



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.3.2001  
COM(2001) 127 final

2001/0074 (CNS)

Proposal for a

**COUNCIL DIRECTIVE**

**concerning the status of third-country nationals who are long-term residents**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. CONTEXT

- 1.1 The European Council, at its special meeting in Tampere on 15 and 16 October 1999, acknowledged the need to ensure fair treatment of third-country nationals who reside legally on the territory of its Member States. It declared that a more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens<sup>1</sup>. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.
- 1.2 The European Council also acknowledged that the legal status of third-country nationals should be approximated to that of Member States' nationals, and decided to pay special attention to the situation of third-country nationals settled on a long-term basis. It declared that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens; e.g. the right to reside, receive education and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis citizens of the State of residence. It endorsed the objective that long-term legally resident third-country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident<sup>2</sup>.
- 1.3 In December 1999, when presenting its first initiative relating to legal immigration – the proposal for a Council Directive on the right to family reunification<sup>3</sup> – the Commission announced that it was planning to commence and pursue work on legal immigration by way of follow-up to the conclusions of the Tampere European Council so as to exploit all the possibilities offered by Title IV of the Treaty establishing the European Community. It stated its intention of addressing the question of the legal situation of third-country nationals holding a long-term resident's permit and its desire to give full effect to Article 63(4) of the Treaty establishing the European Community relating to the rights of third-country nationals residing legally in a Member State to reside in another Member State.
- 1.4 This intention was also declared in the Scoreboard to review progress on the creation of an area of freedom, security and justice in the European Union, approved by the Council on 27 March 2000<sup>4</sup>. The Commission presented the Council (JAI) meeting of 30 November and 1 December 2000.<sup>5</sup> The intention was again confirmed in the Communication on a Community immigration policy<sup>6</sup> presented by the Commission in November 2000, where it looks at all the questions related to immigration in aggregate terms, given the complexity of immigration policy and its impact on a wide range of fields (social, economic, legal and cultural).

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<sup>1</sup> Presidency Conclusions, point 18.

<sup>2</sup> Presidency Conclusions, point 21.

<sup>3</sup> COM(1999) 638 final, 1.12.1999.

<sup>4</sup> COM(2000) 167 final/2, 13.4.2000.

<sup>5</sup> COM(2000) 782 final, 30.11.2000.

<sup>6</sup> COM(2000) 757 final, 22.11.2000.

- 1.5 With this proposal, the Commission is giving practical expression to its intention and to its commitment to a matter that is crucial in terms of securing the genuine integration of third-country nationals settled on a long-term basis in the territory of the Member States. The proposal is part of a broader effort on immigration which the Commission has been making for several years now and which is worth recalling here. Before the Amsterdam Treaty entered into force in 1998, the Commission presented its proposal for a Council Regulation (EC) amending Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community to extend it to third-country nationals<sup>7</sup>. In 1999, it presented a proposal extending the freedom to provide cross-border services to third-country nationals established within the Community<sup>8</sup>, along with a proposal for a Directive on the posting of workers who are third-country nationals for the provision of cross-border services<sup>9</sup>. These three proposals are now on the Council's table. Since the Amsterdam Treaty came into force, the Commission has presented the proposal for a Directive on the right to family reunification<sup>10</sup>; the European Parliament gave its Opinion on 6 September, and the Commission immediately responded with an amended proposal<sup>11</sup>, now also on the Council's table.
- 1.6 The Charter of Fundamental Rights of the European Union<sup>12</sup>, solemnly proclaimed by the European Parliament, the Council of the Union and the European Commission at Nice in December 2000, should also be mentioned in this context. The Charter constitutes the very essence of the European acquis in terms of fundamental rights. Respecting the principle of universalism, most of the rights enumerated in the Charter are conferred on all persons regardless of their nationality or place of residence; the Charter thus enshrines a number of rights conferred on the nationals of the Member States and on third-country nationals residing there. To that extent it reflects the European Union's traditions and positive attitude to equal treatment of citizens of the Union and third-country nationals.
- 1.7 The Commission has also considered the question of the rights inherent in freedom of movement and residence for citizens of the Union with a view to matching them more closely to the new legal and political environment flowing from citizenship of the Union. The Commission's intention is that the movement of citizens between Member States should be on much the same basis as when citizens change their residence or job within their own Member State. Supplementary administrative or statutory obligations should be kept to the minimum needed by the specific fact of being a non-national. To that end, as it undertook in the communication on the follow-up to the recommendations of the High-Level Panel on the Free Movement of Persons<sup>13</sup> and in accordance with the Scoreboard, the Commission will be presenting a fresh proposal for a Directive recasting the existing legislation in a single instrument with the primary objective of facilitating freedom of movement and residence, reducing bureaucracy, better regulating the status of family members of citizens of the Union and defining the possibilities for refusing or withdrawing the right of residence. The proposal will be brought forward in the first half of 2001.

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<sup>7</sup> OJ C 6, 10.1.1998 p. 15.

<sup>8</sup> OJ C 67, 10.3.1999, p. 17; amended proposal, OJ C 311 E, 31.10.2000, p. 197.

<sup>9</sup> OJ C 67, 10.3.1999, p. 12; amended proposal, OJ C 311 E, 31.10.2000, p. 187.

<sup>10</sup> COM(1999) 638 final, 1.12.1999.

<sup>11</sup> COM(2000) 624 final, 10.10.2000.

<sup>12</sup> OJ C 364, 18.12.2000, p. 1.

<sup>13</sup> COM(1998) 403 final, 1.7.1998.

## **2. INTERNATIONAL LEGAL CONTEXT**

- 2.1. Internationally, ILO Convention No 97 introduces obligations to secure equal treatment for migrant workers in a wide range of respects and to ensure security of residence after five years, even where an employment contract is terminated. In 1990 the United Nations adopted an International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, which is not yet in force. It has not yet been ratified by any of the Union Member States.
- 2.2. At European regional level, the Social Charter of 1961 applies to all the Member States, and the 1996 Charter to only some of them. Migrant workers enjoy equal treatment with nationals in economic and social matters. They also enjoy all employment protection rights. The Council of Europe's European Convention on Establishment, signed in 1955, applies solely on the basis of reciprocity, but it constitutes a valuable precedent since it secures equal treatment in a variety of respects. Migrant workers are offered security of residence after five years, and other migrants enjoy this after ten years. It also creates a link between the duration of residence and stronger protection against expulsion and offers major procedural guarantees. Lastly, the European Convention on the legal status of migrant workers of 1977 supplies a useful basis for the protection of civil, economic and social rights of migrants. But this Convention has been ratified by only six Member States.
- 2.3. Recently, the Committee of Ministers of the Council of Europe adopted a Recommendation on the security of residence of long-term immigrants. Long-term status should be granted to third-country nationals after five years' residence, or at any rate no more than ten years. They would then enjoy equal treatment with nationals in wide-ranging fields such as access to employment, housing, social protection and participation in local public life. They should enjoy enhanced protection against expulsion in proportion to the duration of their residence in the territory, having regard to the decisions given by the European Court of Human Rights.

## **3. THE NATIONAL SITUATION**

- 3.1. The national legislation of all the Union Member States provides for specific and more favourable legal treatment of third-country nationals who have resided in their territory for some time. In fourteen of them this is established by statute; in the other by administrative practice. Third-country nationals must first show that they have been settled on a long-term basis in the host Member State, then that State gives them the means of fully integrating into their new society by conferring a series of rights on them. While the legitimacy of a specific status for long-term residents is apparently uncontested, the criteria for its acquisition and the scope and determination of the rights conferred vary from one State to another. The study undertaken by the University of Nijmegen at the Commission's request<sup>14</sup> highlighted the fact that, while national bodies of legislation have their own specific features, there are numerous points of convergence, in particular they all take account of the

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<sup>14</sup> K. Groenendijk, E. Guild, R. Barzilay, The legal status of third-country nationals who are long-term residents in a Member State of the European Union, University of Nijmegen, April 2000.

length of time for which links have been established in the host country and how close they are.

