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No. Cion prop: 8237/01 MIGR 33 - COM (2001) 127 final

Subject : Draft Council Directive concerning the status of third-country nationals who are long-term residents

At its meeting on 15 January 2003, the Working Party on Migration and Expulsion examined the above draft Directive, and in particular Articles 8-12, on the basis of some compromise suggestions submitted by the Presidency.

The text of the entire draft Directive is set out below, with delegations' comments given in the footnotes.

Delegations' attention is drawn to the fact that this consolidated version incorporates, *mutatis mutandis*, the comments concerning the provisions of Chapters III and IV, examined in the course of the third reading of the draft Directive by the Working Party at its meeting held on 28 and 29 May 2002 and contained in 9636/02 MIGR 50.

Chapter I

General provisions

Article 1

Subject matter

This Directive determines:

- (a) the terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto; and
- (b) the terms of residence in Member States other than the one which conferred long-term status on them for third-country nationals enjoying that status.

Article 2

Definitions

For the purposes of this Directive:

- (a) “*third-country national*” means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;

- (b) “*long-term resident*” means any third-country national who has long-term resident status as provided for by Article 7;
- (c) “*first Member State*” means the Member State which granted a third-country national long-term resident status;
- (d) “*second Member State*” means any Member State other than the one which for the first time granted a third-country national long-term resident status and in which that long-term resident exercises the right of residence;
- (e) “*family members*” means the third-country national who reside in the Member State concerned in accordance with Council Directive .../.../EC on the right to family reunification.¹

¹ OJ L [COM(2000) 624 final, 10.10.2000].

- (f) *refugee*" means any third-country national enjoying refugee status within the meaning of the Geneva Convention on the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967¹;
- (g) "*long-term resident's EC residence permit*" means a residence permit issued by the Member State concerned upon the acquisition of long-term resident status.

¹ **DELETED** maintained reservations on the inclusion of refugees in the scope of the Directive. In reply to a query from **DELETED**, the Cion pointed out that a refugee would not lose his/her refugee status after being granted long-term resident status in accordance with this Directive.

In reply to a query from **DELETED** it noted that this Directive does not address the question of the transfer of responsibility, in the cases where refugees move from one State to another, which is the subject of a specific agreement concluded in the framework of the Council of Europe.

Article 3

Scope

1. This Directive applies to third-country nationals residing legally in the territory of a Member State¹.
2. This Directive does not apply to third-country nationals who:
 - (a) reside in order to pursue studies or vocational training;
 - (b) are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;
 - (c) are authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or have applied for authorisation to reside on that basis and are awaiting a decision on their status²;

¹ According to **DELETED**, which took the view that the Directive should apply to the third-country nationals who have entered and resided legally, a reference to the legal entry should be added in paragraph 1. In this context, **DELETED** pointed out that its concern with respect to the legal entry is mainly linked with the question of the mobility of long-term residents, which is addressed in Chapter III. **DELETED** supported the **DELETED** suggestion. However, a vast majority of delegations (**DELETED**) opposed this suggestion. **These delegations** felt that the **DELETED** suggestion would affect the question of the regularisation of third-country nationals, which should not be addressed in the framework of this Directive.

The **Cion** considered that the **DELETED** concern with respect to the legal entry of third-country nationals should more appropriately be considered in the context of instruments dealing with the fight against illegal immigration. It also drew attention to the adverse consequences that this addition might have in terms of mutual trust amongst Member States.

² **DELETED** felt that persons enjoying subsidiary protection should be covered by this Directive. In particular, **DELETED** drew attention to Article 22 of the draft Directive on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection (see 13620/01 ASILE 52). According to this provision persons enjoying subsidiary protection may be granted long-term resident status.

DELETED opposed the inclusion of this category of persons in the scope of this Directive. The **Pres** said that it will inform the Chair of the Asylum Working Party about the discussions on this issue in the framework of this Directive. It also noted that this issue needs to be further considered.

- (d) have applied for recognition as refugees and whose application has not yet given rise to a final decision¹;
- (e) reside solely on temporary grounds such as *au pair* or seasonal worker, or as workers posted by a service provider for the purposes of cross-border provision of services, or as cross-border providers of services²;
- (f) enjoy a legal status governed by the Vienna Convention on diplomatic relations of 1961, the Vienna Convention on Consular Relations of 1963, the Convention of 1969 on Special Missions or the Vienna Convention on the Representation of States in their Relations with International Organisations of a Universal Character of 1975.

¹ **DELETED** maintained a scrutiny reservation on point d).

² **DELETED** maintained a scrutiny reservation on the introductory words (*reside solely on temporary grounds*) of point e).

According to **DELETED**, among the cases listed in point e) mention should also be made of the situation of the third-country nationals whose residence permit has been formally limited (*personnes dont le permis de résidence a été formellement limité*), who would then not have access to long-term resident status. **DELETED** supported the **DELETED** suggestion.

The **Pres**, which noted that the wording of point e) is quite general and should cover the cases evoked by **DELETED**, wondered whether such an addition would be appropriate.

3. This Directive shall apply without prejudice to more favourable provisions of:
 - (a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;
 - (b) bilateral agreements already concluded between a Member State and a third country;
 - (c) the European Convention on Establishment of 13 December 1955, the European Social Charter of 18 October 1961 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.¹

¹ The **Working Party** agreed to move the text of former Article 4 to the Preamble as a recital (*Member States shall give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation*).

