sur la révision de la directive « résidents de longue durée - UE » (RLD-UE). Au-delà des réserves exprimées, la France souhaite assurer la présidence suédoise de son plein engagement dans la recherche de solutions de compromis sur cette directive en vue d'obtenir une révision à la fois ambitieuse et équilibrée du texte.

## Commentaires article par article (16-33)

### Article 17 :

Au point 5, la France n'est pas défavorable à cette nouvelle proposition de rédaction s'agissant d'une mesure optionnelle. La proposition initiale prévoyait qu'un résident de longue durée - UE devait pouvoir commencer son travail ou ses études trente jours après sa mobilité d'un État membre à un autre, la rédaction issue du compromis laisse l'État libre de déterminer cette durée qui peut être réduite à zéro jour. Pour autant, si cette disposition devient obligatoire, la France est opposée à cette absence de délai.

Par ailleurs, nous souhaitons souligner que le renvoi aux dispositions de l'article 5 concernant l'intégration devrait être dirigé vers l'alinéa 2 et non pas vers l'alinéa 3, ce dernier ayant été supprimé.

**Article 21 :**

Au point 1, la France est favorable à l'ajout de l'adjectif « *complete* » dans la mesure où un État membre ne peut pas prendre de décision s'il ne dispose pas de la totalité des documents adéquats et nécessaires à l'évaluation de la pertinence de la demande. Il nous parait normal de laisser la possibilité aux États membres de différer la date limite pour la prise de décision des autorités compétentes si celles-ci ne disposent pas d'un dossier complet. Ces précisions apportent ainsi des garanties aux demandeurs dans la mesure où l'État membre d'accueil a l'obligation de lui indiquer les documents manquants.

Au point 4, la France est favorable à la suppression de la disposition qui prévoyait la prise en compte, pour l'acquisition du droit de séjour autonome prévu par la directive relative au regroupement familial pour les membres de famille après 5 ans de séjour régulier, des périodes de séjour passées dans des États membres autres que celui d'accueil. D'une part, la rédaction de ce point 4 ne précisait pas que le séjour passé dans un autre État membre devait être légal. D'autre part, il n'est pas possible actuellement de vérifier la régularité du séjour dans un autre État membre tant que le dispositif *VIS Recast* n'est pas complètement mis en œuvre.

**Article 24 :**

La France est en accord avec les observations de l'Autriche faites en groupe IMEX le 3 mai 2023.

La France souhaite réinsérer les dispositions du point 3 de l'article 21 de la directive actuelle, qui permet d'imposer l'exigence d'une autorisation de travail (et donc d'opposer la situation de l'emploi, via un renvoi à la directive 2003/86/CE sur le regroupement familial) aux membres de famille rejoignant un membre au cours des douze premiers mois de son séjour dans un second État membre. Faute de cela, ces membres de famille seraient avantagés par rapport au détenteur du statut de résident de longue durée lui-même, qui peut être assujetti à une autorisation de travail lorsqu'il arrive dans le second État membre (selon la nouvelle version du texte de la présidence suédoise).

La France souhaite réinsérer les dispositions actuelles du deuxième paragraphe du point 2 de l'article 21 de la directive actuelle, qui permet d'éviter au cours de la première année de séjour du résident de longue durée dans un second État membre que ce dernier ne change d'activité professionnelle voire d'employeur immédiatement après avoir obtenu une autorisation de travail.

**Article 25 :**

Au point 1, la France souligne l'intérêt de reprendre le point c) de l'actuel article 22(2) permettant de refuser ou ne pas renouveler le titre de séjour des personnes ne séjournant pas légalement. La reprise de ce point c) permet de viser entre autres les personnes ayant présenté une demande de renouvellement de titre de séjour de façon trop tardive.

**Article 26 :**

La France souhaite s'opposer au passage de 5 ans (directive actuelle) à 3 ans pour la période de séjour régulier dans un second État membre après laquelle le ressortissant de pays tiers peut y demander l'obtention du statut de résident de longue durée - UE. En effet, cela reviendrait à avantager les ressortissants de pays tiers par rapport aux citoyens de l'Union européenne, dont l'accès au droit de séjour permanent est conditionné en principe à un séjour légal préalable de 5 ans.

