

Memorandum of the Standing Committee of experts on international immigration, refugee and criminal law on the proposal of the European Commission for a Directive concerning the status of third-country nationals who are long-term residents¹

In March 2001 the European Commission proposed a directive concerning the status of third-country nationals who are long-term residents in the Member States of the European Union.

Why it is a good proposal

This proposal is not only an important step towards fair treatment of third-country nationals, in combination with the measures already taken against racism and xenophobia it is also an important step towards an European integration policy.

Why it should be amended

The Standing Committee considers that the proposal should be amended taking into account three basic considerations:

(1) Granting rights as near as possible to those enjoyed by European Union citizens.

The Commission's intention is to give full effect to the commitment made by the EU leaders at the Tampere European Council in October 1999, where it was concluded that: "A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia". In view of this commitment, the rights should be exercised by objective standards and should be enjoyed without discrimination. The attainment of this aim entails the abolition of any discrimination. By treating European Union citizens more favourable than long-term third-country nationals, the Union implies that unequal treatment of third-country nationals is warranted. Therefore, a broader implementation of Community rules in this Directive is needed.

Adaptation in accordance with Regulation 1612/68

Family members

Family members are defined in accordance with the proposed Directive on the right to family reunification. The latter proposal concerns migrants from outside the EU to third-country nationals who do not necessarily have long residence in an EU Member State. Since the proposal under consideration concerns migrants with long residence in the EU and is primarily oriented towards migration within the EU, the definition of the term 'family members' given in Regulation 1612/68 should apply.

Adaptation in accordance with Directive 64/221

Protection against expulsion

For the same reasons, family members of long-term third-country residents who have been admitted in an EU Member State, should be granted the same protection against

¹ COM (2001) 127 Final.

expulsion as family members of EU citizens under Directive 64/221. Article 13 does not provide this protection for family members.

(2) European Community measures on the status of third-country nationals should contain a standstill clause and allow Member States to grant more favourable treatment.

A standstill clause should be inserted in order to avoid that the Directive would induce Member States to reduce the rights presently granted to third-country nationals with long residence under their national law. Moreover, Member States should be free to grant more rights to long-term residents under their national legislation, as provided for in article 14.

(3) Given the weakening during the discussions in the Council and the Working Group of the Commission's proposed Directive on family reunion and the adoption on 28 May 2001 of Directive 2001/40 on the mutual recognition of decisions on the expulsion of third country nationals², the Directive under examination must assure to give a counterbalance effect.

How should the proposal be amended?

The Standing Committee of experts on international immigration, refugee and criminal law proposes the following amendments:

I. General provisions

Definitions

Article 2 (e) should read: "Family members" means the applicant's spouse, **and their descendants who are under the age of 21 years or are dependants and dependent relatives in the ascending line of the applicant and his spouse.**

This is the same definition as used in Article 10 (1) of Regulation 1612/68.

Non-discrimination clause

Article 4 should read: The Member States shall give effect to the provision of this Directive without discrimination on the basis of sex, race, colour ethnic or social origin (...) and **nationality**.

It should be explicitly provided that the Directive applies to all third-country nationals irrespective of their nationality. Therefore, nationality should be included among the prohibited grounds.

II. Long-term resident status in a Member State

Duration of residence

Article 5 (2) a) should read: periods of residence in the territory of the Member State as an asylum-seeker or as beneficiary of temporary protection shall be taken into account if the third-country national is **granted a refugee status, a residence permit for more than one year or for an indefinite period;**

² OJ 2001 L 149/34.

In case a person enjoying a subsidiary or temporary protection status is granted a more permanent status, the period of residence while having a provisional status should be taken into account.

Article 5 (4) should read: **With regard to a family member of an Union citizen who has resided with that Union citizen in a third state, such periods of residence up to three years shall be taken into account for the purpose of calculating the period of residence provided for in paragraph 1.**

This amendment simplifies the existing text.

Conditions as to resources and health-care insurance

To Article 6 (1) a) should be added : **An employment contract or written evidence proving self-employment for at least one year is considered to be sufficient proof of stable resources.**

This addition confirms that for determining whether there are stable resources, both past and future employment should be relevant.

Public order and domestic security

Article 7 paragraph (1): An explicit reference to Directive 64/221 should be inserted.

Withdrawal of status

Article 10 should read: Member States shall withdraw long-term resident status **only** in the following cases:

(a) absence from the territory **of the European Union** of two consecutive years (...)