Chapter II

Long-term resident status in a Member State

Article 4 (former Article 5)

Duration of residence

1. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years¹ immediately prior to the submission to the relevant application.
2. Periods of residence for the reasons referred to in Article 3(2), points e) and f) are not taken into account for the purposes of calculating the period of legal and continuous residence referred to in paragraph 1.

Regarding the cases covered in Article 3, point a), where the third-country national concerned has acquired a title of residence which will enable him/her to being granted long-term resident status, periods of residence for study purposes or vocational training shall be taken into account as to half only in the calculation of the period of legal and continuous residence referred to in paragraph 1².

¹ According to **DELETED**, which maintained a reservation on paragraph 1, this time-period should be extended to six years.

² **DELETED** maintained reservations on the second sub-paragraph of paragraph 2, which concerns the calculation of periods of residence for study purposes or vocational training. **DELETED**, supported by **DELETED** suggested replacing *shall* by *may*. The **Pres** suggested deleting this provision. **DELETED** supported this suggestion. However, **DELETED**, as well as the **Cion**, preferred maintaining this provision. In this context the **Cion** drew attention to the fact that, in the current competitive situation created by the rapid growth of the information society, there is a need for attracting students to the European Union. In its view, deleting such a clause may discourage third-country nationals from coming to the Member States of the EU with a view to performing or pursuing their studies. With respect to the comments from the **Cion**, **DELETED** felt that special attention should only be paid to the situation concerning researchers. It also took the view that this specific issue should more appropriately be addressed in the framework of the examination of the draft Directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service (see 12623/02 MIGR 89), rather than in a more general instrument such as this Directive.

3. Periods of absence from the territory of the Member State concerned shall not interrupt the period of legal and continuous residence referred to in paragraph 1 and are not taken into account for the purposes of calculating that period where they are¹:
 - (a) shorter than six consecutive months; or
 - (b) due to military or civilian obligations²;
 - (c) due to specific and exceptional reasons of a temporary nature such as detachment for employment purposes, including the provision of cross-border services, studies, research, serious illness, pregnancy or maternity leave.
 - (d) related to residence in a second Member State as member of the family of a long-term resident exercising the right of residence under this Directive or of a citizen of the Union exercising the right to free movement of persons.

In the cases referred to in points a), b) and c) the total period of absence shall be determined in accordance with national law.

¹ The **Working Party** had an extensive discussion on the question of periods of absences, as Member States' legislation differs greatly on this subject. In general terms it was agreed that this provision needs to be simplified. In the framework of the examination, various possible solutions were envisaged, such as:

- introducing a system of authorisation by the competent authorities of the Member States;
- establishing a maximum allowed period of absence (irrespective of whether absences below the set time-limit or exceeding it should be taken or should not be taken into account for the calculation of the five years of legal and continuous residence);
- adding, totally or partially, the periods of absence to the five years time-limit which is requested for being granted long-term resident status.

According to the **Cion**, one criterion that might be taken into account when examining this issue is to determine whether, even if absent, the third-country national maintains the centre of his/her interest in the Member State concerned.

Noting the difficulties of reaching a compromise, the **Pres** felt that this issue needs to be further considered.

² In reply to a remark from **DELETED** the **Cion** clarified that the notion *military obligations* means the compulsory military service and training in the army of the third-country concerned and does not cover the participation in armed conflicts.

Article 5 (former Article 6)
Conditions for acquiring long-term resident status¹

1. Member States shall ask third-country nationals to provide evidence that they have, for themselves and for dependent family members:
 - (a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity prior to the application for long-term resident status.²
 - (b) sickness insurance covering all risks in the Member State concerned³.

¹ **DELETED** maintained a reservation and **DELETED** maintained a scrutiny reservation on Article 5.

In particular **DELETED** suggested introducing four new requirements: the person concerned should provide evidence that he/she has made payments to a pension system over 18 months, has not received a custodial sentence of more than six months, has an appropriate accommodation and is in possession of the authorisations required to exercise specific economic activities.

DELETED supported the introduction of the requirement of an appropriate accommodation. **DELETED**, supported by **DELETED**, suggested introducing the requirement of compliance with tax obligations.

The **Cion** opposed the introduction of new requirements.

² The **Working Party** agreed to align, *mutatis mutandis*, the wording of 5(1)(a) with that of Article 7(1)(c) of the Directive on the right to family reunification (see 14272/02 MIGR 119, page 12).

DELETED maintained reservations on this provision.

³ **DELETED** wondered whether the sickness insurance referred to in point b) would cover the psychological assistance.

2. Member States may require third-country nationals to comply with integration measures, in accordance with national law¹.
3. The conditions in paragraph 1 shall not apply to third-country nationals born in the territory of a Member State².

Article 6 (former Article 7)

Public policy and public security³

1. Member States may refuse to grant long-term resident status where the personal conduct of the person concerned constitutes an actual threat to public order or public security.
2. The refusal referred to in paragraph 1 may not be founded on economic considerations.

¹ The **Pres** recalled that at the meeting of the JHA Council held on 14-15 October 2002 it was agreed to introduce a requirement on integration in this provision.

² **DELETED** maintained a reservation and **DELETED** maintained a scrutiny reservation on this provision.

DELETED drew attention to the fact that the persons under the age of majority do not have legal entitlement and wondered how they might submit an application for acquiring long-term resident status. The **Cion** said that this question needs to be settled on the basis of the practice existing in the Member State concerned.

³ The **Working Party** agreed to align the text of Article 6 with that of Article 6 of the Directive on the right to family reunification.

DELETED drew attention on the need for introducing in this provision a reference to the cases of persons who have been convicted for serious crimes.