Conformément aux remarques faites par la Roumanie en groupe IMEX le 3 mai 2023, la France est favorable à un octroi du titre de résident de longue durée qui ne soit pas de nature à entraîner un retrait automatique par l'autre État membre. À ce stade, l'octroi automatique de la carte de résident de longue durée dans le deuxième État membre entraine la suppression du même titre dans le premier État membre. Cette disposition semble de ce fait moins attractive pour le demandeur, qui doit pouvoir bénéficier d'un accès facilité.

**La France pose une réserve d'examen sur cet article** au regard des garanties d'aides sociales aux membres de la famille des demandeurs, ainsi que sur les critères d'obtention du titre de résident de longue durée pour les membres de la famille dans le second État membre. Des clarifications doivent pouvoir être apportés par la Commission afin d'harmoniser les conditions de délivrance du titre entre le demandeur et les membres de sa famille.

**Article 28 :**

En ce qui concerne la mention de facteurs d'intégration au sein de cet article, la France souhaiterait faire clarifier ces critères, ce champ ne relevant pas des compétences de l'Union européenne.

## GERMANY

**1. Article 17**

**Para. 3:** Prüfvorbehalt wegen Integration (s. auch unten).

**Para. 5:** Zu den Wörtern "or study" danken wir KOM für die Antworten auf unsere Fragen. Wir prüfen diese noch.

Nach den Antworten der KOM muss ein vollständiger Antrag auch die ggf. erforderlichen Erlaubnisse zur Ausübung eines reglementierten Berufs umfassen (Dok 8551/23, QA, Seiten 6 und 7). Nur Artikel 17(4)(a)(ii) geht auf die erforderlichen Erlaubnisse ein. Wir prüfen, ob es einer entsprechenden Klarstellung für Artikel 17(4)(a) insgesamt bedarf (vgl. Artikel 5(1)(c) der Blaue-Karte-Richtlinie: „im Falle reglementierter Berufe die Nachweise vorlegen, dass die […] Voraussetzungen für die Ausübung des reglementierten Berufs, der Gegenstand des Arbeitsvertrags oder des verbindlichen Arbeitsplatzangebots ist, erfüllt sind").

**2. Article 21**

**Para. 1:** Wichtig ist für DEU, dass die Fristen in der Praxis handhabbar sind. Eine Dreimonatsfrist entspricht zwar im Grundsatz der Vorgabe für eine Untätigkeitsklage im deutschen Recht, jedoch sind in den Fällen des Daueraufenthalts-EU auch die Beteiligungen von Behörden in anderen MS zu berücksichtigen. Eine Dreimonatsfrist ist nach den Erfahrungen aufgrund der teilweise 1 Jahr betragenden Antwortzeiten der EU-MS nicht in jedem Fall realistisch. Daher sollte im Ausnahmefall die Entscheidungsfrist verlängert werden können, sofern besondere Umstände vorliegen, auf die die zuständige Behörde keinen Einfluss hat. Alternativ wäre es denkbar, eine Frist für die Antwort des angefragten MS aufzunehmen.

DEU würde es zudem unterstützen, wenn für die Rückmeldung über die fehlenden Dokumente nach Satz 3 dieses Artikels eine Frist vorgesehen würde.

Aus DEU Sicht stellt sich zudem die Frage, ob die Übernahme einer speziellen Fristverlängerung für den Fall einer Anfrage des zweiten Mitgliedstaates beim ersten Mitgliedstaat wie in Art. 7 Abs. 2 auch im Fall des Art. 21 sinnvoll wäre. Bisher sind die Möglichkeiten zur Fristverlängerung in Art. 21 auf Fälle beschränkt, in denen der Antragsteller keine ausreichenden Angaben macht.

**Para. 4:** DEU hat Prüfvorbehalt bzgl. der Streichung erhoben; es soll jedoch hier nochmal hervorgehoben werden, dass in Bezug auf die Frage der Kumulierung von Voraufenthaltszeiten keine Bedenken gegen eine ausdrückliche Regelung bestünden.

**3. Article 24**

**Para. 1:** Mit Blick auf die Ausführungen der SWE Präsidentschaft hierzu im Discussion Paper: DEU-Sicht könnte die Formulierung von Art. 24 Abs. 1 unterstützen. Aus DEU-Sicht spricht viel dafür, im Interesse der rechtlichen Familieneinheit bei den Regelungen zur Gleichbehandlung jedenfalls bei dem Aufenthalt in einem Zweitstaat keinen Unterschied mehr zwischen einem langaufhältigen Drittstaatsangehörigen und seinen Familienangehörigen zu machen.

