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## NOTE

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From: Presidency

To: Working Party on Integration, Migration and Expulsion (Admission)

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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)

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- Discussion paper

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### 1. INTRODUCTION

The Presidency has presented a compromise proposal (doc. 8549/23) to be discussed at the IMEX (admission) meeting on May 3, 2023. The compromise proposal focuses on Chapter III and IV of the Long-Term Residents Directive (LTR Directive). Some of the relevant recitals have been adjusted in accordance with the proposals while others will be amended at a later stage of the discussions. The aim of this discussion paper is to highlight certain key aspects of the Commission's proposal where more information is needed from the Member States to move forward with the negotiations and draft new compromise proposals. In order to facilitate the discussion at the upcoming IMEX-meeting, the Presidency has also asked the Commission to answer some of the questions from the Member States on Articles 15-33 in writing.

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

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 (COM(2022) 650 final), the Commission proposed a deletion of these possibilities. Even though the Presidency understands the aim of the Commission's proposal and the benefits of facilitating intra-EU mobility, the Presidency has nevertheless suggested to reinsert Article 16 paragraph 3 of the current LTR Directive. Paragraph 4, concerning quotas, is however still deleted in the Presidency proposal. Several Member States have raised concerns regarding the deletion of paragraph 3 and, for example, pointed out that unemployed persons (nationals, EU-nationals, or third-country nationals) already living in the Member State in question should have priority to available jobs. The requirements for allowing residence in other Member States in the LTR Directive are relatively few, compared to the admission conditions in other directives in the field of legal migration. In the views of the Presidency, it is therefore reasonable to allow Member States to limit intra-EU mobility for EU long-term residents, for the purpose of work, to skills needed on their labour market.

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

### **3.1. Sufficient resources**

When it comes to the requirement of sufficient resources and the issue of “third parties”, the Presidency has chosen the same approach in Article 17 and 18 as in the Presidency proposal on Article 5 paragraph 1 (see doc. 7517/23). As explained at the IMEX meeting on March 28 2023, the Presidency is of the opinion that Article 5 paragraph 1 of the recast proposal diverges from and might go further than the ruling by the Court of Justice in case C-302/18. The same is true for Article 17 paragraph 2 and Article 18 paragraph 4 of the recast proposal. To comply with the current praxis of the Court, it is not necessary to refer to third parties in the articles in question. It is already clear from legal praxis that Member States should take resources from third parties into account when third country nationals apply for LTR status. The ruling in case C-302/18 concerns Article 5 but the same text and requirements are found in Article 17 and 18 for residence in a second Member State. Therefore, the Presidency has chosen the same approach regarding “third parties” in Article 17 and 18 as in the Presidency proposal on Article 5. As mentioned at the meeting on March 28 2023, the Presidency also made changes in recital 11, including a reference to

the ruling and relevant factors for Member States to consider when the applicant refers to resources made available by a third party, according to the Court of Justice.

Article 5 paragraph 2 of the recast proposal (Article 5 paragraph 1 point a in the Presidency proposal, see doc. 7517/23) state that Member States can indicate a certain sum, as a reference amount, when it comes to the requirement of sufficient resources. At the same time, Member States must assess the situation in each case, making an individual examination. This addition to the directive is based on legal praxis from the Court of Justice, in a case concerning the Family Reunification Directive (C-578/08). The Commission has not proposed a similar provision in Articles 17 and 18, but the Presidency believes that, for consistency, the same principle should apply here. The same text has therefore been added in Article 17 paragraph 2 (a) and Article 18 paragraph 4 in the compromise proposal.

### **3.2. Appropriate housing**

In the Presidency compromise proposal discussed on March 28 2023, the Presidency suggested adding a requirement for LTR status in Article 5 paragraph 2 concerning appropriate housing. The possibility to pose such a requirement was important to several Member States and it is a reasonable requirement for the acquisition of LTR status. For consistency, the Presidency has introduced such an optional requirement also for residence in a second Member State.

## **4. PROCESSING TIMES (ART. 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. In addition, and for consistency, the Presidency has inserted the same possibility to suspend the time period as proposed by the Commission in Article 7 paragraph 2.