The **Cion** took the view that the such cases are already covered by the wording of Article 6 of the aforementioned Directive.

Article 7 (former Article 8)

Acquisition of status

1. To acquire long-term resident status, the third-country national concerned shall lodge an application with the competent authorities of the Member State in which he resides. The application shall be accompanied by documentary evidence that he meets the conditions set out in Articles 4 and 5 and by a valid travel document¹.
2. ²The competent national authorities shall give the applicant written notification of the decision as soon as possible and in any event no later than six months from the date on which the application was lodged. Any such decision shall be personally notified to the third-country national concerned or, if it cannot be done, it will be made public in accordance with the notification procedures under the relevant national legislation³.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

Reasons shall be given for the decision rejecting the application. Any consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by national legislation of the relevant Member State.

3. If the conditions provided for by Articles 4 and 5 are met, and the person does not represent a threat within the meaning of Article 6, the Member State concerned shall grant the third-country national concerned long-term resident status.

¹ **DELETED** maintained a reservation concerning the requirement of a valid travel document.

² The text of paragraph 2 has been aligned, *mutadis mutandis*, with that of Article 5(4) of the draft Directive on the right to family reunification.

³ The wording of the second sentence of Article 7(1) is the same used in Article 10(1).

Article 8 (former Article 9)
EC document certifying the long-term resident status

1. The status as long-term resident shall be permanent, subject to article 9.
2. Member States shall issue a long-term resident's EC residence permit to long-term residents. The permit shall be valid at least for five years; it shall be automatically renewable on expiry.
3. A long-term resident's EC residence permit may be issued in the form of a sticker or of a separate document. It shall be issued in accordance with the rules and standard model in by Council Regulation (EC)1030/2002, of 30 June 2002, laying down a uniform model for the residence permit for third-country nationals¹. Under the heading "type of permit", the Member States shall enter "long-term resident – EC".
4. A long-term resident's EC residence permit shall be issued and renewed free of charge or against payment of an adequate and proportionate sum².

¹ OJ L 157 of 15.6.2002, p. 1.

² **DELETED** maintained reservations on paragraph 4.

Noting that this kind of clause should not be contained in a Directive, **DELETED** suggested deleting this provision.

Pointing out that costs charged for issuing and renewing a residence permit may vary in the Member States, **DELETED** wondered which criteria would be to determine whether a sum is *adequate and proportionate*.

Article 9 (former Article 10)

Withdrawal of status¹

1. Member States shall withdraw long-term resident status in the following cases²:
 - (a) detection of fraudulent acquisition of long-term resident status;
 - (b) acquisition of long-term resident status in another Member State as provided by Article 27;
 - (c) adoption of an expulsion measure under the conditions provided for in Article 12.
2. A third-country national shall lose long-term resident status in the event of absence from the territory for a period of two consecutive years³.

¹ **DELETED** maintained a scrutiny reservation on this provision.

In general terms **DELETED**, as well as the **Cion**, wondered whether it is appropriate to maintain a distinction, as it appears in the current draft, between cases of withdrawal - in paragraph 1 - and cases of loss - in paragraph 2 - of long-term resident status.

According to the **Cion**, which recalled that the original proposal provided exclusively for a mechanism of withdrawal - the cases of loss of status were identified and added during the course of negotiations - the possibility of reverting to the previous system might be envisaged. Expressing doubts about the need for having an autonomous category of loss of status vis-à-vis to the category of withdrawal, **DELETED** felt that the structure of this provision needs to be further considered.

² With a view to meeting a concern expressed by **DELETED** - this delegation wished to cover cases in which, even if long-term resident status may be withdrawn, the expulsion of the person concerned is not justified -, the **Pres** suggested adding the following point d) to Article 9(1):

'd) threat to public order, in consideration of the seriousness of the offences he/she has committed, but it is not a reason for expulsion within the meaning of Article 12.'

DELETED opposed this suggestion, on which **DELETED** entered scrutiny reservations.

³ **DELETED** supported by **DELETED**, also pointed out that also the loss of status - which on the basis of the current draft appears to be an automatic consequence of the absence of the long-term resident for a certain period of time - should result from an administrative act adopted by the Member State concerned.

DELETED considered that it is not appropriate to set a deadline with respect to absences of persons who have been residing for a long period of time in the territory of a Member State of the EU. Feeling that this provision is too restrictive and detailed, this delegation entered a reservation on paragraph 2.

Noting that two years is too long a period, **DELETED** entered a reservation on this time-limit.

Member States may provide for derogations where the absence is due to the discharge of military or civilian service obligations, detachment for employment purposes, studies or research, serious illness, pregnancy or maternity leave.

Member states may provide that absences exceeding two years or for reasons not referred to in the second subparagraph shall not entail withdrawal of status¹.

¹ **DELETED** wanted the word *shall* to be replaced by *may*.

3. The expiry of a long-term resident's EC residence permit shall in no case entail withdrawal of long-term resident status.
4. Where the withdrawal does not justify the adoption of an expulsion measure, the Member State shall issue a residence permit to the person concerned who is still residing in its territory.

Article 10 (former Article 11)

Procedural guarantees

1. Reasons shall be given for any decision rejecting an application for long-term resident status or withdrawing that status. Any such decision shall be personally notified to the third-country national concerned or, if it cannot be done, it will be made public in accordance with the notification procedures under the relevant national legislation. The notification shall specify the redress procedures available and the time within which he may act
2. A third-country national whose application for long-term resident status is rejected may subsequently lodge another application if changes in his personal circumstances so justify¹.
3. Where an application for long-term resident status is rejected or that status is withdrawn or the residence permit is not renewed, the person concerned shall have the right to mount a legal challenge in the Member State concerned.

