

## Considerations on the legal status of third-country nationals who are long-term residents in the EU

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### **Abstract**

*This article aims at presenting and interpreting the general terms of the framework comprising the rules and obligations of the legal status of third-country nationals who are long-term residents.*

*The presentation of these aspects is important because it enables us to understand the entire scene and to seek solutions to align the frame to the current needs of this category of persons.*

**Keywords:** *migration, third-country nationals, long term residents, rights, obligations, Directive, EU*

### **Setting up the scene**

Migration has become a joint responsibility of the EU Member States following the introduction of this provision by the Treaty of Amsterdam [1]. The second Directive derived from by the introduction of common EU migration competence by the Treaty of Amsterdam, is Directive 2003/109 / EC [2]. This represents an important milestone in the development of EU [3] migration policy. It establishes the rights and conditions for granting and withdrawing long-term resident status of third-country nationals who meet a number of conditions. Besides the necessary criteria to be met for obtaining long-term resident status in the territory of a Member State, the Directive [4] provides travel conditions in another Member State and rules that must be fulfilled to obtain long-term resident status in that State .

Long-term residents is defined as third-country national who is in has long-term resident status and has met the conditions on the acquisition in question, conditions on the duration, and order and public security [5].

Obtaining long-term resident status is allowed only for third country nationals residing legally in a Member State [6]. Certain categories of legal residents have the right to obtain long-term status resident: those conducting studies or training courses, those who benefit from temporary protection or expects decision on obtaining this protection, those who reside due to subsidiary forms of protection or have applied for such protection pending the decision on the admission or rejection, are refugees or awaiting a decision in this regard, temporary residence as an au pair or seasonal workers are posted in the provision of cross-border services or the provider's organization border if the residence permit has been formally limited or if they have a

status governed by the Vienna Convention on Diplomatic Relations and Consular special missions on the Representation of States in dealing with organizations with universal character.

Long-term resident status is granted to nationals of third countries who meet legal and uninterrupted residence provided for five years in a Member State [7].

Are not to be taken into account such periods of residence in order to fulfill legal residence requirements for obtaining long-term resident status for the following categories of persons: persons who have temporary residence in the territory of a Member State in quality au pair, seasonal workers or seconded to the provision of cross-border services or cross-border services provider if the residence permit has been formally limited or if they have a status governed by the Vienna Convention on Diplomatic Relations and Consular special missions on the Representation of States in relationships with organizations with universal character [8]. Instead, people who perform studies or training courses and legally residing in the territory of a Member State and hold a residence permit that allows them to obtain long-term resident status will be taken into account in calculating the period of five years half the duration of studies. The time period needed to be fulfilled doesn't need to be read literally, but in virtue of the law. It says that the resident may be absent from the territory of more than 6 consecutive months fits into a maximum total of 10 months over the five years [9]. If these conditions are met, inwardly given period, they will be taken into account in calculating the period of five years. For special or exceptional reasons but must be temporary and in accordance with the legislation of the Member State, it may accept that 5 year period is not interrupted by a period of absence longer than 6 consecutive months or 10 months inwardly term five years [10]. But in this case, the absence will be considered in calculating the period of five years. However when posting periods of absence is due to reasons of service or within cross-border services, Member States may take into account periods of absence. Besides the condition length of stay of third country nationals must prove for themselves and family members who have dependents that they have sufficient resources, stable and regular health insurance to cover risks in general for nationals of the Member State concerned. Member States may add integration provided that the conditions under national law.

Cumulative fulfillment of conditions and lack of danger on grounds of public policy or public security lead to obtaining long-term resident status.

Third-country national must make a request to the competent authorities. He must also add documents established by the national law, among which may be required, in case of need, a valid travel document or certified copy thereof. In six months maximum authorities shall notify the applicant of the decision and of the rights and obligations they have. The consequences of the absence of a decision after the expiry of six months will be regulated in national legislation.

If the decision to grant long-term resident status is positive, then the third term resident receives permanent status and long-term residence permit and in accordance with approved unique model. The validity of the residence permit of at least five years. It may be renewed by law, upon application, if required [11].

If the decision to grant or renewal of the permit is negative, the applicant shall be notified in accordance with relevant national legislation. This decision will be motivated and will provide legal options that you have access to regarding national legal term.

According to article 13 law may provide more favorable conditions than the present Directive [12], to issue residence permits of permanent or unlimited validity. Residence permits in question can not grant the right of residence in other Member States.