DEU hat bisher vorgetragen, dass es kein Problem in der Ungleichbehandlung von Familienangehörigen im ersten und zweiten MS sieht. Daran wird festgehalten. Die notwendigen Voraussetzungen werden durch den Drittstaatsangehörigen erfüllt und der Aufenthaltstitel (verbunden mit den entsprechenden Rechten und Ansprüchen im Rahmen der Gleichbehandlung) wird seinen Familienangehörigen quasi akzessorisch erteilt wird. Es erfolgt keine „ungerechtfertigte oder voraussetzungslose Besserstellung".

**Para. 2:** DEU hat ein Interesse daran, zu prüfen, dass die Arbeitsbedingungen nicht ungünstiger sind als von vergleichbaren Beschäftigten, um Lohndumping zu vermeiden. Deshalb halten wir die Mitteilung eines Arbeitgeberwechsels für sinnvoll. Wir gehen davon aus, dass diese Prüfung trotz sofortiger Arbeitsaufnahme (Article 24 paragraph 2 sentence 3) im Nachhinein erfolgen kann. Insoweit könnten entgegen der schriftlichen Stellungnahme zur Ratsarbeitsgruppe vom 30.11.2022 von der Prüfung und Einfügung einer Frist für den Beginn der Tätigkeit in Art. 24 para. 2 abgesehen werden.

**4. Article 26**

DEU ist einverstanden mit einer Herabsenkung von fünf auf drei Jahre. Wichtig ist jedoch, dass die in Art. 26 Abs. 3 vorgesehene Ausnahme bestehen bleibt, dass in Abweichung zu Art. 24 Abs. 1 Sozialhilfeleistungen anderen Personen als Arbeitnehmer etc. nicht vor dem Ablauf von 5 Jahren gewährt werden muss.

**5. Art. 28**

DEU hat Prüfvorbehalt und bittet erneut um Prüfung, ob mit Blick auf die Aussagen zur Integration in Satz 3 sowie an anderen Stellen im Kompromisstext, in denen nicht explizit auf die nationalen Integrationsregelungen verwiesen wird, eine Kompetenz der EU besteht.

Begründung: Die EU hat keine Kompetenzen für Regelungen im Bereich Integration. Eine berichtsmäßig festgelegte Bewertung (der KOM) hinsichtlich Auswirkungen der RL auf den Bereich Integration scheidet daher aus, insbesondere auch deswegen, weil sie im Zusammenhang mit Art. 30 Absatz 1 mit einer Umsetzungspflicht für innerstaatliche Rechtsvorschriften verbunden wird. Hier (und in den Art. 5 Abs. 2, Art. 9 Abs. 6, Art. 15 Abs. 2, Art. 17 Abs. 3) könnte ggf. für die EU/KOM eine unzulässige „Kompetenz-Kompetenz“ für Integrationsregelungen / -Maßnahmen (-Bewertungen) angelegt sein. Dies dürfte sich auch aus Erwägungsgrund 42 und im Zusammenhang mit dem Rechte einräumenden Art. 1 ergeben.

**6. Art. 30 para. 1 (siehe unter 5.)**

**1. Article 17**

**Para. 3:** Scrutiny reservation because of integration (see also below).

**Para. 5:** We thank the Commission for its responses to our questions about the words "or study". We are still examining these responses.

According to the Commission's responses, a complete application must include any permits required to pursue an economic activity in a regulated profession (Doc 8551/23, QA, pages 6 and 7). Only Article 17(4)(a)(ii) refers to the necessary permits. We are examining whether clarification to this effect is needed in Article 17(4)(a) as a whole (compare Article 5(1)(c) of the Blue Card Directive 2021/1883): "for regulated professions, present documents attesting to the fulfilment of the conditions set out under national law for the exercise by Union citizens of the regulated profession specified in the work contract or binding job offer, in accordance with national law").