¹ Noting that in accordance with the current draft of this provision the person concerned may only lodge another application if changes in his/her personal circumstances so justify while, **DELETED** maintained a scrutiny reservation on paragraph 2, as under its national law he/she is always entitled to lodge another application.

Article 11 (former Article 12)¹

Equal treatment

1. Long-term residents shall enjoy equal treatment with nationals as regards:

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- ¹ The Pres submitted the following compromise suggestion for Article 11:
- '1. *Long-term residents shall enjoy equal treatment with nationals as regards*
 - (a) *education and vocational training, including study grants*
 - (b) *recognition of diplomas, certificates and other qualifications issued by a competent authority*
 - (c) *social and tax benefits*
 - (d) *access to goods and services and the supply of goods and services made available to the public, including housing*
 - (e) *freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose member are engaged in specific occupation, including the benefits conferred by such organisations;*
 - (f) *free access to the entire territory of the Member State concerned, subject to the measures required to the protection of public order and domestic security.*
 - 2. *Long-term resident shall enjoy treatment as close as possible to that which nationals enjoy as regards:*
 - (a) *access to employment and self-employed activities, provided such activities do not entail even occasional involvement in the exercise of public authority, and conditions of employment and working conditions, including conditions regarding dismissal and remuneration;*
 - (b) *social protection, including social security and health-care;*
 - (c) *social assistance.*
 - 3. *Where a Member State grants any of the rights mentioned in paragraphs 1 and 2 to its own nationals while they are residing outside its territory, this Member State is not obliged to grant these right to third country nationals who have acquired long-term resident status in another Member State and have been issued a residence permit in accordance with the provisions of Chapter III, in the case where these persons reside outside its territory.*
 - 4.2. *Member States may extend the benefit of equal treatment to matters not referred to in paragraph 1.'*

Various delegations (**DELETED**) maintained scrutiny reservations on this suggestion and in particular on the new paragraph 2. Some delegations, and in particular **DELETED**, expressed some concern regarding the distinction between the cases, referred to in paragraph 1, in which third-country nationals will be granted equal treatment and the cases in which, under paragraph 2, they will receive treatment as close as possible to that which nationals enjoy.

DELETED drew attention to the need for further considering this provision, in order to avoid that long-term residents are granted treatment more favourable than the treatment that EU nationals are entitled to under EC law.

The Cion preferred maintaining the current draft of this provision. In its view the most appropriate solution would be to examine, for each of the individual rights listed in Article 11, what possible restrictions and limitations may be envisaged and introduced.

Noting that there is no harmonisation in the areas identified in this provision, **DELETED** wondered whether the difficult exercise proposed by the Cion would be feasible.

The Pres said that this provision needs to be further considered.

- (a) access to employment and self-employed activity, provided such activities do not entail even occasional involvement in the exercise of public authority, and conditions of employment and working conditions, including conditions regarding dismissal and remuneration;
 - (b) education and vocational training, including study grants;
 - (c) recognition of diplomas, certificates and other qualifications issued by a competent authority;
 - (d) social protection, including social security and health-care;
 - (e) social assistance;
 - (f) social and tax benefits;
 - (g) access to goods and services and the supply of goods and services made available to the public, including housing;
 - (h) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations;
 - (i) free access to the entire territory of the Member State concerned.
2. Member States may extend the benefit of equal treatment to matters not referred to in paragraph 1.

Article 12 (former Article 13)

Protection against expulsion

1. Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public order or public security.
2. The decision referred to in paragraph 1 shall not be founded on economic considerations.
3. Before taking a decision to expel a long-term resident, Member States shall have regard to the following factors:
 - (a) the duration of residence in their territory;
 - (b) the age of the person concerned;
 - (c) the consequences for the person concerned and family members;
 - (d) links with the country of residence or the absence of links with the country of origin.
4. Where an expulsion decision has been adopted, a judicial redress procedure shall be available to the long-term resident in the Member State concerned.
5. Legal aid shall be given to long-term residents lacking adequate resources, on the same terms as apply to nationals of the State where they reside.

Article 13 (former Article 14)
More favourable national provisions

Member States may issue residence permits of permanent or unlimited validity on terms that are more favourable than those laid down by this Directive. Such residence permits shall not confer the right of residence in the other Member States as provided by Chapter III of this Directive.

Chapter IIa

Acquisition of long-term resident status by refugees¹

Article 14

Specific provisions concerning refugees

1. The provisions of this Directive apply to refugees recognised by the Member States.

This Chapter is without prejudice to any rules granting and maintaining refugee status².

2. This Directive shall apply without prejudice to the obligations imposed by Article 33 of the Geneva Convention of 28 July 1951 on the Status of Refugees, as amended by the New York Protocol of 31 January 1967, and Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

Article 14a

Duration of residence for refugees

1. The period of legal and continuous residence referred to in Article 4(1) will be calculated from the moment when the third-country national concerned has been recognised as having refugee status³.
2. Where the third-country national has acquired refugee status, the periods of residence referred to in Article 3(2), points b) and d) may be taken into account for the purposes of calculating the period of legal and continuous residence referred to in Article 4(1).

¹ **DELETED** maintained a general reservation on this Chapter (see also footnote 1 on page 4).

² **DELETED**, which maintained a reservation on this provision, pointed out that the question of the transfer of responsibility (see footnote 1 on page 4) needs to be further examined. It said that it is considering submitting a compromise suggestion in this respect.