- 3.2. The status of long-term residents in the Member States is often evidenced by a residence permit that is either permanent or of unlimited validity or else by an establishment permit. The first criterion for the acquisition of such secure residence permits is the period of legal residence of the third-country nationals in the territory. The period varies from two to fifteen years; eight Member States grant long-term resident status after five years' continuous legal residence. For members of a long-term resident's family or for refugees, certain Member States grant the status after shorter periods of residence. Other criteria are also applied: the persons concerned must not constitute an actual threat to public order or national security and in general must have an adequate income or be employed. Where these criteria are met, long-term resident status is automatic in eleven Member States; in the others, the administration has a degree of discretion.
- 3.3. The period of validity of the status and of the residence permit that goes with it tends to vary. The status is generally permanent, whereas the permit must be renewed. Certain States, at the time of renewal, check whether the conditions on the basis of which the status was acquired are still valid. But this is a minority position, since in most Member States the residence permit is renewed automatically. Where the status is withheld, the Member States provide for administrative or judicial redress procedures.
- 3.4. In thirteen Member States permanent residence status entails unrestricted access to the employment market. Long-term residents have access to social benefits and social assistance on the same terms as nationals in most Member States. Some States reserve access to social assistance for their nationals alone. Access to both primary and secondary education is on a non-discriminatory basis in most Member States. But university tuition fees may be higher and access to study grants may be more difficult for third-country nationals, even if they are long-term residents.
- 3.5. Five Member States provide that long-term residents may vote and stand as candidates at municipal elections. Two others confer this right on the basis of the principle of reciprocity.
- 3.6. Regarding withdrawal of the status, all the Member States provide for it in the event of fraud or prolonged absence from the territory. The great majority do not consider unemployment or inadequate resources as valid grounds for withdrawal.
- 3.7. Permanent or long-term resident status is a status that helps to offer those concerned legal certainty, so that they enjoy enhanced protection against expulsion. The longer the period of residence, the greater the violation of public order must be. Certain Member States operate a kind of tariff system, matching the term of imprisonment to the period of residence. Others confine expulsion orders to certain offences (such as drug-trafficking, organised crime, terrorism). And certain States refer to the criteria of Council Directive 64/221/EEC on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health<sup>15</sup> or those used by the European Court

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<sup>15</sup> OJ 56, 4.4.1964, p. 850/64.

of Human Rights in decisions on Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In some Member States, certain categories of long-term residents enjoy absolute protection against expulsion (persons born in the territory of the Member State, persons resident for more than twenty years, minors).

#### **4. WORK IN THE EUROPEAN UNION CONTEXT**

- 4.1. The special treatment available for third-country nationals who were long-term residents was already visible in the European Union before the entry into force of the Amsterdam Treaty. In 1996 the Council, on a French initiative, adopted a Resolution on the status of third-country nationals residing on a long-term basis in the territory of the Member States<sup>16</sup>, which was the first attempt to approximate national legislation in this field. Apart from the fact that it had no mandatory legal force, the Resolution generated no progress beyond a stock-taking of existing national legislation. In its report to the Commission dated 18 March 1997, the High-Level Group on the free movement of persons stated that the situation of third-country nationals residing legally in a Member State could be improved. In the communication of 1 July 1997 (*supra*), the Commission took stock of measures taken in response to the recommendation, highlighting its proposal of 12 November 1997 for amendment of Regulation (EEC) No 1408/71 as regards its extension to nationals of third countries<sup>17</sup>.
- 4.2. In 1997, the Commission presented a proposal for a Convention on the admission of third-country nationals<sup>18</sup>. It provided for a special status for third-country nationals residing on a long-term basis, including the possibility of settling in another Member State to study or work. The aim was to provide input for a debate on immigration questions prior to the entry into force of the Amsterdam Treaty and the large-scale institutional changes flowing from it. In an introductory statement the Commission announced its intention of presenting a new draft in the form of a Directive as soon as the new treaty was in force. The European Parliament's Opinion on the proposal for an admission Convention<sup>19</sup> wished the situation of long-term residents to be treated separately from the instruments on the admission of third-country nationals.
- 4.3. On 5 and 6 October 2000 the French Presidency organised a seminar in Paris on the integration of third-country nationals residing legally. The purpose of the seminar was to launch a debate between representatives of the Member States and the Community institutions, experts from international and non-governmental organisations and academic circles on means of promoting a vigorous policy on the integration of third-country nationals in the European Union. The study on the legal status of long-term residents conducted by the University of Nijmegen at the Commission's request was presented and discussed there.
- 4.4. Following this seminar, the French Presidency presented a draft set of Council conclusions on the conditions for harmonising the status of third-country nationals

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<sup>16</sup> Resolution of 4 March 1996, OJ C 80, 18.3.1996.

<sup>17</sup> OJ C 6, 10.1.1998, p. 15.

<sup>18</sup> OJ C 337, 7.11.1997, p. 9.

<sup>19</sup> Minutes of sitting of 10 February 1999, PE 276.722.

resident on a long-term basis. Initial technical discussions in working parties highlighted the Member States' interest in the topic but, mainly for timetable reasons, no agreement emerged. The Ministers discussed the question at the Council meeting (Justice and Home Affairs) on 30 November and 1 December 2000.

- 4.5. During the preparatory work on the proposal, the Office of the United Nations Commissioner for Refugees, non-governmental organisations were sounded out. As a result of these soundings, the results of the Paris seminar and the Council's discussions on the French Presidency's draft Conclusions, the Commission had an overview of the question of the status of long-term residents.

## **5. OBJECTIVES AND OVERVIEW OF THE PROPOSAL**

- 5.1. As the Communication on Community immigration policy<sup>20</sup> states, "it is ... essential to create a welcoming society and to recognise that integration is a two-way process involving adaptation on the part of both the immigrant and of the host society. The European Union is by its very nature a pluralistic society enriched by a variety of cultural and social traditions, which will in the future become even more diverse. There must, therefore be respect for cultural and social differences but also of our fundamental shared principles and values: respect for human rights and human dignity, appreciation of the value of pluralism and the recognition that membership of society is based on a series of rights but brings with it a number of responsibilities for all of its members be they nationals or migrants. The provision of equality with respect to conditions of work and access to services, together with the granting of civic and political rights to longer-term migrant residents brings with it such responsibilities and promotes integration".
- 5.2. To permit fair treatment of third-country nationals and promote their full integration, as called for by the Tampere European Council, the Commission considers that there should be a common status of long-term resident so that all third-country nationals residing legally can acquire it and enjoy it on much the same terms in all the Member States. Criteria must therefore be determined for the acquisition of the status and the rights that go with it, on the basis of equal treatment with citizens of the Union in the spirit of the Tampere conclusions. For the sake of certainty as to the law governing third-country nationals, it is essential that acquisition of the status should not be left to Member States' discretion where the conditions are actually met.
- 5.3. The status will be available to all third-country nationals who reside legally in the territory of a Member State on a long-term basis. This category covers refugees with recognised status under the Geneva Convention and third-country nationals who are members of the family of a citizen of the Union. The only excluded categories are those who are not intending to actually settle, in particular persons resident in order to study or to engage in a seasonal occupation and those enjoying temporary protection. Lastly, persons enjoying a subsidiary or additional form of protection are not within the scope of the proposal as these concepts have not been harmonised in the Community.

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<sup>20</sup> COM(2000) 757 final, 22.11.2000.

- 5.4. Long-term residents enjoying the status will enjoy equal treatment in a series of respects, ranging from access to employment and self-employed activity to education and vocational training and social protection and assistance. They will also have enhanced protection against expulsion.
- 5.5. Although the importance of voting rights and access to nationality for the integration of third-country nationals who are long-term residents is now generally acknowledged, the EC Treaty provides no specific legal basis for it. On voting rights, Community involvement is provided for only as regards municipal and European elections and only for citizens of the Union. Access to nationality is a matter reserved solely for national powers. This proposal accordingly does not address these two aspects, though it is true that the Tampere European Council endorsed “the objective that long-term legally resident third-country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident”<sup>21</sup>.
- 5.6. The Commission considers that full integration also entails the right for long-term residents to reside in other Member States and that the time has come to implement Article 63(4) of the EC Treaty. A genuine area of freedom, security and justice, a fundamental objective of the European Union, is unthinkable without a degree of mobility for third-country nationals residing there legally, and particularly for those residing on a long-term basis. It must also be stressed that Article 45 of the Charter of Fundamental Rights of the European Union confirms that “freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third-countries legally resident in the territory of a Member State”.
- 5.7. The Commission is aware of the importance of the task it has set itself; there are no relevant provisions in Community law as it stands. Third-country nationals holding a residence permit do not currently have the right of residence in another Member State. The Schengen acquis merely gives them the right to move for up to three months in the Member States where the Schengen acquis applies. Free movement does not entail the possibility of residing in another Member State for study purposes. The proposal to extend freedom to provide cross-border services to third-country nationals established in the Community does not address the question of residence but only freedom to provide services. Consequently, third-country nationals wishing to settle in another Member State will have to go through all the formalities imposed on first-time immigrants and will not be eligible for favourable treatment, even if they are long-term residents in a Member State.
- 5.8. This situation is discriminatory in relation to citizens of the Union who, under the Treaty and the current secondary legislation, enjoy the freedom of movement of persons. Nor does it match the demands of an employment market that is in a process of far-reaching change, where greater flexibility is needed. The evolution of the employment market in the Union is highlighting employment shortages in certain sectors of the economy. Third-country nationals who are long-term residents may be ready and willing to relocate either in order to put their vocational skills to work in another Member State or to escape unemployment in the Member State where they reside. The mobility of long-term residents can thus make for better utilisation of employment reserves available in different Member States. At a time when several

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<sup>21</sup> Presidency Conclusions, point 21.