**2. Article 21**

**Para. 1:** For Germany, it is important for the time limits to be workable in practice. A time limit of three months is in principle the requirement under German law for a complaint for failure to act; however, with regard to the EU long-term residence permit, it is necessary to consider the consultation of authorities in other Member States. A time limit of three months is not realistic in every case, based on the experience that it sometimes takes a year for EU Member States to respond. For this reason, it should be possible in exceptional cases to extend the time limit for decisions, when there are special circumstances which are beyond the control of the competent authority. Alternatively, a time limit for the response from the requested Member State could be added.

Germany would also support a time limit for the competent national authorities to notify the applicant of the additional documents or information that are required pursuant to sentence 3 of this Article.

Germany also asks whether it would make sense to include in Article 21 a special extension of the time limit if the second Member State requests information from the first Member State, as in Article 7(2). At present the possibilities in Article 21 for extending the time limit are limited to cases in which the applicant does not submit sufficient information.

**Para. 4:** Germany has entered a scrutiny reservation on the deletion; however, we would like to emphasise once again that we have no concerns regarding a provision explicitly addressing the cumulation of previous periods of residence.

**3. Article 24**

**Para. 1:** In view of the explanations of the Swedish Presidency in the Discussion Paper concerning this issue: Germany could support the wording of Article 24(1). In the interest of the legal family unit when it comes to the rules on equal treatment, at least with regard to stays in a second Member State, Germany sees many reasons for doing away with all distinctions between long-term residents and their family members.

Germany has already stated that it sees no problem with unequal treatment of family members in the first and second Member States. We stand by that position. The necessary conditions are fulfilled by the third-country national, and the residence permit (and the related rights and entitlements in the context of equal treatment) is issued to the family members of the third-country national as accessories, so to speak. This does not result in any unjustified or unconditional preferential treatment.

**Para. 2:** To avoid wage dumping, Germany has an interest in examining whether the conditions of employment are less favourable than those of comparable employees. That is why we believe it makes sense to communicate to the competent authorities any change of employer or economic activity. We assume that the long-term resident may take up the new activity immediately and that this examination can be conducted after that (Article 24(2) sentence 3). As a result, it would be possible to waive the examination and introduction of a waiting period before taking up an economic activity in Article 24(2), in contrast to the written comments for the Council Working Party of 30 November 2022.

**4. Article 26**

Germany has no objections to reducing the length of residence to three years, instead of five years. However, it is important to maintain the exception provided in Article 26(3): that, by way of derogation from Article 24(1), there will be no obligation to confer entitlement to social assistance to EU long-term residents other than workers, etc., prior to the completion of five years of legal and continuous residence.

**5. Art. 28**

Germany has a scrutiny reservation and asks once again whether the EU has competence, in view of the statements on integration in sentence 3 and elsewhere in the compromise text in which there is no explicit reference to the national integration regulations.

Reasoning: The EU has no competences for regulating in the area of integration. For this reason, there can be no assessment (by the Commission) set out in a report on the impacts of the Directive in the area of integration, in particular because, in conjunction with Article 30 (1), such an assessment is linked to an obligation to implement national legislation. This Article (and Article 5 (2), Article 9 (6), Article 15 (2), Article 17 (3)) could possibly provide an unacceptable competence for the Commission with regard to integration rules and measures (and assessments). Such competence could also arise from recital 42 and in conjunction with Article 1, which confers rights.

**6. Article 30 (1) (see 5.)**

## HUNGARY

recast Long-term residents directive - Articles 16- 33

8549/23, 8550/23

Hungary does not support the recast of the Directive in principle. In the area of legal migration, we oppose any kind of harmonization, as facilitating migration should be the sole decision of each Member State. We are particularly concerned that the proposal encourages mobility within the EU as it disproportionately affects the employers of the Member States that are the first to receive the workers.

However, we believe that the current text is the right direction for a proper compromise, which should be maintained in future negotiations.

**Art 17**

In Article 17 (2) (a) we support the deletion of the reference to third parties, in line with the discussion paper. We also support the compromise proposal as regards the reference amount, provided that it is only an option and not as an obligation.

In Article 17 (5) we support the proposal in its current form, respecting decisions that must be taken at national level.

**Art 28**

In the context of the Commission's report according to Article 28, we also propose that the Commission should set out its ideas detailed on possible "different factors relevant for integration" – which aspects it intends to examine, on the basis of what data and information.