³ According to **DELETED**, which entered a reservation on this provision, the periods of residence spent by the third-country national in the territory of the Member State concerned as asylum seeker should also be taken into account.

DELETED felt that for refugees, a period of legal and continuous residence shorter than that referred to in Article 4(1) should be envisaged (four years instead of five). With respect to the question of the length of the period of legal and continuous residence be taken into account in the case of refugees, **DELETED** drew attention on the need for ensuring consistency with the time-limit which will be agreed in the framework of the examination of the relevant asylum instrument which is currently being examined by the Asylum Working Party.

Article 14b

Exemption from the fulfillment of certain conditions

By derogation from Article 5(1) and (2), the refugees are not required to meet the conditions set out in the said provisions¹.

¹ **DELETED** maintained a reservation and **DELETED** maintained a scrutiny reservation on this provision.
DELETED maintained a linguistic reservation.

Chapter III

Residence in the other Member States¹

Article 15

Principle²

1. A long-term resident may reside in the territory of Member States other than the one which granted him the status, for a period exceeding three months, as provided by this Chapter.
2. This Chapter does not concern the residence of long-term residents in the territory of the Member States:
 - (a) as employed workers posted by a service provider for the purposes of cross-border provision of services;
 - (b) as providers of cross-border services; or
 - (c) as cross-border workers.

¹ **DELETED** maintained reservations on the whole of Chapter III. These delegations opposed, in particular, the fact that, according to the provisions contained in this Chapter, third-country nationals would be granted a treatment equivalent to that of EU citizens.

² **DELETED** maintained a reservation on Article 15.

Article 16

Conditions

1. Residence in a second Member State by a long-term resident shall be subject to compliance with the following conditions¹:
 - (a) exercise of an economic activity in an employed or self-employed capacity²; or
 - (b) pursuit of studies or vocational training, and possession of the minimum level of regular resources, to be determined by Member States, needed³ to avoid becoming a burden on the second Member State during the period of residence and sickness insurance covering all risks in the second Member State; or
 - (c) possession of the minimum level of regular resources, to be determined by Member States, needed to avoid becoming a burden on the second Member State during the period of residence and sickness insurance covering all risks in the second Member State; or
 - (d) have appropriate accommodation.
2. Long-term residents residing in a second Member State as workers in an employed or self-employed capacity shall retain their status as workers if:

¹ **DELETED** suggested adding also in Article 16 the requirement on integration which has been introduced in Article 5(1).

² Stressing that Member States should be granted discretion in regulating access to the labour market, **DELETED** maintained reservations on point a). In particular, **DELETED** recalled its suggestion to add the words *if he/she is entitled to, in accordance with national law* at the end of point a) (see 5580/02, page 4, footnote 1). Pointing out that such an approach would not favour harmonisation, **DELETED** opposed the **DELETED** suggestion and supported the approach suggested by the **Cion**.

The **Cion** took the view that, rather than introducing a reference to the national legislation, it would be more advisable to examine alternative conditions, if delegations feel that the requirements set in points a), b) and c) are not appropriate or sufficient.

³ The **Pres** drew attention to the fact that the correct version of its suggestion concerning this point should not contain the word *minimum*, which needs to be deleted. According to **DELETED**, an additional criterion should be added in point b), insofar as the resources should not only be regular, but also durable and sustainable.

- (a) they sustain a temporary incapacity for work as a result of illness or accident;
- (b) they are unemployed and entitled to unemployment benefits deriving from their contributions to the national social security system¹; in this case, the status of worker shall be retained as long as such entitlement subsists;
- (b) they embark on vocational training. Unless they are in a state of involuntary unemployment, the retention of worker status depends on the existence of a relation between the previous occupational activity and the training concerned.

¹ Welcoming the changes introduced by the Pres in this point, **DELETED** said that it is considering lifting its reservation on this provision. **DELETED** maintained a scrutiny reservation on point b).

The Cion stressed that paragraph 2 is an accessory provision. It clarified that this provision does not address the issue of the entitlement of the person concerned to claim benefits from the national security system, insofar as its objective is limited to enable him/her to retain the status of worker.

Article 17

Checks on conditions for residence

1. As soon as possible and no later than three months after entering the territory of the second Member State, the long-term resident shall apply to the competent authorities of that Member State for a residence permit¹².

Without prejudice to the provisions of the above paragraph, the long-term resident and his relatives may also submit the application mentioned in the first paragraph in or from the territory of the first Member State to the competent authorities of the second Member State³.

2. To check for compliance with the conditions provided for by Article 16(1)(a), the second Member State may ask the persons concerned to present with their application for a residence permit:
 - (a) their long-term resident's permit, an identity document and a valid travel document⁴,

¹ **DELETED** stressed the need to introduce, in this provision, penalties to be applied by Member States when the person concerned failed to apply for a residence permit within the set time-limit. The **Pres** felt that the **DELETED** concern would be covered by Article 25(2) c). However, **DELETED** felt that this provision does not apply to such cases, insofar as it enables Member States to take a decision to expel the third-country national who is not lawfully residing in the Member State concerned.

² According to **DELETED**, which suggested introducing a requirement on integration in Article 16, a new paragraph 5 should be added in Article 17. This new paragraph would state that among the conditions to be checked by the Member State concerned should also be included the payment, if required, of the costs of integration programmes (see 12217/02 MIGR 82).

³ **DELETED** expressed some doubts about the opportunity of introducing this new subparagraph. **DELETED** wondered how this provision might be implemented in practice.