Member States are engaging in international competition to attract specialists, notably in information technology, the possibility of acquiring long-term resident status and therefore of residing in any of the Member States will make the prospect of settling in the European Union on a long-term basis all the more attractive.

- 5.9. The acquisition of long-term resident status is an essential instrument for integrating persons who are planning to settle on a long-term basis in the Union. This proposal for a Directive preserves a very tight link between actual legal residence in a Member State and acquisition of long-term resident status; putting down roots in a Member State is regarded as a *sine qua non* for acquiring the status provided for by the Directive, which establishes equal treatment with nationals of the Member State in a wide range of aspects of economic and social life and offers the possibility of residing in other Union Member States. There are admittedly categories of third-country nationals, such as researchers, sportsmen and women or artists, who, without wishing to settle on a long-term basis, may wish to enjoy mobility in the Member States. Securing that mobility is a challenge that the Union must take up if it is to remain internationally competitive and be attractive to such categories. This proposal is a first step towards giving effect to Article 63(4) of the EC Treaty, which can be used as a legal basis for other specific instruments for the mobility of third-country nationals not wishing to settle on a long-term basis. In its proposals on the admission of third-country nationals for the purposes of working in an employed or self-employed capacity, studying or vocational training or non-gainful activities, the Commission will provide as necessary for appropriate forms of mobility between Union Member States.

## **6. CHOICE OF LEGAL BASIS**

- 6.1. The choice of legal basis is consistent with the changes made to the EC Treaty by the Amsterdam Treaty, which entered into force on 1 May 1999. Article 63(3)(a) of the EC Treaty provides that the Council is to adopt measures relating to “conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion”. Article 63(4) provides that the Council is to adopt “measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States”.
- 6.2. These Articles constitute the legal basis for a proposal laying down the conditions for acquisition of long-term resident status by third-country nationals who reside in the territory of a Member State and the conditions on which persons holding that status enjoy the right of residence in another Member State.
- 6.3. The proposal for a Directive must be adopted by the procedure of Article 67 of the Treaty: the Council acts unanimously on a proposal from the Commission or at the initiative of the Member States after consulting the European Parliament. Title IV of the EC Treaty does not apply to the United Kingdom and Ireland unless those Member States decide otherwise in accordance with the Protocol on the position of the United Kingdom and Ireland annexed to the Treaties. Likewise, Title IV does not apply to Denmark by virtue of the Protocol on the position of Denmark, annexed to the Treaties.

## **7. SUBSIDIARITY AND PROPORTIONALITY**

7.2. The new Title IV on visas, asylum, immigration and other policies related to free movement of persons, inserted in the Treaty establishing the European Community, confers powers on these matters on the European Community. These powers must be exercised in accordance with Article 5 of the EC Treaty, i.e. if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community. The proposed Directive respects these criteria.

### **7.2. Subsidiarity**

The primary objective of this initiative is to grant a status to third-country nationals who are long-term residents in the territory of a Member State in accordance with criteria that are common to all the Member States. This objective satisfies the requirements of the establishment of an area of freedom, security and justice, which entails the adoption of common rules governing immigration policy. Common criteria can be determined only at Community level. The second objective is to determine the conditions in which such persons may exercise their right of residence in another Member State. This entails determining rules that are common to all the Member States to ensure that the right of residence is effective; such rules can be determined only at Community level.

### **7.3. Proportionality**

The form of Community action must be the simplest that will enable the objective of the proposal to be attained and effectively implemented. In this spirit, the legal instrument chosen is a Directive, laying down general principles but leaving the Member States to which it is addressed the choice of the most appropriate form and methods for giving effect to these principles in their national legal system and general context. The proposed Directive merely determines the conditions for the acquisition of long-term resident status having effect at European level, since the person enjoying it will have the right of residence in another Member State, leaving it up to the Member States, if they wish, to determine more favourable conditions for the acquisition of a permanent status applying solely in the national context.

## **ARTICLE-BY-ARTICLE COMMENTARY**

### **Chapter I – General provisions**

#### Article 1

The Directive has two purposes. The first is to approximate national legislation and practice regarding the grant of long-term resident status to third-country nationals residing legally. While the great majority of Member States provide for forms of long-term or permanent resident status, the conditions for acquiring it vary. Approximating national legislation would enable all third-country nationals to enjoy long-term status on equivalent terms in all the Member States, irrespective of the Member State of residence.

The second purpose is to give effect to Article 63(4) of the EC Treaty and determine the conditions in which third-country nationals who are long-term residents within the meaning of the Directive may reside in a Union State other than the one which first granted them the status.

#### Article 2

This Article defines the concepts used in the instrument:

- (a) the concept of third-country national is defined by default, excluding citizens of the Union as defined by the EC Treaty. It applies to persons having the nationality of a third country and to stateless persons within the meaning of the New York Convention of 28 September 1954;
- (b) the concept of long-term resident refers to third-country nationals to whom a Member State has granted the status provided for by the Directive;
- (c) the concept of first Member State means the Member State which granted the third-country national long-term resident status;
- (d) the second Member State means a Member State which has not granted the third-country national long-term resident status but in whose territory the third-country national resides under the proposal;
- (e) to ensure correspondence between instruments, the definition of members of the family of a third-country national corresponds to Articles 4 and 5(1) of the Council Directive on the right to family reunification<sup>22</sup>. As regards, in particular, unmarried partners, they are considered as family members when they live in a durable relationship with the third-country national, if the legislation of the Member State concerned treats the situation of unmarried couples as corresponding to that of married couples;
- (f) the concept of refugee covers third-country nationals who have been granted refugee status under the Geneva Convention of 1951, and those who have obtained it on the basis of constitutional provisions in the Member States, as in France (constitutional asylum for “freedom fighters”) and in Germany (refugees recognised on the basis of Article 16(1) of the Basic Law);

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<sup>22</sup> OJ L [COM(2000) 624 final, 10.10.2000].

- (g) the “long-term resident’s EC residence permit” is defined as the residence permit evidencing the status.

### Article 3

1. Paragraph 1 defines the scope of the proposal for a Directive in broad terms. The instrument is a horizontal one. It applies to all third-country nationals residing legally in a Member State, irrespective of the grounds on which they were originally admitted. The scope thus includes third-country nationals admitted for purposes of employment or work in a self-employed capacity, family reunification, the exercise of non-gainful activities, and persons admitted without any active status. The proposal also covers third-country nationals born in the territory of a Member State and residing there without having acquired its nationality. Refugees recognised on the basis of the Geneva Convention are also covered, but the proposal does not address the question of the transfer of protection in the event of the exercise of the right of residence in another Member State. Lastly, the proposal also covers the legal situation of third-country nationals who are members of the family of citizens of the Union.
2. Exceptions from the horizontal approach are, however, provided for in the exhaustive list in paragraph 2.
  - (a) Persons enjoying temporary protection are excluded. The Commission has presented a proposal for a Directive on temporary protection in the event of a large-scale influx of displaced persons; it proposes that the maximum duration of temporary protection be two years<sup>23</sup>. The exclusion of persons enjoying this form of international protection is based on the temporary nature of their residence.
  - (b) Persons covered by a form of subsidiary or additional protection are excluded. The fact that the concept of subsidiary protection is not harmonised at Community level precludes coverage of this category of persons in this proposal. But the Commission believes that such persons, who are legal residents, must have access to long-term resident status if they meet the criteria. The Conclusions of the Tampere European Council of 15 and 16 October 1999 state that “[refugee status] should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection”. The Commission is planning in 2001 to present a proposal concerning subsidiary protection that could extend to access to long-term status for this category of third-country nationals.
  - (c) The proposal does not cover access to long-term status for asylum-seekers, given that the outcome of their application is never certain.
  - (d) Students in primary and secondary education and persons admitted for the purposes of vocational training are admitted for temporary periods and theoretically return to their country of origin at the end of their training. They are unlikely to settle and should therefore be excluded from the Directive. Similar reasoning applies to persons working *au pair* and seasonal workers, whose residence is generally for a limited period, often very short. The remainder of this excluded category of third-country nationals consists of those who are posted by their firm or residing in a Member State for the purposes of cross-border provision of services; here again, the decisive factor is

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<sup>23</sup> COM(2000) 303 final, OJ C 311 E, 31.10.2000.

the short duration of their stay – they are not intended to settle in the Member State where they reside temporarily.