Although long-term resident status is permanent, it can be withdrawn or lost when they are found to have been obtained by fraudulent means or when to take measure of expulsion for national concerned or when he was absent for more than 12 consecutive months the EU [13]. Member States may derogate special or exceptional reasons for withdrawal or loss of long-term resident status for the absence of the EU for 12 months [14]. Even when obtained long-term resident status to see that no threat to public order, it can this status as a result of committing a crime that generates such a threat. Another situation that may lose status in question occurs when obtaining long-term resident status in another Member State. Loss of status occurs when there is an absence of six years of its territory. However, Member States may derogate from this rule when there are special reasons for absence over six years.

Permit expiration is not a fact that causes withdrawal or loss of long-term resident status. Expulsion is not a prerequisite when a license expires or is withdrawn. National legislation may provide for cases in which a national of a third country or territory not to leave when they lose or residence permit is withdrawn only

if it meets a number of conditions and not high on a threat to public policy or public security.

### **Equal Treatment [15]**

Article 11 provides for the rights which the third when a third country acquires long-term resident status.

Third-country nationals who acquires long-term resident status recognized as equal treatment with nationals on many rights that they have. Member States may provide in national legislation and other areas in which to apply equal treatment.

Access to a job as an employee and self-employed, terms of employment, work, payment and dismissal will be the same for the two categories of residents. The exception imposed by the Directive [16] refers to restrict access to employment in all conditions involving the exercise of public authority. For some jobs or for some independent activities restrict access Member State may apply long-term residents, whether under national law they are reserved to nationals.

Across the long-term resident of the Member State shall be guaranteed access, within the limits provided by law.

Education, training, grants and scholarships that are related rights which has long-term resident. According to the law, they can be restricted to registered or usual place of residence in the territory of the Member State. If these rights are required for family members, it can be restricted to their residence. Complementary to this law, but without influencing each other, long-term residents enjoy under domestic law, the right to recognition of diplomas, certificates and professional qualifications. Moreover, Member States may require proof of appropriate official language as long-term residents can have access to education or training.

It gives equal treatment with regard to social security, social assistance, social protection and tax benefits recognized national citizens. The State may choose to limit equal treatment to core benefits.

Access to goods and services and the provision of public goods and services and access to procedures for obtaining housing are guaranteed to long term residents as well as national citizens.

Freedom of association, affiliation and participation in an organization of workers or employers or any professional organization and rewards are guaranteed long-term residents.

**Expulsion [17]**

Long-term residents can be expelled from the territory of the Member State only when it is a genuine and sufficiently serious threat to public policy or public security. If such a decision is adopted, the resident may exercise jurisdictional way both. To assess such a case, it will consider the following elements: length of stay, age, consequences on the person and his family ties with the country of residence and origin. Economic reasons can't generate as resident considering such a threat. Long-term residents who do not have the sufficient resources will receive equal treatment with nationals regarding legal assistance.

**Another Member State, Deadlines and Family Member**

To obtain the right to stay for longer than three months in another Member State, long-term resident must meet a number of conditions. Member States may limit the total number of persons who have the right to stay wish, if they have a prerogative in force in this regard in the domestic law, the coming into force of the Directive [18].

The motivation of the need for residing on the territory of the second Member State may be: do business as an employee or self-employed worker, studying or training classes or for other purposes. Not within the scope of this article deadlines and stay a long residence in the Member States as an employee seconded by a service in a cross-border provision of services firms or service or borders. Border workers and seasonal workers may be under guardianship by the provisions of domestic legislation.

Member States may intervene when long term resident of another Member State wishes to pursue an economic activity as an employee or independent worker to make an analysis of the labor market and apply their national requirements for engaging in such and pursuit of them. It can be applied preference for Union citizens, nationals of third countries if required by the Union acquis for third country nationals or legal residents who receive unemployment benefits in the Member State concerned. Article 21 (2) [19] add the prerogative of states to restrict access for up to 12 months salary in other activities than those for which they were given the residence permit for residents carrying out economic activities as an employee or self-employed. Member States may determine in the national legislation the

conditions of access to a place of work as an employee or self-employed, for residents who hold a residence permit.

Long-term residents must meet a number of conditions to obtain a residence permit on the territory of a Member State [20]. In addition to the provisions of this Directive, Member States may require third-country nationals to comply with integration measures in domestic legislation. For example, school attendance may be required for learning.

Within three months from the date of entry in the Member State must submit to the competent authorities, an application for residence permit. This may be submitted to the competent authorities of the second Member State while still residing in the territory of the first Member State, if MS. According to paragraph (4) shall be accompanied by a residence permit valid travel document or a certified copy of it and other supporting documents established by national legislation. One of the acts may be evidence of possession of adequate housing.

If interested person, attend education or training courses could also be asked proof of registration from an accredited institution for their performance.