## IRELAND

**General Comment**

Ireland is thankful to the Swedish Presidency for their work on the compromise text. Ireland maintains a scrutiny reservation on the entire text, while we continue consultation with our relevant Government Departments.

**Article 4.1 sub paragraph 3**

Ireland is flexible and can accept a three-year period of continuous residence for beneficiaries of international protection.

**Article 17.1**

Ireland is supportive of the may clause.

**Article 17.5**

Ireland is supportive of the may clause.

## LATVIA



Comments of Latvia on documents 8549/23 and 8550/23.

1) Latvia supports an approach of the Presidency regarding:

   - labour market tests and quotas (art. 16)
   - processing times (art. 21)
   - autonomous permits for family members (art. 21)

2) Regarding sufficient resources Latvia would prefer the initial wording included into the proposal of the Commission with a clear reference to a possibility for a third party to grant financial resources; however, Latvia will not object against the approach of the Presidency.

3) Regarding rights in the second Member State (art. 24) Latvia agrees that the set of rights of family members in the second Member State shall not be more favourable than in the first Member State.

   Regarding the access to labour market for EU long-term resident in the second Member State – Latvia would support the following approach:

   - for EU long-term residents who apply for an employment – upon first application - to apply an ordinary standard procedure applicable for any third-country citizen. After 12 months – free access to labour market;
   - for EU long-term residents who enter for other reason than employment – restrictions during first 12 months. If a person would like to start an employment or self-employed activities after, e.g., 3 months – standard procedure. After 12 months of a residence – free access to labour market.

   Regarding the status in the second Member State (art. 26) Latvia would prefer the existing provision – a long-term resident status after 5 years of residence in the second Member State since this provision would not create inequality between citizens of the Union and third countries, and would also be easier to administer.

# LITHUANIA

***LT comments on LTR recast doc. Nr. 8549//23***



**2. LABOUR MARKET TESTS AND QUOTAS (ART. 16)**

The amendments to Article 16 are acceptable. Lithuania does not currently apply a labour market test to TCNs with long-term resident status granted by another EU MS.

**3. REQUIREMENTS FOR RESIDENCE IN A SECOND MEMBER STATE (ART. 17/18)**

We are grateful to the Presidency for the amendment to Article 17(1), and the other amendments to Article 17 and 18 are also appropriate.

Herewith, we would like to ask for a clarification on Article. 17(4): should this provision, in the case of regulated professions, be interpreted in such a way that, in addition to the documents specified in subparagraphs (a) and (b), the Member State could/should have the right to request a document for the recognition of professional qualifications (if the profession chosen by EU long-term resident is regulated one), in order to complete the application indicated in Article 17(1), as it is foreseen in Article 17(5)?

**4. PROCESSING TIMES (ART. 21)**

We can support the proposal of 90 days from submitting full application, and amendments to Article 21(1) are acceptable.

**5. AUTONOMOUS PERMITS FOR FAMILY MEMBERS (ART. 21)**

Scrutiny reservation on deletion of Article 21(4). We would like to ask to provide some practical example of the implementation of this provision.

## 6. RIGHTS IN THE SECOND MEMBER STATE (ART. 24)

Considering that the *principle of equal treatment* (Article 12 of the Directive) does not apply to family members of EU long-term residents who do not use intra-EU mobility in the first Member State, we think that this principle neither should be applied to family members of EU long-term residents in the second Member State, because in this case the applicable law in the second Member State would be more favorable. We think that family members of EU long-term residents in the second Member State should enjoy the same rights as in the first Member State. In addition, the proposed legal regulation might be very complicated, because family members of EU long-term residents may have residence permits for reasons other than family reunification, so responsible institutions in the second Member State may not have information that TCNs are family members of EU long-term residents. Furthermore, if a family member of an EU long-term resident in a second Member State is entitled for equal treatment rights, such as social support, it might be difficult for responsible institutions to determine in each specific case whether a family member of an EU long-term resident lives in the first or in the second Member State.

It would be appropriate to re-insert the former Article 21(3), which was deleted in the recast of the COM's proposal:

"3. As soon as they have received the residence permit provided for by Article 19 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 14 of Directive 2003/86/EC."

In this case, family members of EU long-term residents in both the first and the second Member State would receive the rights listed in Article 14 of the Family Reunification Directive.