- (e) The final excluded category consists of third-country nationals whose legal situation is covered by international agreements relating to diplomatic and consular personnel and international organisations.
3. Members of the families of citizens of the Union who have exercised their right to free movement remain entitled to the full benefit of Community law on the free movement of persons, particularly where there are provisions that are more favourable to them. But where they have obtained the right of permanent residence in a Member State under Community law on the free movement of persons, they may also enjoy the rights conferred by this Directive on long-term residents in the same way as other third-country nationals. This is necessary in order to ensure that they may individually exercise their right to reside in another Member State.
4. At a time when it is embarking on an effort to approximate the rules on the status of long-term residents, the European Community has every intention of standing by its international commitments and all its agreements, whether Community or mixed.
- (a) The proposal for a Directive is without prejudice to more favourable provisions in Community or mixed agreements that have been or are to be concluded with third countries to govern the legal situation of third-country nationals. This exclusion is valid where the provisions concerned are related to the content of the proposal; it concerns agreements, decisions taken under them and the related court decisions. Even if these agreements do not directly settle the question of access to long-term status, they may contain provisions governing the rights of third-country nationals, and they will not be affected by the Directive if they are more favourable.

The following are among them:

- the Agreement establishing the European Economic Area, 1992<sup>24</sup>, which extends to nationals of Norway, Iceland and Liechtenstein and their family members the benefit of all the rules of Community law governing free movement of persons;
  - the Association Agreement with Turkey, 1962<sup>25</sup>;
  - the Europe Agreements with central and eastern European countries applying for accession;
  - the Euro-Mediterranean association Agreements with Morocco and Tunisia.
- (b) The proposal is also without prejudice to more favourable provisions of three international instruments under the Council of Europe which apply to migrant workers who are nationals of Council of Europe member countries.
- (c) The proposal is without prejudice to the obligation of non-refoulement provided for by Article 33 of the Geneva Convention of 28 July 1951 on the Status of Refugees and the obligations imposed by Article 3 of the European Convention for the Protection of

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<sup>24</sup> OJ L 1, 3.1.1994, p. 3.

<sup>25</sup> OJ L 217, 29.12.1964.

Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, which protects everybody against expulsion to a country where they risk being subjected to torture or inhuman or degrading treatment.

#### Article 4

Within the categories of third-country nationals who are covered by the proposal there are persons of different race or ethnic origin, religions, beliefs, sex, sexual orientation and age. This provision obliges the Member States to enforce the principle of non-discrimination when implementing the obligations imposed by the Directive. It is in accordance with Article 21 of the Charter of Fundamental Rights of the European Union.

## **Chapter II**

### **Long-term resident status in a Member State**

#### Article 5

1. The first condition to be met for the acquisition of long-term resident status is the period of residence; this is the main criterion for assessing the stability of residence in the territory of the Member State concerned. It is set at five years. Residence must have been legal and continuous. There is no provision for a minimum age for children to be eligible for long-term status. That age will be set by national legislation, corresponding to the age at which Member States give children their first residence permit.
2. The scope of the proposal is broad; no account can be taken, therefore, of grounds on which persons were admitted but only of the grounds on which they are legally residing in the territory of a Member State when they meet the period-of-residence criterion for the status. Persons initially admitted on one ground might change status and reside on another ground. A third-country national admitted, for instance, to pursue studies might change status and base right of residence on work or the status of family member. It must accordingly be made very clear which periods of residence can be taken into account.
  - (a) Periods of residence as asylum-seeker or as a person enjoying temporary protection are not taken into account unless the applicant is subsequently recognised as a refugee. Since this decision recognises a status, it has retrospective effect as from the time when the refugee entered the territory of the state that recognised the status.
  - (b) Periods of residence for pre-doctoral study purposes can be taken into account, but not in their entirety as the purpose of the studies is generally not to settle in a Member State. If the student changes status, half the duration of the studies may be taken into account in calculating the period of residence qualifying for long-term status. But students reading for a doctorate should not come under this rule; they can become eligible for long-term status after five years' residence. The integration of this category of highly qualified persons should be encouraged.
3. Article 5(1) lays down the principle of continuous residence as evidence of stable residence in the country. But the criterion must be applied flexibly to take account of events that can occur in a person's life and occasion absence from the Member State without actually affecting the stability of residence there. Certain absences are accordingly not regarded as interrupting the period of residence – absences for less than

six consecutive months and absences for important or serious reasons. Secondment for work purposes is provided for in order to promote the single market, where firms can mobilise their personnel outside a Member State without them being penalised when their period of residence is computed. Likewise, given the objective of achieving a European area of research set out in the Commission communication of 18 January 2000<sup>26</sup> and confirmed at the Lisbon European Council on 23 and 24 March 2000<sup>27</sup>, periods devoted to research in another Member State should not be penalised, and the researchers should not be prevented from obtaining long-term resident status. Lastly, in conjunction with Chapter III of the proposal, absences linked to the exercise of right of residence or free movement of persons in a Member State are also covered; this concerns family members who have not yet obtained long-term status but settle with the long-term resident or a citizen of the Union in another Member State. Residence in another Member State must not deprive them of access to long-term status.

4. Family members of a citizen of the Union shall not be disadvantaged if they accompany the citizen of the Union to a third country on condition that they have lived for at least two years in an EU Member State and on condition that they return to the same EU Member State within three years of the date of departure. If these conditions are met, the first two years of residence shall be taken into account in calculating the period of residence required to obtain the status.

#### Article 6

1. Apart from the period of continuous legal residence, the Member States shall ask for evidence that third-country nationals can meet their subsistence needs and those of their dependent family members, whether or not they are to become long-term residents at the same time. The purpose of this evidence is to ensure that they do not become a burden on its social assistance scheme after obtaining the status. The criteria for assessing this are determined very strictly to avoid rendering eligibility for the status nugatory and to harmonise the conditions in all the Member States. Third-country nationals have to prove at the time of their application that they have:

- (a) stable and adequate resources. The minimum resources required may not be higher than the minimum income guaranteed by the State. If the State's social legislation does not provide for this form of social assistance, the resources required may not exceed the minimum retirement pension paid by the State. The stability of the resources must be checked before the applicant is granted long-term resident status, in the light of the nature and regularity of the person's income;

- (b) sickness insurance covering all risks.

Would-be long-term residents must also prove that they have resources and sickness insurance for their dependent family members, whether they acquire long-term status at the same time or are not yet eligible.

2. Certain categories of persons are exempt from the resources and sickness insurance test on the basis of their specific situation:

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<sup>26</sup> COM(2000) 6 final.

<sup>27</sup> Presidency Conclusions, point 12.

- (a) refugees, given the special circumstances that made them flee their country and prevent them returning there, must not be subjected to economic requirements;
- (b) third-country nationals born in the territory of a Member State may acquire the status after five years in the territory, without having the possibility of showing that they have adequate resources.

#### Article 7

Member States may use considerations of public policy or domestic security as a basis for withholding the status. These considerations are subject to criteria similar to some of those in Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health.<sup>28</sup>

#### Article 8

This Article governs the administrative procedure applicable to the acquisition of the status. The procedure reflects the fact that the status is granted automatically where the acquisition criteria are met. There is a mandatory exercise of the administration's powers.

1. The status can be granted only on application. Persons may apply if they believe they are entitled. Applications must be accompanied by documentary evidence that the conditions as to period of residence and availability of resources and sickness insurance are met (residence permit, reasons for absences and their duration if they exceed the set limits, evidence of resources and sickness insurance).
2. To ensure legal certainty for the third-country nationals, national administrations have six months to examine the application on the basis of the documentary evidence supplied. If the application is not accompanied by the requisite evidence, they must inform the applicant and suspend the six-month period until the application is complete.
3. If the conditions are met, there is a mandatory exercise of the Member State's powers and long-term resident status must be granted. The status is permanent and can therefore be withdrawn only in the circumstances listed in Article 10.

#### Article 9

1. These provisions govern the issuance of the long-term resident's EC residence permit evidencing the status. The permit is valid for ten years and automatically renewable. Renewal is provided for solely in order to allow the long-term resident's personal data (address, photograph) to be updated, and the conditions governing recognition of the status may not be reviewed on this occasion. Renewal is automatic.
2. The model long-term resident's residence permit is the same for all Member States, being the model laid down by the Council Regulation laying down a uniform model residence permit for third-country nationals. Such permits must be marked "long-term resident – EC" so that the holders can immediately be identified as long-term residents in the Member State where they reside and when they exercise the right of residence in other Member States.

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<sup>28</sup> OJ 56, 4.4.1964, p. 850/64.



3. Residence permits must be issued free of charge or at the same rate as is charged for identity cards issued to nationals.