⁴ **DELETED** supported the addition of the requirement of *a valid travel document*. **DELETED**, which entered reservations, as well as the **Cion**, opposed it.

- (b) evidence that they have an employment contract or a proposal for an employment contract¹, or that they exercise an economic activity in a self-employed capacity, or that they have the minimum level of regular resources, to be determined by Member States, needed to exercise an economic activity in a self-employed capacity, in both cases presenting the permits required by national law² together with a detailed description of that activity, and
 - (c) have appropriate accommodation³.
3. To check for compliance with the conditions provided for by Article 16(1)(b), the second Member State may ask the persons concerned to present with their application for a residence permit:
- (a) their long-term resident's permit, an identity document and a valid travel document;
 - (b) evidence of enrolment in an accredited establishment in order to pursue studies or vocational training; and
 - (c) evidence that they have the minimum level of regular, adequate resources, to be determined by Member States, and sickness insurance covering all risks in the second Member State.

¹ While welcoming the change suggested by the Pres, **DELETED** observed that the requirement of providing evidence of *a proposal for an employment contract* would not be sufficient. **DELETED** wondered how, in light of the introduction of a new sub-paragraph in paragraph 1, which states that the application may also be submitted from the first Member State, the persons using such a possibility would be able to meet such a requirement. It preferred maintaining the draft contained in the original Cion proposal (*statement by the employer that they are hired*)

² **DELETED** wondered about the opportunity of specifying that the person concerned must present the permits required by national law, if the same requirement needs to be met also by EU nationals. However, if such a requirement is intended to be imposed only to third-country nationals, they would oppose it.

³ **DELETED** supported the addition of the requirement of *appropriate accommodation*. **DELETED**, which entered reservations on point c), as well as the Cion, opposed it. **DELETED** wanted this requirement to be also included in paragraphs 3 and 4. The Pres also took the view that this requirement should apply to paragraphs 3 and 4.

4. To check for compliance with the conditions provided for by Article 16(1)(c), the second Member State may ask the persons concerned to present with their application for a residence permit:
 - (a) their long-term resident's permit, an identity document and a valid travel document; and
 - (b) evidence that they have the minimum level of regular, adequate resources, to be determined by Member States, and sickness insurance covering all risks in the second Member State.
5. To check for compliance with the conditions provided for by Article 16(1)(d), the second Member State may ask the persons concerned to present with their application for a residence permit, evidence that they have appropriate accommodation.

Article 18

Family members¹

1. Members of the family, as already constituted in the first Member State, shall have the right to accompany or join a long-term resident who has exercised his right of residence in a second Member State. As soon as possible and no later than three months after entering the territory of the second Member State, the family members shall apply to the competent authorities of that Member State for a residence permit, supplying the document proving the continued existence of family ties.^{2 3}

¹ The **Cion** stressed the existence of a close link between Article 18 and the Directive on the right to family reunification, which is currently being considered by the Council bodies. For that reason, it drew attention to the fact that it might be necessary to adapt this provision in accordance with the outcome of the discussions on the said Directive.

DELETED maintained reservations on Article 18. **DELETED** also entered a linguistic reservation on paragraph 1.

² In reply to query from **DELETED** concerning the requirement of a *document proving the continued existence of family ties*, which has been introduced in its suggested draft for Article 18, the **Pres** said that its intention was not to introduce a new specific document. It took the view that it will be up to the Member State concerned to determine what document needs to be supplied by the person concerned.

Drawing attention to the requirement set out in paragraph 2(b) - the persons concerned need to provide evidence that they have resided as a member of the family of the first long-term resident in the first Member State -, the **Cion** wondered whether such an addition is at all necessary.

³ **DELETED** wondered why this provision does not refer to the possibility of submitting the application from outside the territory of the Member State concerned.

The **Pres** said that it suggested introducing this possibility in Article 17, by adding a new subparagraph to paragraph 1, but could well be stated also in Article 18, if delegations feel it appropriate.

2. The second Member State may ask the family members concerned to present with their application for a residence permit:
 - (a) their long-term resident's permit or residence permit, an identity document and a valid travel document;
 - (b) evidence that they have resided as members of the family of the long-term resident in the first Member State;
 - (c) evidence that they have the minimum level of regular, adequate resources, to be determined by Member States, and sickness insurance covering all risks in the second Member State or that the long-term resident has such resources and insurance for them; and
 - (d) evidence that they have appropriate accommodation¹.
3. Where the family was not already constituted in the first Member State, Directive .../.../EC [on the right to family reunification]² shall apply.

¹ According to **DELETED**, which suggested introducing a requirement on integration in Article 16, a new point (*e*) *evidence that they have paid the costs of the integration programme*) should be added in this provision (see 12217/02 MIGR 82).

² OJ L ...

Article 19

Public policy and domestic security

1. Member States may refuse applications for residence from long-term residents or family members where the personal conduct¹ of the person concerned constitutes a threat to public order, domestic security or public health².
2. The refusal referred to in paragraph 1 may not be founded on economic considerations.

¹ **DELETED**, which wanted the word *personal* to be deleted, maintained a reservation on paragraph 1.

² **DELETED** queried why the **Pres** suggested adding the criterion of *public health* in this provision, which is not mentioned in Article 6. The **Pres** felt that it is not necessary to maintain a strict parallelism between Articles 6 and 19, which deal with different situations. It noted that, while Article 6 concerns persons who have been residing for five years in the first Member State, Article 19 refers to the first admission of the third-country nationals in the second Member State.

The **Cion** opposed the introduction of the said criterion, which was not contained in its proposal.