## 7. LTR STATUS IN THE SECOND MEMBER STATE (ART. 26)

We could support 3 years term in a second Member State, but we believe that EU long-term status holders should not have different rights, as this would create difficulties in the implementation. Member States should retain the possibility to apply integration requirements. In addition, these provisions need to be brought into the line with the provisions on loss of LTR status.

## THE NETHERLANDS

NL text proposal for article 17(2)(a) of the LTR directive:

Replace ‘also made available by a third party’ by ‘**not** made available by a third party, **with the exception** of family members of the applicant as defined in article 4 of Directive 2003/86/EC’.

# ROMANIA

**ST 8549/23, and 8550/23**



## I. Comments on the compromise proposal, including answers to questions from ST 8550/23

- **Art. 16 (3)-** we could support the compromise proposal of PRES SE in the sense of applying the national legal provisions regarding the employment of foreigners, including the contingent of foreign workers newly admitted to the labor market.

- **Art. 17 (1) paragraph 2** - we could agree to replace the imperative term "shall" with the permissive norm "may" when submitting an application by a third party beneficiary of long-term stay while still in the first SM. We specify that also in the directive in force the term is "may" (art. 15 (1) paragraph 2);

- **Art. 17 (2) a -** we agree with the deletion of the phrase "*also made available by a third party*" considering that stable and regular resources, especially proof of means of maintenance, cannot be made by a third party, other than the applicant's family member;

- **Art.17 (2) c -** we support the PRES SE proposal and we consider it necessary for the applicant and even the family members to prove that they have an accommodation considered suitable for a similar person/family from the MS (ex : rental agreement, loan agreement, sale purchase agreement, etc.). A similar provision is introduced as a condition for obtaining status in the first member state (art. 5 (2) of the proposal);

- **Art.17 (5) -** we may support the PRES SE proposal;

- **Art. 18 (4) c -** we agree with the deletion of the phrase "also made available by a third party" and we support the fact that stable and regular resources, especially proof of maintenance means cannot be made by a third party other than the applicant's family members. We can support the addition regarding the possibility of indicating a reference amount to prove stable resources, similar to the provision regarding the condition for obtaining the status in the first member state (art. 5 (1) a of the proposal ).

- **Art. 20 -** we accept the text, the reference to Regulation 399/2016 ensuring clarity and predictability of the rule.

- **Art. 21 (1) -** we could support the settlement term in no more than 90 days from the date that the complete application has been lodged, but we do not agree with the mention "reasonable deadline" in the situation of suspension of the settlement term due to incomplete documents. We consider that a 30 days deadline specified in the previous working documents is a reasonable deadline that we can accept. Thus, we understand that an incomplete application, which would have a settlement term of 90 days if there were no missing documents, could be resolved in 90 + 30 days. The 120 days period seems sufficient for taking a decision on the application, especially from the perspective of the competent authority responsable to examine the application, considering the high probability of a very high volume of pending application with different terms which could be considered reasonable. At the same time, we appreciate that a clear mention of the term ensures predictability and predictability of the rule.

- **Art.21 (4) -** we specify that the provisions regarding the family members of Blue Card holders are similar to those in paragraph 4 that PRES SE wants to delete (art. 17 (7) of the Directive 1883/2021). Also, the validity of the autonomous permit is established by national law, in Romania being limited to 6 months.

- **Art. 24-** we can agree with the proposal that family members have access to the labor market, similar to the long-term resident and we can support the reintroduction of para.3. We do not consider it to be a risk for an LTR or their family member to change employers, this being an act of will. A risk could be considered the loss of LTR status in the first Member State after only 3 years. According to art. 9 paragraph 5 of the proposal, the LTR status is lost once the LTR is obtained in the second member state. We appreciate that informing the authorities of any change in the situation of an LTR or family member contributs to maintaining a clearer evidence of them, including from the integration perspective.

- **<u>Art. 26</u>-** we appreciate that the proposal for obtaining the LTR status in the second member state after only 3 years could be accepted only if the amendment of art. 4 (3) of the proposal is agreed. Thus, as currently is proposed, it could be considered that 2 years as a LTR beneficiary in the first Member State should be added to the 3 years prior to the application in the second Member State,. Also, it is not clear what the derogation from paragraph 3 refers to. It seems that in the proposal an LTR with a temporary residence permit in the second member state benefits from the provisions of art.12 and art.24 without any derogation, but once the LTR status is obtained, these "benefits" are limited. Regarding paragraph 4, it is unclear why only in the second member state the legal stay of an EU long-term resident could end if he does not have sufficient resources or comprehensive sickness insurance.