#### Article 10

1. Long-term resident status must offer its holder maximum legal certainty. The sole grounds on which it may be withdrawn are listed here:
  - (a) absences of less than two years do not warrant withdrawal of the status. This element of flexibility allows the long-term resident to travel, for instance, between the country of origin and the Member State of residence. Derogations are possible on the same grounds as are specified by Article 7 where longer absences are involved;
  - (b) proven fraud is a ground for withdrawal of the status, since this provides Member States with a means of combating such abuse;
  - (c) as provided by Article 27 of the proposal, obtaining long-term status in a second Member State entails renouncing it in the first Member State that granted it. It would be unthinkable for a third-country national to enjoy several statuses at once;
  - (d) since expulsion measures are taken in very serious circumstances, as specified by Article 13, they entail withdrawal of long-term resident status.
2. Since Chapter III of the proposal addresses the question of the right of residence in another Member State, absences linked to the exercise of this right of residence may not entail withdrawal of the status as long as it is not actually granted in the second Member State, in other words during the five-year transitional period provided for by Article 23.
3. Member States may provide that even absences of more than two years will not entail withdrawal of the status. This is to enable long-term residents to play an active role in their country of origin without jeopardising the rights acquired in the host Member State. It also enables the Member States to cover the case of long-term residents who have retired after working all their life in a Member State but wish to return in their country of origin.
4. Since the status is permanent, long-term resident status is not lost simply because the permit has expired.
5. In certain circumstances, withdrawal of the status may be justified without there being any reason to expel the person. These would be (a) cases of fraud or excessively prolonged absence entailing withdrawal of the status without there being any reason to expel the person and (b) cases where an expulsion measure is adopted on grounds of the threat to public order or public security that the long-term resident represents but cannot be executed because of exceptional circumstances, as where the state of health of the person concerned precludes expulsion. A person who cannot be expelled must not be left in limbo but must be granted another residence permit in order to be allowed to continue residing legally in that State's territory but without the rights pertaining to long-term status.

## Article 11

1. At all stages of the procedure, from the application to withdrawal, applicants must be kept properly informed so that they can defend their interests. Negative decisions must therefore be notified in writing, and reasons must be given for them. They must also specify what redress procedures are available and what time-limits apply.
2. A decision rejecting an application can never be permanent; so a person whose application is rejected but who remains in the territory of the Member State must have the possibility of reapplying for the status. This possibility is provided for, in particular, where the application is rejected on the grounds that the applicant does not have adequate stable resources at the time of the application. This should limit the number of proceedings to contest rejection decisions.
3. Acquisition of the status being automatic for persons meeting the criteria set out in the proposal for a Directive, they must be able to contest rejection or withdrawal decisions in the courts, even if they have already had access to other redress procedures. The possibility of contesting decisions not to renew the status is also provided for where, in exceptional circumstances, the national administrative authorities violate the rule that renewal is automatic and cannot be withheld.

## Article 12

1. This Article responds to the statement in the Conclusions of the Tampere European Council (paragraph 21) that there should be equal treatment with citizens of the Union in a number of respects:
  - (a) Access to employed or self-employed activities may not be subject to restrictions or to a work permit. Long-term residents will be entitled to change employer or occupation or to move from employed to self-employed status, without any restriction. But just like citizens of the Union, they may not be given access to jobs entailing involvement in the exercise of public authority. Likewise, there must be no discrimination between nationals and long-term residents as regards conditions of employment – remuneration and dismissal, working hours, safety and health standards and holiday entitlements.
  - (b) Long-term residents are to have access to education and vocational training on the same terms as nationals. Tuition fees at schools and universities may not be higher in the case of long-term residents and they are to have access to study grants. Vocational training covers all levels of vocational guidance, further training and job conversion and work experience schemes.
  - (c) Long-term residents must have the same right to recognition of their qualifications as citizens of the Union. This encompasses also the obligation of the host Member State to take into consideration all the diplomas, certificates and other evidence of formal qualifications – i.e. including those acquired outside the EU – of the person concerned and his relevant experience, by comparing the specialised knowledge and abilities certified by those diplomas and that experience with the knowledge and qualifications required by the national rules (Case C-238/98 *Hocsman*).
  - (d) Long-term residents must have the same social protection entitlements as nationals. This would include family allowances, retirement pensions, sickness insurance and unemployment benefits.

- (e) All forms of social assistance provided by the State for its nationals must be available to long-term residents. This would include the minimum income support or retirement pensions and free health-care.
  - (f) The social benefits covered here are the economic or cultural benefits given in the Member States by public authorities or private bodies; this corresponds to the definition given by the Court of Justice in decisions on the application of Council Regulation (EEC) No 1612/68<sup>29</sup>. They include concessionary public transport fares, reduced admission charges for cultural and other events and subsidised meals for children of low-income families. The tax reliefs are those given by the State: long-term residents must be eligible for them on the same terms as nationals.
  - (g) There must be no discrimination against long-term residents in access to goods and services, including both public and private-sector housing.
  - (h) Long-term residents can exercise their freedom of association and trade-union membership on the same terms as nationals; no additional restrictions may be imposed on them. Long-term residents can also be elected to represent a trade union or association.
  - (i) No restrictions may be imposed on long-term residents as regards access to the territory beyond those imposed on nationals, as in the case of military areas.
2. The Article allows Member States to apply equal treatment between long-term residents and nationals in other matters not covered by paragraph 1. This is without prejudice to obligations imposed by international instruments.

### Article 13

1. Long-term residents must enjoy enhanced protection against expulsion; the proposal is inspired by existing Community law on free movement for citizens of the Union. The definition of threat to public order or domestic security is taken from the judgment of the Court of Justice in Case 30/77 *Bouchereau*<sup>30</sup>; it is tightly circumscribed, and the personal conduct of the person concerned is all that counts.
2. The assessment of the seriousness of personal conduct is taken from the Court's judgment in Joined Cases 115 and 116/81 *Adoui and Cornuaille*<sup>31</sup>).
3. Public policy and public security are defined in terms of Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health<sup>32</sup>.
4. Where an expulsion measure is justified, the Member State must still take account of certain factors when deciding whether the consequences for the person and the family are proportionate to the seriousness of the charges. These factors have been taken from decisions of the European Court of Human Rights relating to Article 8 of the

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<sup>29</sup> OJ L 257, 19.10.1968, p. 2.

<sup>30</sup> [1977] ECR 1999, para 35.

<sup>31</sup> [1982] ECR 1665, para 8.

<sup>32</sup> OJ 56, 4.4.1964, p. 850/64.

European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950<sup>33</sup>. These are the period of residence and the person's age – the consequences for a minor or an elderly person are not the same as for another person. The State and, ultimately, the courts will also have to consider the consequences for family life and assess the relationship between the person concerned and the country of origin.

5. Long-term residents must have maximum legal protection against so serious a decision. They must therefore have access to judicial redress procedures. States must see that these have suspensory effect, either automatically or by court decision at the request of the person concerned during the procedure.
6. To guarantee that redress procedures have their proper effect and to comply with Article 47 of the Charter of Fundamental Rights of the European Union, long-term residents must be eligible for legal aid on the same terms as nationals.
7. Long-term residents enjoy the maximum legal certainty regarding their right of residence; reasons for any expulsion measure must be given, and the criteria set out above must be respected. It is therefore quite unthinkable for emergency expulsion procedures against these persons to be allowed, as they do not allow for a proper balance between the seriousness of the offence and the protection of the accused's rights in accordance with the principle of proportionality.

#### Article 14

The conditions for long-term resident status laid down in this proposal may be less favourable than existing or future conditions laid down by the legislation of certain Member States. Article 14 allows the Member States to grant permanent or unlimited-duration status on more favourable terms; but this status would have effect only nationally and would not be recognised by the other Member States, unlike the long-term resident status provided for by Chapter II. The status granted on more favourable terms would not entitle the holder to the right of residence in another Member State.

### **Chapter III**

#### **Right of residence in the second State of residence**

#### Article 15

1. Article 63(4) of the EC Treaty provides that the Council is to adopt measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States. Article 45(2) of the Charter of Fundamental Rights provides that, in accordance with the EC Treaty, freedom of movement and residence may be given to third-country nationals residing legally in the territory of a Member State. Chapter III of the proposal gives effect to Article 63(4). Article 15 lays down the principle of the right of residence of long-term residents in a Member State other than the one which granted them the status. Right of residence refers to any stay in another Member State for a period exceeding three months.

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<sup>33</sup> Commission Communication on the special measures concerning the movement and residence of citizens of the Union which are justified on grounds of public policy, public security or public health: COM(1999) 372 final, 19.7.1999.

The proposal for a Directive does not concern the conditions for the admission of third-country nationals to the territory of another Member State for a period of less than three months, which is covered by Article 62(3) of the EC Treaty. This is governed by the Schengen Agreement, incorporated in the *acquis communautaire* by Council Decision of 20 May 1999<sup>34</sup>.