Article 20

Public health¹

1. The only diseases or infirmities that may justify a refusal to allow entry or the right of residence in the territory of a Member State shall be the quarantinable diseases referred to by the World Health Organisation's International Health Regulation No 2 of 25 May 1951 and such other infectious or contagious parasite-based diseases as are the subject of protective provisions in relation to nationals in the host country. Member States may not introduce new more restrictive provisions or practices.
2. Diseases or infirmities contracted after the first residence permit was issued shall not justify a refusal to renew the permit or expulsion from the territory.
3. A Member State may impose a medical examination², for persons to whom this Directive applies, in order to certify that they do not suffer from any of the diseases referred to in paragraph 1. Such medical examinations may not be performed on a systematic basis³.

¹ **DELETED** maintained reservations on Article 20.

² **DELETED** opposed the deletion of the words *performed free of charge*, which was contained in the original Cion proposal.

³ According to **DELETED**, which recalled a suggestion presented by **DELETED**, the authorities of the Member State concerned should be able to require the person concerned to provide evidence that he/she was not suffering from the diseases referred to in paragraph 1.

Article 21

Examination of applications and issue of a residence permit

1. The competent national authorities shall process applications within three months of entry in the register of the competent authority. If an application is not accompanied by the documentary evidence listed in Article 17(2), (3) and (4) and Article 18(2), the competent national authorities shall inform the applicant and allow additional time. In this event the three-month period shall be suspended and shall be counted again from the time when the additional documentary evidence is provided¹.

¹ **DELETED** wondered whether three months would be a sufficient time-limit for processing the application. **DELETED** also expressed some concern about the mechanism of suspension of the time limit referred to in this paragraph. According to **DELETED**, this provision should address the question of the legal consequences if the decision concerning the application is adopted by the competent authorities of the Member State concerned when the three month time-limit has already elapsed.

The **Cion** suggested adopting a wording in paragraph 1 similar to that of Article 5(4) of the Directive on the right to family reunification. In this context it also recalled that the third subparagraph of this provision expressly regulates the issue raised by **DELETED** (*The consequences of no decision being taken by the end of the period provided for in the first subparagraph shall be determined by the national legislation of the relevant Member State*).

DELETED supported the **Cion** suggestion.

2. If the conditions provided for in Articles 16 and 18(1) are met, then, subject to the provisions relating to public policy, domestic security and public health in Articles 19 and 20, the second Member State shall issue the long-term resident with a renewable residence permit¹. The period of validity of this permit shall correspond to the authorised duration of residence². The second Member State shall inform the first Member State of its decision³.
3. The second Member State shall issue members of the long-term resident's family with renewable residence permits valid for the same period as the permit issued to the long-term resident.
4. Residence permits shall be issued free of charge or against payment of an appropriate and proportionate charge.

¹ **DELETED** suggested deleting the word *renewable*. **DELETED** felt that, should this be done, the entire second sentence of paragraph 2 should also be deleted.

The **Cion** said that the **DELETED** suggestion needs to be considered further.

² **DELETED**, as well as the **Cion**, queried the change introduced by the **Pres** (*authorised* instead of *foreseeable*), which they found unclear.

The **Pres** said that this change is linked with the checks of the conditions established in Article 17.

³ According to **DELETED**, this provision should specify more clearly how the information concerning its decision has to be provided by the second to the first Member State. In particular, it queried what authorities would be competent in providing such information and wondered whether the Schengen Information System may be used for such purposes. **DELETED** wondered how this system might work in practice. **DELETED** took the view that the contact points should be the competent authorities of the Member States who issue the long-term resident permits.

Feeling that a very easy and flexible system of information should be envisaged, the **Cion** considered that a list of contact points to be included in an Annex to the Directive might be sufficient.

The **Pres** supported the suggestion from the **Cion**. However, it drew attention to the fact that, before examining any practical arrangements, the Working Party needs to reach agreement on the fundamental question of whether this information has to be provided from the second to the first Member State rather than - as it was envisaged in the **Cion** proposal - by the person concerned to the first Member State.

Article 22

Procedural guarantees¹

1. Reasons shall be given for any decision rejecting an application for a residence permit. It shall be notified in writing to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the possible redress procedures available and the time limit for taking action.
2. Where an application for a residence permit is rejected, or the permit is not renewed or is withdrawn, the person concerned shall have the right to apply to the administrative bodies and courts of the Member State concerned.

¹ The **Pres** said that all the changes agreed by the Working Party concerning Article 10 should be incorporated in this provision accordingly.

Article 23

Maintenance of status in the first Member State

1. Long-term residents residing in a second Member State shall retain their long-term resident status in the first Member State for as long as they do not acquire that status in the second Member State or if they decide not to apply for it after five years of legal residence¹².

¹ **DELETED** entered a linguistic reservation on paragraph 1 (the word *not* in the last sentence has not been translated in the Greek version).

DELETED supported the addition of the time-limit of five years in Article 23. **DELETED** felt that the person concerned should not retain the long-term resident status for such a long time. It considered that a shorter time-limit (six months) needs to be set in Article 9, which regulates withdrawal and loss of the status.

DELETED opposed the introduction of a time-limit in this provision. It felt that, if a time-limit is envisaged, five years should be a minimum deadline. In its view, a clear link should exist between deadlines and conditions: the more requirements are set for granting the long-term resident status, the more difficult it should be to lose it or withdraw it.

