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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)
- Discussion paper

1. INTRODUCTION

The Presidency has presented a compromise proposal on the Long-Term Residents Directive (LTR Directive) (doc.10528/23) to be discussed at the IMEX (admission) meeting on June 28, 2023. The aim of this discussion paper is to facilitate the discussion at the meeting and move forward with the negotiations, focusing on certain key aspects of the Presidency proposal. Time permitting, delegations will also have the opportunity to comment on other aspects of the proposal. Delegations are of course also welcome to send in written comments after the meeting.

2. SCOPE (ART. 3)

The Presidency compromise proposal aims at creating a clearer link to the aim of the recast proposal, namely attracting skills and talent to the EU.

In Article 3 (2), new point (ea) has been added stating that third country nationals who reside as intra-corporate transferees under Directive 2014/66 are excluded from the scope of the Directive. Explicitly excluding intra-corporate transferees from the scope may appear as a limitation for that category, compared to the situation today, but the intention of the Presidency is quite the opposite. With the Presidency proposal, intra-corporate transferees will not be able to acquire LTR status but residence with such permits will be taken into account when calculating the duration necessary to grant such status (5 or 3 years), in accordance with Article 4 and 26. The Presidency is aware that intra-corporate transferees often reside in the EU on a temporary basis. At the same time, Directive 2014/66 allows Member States to grant a residence permit on another basis in accordance with Union or national law when the intra-corporate transferee permit expires (Article 12(1) of Directive 2014/66). It should also be noted that intra-corporate transferees often work in the field of Information and Communications Technology, where there is a shortage of labour in many Member States.

On an EU-level, efforts have already been made to attract researchers to the union, through Directive 2016/801. Efforts to attract this category has also been made on a national level in many Member States. According to recent information from the Commission, third-country nationals who have entered the territory of the EU as researchers in conformity with Directive 2016/801, are, in principle, not excluded from the scope of the current LTR Directive. A new recital 7a has been introduced both to clarify this and the changes made by the Presidency to further attract skills and talent to the EU, and the scope of the Directive regarding residence solely on temporary grounds.

3. DURATION AND TYPE OF PERMIT NEEDED FOR LTR STATUS (ART. 4)

The Presidency compromise proposal includes several changes in Article 4, both in substance and layout. The changes in layout aim at making the text clearer and easier to read. Parts of the text have been moved from one paragraph to another, so there are not as many substantive changes compared to the Commission proposal as it might appear at first glance. The Presidency has also kept the numbers of the paragraphs in the Commission proposal as far as possible, to facilitate comparisons with the recast proposal and the report of the European Parliament. In substance, this compromise proposal is closer to the Commission proposal than the text discussed in IMEX on March 28, but still with a focus on attraction of skills and talent to the EU.

Article 4(1) – Fundamental requirements

The first paragraph of Article 4 sets the main rule for the acquisition of LTR status, namely the requirement of at least five years of legal and continuous residence. The Presidency has also clarified that, to be granted LTR status, the applicant must reside legally in the Member State in question in accordance with Article 3 (1), i.e., with residence included in the scope of the Directive. This paragraph also underlines the importance of control measures to monitor the requirement of legal and continuous residence (paragraph 2 of the Commission proposal).

Article 4(1a) – 3 years for beneficiaries of protection

The Commission proposal for a regulation on Asylum Migration and Management (AMMR) includes a proposed amendment to the LTR Directive. The effect of this proposed amendment would be to add a new subparagraph to Article 4(1) so that, with regard to beneficiaries of international protection, the required period of legal and continuous residence would be three years. The Czech Presidency proposed to move the content of Article 71 of the AMMR proposal to Article 4 of the LTR Directive proposal, to enable its detailed examination in the IMEX Working Party, which was supported by a majority of Member States. At the June 28 IMEX-meeting, the Presidency would like to have a first exchange of views on the Commission proposal to grant beneficiaries of international protection LTR status after three years of legal and continuous residence. The relevant text is inserted in Article 4(1a) of the Presidency compromise proposal for the aim of these discussions.