2. The right of residence to which the proposal for a Directive applies does not set out to cover two situations related to the freedom to provide services where the Commission has already presented two separate proposals for Directives: the proposal for a Council and Parliament Directive on the posting of workers who are third-country nationals for the provision of cross-border services<sup>35</sup> and the proposal for a Council Directive extending the freedom to provide cross-border services to third-country nationals established within the Community<sup>36</sup>.

#### Article 16

1. Paragraph 1 determines the conditions in which long-term residents may exercise the right of residence. The first case concerns long-term residents who work in an employed or self-employed capacity in the second Member State. The second case concerns long-term residents who are pursuing studies or vocational training. The third case concerns long-term residents who do not exercise an economic activity but have adequate resources to reside in the second Member State.
2. Paragraph 2 is based on past decisions of the Court of Justice relating to the free movement of workers.

#### Article 17

1. This Article specifies the evidence to be provided in support of an application for the right of residence in another Member State and the procedure to be followed. The application for a residence permit in the second Member State must be made no later than three months after the applicant entered it and accompanied by documentary evidence that the conditions for the right of residence are met.
2. Paragraphs 2 to 4 contain an exhaustive list of the items of evidence that the second Member State may ask of long-term residents who move and apply for a residence permit. In all events the second Member State may check whether applicants have identity documents and a long-term resident's permit.

The second Member State may also ask for evidence that long-term residents have an actual or promised employment contract. If the applicants are self-employed, it may also ask for evidence that they have the necessary resources to engage in their future activity and a description of it. If the long-term residents wish to exercise their right of residence in order to pursue studies or vocational training, the second Member State may ask for evidence that they are enrolled in an accredited establishment or have adequate resources and sickness insurance to avoid becoming a burden on the host country. If the long-term

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<sup>34</sup> Council Decision determining, in conformity with the relevant provisions of the Treaty establishing the European Community and the Treaty on European Union, the legal basis for each of the provisions or decisions which constitute the Schengen *acquis*, OJ L 176, 10.7.1999, p. 17.

<sup>35</sup> OJ C 67, 10.3.1999, p. 17; amended proposal, OJ C 311 E, 31.10.2000, p. 197.

<sup>36</sup> OJ C 67, 10.3.1999, p.12; amended proposal, OJ C 311 E, 31.10.2000, p. 187.

residents have no plans to work or study, the second Member State may ask for evidence of resources and sickness insurance.

#### Article 18

1. Long-term residents would not truly have the right of residence in another Member State if their family members could not settle with them in the second Member State. Such family members do not need to have long-term status themselves but they must have been part of a family with the long-term resident in the first Member State. The long-term resident may be accompanied by the family members or be joined by them after settling in the second Member State.
2. The same procedure applies to the application for a residence permit in the second Member State. The documentary evidence to be provided must show that they have resided in the first Member State as members of the family of the long-term resident exercising the right of residence and that they have adequate resources and sickness insurance or that the long-term resident has such resources and insurance for them.
3. If the family was not constituted in the first Member State, the ordinary law applies: the long-term residents exercising their right of residence may be joined by the members of their family as provided by the Council Directive on the right to family reunification.

#### Article 19

The second Member State may check whether there are grounds of public policy or domestic security for refusing to issue a residence permit to long-term residents and/or their family members. As is the case for the acquisition of the status provided for by Article 7, these grounds are determined in terms of Directive 64/221/EEC of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health<sup>37</sup>.

#### Article 20

1. Paragraph 1 specifies the diseases and infirmities that may be used to justify a refusal on public health grounds. Some of them were in the Annex to Directive 64/221/EEC of 25 February 1964 and are still topical. Others are no longer topical and have been left out.
2. This limitation is based on Directive 64/221/EEC and precludes the right of residence from being rescinded on health grounds.
3. A pre-admission medical examination must be the exception. It is allowed only where there is serious suspicion that the applicant suffers from one of the diseases or infirmities on the basis of which admission may be refused, and the second Member State must bear the cost. In any event the examination may not be performed systematically.

#### Article 21

1. The procedure for examining the application for a residence permit is based on that provided for by Chapter II concerning the acquisition of long-term resident status and the issuance of the long-term resident's EC residence permit. The period allowed is cut to

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<sup>37</sup> OJ 56, 4.4.1964, p. 850/64.

three months as what is concerned here is the exercise of the right of residence, which may not be impeded by excessively lengthy procedures.

2. If the examination of the application and the accompanying documentation shows that the long-term resident meets the conditions for the exercise of right of residence, the second Member State must issue a residence permit. But this residence permit will not be a long-term resident's permit. The period of validity will be set by the Member States on the basis of the validity of ordinary residence permits issued to third-country nationals; it may be confined to the foreseeable duration of the stay. But the permit will always be renewable. Long-term residents must inform the State that granted them the status that they have exercised their right of residence. That State must preserve the permanent resident status throughout the transitional period.
3. Family members meeting the criteria are entitled to renewable residence permits with the same period of validity as the permit issued to the long-term resident.
4. Like the long-term resident's EC residence permit provided for by Article 9, residence permits must be issued free of charge or at the same rate as is charged for identity cards issued to nationals.

#### Article 22

This Article provides procedural guarantees where the second Member State rejects an applications for residence permits made by long-term residents and/or members of their family. Reasons must be given for a decision rejecting an application so that there is a clear indication of the reasons why the national authorities have refused admission; the notification must specify the redress procedures available to the applicant. Whenever an application is rejected or a residence permit is either withdrawn or not renewed, the person concerned must be informed of the right to appeal to the courts.

#### Article 23

1. Long-term residents who exercise their right of residence do not immediately become a long-term residents in the second Member State. Immediate and full mutual recognition of the status is not an especially good idea, as the persons concerned will not yet have established links in the second Member State. They will therefore retain their status in the first Member State until they obtain it in the second. This ensures that long-term residents will not weaken their original situation by exercising their right of residence.
2. Members of a long-term resident's family are covered by the preceding paragraph if they are themselves long-term residents; but they will not necessarily have long-term resident status when they accompany or join the long-term resident. Paragraph 2 accordingly provides that family members who are not long-term residents retain their residence permit in the first Member State until they expire. In accordance with Article 5(3)(c) their residence in another Member State may not deprive them of their long-term status.
3. Following the same logic, periods spent in the second Member State are taken into account in calculating the period of residence giving entitlement to autonomous status under the Council Directive on the right to family reunification.

## Article 24

1. This Article specifies the legal status of long-term residents who exercises their right of residence in a second Member State. Whatever the period of validity of their long-term resident's resident permit or the manner in which they exercise their right of residence, they will enjoy the same rights in the second Member State as in the first. This is not a traditional admission procedure but the exercise of a right conferred on long-term residents. But there is a restriction as regards social assistance and study grants which are maintenance grants for the student's subsistence; the long-term resident must not become a burden on the public finances of the second Member State.

Matters relating to the coordination of social security systems for persons moving within the Community are not dealt with here. They were dealt with by the Commission's proposal for a Council Regulation (EC) amending Regulation (EEC) No 1408/71 as regards its extension to third-country nationals<sup>38</sup>, based on Articles 42 and 308 of the EC Treaty. This coordination system concerns equal treatment, the maintenance of acquired rights and the cumulation of contribution periods in the Member States.

2. The members of the family of long-term residents who exercise their right of residence are entitled to the rights conferred by Article 12 of the Council Directive on the right to family reunification: access to education, work in an employed or self-employed capacity and vocational training.

## Article 25

1. Long-term residents who exercise their right of residence do not immediately become long-term residents in the second Member State. Their residence permits may be withdrawn, and they may be expelled, during a transitional period of five years, for the following reasons alone:
  - where they constitute a threat to public order or domestic security. Considerations of public policy or domestic security are defined in the same terms as in Directive 64/221/EEC of 25 February 1964;
  - where they no longer meet the conditions for the exercise of the right of residence, either because they are no longer in economic activity, or because they no longer have adequate resources or sickness insurance and risk becoming a burden on the second Member State.
2. But expulsion cannot be for an unlimited period, and long-term residents have the possibility of returning to the second Member State and reapplying for the right of residence.

## Article 26

1. The question is to which State the person is to be expelled, either voluntarily or under force. There is currently no general obligation in Community law to readmit third-country nationals as between Member States. There are only a set of bilateral agreements. Article 23 of the Convention implementing the Schengen Agreement relates solely to the

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<sup>38</sup> OJ C 6, 10.1.1998, p. 15.



obligation, as between Member States that are Parties to Schengen, to readmit third-country nationals who hold an unexpired short-stay visa. To regulate situations which Member States may have to deal with under the proposed Directive, this Article establishes the readmission obligation for the Member State that granted long-term resident status and issued residence permits to family members. That State remains responsible for the long-term resident throughout the transitional period. The same obligation exists as regards family members.