- **With regard to point 8 of working document 8550/23, we appreciate that we could agree with the PRES SE approach, taking into account the issues presented above, as well as the mentions from the previous meeting.**

## THE SLOVAK REPUBLIC

(doc. 8549/23)

In addition to the written comments provided by the Slovak Republic to the Articles 1-15 (compilation in doc. 8312/2/23 REV 2), Slovakia would like to submit the following comments to the Articles 16 – 33 discussed at the last IMEX meeting (3 May 2023):

**Article 24**

Based on preliminary analysis, the Slovak Republic prefers that family members in the second Member State (after intra-EU mobility) be treated similarly to the family members in the first Member State, which means in accordance with Article 14 of the Family Reunification Directive as it is currently suggested. As a result, the Slovak Republic may support SE PRES proposal to reintroduce paragraph 3 of Article 21 into the LTR Directive (recast).

**Article 26 (2)**

The Slovak Republic would like to thank SE PRES and the European Commission for their explanations regarding potential less favourable conditions for European Union citizens. In this context Slovakia may be flexible regarding time limits of 3 years if the paragraph 3 of Article 26 considers it to be a derogation from Article 24(1)

The Slovak Republic has no comments on other changes.

## SPAIN

Dear Presidency and General Secretariat,

Please, find enclosed Spain's input, following the request for written contributions for the compromise text 8549/23 on the Proposal for a Directive of the European Parliament and of the Council on concerning the status of third-country nationals who are long-term residents (recast).

Article 21

Regarding the **autonomous permit for family members** and its potential conflict with the provision for family members of EU citizens, in Spain, we fail to see how the regime foreseen for family members of LTR is more favourable than the one for family members of EU citizens.

On the one hand, family members of EU citizens are not subject to the same requirements for the acquisition of their status as family members of LTR. They are basically required, as the EU citizens are, to prove that they will not be a burden for the Member State to which they are moving. That's all.

According to DIRECTIVE 2004/38/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, of 29 April 200,4 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, family members of EU citizens are equipped with the maximum level of rights in the EU, that is to say, to the same rights as any of us EU citizens, from the first day.

However, it is also true that, according to this directive, the family members of EU citizens would not obtain permanent residence until 5 years have elapsed, but we must note that they have exactly the same rights with a non-permanent residence than with a permanent residence, i.e. this change in the duration of their residence permit has no impact on the rights they enjoy, since, as we have said, they enjoy the same rights from the day they set foot on the European Union. This is stated in Article 24 of the 2004 Directive:

*1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.*

However, when it comes to family members of LTR, the situation is quite different. So far, the rules of the Family Reunification Directive apply to them, with certain derogations, but, in any case, this regime is way less favourable than that of the family members of EU citizens. Only when the family members of LTR themselves acquire the status of long-term residents, their rights are extended to those of Article 12 of this directive. Yet, let us highlight that in no case are they assimilated to those of the family members of EU citizens.

Therefore, the fact that a family member of an EU citizen is required to spend 5 years to become a permanent resident has absolutely no impact on the rights they enjoy, but the change of status for a family member of a LTR does bring about a substantial improvement. The fact that 3 years are required to access this improvement compared to the 5 years required for family members of EU citizens for the change of status (which does not entail any improvement because they are already at their maximum level of enjoyment of rights) does not, in our opinion, imply any favourable treatment as such. We are trying to compare two groups that might not be comparable.

Lastly, we would really appreciate it if there was more clarity on the rights this collective (family members of LTR) are to enjoy in the first MS and in the second MS (if there is mobility). Whereas we understand (and could accept) that in the second MS they should be entitled to the set of rights foreseen in article 12 (as they will have been in the EU for a long while, they are not newcomers anymore, in comparison to the first Member State), we understand that it might be advisable in any case to reflect upon this and agree on a possible solution for this situation.

Article 26

See comments to article 24 in relation to the comparison between family members of EU citizens and family members of LTR.