Article 4(3) – Cumulation of residence in different Member States

The third paragraph of Article 4 is a derogation from Article 4(1), by allowing the cumulation of residence in different Member States. In the Commission proposal, third-country nationals could cumulate up to three years of residence in other Member States with almost any kind of permit. The Presidency compromise proposal contains a more restrictive system for cumulation, taking the concerns of Member States into account. Many Member States find the possibility to cumulate residence in different Member States acceptable in principle if the system works well in practice and does not lead to an administrative burden. Even if third-country nationals are obliged to send in documentary evidence to show that they meet the conditions for LTR status, the Presidency believes that information from other Member States often will be necessary to make sure that the requirement of legal and continuous residence is fulfilled. There should therefore be a system in place for the exchange of information that sufficiently meet the needs of Member States. To the Presidency's understanding, the systems available to aid the responsible authorities are EU Mobil (with the improvements highlighted by the Commission) and the new Visa Information System (VIS).

The Presidency proposal significantly limits the number of third country nationals who will be able to cumulate residence in different Member States. The aim of the proposal is to create a clear link between the aim of the recast proposal, namely attracting skills and talent to the EU, and the new system for cumulation. These are also categories of third-country nationals who are more likely to move between different Member States, for work or improvement of skills. In addition, a more restrictive approach to cumulation should limit the possible administrative burden. The following categories are included in the Presidency proposal:

- EU Blue Card holders
- Holders of national residents permits for highly qualified employment
- Researchers under Directive 2016/801

- Intra-corporate transferees under Directive 2014/66
- Family members of the above-mentioned categories
- Family members of an EU long-term resident

When it comes to EU Blue Card holders and researchers, efforts have already been made on an EU-level to attract their skills and talent to the Union. Such residence is also based on a common set of admission criteria and the permits are easily recognised by competent authorities in different Member States. According to the Presidency, this will make it easier for competent authorities to determine if residence in other Member States meet the requirements in Article 4.

The Presidency has also included national residence permits for highly qualified employment to broaden the scope of this provision and make the EU more attractive for third country nationals with such skills. Such residence can also be cumulated when EU Blue Card holders apply for LTR status (Article 18(2) of Directive 2021/1883).

When it comes to intra-corporate transferees, please view the comments made by the Presidency under point 2 of this discussion paper. Including intra-corporate transferees in this provision indicates that residence with an intra-corporate transferee permit in another Member State should be taken into account when calculating the five-year period necessary to be granted LTR status. As with the categories mentioned above, this could serve to attract such skills and talent to the EU.

The Presidency has also included family members of the above-mentioned categories in this provision, making it possible for them to acquire LTR status in a second Member State at the same time as the Blue Card holders, researchers etc. This is reasonable, according to the Presidency, and family members are an important factor in the attraction of skills and talent to the EU.

Lastly, the Presidency has chosen to include family members of EU long-term residents in this provision. This is directly connected to the proposal to delete Article 21(4) in the Commission proposal. The Presidency shares the Commissions aim to respect family life but has several issues with Article 21(4), as described in IMEX on May 3, for example the fact that family members would be able to acquire an autonomous residence permit in a second Member State after only two years, while EU long-term residents must reside three years in a second Member State to acquire LTR status. In the Presidency's view it can also be questioned whether Article 15(1) of Directive 2003/86, is applicable when family members have *joined or accompanied* long-term residents in a second Member State, when the family was already constituted in the first Member State. In such case, the provision cannot be applied as intended. Furthermore, to facilitate the application of the recast LTR-Directive, it is an advantage if the number of different rules for different categories in the Directive can be kept to a minimum. With the Presidency proposal, family members will be able to acquire LTR status, which is an autonomous status, and the associated residence permit, which is independent of that of the sponsor, after three years in a second Member State, in a similar way as the long-term resident.

As in the previous proposal by the Presidency, the last three years of residence must be spent in the territory of the Member State where the application for LTR status is submitted. This is also in line with the three-year requirement in Article 26(2).

Article 4(3a) – Type of permits leading to LTR-status

The aim of the new paragraph 3a is to clarify which periods of residence should be taken into account when third country nationals apply for LTR status (residence in other Member States excluded). The new paragraph does not differ greatly from the Commission's proposal, or the current Directive, but the Presidency believes that this issue requires further clarifications to ensure that the requirements in Article 4 are understood in the same way by all Member States.