2. The readmission obligation is valid even if the long-term resident's EC residence permit has expired and has not been renewed; this flows from the fact that long-term resident status is permanent and the long-term resident's EC residence permit merely evidences it. The readmission obligation is also valid where the family members' residence permits have expired, by analogy with a rule that is generally laid down in readmission agreements between the Member States and third countries.

#### Article 27

After the five-year transitional period, long-term residents who have exercised the right of residence may ask the second Member State for full long-term resident status. To that end, they may apply for long-term resident status. In that event, there is provision for full correspondence between the rules governing the acquisition of the status in the first Member State and in the second, including those relating to procedures and procedural guarantees.

### **Chapter IV: Final provisions**

#### Article 28

This Article is a standard provision of Community law providing for effective, proportionate and dissuasive penalties. It leaves the Member States with the choice of penalties applicable to infringements of national provisions enacted to give effect to the Directive.

#### Article 29

The Commission is to report on the application of the Directive by the Member States, in accordance with its role of enforcing provisions enacted by the institutions under the Treaty. It is also to propose amendments if the need arises.

#### Article 30

Member States are required to transpose the Directive by 31 December 2003. They are to inform the Commission of changes made to their legislation, regulations or administrative provisions. They are to make a reference to the Directive when adopting their provisions.

#### Article 31

This Article sets the date of entry into force.

#### Article 32

The Directive is addressed to the Member States.

Proposal for a

**COUNCIL DIRECTIVE**

**concerning the status of third-country nationals who are long-term residents**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3) and (4) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the Opinion of the European Parliament<sup>2</sup>,

Having regard to the Opinion of the Economic and Social Committee<sup>3</sup>,

Whereas:

- (1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third-country nationals.
- (2) Article 63(3) of the Treaty provides that the Council is to adopt measures on immigration policy. Article 63(3)(a) provides, in particular, that the Council is to adopt measures relating to the conditions of residence, and standards on procedures for the issue by Member States of long-term residence permits.
- (3) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated that the legal status of third-country nationals should be approximated to that of Member States' nationals and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union.
- (4) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

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<sup>1</sup> OJ C  
<sup>2</sup> OJ C  
<sup>3</sup> OJ C

- (5) The integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community declared by Articles 2 and 3(1)(k) of the Treaty.
- (6) The chief criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. Residence should be both legal and continuous in order to show that the person has put down roots in the country. Provision should be made for a degree of flexibility so that account can be taken of circumstances in which a person might have to leave the territory on a temporary basis.
- (7) To acquire long-term resident status, third-country nationals should prove that they have adequate resources and sickness insurance cover, to avoid becoming a burden for the Member State. The level of such resources should not be disproportionate and should be set uniformly for all the Member States. A further condition for acquiring the status is that third-country nationals should not constitute an actual threat to public order and domestic security.
- (8) A set of rules governing the procedures for the examination of applications for long-term resident status should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair in order to offer appropriate legal certainty to those concerned.
- (9) The acquisition of long-term resident status should be certified by residence permits enabling those concerned to prove their legal status easily and immediately. Such residence permits should also satisfy high-level technical standards, notably as regards protection against falsification and counterfeiting, in order to avoid abuses in the Member State in which the status is acquired and in Member States in which the right of residence is exercised.
- (10) In order to constitute a genuine instrument for the integration of long-term residents into the society in which they live, long-term resident status should ensure equality of treatment with citizens of the Member State in a wide range of economic and social matters.
- (11) Long-term residents should enjoy maximum protection against expulsion. This protection is based on Community law relating to free movement of persons and criteria determined by the decisions of the European Court of Human Rights. Protection against expulsion entails provision in the applicable procedures for effective judicial redress procedures.
- (12) Harmonisation of the terms for acquisition of long-term resident status promotes mutual confidence between Member States. Certain Member States issue permits with permanent or unlimited validity on conditions that are more favourable than those provided for by this Directive. The possibility of applying more favourable national provisions is not excluded by the Treaty. However, for the purposes of this Directive, it should be provided that permits issued on more favourable and unharmonised terms do not confer the right to reside in other Member States.

- (13) Establishing the conditions subject to which the right to reside in another Member State may be acquired by third-country nationals who are long-term residents contributes to the effective attainment of an internal market as an area in which the free movement of persons is ensured. It could also constitute a major factor of mobility, notably on the Union's employment market.
- (14) It should be provided that the right of residence in another Member State may be exercised in order to work in an employed or self-employed capacity, to study or even to settle without exercising any form of economic activity. Family members should be able to settle in that other Member State with long-term residents in order to preserve family unity and to avoid hindering the exercise of the long-term resident's right of residence. The right of residence should be exercised on terms similar to those enjoyed by citizens of the Union when they exercise their right to free movement.
- (15) The Member State in which a long-term resident intends to exercise his right of residence should be able to check that the person concerned meets the conditions for residing in its territory. It should also be able to check that the person concerned does not constitute an actual threat to public order, domestic security or public health.
- (16) A set of rules governing the procedures for examination of applications by long-term residents for a residence permits in another Member States should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as transparent and fair, in order to offer appropriate legal certainty to those concerned. They should not constitute a means of hindering the exercise of the right of residence.
- (17) To avoid rendering the right of residence nugatory, long-term residents should enjoy in the second Member State the rights they enjoy in the Member State in which they acquired the status. Exceptions from this principle should be provided for as regards social security benefits to ensure that the persons concerned do not become a burden on the Member State in which they exercise the right of residence. The rights enjoyed by the persons concerned in the second Member State should be similar to those enjoyed by citizens of the Union when they exercise their right of free movement.
- (18) It should be provided that after a transitional period long-term residents may elect to settle definitively in the Member State in which they have exercised their right of residence in order to enjoy full rights there, including the right to social security benefits. In the interests both of the persons concerned and of the first and second Member States, this transitional period should not be excessively long and at the end of the transitional period the long-term residents should be able to apply for long-term resident status in the second Member State, entailing withdrawal of long-term resident status in the Member State in which they originally acquired it.
- (19) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives of the proposed action, namely the determination of terms for granting and withdrawing long-term resident status and the rights pertaining thereto and terms for the exercise of rights of residence by long-term residents in other Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effect of the action, be better achieved by the Community. This Directive confines itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose,

HAS ADOPTED THIS DIRECTIVE:

## 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 on which third-country nationals enjoying long-term resident status have the right of residence in Member States other than the one which conferred that status on them.

#### *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 8;
- (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 applicant's spouse or unmarried partner, minor children and relatives in the ascending line and adult dependant children admitted to the Member State concerned and residing there in accordance with Council Directive .../.../EC on the right to family reunification<sup>394</sup> The family members of citizens of the Union are defined by the Community legislation relating to free movement of persons in accordance with Article 4 of that Directive;
- (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 1967;

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<sup>4</sup> OJ L ..... [COM(2000) 624 final, 10.10.2000].

- (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.

### Article 3

#### Scope

1. This Directive applies to third-country nationals residing legally in the territory of a Member State.
2. This Directive does not apply to third-country nationals who:
  - (a) 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;
  - (b) 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 status;
  - (c) have applied for recognition as refugees and whose application has not yet given rise to a final decision;
  - (d) reside in order to pursue studies, with the exception of studies for a doctorate, or vocational training, or 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 services;
  - (e) 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.
3. Third-country nationals who are members of the family of citizens of the Union who have exercised their right to free movement of persons may not acquire long-term resident status in the citizen of the Union’s host Member State until they have obtained the right of permanent residence in that Member State within the meaning of the legislation on the free movement of persons.
4. 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) 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.
5. 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 4*

### *Non-discrimination clause*

The 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 5*

### *Duration of residence*

1. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously for five years in the territory of the Member State concerned.
2. For the purposes of calculating the period of legal and continuous residence referred to in paragraph 1:
  - (a) periods of residence in the territory of the Member State as asylum-seeker or as beneficiary of temporary protection shall be taken into account solely if the third-country national is a refugee;
  - (b) periods of residence for study purposes, with the exception of study towards a doctorate, shall be taken into account as to half only.
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 shall be included for the purposes of calculating that period where they are:
  - (a) shorter than six consecutive months; or
  - (b) related to the discharge of military obligations, detachment for employment purposes, including the provision of cross-border services, studies, with the exception of study for a doctorate, or research, serious illness, pregnancy or maternity; or
  - (c) 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.
4. Uninterrupted periods of residence of at least two years in the Member State concerned by a family member of a citizen of the Union, who as family member resided in a third state and within a period of three years returned to the Member State concerned, shall be taken into account in the calculation of the period of residence referred to in paragraph 1.