It should be stressed that the conditions stipulated in this article are the only reasons for withdrawal of a long-term residence status. Moreover, temporary absence due to a stay in another Member State should not be a ground for withdrawal.

Family reunion

A new Article 11a should be inserted: **Long-term residents have the right to family reunion in accordance with Regulation 1612/68.**

The proposal should guarantee the full implementation of Community law and the Tampere principle of equal treatment.

Equal treatment

Article 12 the first sentence of paragraph (1) should read: **A long-term resident and his family members** shall enjoy equal treatment with nationals as regards: (...).

Uniformity of legal status within the family is an important principle.

Protection against expulsion

Article 13 (1) should read: Member States may take an expulsion decision against long-term residents **and their family members** solely where (...) an actual threat to public order or domestic security that affects a fundamental interest of society, **in accordance with Directive 64/221.**

Article 13 (5) second sentence should read: Member States shall provide that such procedures have suspensory effect.

Without suspensory effect, the remedy cannot be considered to be effective.

A new paragraph (8) should be inserted to Article 13: **Expulsion decisions may not be accompanied by a permanent ban on residence.**

Expulsion for an unlimited period should not be possible. An identical clause has already been included in Article 25 (2) of the proposal.

A new paragraph (9) should be inserted to Article 13: **The Directive 2001/40³ on mutual recognition of expulsion orders does not apply to long-term residents and their family members.**

That Directive does not take into account long lawful residence in a Member State. A long-term resident should not only be expelled on the ground of a simple violation of the immigration law of another Member State.

Standstill clause

A new Article 14a should be inserted: **Member States shall not introduce new restrictions on acquisition and loss of permits of permanent or unlimited validity issued to third-country nationals under national legislation. New restrictions on their access to employment are also prohibited.**

A standstill clause is to be inserted to prevent derogation of the position of long-term third-country nationals.

III. Right of residence in the other Member State

Checks on conditions for the exercise of the right of residence

Article 17 (2), (3) and (4) should be amended as follows: (...) to present with their application for a residence permit **only the following documents** (...).

This corresponds with similar wording in Article 4 of Directive 68/360/EEC. It also confirms that the long-term resident has a right to work in a second Member State, once he meets the conditions of Article 17.

Family members

In article 18 paragraph (1) the words: **as already constituted in the first Member State** should be deleted.

Article 18(2) b) should be amended as follows: evidence that they **are family members of the long-term resident as defined in Article 10 of Regulation 1612/68.**

Long-term residents should have the right to family reunification as European Union citizens under Article 10 of Regulation 1612/68.

³ OJ L 149/34, 2.6.2001.

Article 18(3) should be deleted.

Public order and domestic security

Article 19 paragraph (1): An explicit reference to Directive 64/221 should be inserted.

Public health

Article 20 (3) should be deleted.

Since medical examinations cannot be imposed on European Union citizens, it imposes unwarranted discrimination. Moreover, the long-term resident has already lived at least five years within the European Union, before he can use his freedom of movement. This reduces the needs for medical examinations.

Examination of applications and issuance of residence permit

Article 21 (1) the first sentence should read: **A decision to grant or to refuse a residence permit shall be taken as soon as possible and in any event not later than three months after the application has been lodged.**

Article 21 (2) the second sentence should read: The period of validity of this permit shall correspond to the foreseeable duration of the stay **in accordance with Article 6 of Directive 68/360.**

Rights in the second Member State

Article 24 (1) should read: As soon as they **are entitled to** the residence permit provided for by Article 21 in the second Member State, (...).

This makes clear that the status is not dependent upon a document being issued by the host Member State. Indeed, the documents are declaratory and not constitutive of rights. The Community rules recognize the right of residence for worker without issuing a residence permits. As specified by the Commission in its Explanatory Memorandum: "This is not a traditional admission procedure but the exercise of a right conferred on long-term residents".

Article 24 (2) should read: As soon they **are entitled to** the residence permit provided for by Article 21 in the second Member State, members of the family of the long-term resident shall in that Member State enjoy the rights enumerated in Article 12, with the exception of social assistance and study grants.

Withdrawal of residence permit

Article 25 (1) a) should be amended as follows: on grounds of public order or domestic security in accordance with Article **13**;

In Article 13 the necessary procedural safeguards are guaranteed.

Obligation to readmit

Article 26 (1) should read: **If the decision of the second Member State to withdrawal the residence permit is final**, the first Member State shall immediately readmit the long-term resident and the family members.

Utrecht, 20 August 2001