If interested person may be required to wages is evidence of a contract of employment, a statement attesting the existence hiring employer or a labor contract proposals.

If interested person is self-employed worker who will have to prove that the company has the necessary funds for such activities by submitting the necessary documents.

Residents must demonstrate the stable and regular resources that can support the maintenance of his and his family without recourse to social assistance. These resources can be assessed by comparing them with the states in local labor wages and pensions.

Another condition that must be met is that the existence of a health insurance that includes risks normally covered in the Member State concerned for its nationals. May be required to undergo a medical examination may be free for both long-term resident and his family members. This exam can't have a systematic character.

Following the application for obtaining the permit, the competent authorities shall examine the application in more than four months. The term may be extended by 3 months in exceptional circumstances related to the complexity of the application or when the necessary documents are missing.

Once it is found that all the conditions, the residence permit for residents and family members. It may be renewed upon request at expiration. The decision taken will be communicated by the second Member State to the First Member State. Regarding the residence permit issued to family members it can be renewed for the same period for which the residence permit was issued long-term resident.

If the decision of the second Member State is to refuse the issue or renewal of the permit, the long-term residents will have a judicial review on his territory.

If the decision by the competent authorities of the Member State is to provide a residence permit, then it will be analyzed to ensure equal treatment Article 11. Membrii family will benefit from the rights provided by the article 14 Directive 2003/86 / EC .

Long-term residents who exercise their right of residence in the territory of one second Member State may be accompanied by family members already established in the first Member State [21].

Family members must be those specified in Directive 2003/86 / EC of 22 September 2003 on the right to family reunification. Article 4 (1) indicate that family members can accompany it: the sponsor's spouse, minor children of the sponsor and of his spouse and minor children adopted minors and minor children of the sponsor adopted when it exercise parental rights of children or when it is in its maintenance. Besides family members tutelage of Article 4 (1) of Directive 2003/86 / EC may be authorized to accompany or join him and other family members already established. Supporting documents which may be required family members are: residence of the sponsor, a valid travel document or its certified copy, proof of membership of the family in the first Member State holding evidence satisfactory stable and regular resources for maintenance safari resort social welfare, health insurance covering all risks in the second Member State.

In case the long-term resident exercising the right of residence in a second Member State wishes to be accompanied or to join people who were not part of the family established in the first Member State shall apply the provisions of Directive 2003 / 86 / EC [22].

Family members and long-term resident will be refused to grant long-term residence permit if a threat to public order or public security [23]. For making such a decision will be analyzed severity or nature of the offense or the danger of the person

who committed the crime. The decision refusing to grant the permit can't be justified by economic reasons.

Another cause may be denied a residence permit application is the threat to public health that are long-term residents or their family members [24]. Which diseases constitute grounds for refusal to enter the country or issue a residence permit defined by the World Health Organization and infectious or contagious parasite when they are subject to protection provisions nationals in the country of destination. If the disease is contracted after issuing a residence permit in the second Member State shall not constitute a refusal to renew or expulsion.

Member States may define more restrictive provisions in domestic legislation.

Long-term residents of the first Member State and family members may be required under national law to leave the territory of the second Member State, until obtaining a residence permit [25]. Withdrawal or non-renewal of the license may be motivated by the threat it represents to public policy or public security, or if not all conditions that led to its issue or if not lawfully residing in the territory of the second State member.

If you decide to withdraw or refuse to renew a residence permit in the second Member State, the first Member State shall be informed by the second on the decision. Following the decision taken long-term resident of the first State and his family members will be admitted immediately to the first Member State.

If it is decided the expulsion of long-term resident until issuing the permit for reasons of public order and public security, the second Member State shall consult the first Member State. If the decision taken as a result of consultations with the first Member State is expulsion, then the second Member State shall provide information on the implementation of the removal decision.

Can't be permanently rejected for cases where the expulsion decision for not fulfilling the conditions of giving the permit and the cases when the third country national doesn't fulfill any more the condition if residence on the Member State in question .

In case the long-term resident was denied renewal or residence permit was withdrawn in the second Member State, the readmission obligation remains valid for the first Member State without being detrimental to the possibility of a third move into a third Member State.

## Conclusions

Third country citizens who have long-term resident status are the most predictable and stable of all categories of migrants. Their status is defined by the EU acquis and consider it the most extensive confer rights of the given categories of migrants.

Limited rights for family members and the significant conditions that they must meet, individualize a restrictive regulatory framework.

We consider that it is important to recognize more rights for this category of migrants. We opt as being important to extend the guarantee of equal treatment of in terms of social security.

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[25] Idem, Art. 22