## *Article 6*

### *Conditions as to resources and sickness insurance*

1. Member States shall ask third-country nationals to provide evidence that they have, for themselves and for dependent family members:
  - (a) stable resources corresponding to the level of resources below which social assistance may be granted in the Member State concerned. Where this provision cannot be applied, the resources shall be considered to be adequate where they are equal to the level of the minimum social security pension paid by the Member State concerned. The criterion of stability of resources shall be evaluated by reference to the nature and regularity of the resources enjoyed prior to the application for long-term residence status.
  - (b) sickness insurance covering all risks in the Member State concerned.
2. The conditions in paragraph 1 shall not apply to:
  - (a) refugees;
  - (b) third-country nationals born in the territory of a Member State.

## *Article 7*

### *Public policy and domestic security*

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 domestic security.
2. Criminal convictions shall not in themselves automatically warrant the refusal referred to in paragraph 1. Such refusal may not be founded on economic considerations.

## *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 5 and 6.
2. The competent national authorities shall examine the application within six months after it is lodged. If the application is not accompanied by all the documentary evidence that the applicant meets the conditions provided for by Articles 5 and 6, the competent national authorities shall inform the third country national concerned and allow additional time. In this event the six-month period shall be suspended and shall run again from the time when the additional documentary evidence is provided.



3. If the conditions provided for by Articles 5 and 6 are met, and the person does not represent a threat within the meaning of Article 7, the Member State concerned shall grant the third-country national concerned long-term resident status. This status shall be permanent, subject to Article 10.

#### *Article 9*

##### *Long-term resident's EC residence permit*

1. Member States shall issue a long-term resident's EC residence permit to long-term residents. The permit shall be valid for ten years; it shall be automatically renewable on expiry.
2. 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) .../... [laying down a uniform model for the residence permit for third-country nationals]<sup>5</sup>. Under the heading "type of permit", the Member States shall enter "long-term resident – EC".
3. A long-term resident's EC residence permit shall be issued free of charge or against payment of a sum not exceeding the charges required of nationals for the issuance of identity cards.

#### *Article 10*

##### *Withdrawal of status*

1. Member States shall withdraw long-term resident status in the following cases:
  - (a) absence from the territory for a period of two consecutive years. Member States may provide for derogations in the event of absence related to the discharge of military obligations, detachment for employment purposes, studies or research, serious illness, pregnancy or maternity;
  - (b) detection of fraudulent acquisition of long-term resident status;
  - (c) acquisition of long-term resident status in another Member State as provided by Article 27;
  - (d) adoption of an expulsion measure under the conditions provided for in Article 13.
2. Absences related to the exercise of the right of residence in a second Member State shall not entail withdrawal of long-term resident status.
3. Member States may provide that prolonged absences exceeding two years or related to reasons not referred to in paragraph 1 shall not entail withdrawal of long-term resident status.

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<sup>5</sup> OJ L

4. The expiry of a long-term resident's EC residence permit shall in no case entail withdrawal of long-term resident status.
5. Member States shall issue to the person concerned a residence permit other than a long-term resident's EC residence permit if:
  - (a) long-term resident status is withdrawn pursuant to paragraph 1(a) or (b); or
  - (b) an expulsion measure cannot be executed against a long-term resident.

#### *Article 11*

##### *Procedural guarantees*

1. Reasons shall be given for any decision rejecting an application for long-term resident status or withdrawing that status. It shall be notified in writing to the third-country national concerned. The notification shall specify the redress procedures available and the timewithin 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 justify.
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 apply to the courts of the Member State concerned.

#### *Article 12*

##### *Equal treatment*

1. Long-term residents shall enjoy equal treatment with nationals as regards:
  - (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 13*

#### *Protection against expulsion*

1. Member States may take a decision to expel a long-term resident solely where his personal conduct constitutes an actual and sufficiently serious threat to public order or domestic security that affects a fundamental interest of society.
2. Personal conduct shall not be considered a sufficiently serious threat if the Member State does not take severe enforcement measures against its own nationals who commit the same type of offence.
3. Criminal convictions shall not in themselves automatically warrant an expulsion decision. Such a decision may not be founded on economic considerations.
4. 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.
5. Where an expulsion decision has been adopted, a judicial redress procedure shall be available to the long-term resident in the Member State concerned. Member States shall provide that such procedures may have suspensory effect.
6. 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.
7. Emergency expulsion procedures shall be prohibited against long-term residents.

### *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 III**

### **Right of residence in the other Member States**

#### *Article 15*

##### *Principle*

1. A long-term resident may exercise the right of residence 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; or
  - (b) as providers of cross-border services.

#### *Article 16*

##### *Conditions*

1. The exercise of the right of residence in a second Member State by a long-term resident shall be subject to compliance with the following conditions:
  - (a) exercise of an economic activity in an employed or self-employed capacity; or
  - (b) pursuit of studies or vocational training, and possession of adequate resources available 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 adequate resources available 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.
2. Long-term residents exercising the right of residence in a second Member State as worker in an employed or self-employed capacity shall retain their status as workers if:
  - (a) they sustain a temporary incapacity for work as a result of illness or accident;
  - (b) they are unemployed and entitled to unemployment benefits; in this case, the status of worker shall be retained as long as such entitlement subsists;
  - (c) 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.

## *Article 17*

### Checks on conditions for the exercise of the right of residence

1. 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 permit.
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 and an identity document; and
  - (b) evidence that they have an employment contract or a statement by the employer that they are hired, or that they exercise an economic activity in a self-employed capacity, or that they have the resources needed to exercise an economic activity in a self-employed capacity, together with a detailed description of that activity.
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 and an identity document; and
  - (b) evidence of enrolment in an accredited establishment in order to pursue studies or vocational training;
  - (c) evidence that they have adequate resources and sickness insurance covering all risks in the second Member State.
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 and an identity document; and
  - (b) evidence that they have adequate resources and sickness insurance covering all risks in the second Member State.

## *Article 18*

### *Family members*

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. 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.
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 and an identity document; and
  - (b) evidence that they have resided as member of the family of the long-term resident in the first Member State; and
  - (c) evidence that they have adequate resources and sickness insurance covering all risks in the Second Member State or that the long-term resident has such resources and insurance for them.
3. Where the family was not already constituted in the first Member State, Directive .../.../EC [on the right to family reunification]<sup>6</sup> shall apply.

#### *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 conduct of the person concerned constitutes an actual threat to public order or domestic security.
2. Criminal convictions shall not in themselves automatically warrant the refusal referred to in paragraph 1. Such a refusal may not be founded on economic considerations.

#### *Article 20*

##### *Public health*

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 examination, performed free of charge, 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 basis.

#### *Article 21*

##### *Examination of applications and issuance of a residence permit*

1. The competent national authorities shall examine applications within three months after they are lodged. 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 third-country national concerned and allow additional time. In this event the

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<sup>6</sup> OJL

three-month period shall be suspended and shall run again from the time when the additional documentary evidence is provided.

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 permit. The period of validity of this permit shall correspond to the foreseeable duration of residence. The long-term resident shall inform the Member State which granted him long-term resident status.
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. Permits shall be issued free of charge or against payment of a sum not exceeding the charges required of nationals for the issuance of identity cards.

#### *Article 22*

##### *Procedural guarantees*

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. The notification shall specify the redress procedures available and the time within which he may act.
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 courts of the Member State concerned.

#### *Article 23*

##### *Maintenance of status in the first Member State*

1. Long-term residents exercising their right of residence 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.
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 they 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 State*

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 grants.

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]<sup>7</sup>.

#### *Article 25*

##### *Withdrawal of residence permit*

1. During a five-year transitional period, the second Member State may take a decision to expel a long-term resident and/or family members:
  - (a) on grounds of public policy or domestic security as defined in Article 19;
  - (b) where the conditions provided for by Articles 16 and 18 are no longer met.
2. Expulsion decisions may not be accompanied by a permanent ban on residence.

#### *Article 26*

##### *Obligation to readmit*

1. If the residence permit is withdrawn by the second Member State, the first Member State shall immediately readmit the long-term resident and his family members.
2. The obligation to readmit referred to in paragraph 1 shall apply even if:
  - (a) the long-term resident's EC residence permit has expired;
  - (b) the family members' residence permit has expired.

#### *Article 27*

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

1. After five years' legal residence in its territory, long-term residents who have exercised the right of residence in the territory of the second Member State may apply to that Member States' competent authorities for long-term resident status.
2. The second Member State shall grant long-term residents the status provided for by Article 8 , subject to the provisions of Articles 6 and 7. The second Member State shall notify its decision to the first Member State, which shall withdraw the status from the persons concerned.

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<sup>7</sup> OJL



3. The procedure laid down in Article 8 shall apply to the presentation and examination of applications for long-term resident status in the second Member State. Article 9 shall apply for the issuance of the residence permit. Where the application is rejected, the procedural guarantees provided for by Article 11 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 the date specified in Article 30 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 those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

#### *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*