Article 4(5) of the Commission proposal concludes that any period of residence with a residence permit or long-stay visa in a Member State should be taken into account when calculating the duration of time necessary to acquire LTR status, including residence not included in the scope of the Directive (for example for studies, temporary protection or on temporary grounds). This proposal from the Commission has led to both comments and questions from Member States. At the same time, Article 4(2) subparagraph 1 of the current Directive point out that residence for specific reasons outside the scope of the Directive (Article 3(2)(e) and (f)) should not be taken into account when calculating the duration of time necessary to acquire LTR status. This indicates that other periods of residence outside the scope of the Directive should be taken into account by responsible authorities when third-country nationals apply for LTR status.

The Presidency proposal is in substance similar to the current Directive and the Commission proposal, but the text is meant to be clearer and more direct. The new Article 4(3a) clarifies that when Member States calculate residence within their own territory, both residence included in the scope of the Directive and residence excluded from the scope of the Directive (with the exemptions mentioned below) must be taken into account. The Presidency proposal also lists exemptions from this rule that cannot lead to LTR status: periods spent as a holder of a long-stay visa or residence permit issued under Union or national law solely on temporary grounds, as a diplomate or with a suspended removal-decision. Since applicants for protection do not have a long-stay visa or residence permit, they are excluded on that ground.

Article 4(5) and 4(5a) – Agreed text from the Qualification Regulation

In December 2022, an inter-institutional provisional agreement was reached regarding the Qualification Regulation, including two provisions that concern the LTR-Directive: Recital 44 and Article 44. The document presented to Coreper in December (doc. 16109/22) state that the amendment to the LTR-Directive will be removed from the text of the Qualification Regulation if the recast LTR-Directive is adopted before the Qualification Regulation. If this is not the case, the amendment should stay in the text of the Qualification Regulation. The Presidency believes that the agreed text should be inserted in the recast LTR-Directive at this point of the discussions. The aim of inserting the agreed text on beneficiaries of protection in brackets in the Presidency proposal is to clarify the situation for Member States. It also makes sense to gather all provisions on the calculation of the period necessary to be granted LTR status in Article 4 of the LTR-Directive. In addition, Article 44 of the Qualification Regulation amends Article 4 of the current LTR-Directive, which is now under revision. The text from the Qualification Regulation must therefore work with the revised version of Article 4. The Presidency does not intend to discuss Article 4(5) and 4(5a) in substance in IMEX on June 28, but Member States are of course welcome to comment on the process and timing of this issue.

4. PROCESSING TIMES (ART. 7/21)

In Article 7(2) of the Commission's recast proposal the current possibility to extend the time limit in exceptional circumstances has been deleted. Instead, the Commission has proposed a possibility to suspend the time period if the information is inadequate or incomplete, within a reasonable deadline. In Article 21(1) of the Commission's recast proposal, the time to take a decision on an application for a residence permit in the second Member State has been reduced from four months to 90 days. At the same time, the current possibility to extend this time period has been reduced from three months to 30 days. In its compromise proposal, for consistency, the Presidency suggest that the possibility to extend and suspend the applicable time limit should be the same in

Article 7(2) and Article 21(1). The possibility to extend the time limit in exceptional circumstances has therefore been changed to 60 days in both Articles. To have some margin of negotiation in relation to the European Parliament, the current time limit of four months in Article 21(1) has also been reintroduced. The Presidency proposal does not include a set deadline to send in missing documents or information to the responsible authorities if the application is inadequate or incomplete in Article 7(2) and Article 21(1). The reason for that is consistency with other Directives with similar provisions, which foresee *a reasonable deadline* but no deadline set in days (see for example Article 11(2) of Directive 2021/1883, Article 34(3) of Directive 2016/801, Article 15(2) of Directive 2014/66 and Article 5(4) in the General approach of the recast of Directive 2011/98, doc. 10464/23).