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

Article 21 paragraph 4 of the Commission's recast proposal states that residence in different Member States shall be cumulated for family members when calculating the duration necessary for the acquisition of an autonomous residence permit. Member States may also require two years of legal and continuous residence in the Member State where the application is submitted. This is a derogation from Article 15 paragraph 1 of Directive 2003/86/EC (the Family Reunification Directive). In the Presidency's view, this proposal appears to be more generous than the rules applicable for family members of EU citizens. Family members of EU citizens must reside legally within the second Member State for five consecutive years, with no possibility of accumulation, to acquire an independent right of permanent residence according to Directive 2004/38/EC. The Presidency believes that the aim of the Commission's proposal could be better achieved in other ways than in the recast proposal, for example by adjusting the provision on accumulation of residence in different Member States in Art. 4 so that it includes family members of EU long-term residents. Also, the time required in a second Member State to acquire an autonomous residence permit for family members (two years) is not consistent with the time required for EU long-term residents to acquire LTR status (three years). This means that family members could receive autonomous residence permits in a second Member State even though the person with LTR status still has a stronger connection to the first Member State, where he/she would have to return if the requirements in Chapter III are no longer fulfilled. The Presidency has therefore deleted paragraph 4 of Article 21 and will return to this issue at the IMEX meeting in June.

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

In Article 24 paragraph 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. The Presidency would like to point out that 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 the Family Reunification Directive would apply. Consequently, the Commission's proposal seems to make it more favourable to be a family member in a second Member State than in a first Member State. The Presidency has not suggested any changes in this provision at this stage but would like to hear the views of Member States on this matter, i.e., whether these differences are justified. One option would be to reintroduce paragraph 3 of Article 21, which has been deleted in the Commission's recast proposal. In such case, family members of

EU long-term residents in the second Member State would receive the (more limited) rights listed in Article 14 of the Family Reunification Directive, same as in the first Member State.

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. The Presidency has not suggested any changes in this provision at this stage but would like to hear the views of Member States on this matter. For example, if there is a risk of EU long-term residents and their family members changing employer and working under inferior conditions if they are allowed to change employer as soon as they move to a second Member State. It is also somewhat unclear what the competent authorities in the second Member State can do when an EU long-term resident or a family member communicate a change of employer. For example, if it would be allowed to request information about the terms of employment, to make sure that the requirements in Chapter III are fulfilled, possibly resulting in the withdrawal of the residence permit.

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

Also, as some Member States have pointed out, acquiring LTR- status in a second Member State after three years could be regarded as more favourable than the corresponding rules for EU nationals, where five years of residence is required for the right of permanent residence in accordance with Directive 2004/38/EC. Article 26 paragraph 3 and 4 of the Commission's recast proposal contain measures to prevent better treatment of EU long-term residents due to the lowering of the residence requirement to three years. Paragraph 3 concerns the access to certain rights (social assistance etc.) and paragraph 4 concerns decisions to end the legal stay.

The Presidency appreciates the ambition to avoid better treatment of EU long-term residents than EU nationals. Citizenship in EU Member States should provide a clear added value, not a disadvantage. At the same time, the Commission's proposals in paragraphs 3 are quite complicated

and could prove difficult to apply in practice. Differentiating the rights applicable to different categories of EU long-term residents, depending on the length of residence, could prove complicated on a national level. Also, this difference would only apply to EU long-term residents other than workers and self-employed and their family members. In addition, the Presidency would like to point out that restricting rights for certain categories in line with paragraph 3, contradicts the obligation to provide equal treatment to EU long-term residents and their family members in Article 24. Therefore, it has been clarified in the Presidency compromise proposal that Article 26 paragraph 3 is a derogation from Article 24 paragraph 1.

At this point, the Presidency has only made minor adjustments in Article 26. In order to move forward with the negotiations and draft new compromise proposals, the Presidency would appreciate more input from the Member States on this part of the Commission proposal. First, whether the reduction from five to three years is at all acceptable to Member States. Second, if three years of residence in a second Member States is acceptable, whether the proposed measures to avoid treating persons with LTR status better than EU nationals are sufficient and possible to apply in practice.

## 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?*