Stressing that the Directive aims at granting legal certainty to the persons who have been granted the long-term resident status, the **Cion** also preferred not to set any deadline in Article 23. However, it took the view that, in the perspective of facilitating the integration of the person concerned in the second Member State, another approach might be envisaged. A deadline shorter than five years might be taken into account, while accordingly reducing the conditions requested for being granted the status in the second Member State: it would then become easier for the person concerned to lose his/her status in the first Member State. With respect to the **Cion** comments, **DELETED** wondered how it would be possible for the person concerned to achieve, in a limited period, a level of integration in the second Member State similar to that acquired in the first Member State where he/she has resided for a longer time.

DELETED criticised the fact that the long-term resident status appears to be similar, in its view, to citizenship.

² In the framework of the examination of this provision, **various delegations** drew attention to the question of the situation of the persons concerned in cases where a decision on the application has not be taken by the competent authorities within the three month time-limit set in paragraph 1. It was felt that this provision should regulate such cases, which may occur in practice, particularly if the person concerned submits the application shortly before the end of the deadline.

The **Pres** observed that two solutions might be envisaged: either the person concerned has to go back to the first Member State and remain there until the competent authorities of the second Member State have taken a decision concerning his/her application, or he/she should be granted a temporary permit allowing him/her to stay until such a decision has been adopted. It finally noted that this issue needs to be considered further.

2. (Members of the family of a long-term resident exercising his right of residence who are not themselves long-term residents shall retain the residence permits issued in the first Member State until those permits expire.)
3. If the family members have not yet acquired an autonomous residence permit as provided for by Article 13 of Directive .../.../EC [on the right to family reunification], their period of legal residence in the second Member State shall be taken into account in the first Member State for the purposes of acquiring the autonomous residence permit.)

Article 24

Rights in the second Member State¹

1. As soon as they have received the residence permit provided for by Article 21 in the second Member State, long-term residents shall in that Member State enjoy the rights enumerated in Article 12, with the exception of social assistance and study or maintenance grants².

2. As soon as they have received 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 listed in Article 12(1) and (2) of Directive .../.../EC [on the right to family reunification]³.

¹ **DELETED** maintained reservations on this provision. **DELETED** entered a scrutiny reservation on the whole of this provision and **DELETED** on paragraph 1.

² The **Cion** wondered why maintenance grants have been included among the exceptions referred to in paragraph 1.

³ OJ L ...

Article 25

Withdrawal of residence permit and obligation to leave the territory

1. Until the third-country national has obtained long-term resident status, the second Member State may decide to withdraw the resident permit and to oblige the person concerned and his/her family members to leave its territory in the following cases:
 - (a) on grounds of public policy, domestic security or public health as defined in Articles 19 and 20;
 - (b) where the conditions provided for in Articles 16, 17 and 18 are no longer met.
2. In addition, during the period referred to in paragraph 1, the second Member State may decide to expel the third-country national, having regard to the provisions of Article 13, in the following cases:
 - (a) on grounds of public policy, domestic security or public health as defined in Articles 19 and 20;
 - (b) where the conditions provided for in Articles 16, 17 and 18 are no longer met;
 - (c) where the third-country national is not lawfully residing in the Member State concerned.
3. Expulsion decisions may not be accompanied by a permanent ban on residence in the cases referred to in paragraphs 1(b) and 2(b).

Article 26¹

Obligation to readmit

1. If the second Member State adopts one of the measures referred to in Articles 25(1) and 25(2), the first Member State shall immediately readmit without formalities the long-term resident and his/her family members. The second Member State shall notify the first Member State of its decision.
2. The obligation to readmit referred to in paragraph 1 shall be without prejudice to the possibility of the long-term resident and his/her family members moving to a third Member State in the cases referred to in Articles 25(1)(b) and 25(2)(b).
3. In the cases referred to in Article 25(2)(a), before adopting a decision to expel a third-country national to his/her country of origin, the second Member State shall consult the first Member State, having regard to the provisions of Article 12.

1

DELETED has submitted the following compromise suggestion for Article 26:

- '1. *If the second Member State adopts one of the measures referred to in article 25 (1) and (2), the first Member State shall immediately readmit without formality the long-term resident and his/her family members.*
The obligation to readmit referred to in the first sub-paragraph is without prejudice to the possibility that, in the cases referred to in articles 25 (1) and (2), point (b), the long-term resident and his/her family members move to a Member State other than the Member State concerned.
2. *In the cases referred to in Article 25 (1), point (a), where the second Member State decides to adopt an expulsion order of the third-country national to his/her country of origin, it shall consult the first Member State beforehand, while taking into account the provisions of Article 12.*
3. *Where an expulsion order has been adopted by the second Member State in the cases referred to in Article 25 (2), point (a), the Member State shall apply the provisions of Council Directive 2001/40/CE of 28 May 2001 on the mutual recognition of the expulsion decisions of third-country nationals'.*

Article 27

Acquisition of long-term resident status in the second Member State

1. Long-term residents who have resided legally in the territory of the second Member State for a period of five years, may apply to that Member State's competent authorities for long-term resident status.
2. The second Member State shall grant long-term residents the status provided for by Article 7, subject to the provisions of Articles 5 and 6. The second Member State shall notify its decision to the first Member State, which shall withdraw the status from the person concerned.
3. The procedure laid down in Article 7 shall apply to the presentation and examination of applications for long-term resident status in the second Member State. Article 8 shall apply for the issue of the residence permit. Where the application is rejected, the procedural guarantees provided for by Article 10 shall apply.

Chapter IV

Final provisions

Article 28

Penalties

Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by 31 December 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 29

Report

By 31 December 2005 at the latest, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose such amendments as may be necessary.

Article 30

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2003 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

Article 31
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 32
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President