5. ABSENCE FROM THE TERRITORY OF THE UNION (ART. 9)

In the Commissions' recast proposal, the period during which an EU long-term resident can be absent from the territory of the Union without losing the status has been extended from 12 to 24 months, Article 9(1), point (c). As was raised in the Presidency discussion paper before IMEX on March 28 (doc. 7512/23), several Member States are concerned of the effects of the ruling of the European Court of Justice in case C-432/20. After taking into account the comments from Member States on the first Presidency compromise proposal, the aim of which was to avoid the unwanted effects of the ruling while at the same time introducing changes that are easy to apply for Member States, further changes have been made to the provision. Member States have raised concerns that absence is difficult to check in practise. In this compromise proposal, the ground for withdrawal or loss of LTR-status has therefore been changed from *absence* from the territory of the Union to the long-term resident having his/her *main residence* outside the territory of the Union for more than a certain period within five years. This time period has been set to 18 instead of 24 months, and it has been clarified that the relevant five-year period is the one preceding a decision of withdrawal or loss of status. The aim of these changes, and the addition of examples in Recital 17 of factors that could indicate main residence, is to make the provision easier to apply in practise while at the same time keeping the system flexible.

6. CHILDREN BORN OR ADOPTED IN A MEMBER STATE (ART. 15(6))

In its recast proposal, the Commission introduces a new provision regarding children of a long-term resident. In Article 15(1) the Commission proposes that children who are born or adopted in the territory of the Member State that issued the long-term resident his/her LTR residence permit shall acquire LTR status without being subject to the conditions set out in Articles 4 and 5. This proposal has raised several questions, including whether it is reasonable for the children concerned to acquire LTR-status, which is an autonomous status and not linked to the parents status, without fulfilling the requirements normally associated with LTR-status. The Presidency is concerned that the provision in Article 15(1) could lead to abuse. A child born or adopted in the territory of a Member State could apply for the LTR-status at any point in time without fulfilling, for example, the condition of legal and continuous residence for five years. Another question raised is whether it is reasonable to have different rules on acquiring LTR-status for different children within the same family, depending on where they are born or adopted.

The Presidency agrees with the Commission that it is important to ensure the family life of long-term residents. Furthermore, Directive 2003/86 on family reunification is not applicable in situations where children of long-term residents are born or adopted in the territory of the Member State. It could therefore be reasonable to regulate this situation at EU-level. However, as far as the Presidency understands, this specific situation has not been regulated in other Directives in the field of legal migration. If Member States still want to regulate this situation in the LTR Directive, the Presidency finds it more logical to introduce new rules that are in line with those applicable to other family members of long-term residents. In the Presidency compromise proposal, Article 15(1) has, for that reason, been deleted and instead a new provision, Article 15(6), has been introduced. According to Article 15(6), children born or adopted on the territory of the Member State that granted the parent his/her LTR-status, shall be granted a renewable residence permit in that Member State, in a similar way as other family members of long-term residents.

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

In Article 24(1) of the recast proposal, the Commission proposes to give family members equal treatment rights in the second member State, in line with Article 12. As was raised in the Presidency discussion paper before IMEX 28 March (doc. 7512/23), Article 12 does not apply to family members of EU long-term residents in the first Member State. Instead, for family members who have not exercised intra-EU mobility, the rights listed in Article 14 of Directive 2003/86 would apply. Consequently, it is more favourable to be a family member in a second Member State than in a first Member State with the Commission proposal. The Presidency believes that the same rights should apply to family members in the first as in the second Member State. After taking into account the comments from Member States, the Presidency have reintroduced paragraph 3 of Article 21, which was deleted in the Commission's recast proposal. The Presidency proposal means that family members of EU long-term residents in the second Member State would receive the rights listed in Article 14 of Directive 2003/86, same as in the first Member State.

In Article 24(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. After taking into account the comments from Member States the Presidency have kept the proposal from the Commission on communication but also reintroduced the possibility to restrict access to employed activities during the first 12 months, which should give Member States the flexibility to adapt rules that are suitable for their labour market.

8. QUESTIONS FOR MEMBER STATES

- Do Member States agree with the Presidency's approach and with the content of the compromise proposals?
 - If not, which further changes would Member States like to see and why?
 - Also, can Member States support the Commission proposal to grant beneficiaries of international protection LTR status after three years of legal and continuous residence (see point 3 of this paper)?
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