

## **Meijers Committee**

standing committee of experts on international immigration,  
refugee and criminal law

### **CM2106 Contribution to the European Commission's consultation with representatives of Civil Society on legal migration, 20 April 2021**

#### **1. The Long-Term Residents Directive 2003/109**

Concerning this Directive we make the following comments and recommendations.

1. The Long-Term Residents or LTR Directive and the Family Reunification Directive are the main EU contributions to the integration of third-country national (TCN) immigrants in the EU. We appreciate the efforts of the European Commission to improve the implementation of the LTR Directive, but we seriously doubt whether proposing a recast is the right way forward. Proposing a recast of the Directive creates a serious risk of counterproductive effects, such as restricting rather than extending the access of long-term residents to the EU status and their rights becoming less rather than more comparable with the rights of Union citizens.

2. Most of the shortcomings and issues mentioned in the Background paper and the Inception Impact Assessment can be dealt with without changing the text of the LTR Directive. e.g. by Commission Guidelines or infringement procedures. The Commission has successfully used both instruments concerning Directive 2004/38 and Directive 2003/86.

3. The limited use of the EU LTR status in some Member States is primarily due to administrative practices, traditions, and policy choices of national authorities and to the labour market test as a condition for intra-EU mobility. Lack of awareness of the status among long-term residents is not the primary cause. To increase the use of the EU LTR status, in guidelines as proposed in point 2, the Commission should underline that the directive allows long-term residents to have both the EU and the national status and that Member States may not force long-term residents to choose between the two statuses.

4. The Directive does not allow Member States to enforce a mandatory choice between the two statuses. In 2013 the German Bundesverwaltungsgericht held that a third-country national who already had an EU long-term residence status was entitled to a national settlement permit, since this would bring him/her additional rights. The argument that it is technically impossible to issue two documents to the same person was refuted by the court (BVerwG 19 March 2013, 1 C 12.12, point 13 and 23).

5. In such cases, granting only the national permit is incompatible with the first sentence of Article 13 of the LTR Directive, if the conditions for the acquisition of the national permanent permit are stricter or that permit grants fewer rights than, according to Chapter II of the Directive, are attached to the EU LTR-status in the first Member State. For example, in Germany, the income requirement for the national permit is more strict than the requirement in Article 5(1)(a) of the LTR Directive and the level of protection against loss of the national permit in case of absence from the Member State or on public order grounds is below the level of the LTR-Directive.

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6. Inconsistencies and uncertainties in the clauses on social security and social assistances occur in most directives on legal migration. They should be removed or reduced by a horizontal revision of those clauses in all directive concerned not by amending the clauses in one directive only. The Commission should make a survey of similarities and differences on this issue and systematically consider whether the differences are justified or not.

7. The issues of lack of clarity or uncertainty with regard to the rights of family members of long-term resident third-country nationals in the first Member State, the right to buy immovable property, and the loss of the status in case of absence from the EU for more than 12 months can and should be addressed in Guidelines as proposed in point 2, explaining why the relevant provisions of the directive may not be interpreted restrictively.

8. Family members are entitled to their own EU LTR status in the first Member State on the basis of five years of lawful residence and a sufficient family income. Article 11(1)(f) of the LTR Directive on equal treatment with regard to housing is not limited to public housing. The loss of residence right can be avoided by a short presence in the EU during the last 12 months (the directive does not require prolonged residence during the 12 months). These three issues can be clarified in Guidelines or, if necessary, in infringement procedures.

9. The desire for intra-EU mobility among long-term resident TCN is currently blocked mainly by the labour market test as applied by a majority of the Member States bound by the directive (see COM(2019)161, p. 7). This is illustrated by the fact that, according to census data, more than 200.000 non-British EU citizens, born in Africa, Asia, the Americas and the Caribbean, were living in the UK in 2011. They were only able to move to the UK after the acquisition of the nationality of another EU Member State. Naturalisation in most Member States is far more cumbersome than acquiring the LTR status. The LTR Directive never applied in the UK. In order to avoid the labour market test and other barriers in UK law and to realize intra-EU mobility, these third-country nationals had to acquire the right of free movement attached to Union citizenship. Academic research has documented similar intra-EU relocation patterns between other Member States as well (Ahrens Jill, Kelly, Melissa and van Liempt, Ilse, *Free movement? The onward migration of EU citizens born in Somalia, Iran and Nigeria*. Population, Space and Place 2016, p. 84-98).

### 10. **Five shortcomings in the current LTR Directive should be amended:**

- a) The labour market test during the first year in the second Member State (in Article 21(2)) should be deleted. This amendment will remove the main obstacle to intra-EU mobility of long-term residents with the EU LTR status.
- b) The restrictions in the access to employment and self-employment of long-term residents with the EU LTR status (in Article 11 and Article 14(3)) should be abolished, considering that the third-country nationals concerned have already lawfully resided in the Member State for at least five years.

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- c) Article 11(1)(c) should be amended to allow for the recognition of professional diplomas, certificates and other qualifications acquired in other Member States, in accordance with the relevant EU rules and no longer in accordance with the national procedures.
- d) For beneficiaries of international protection, the residence requirement should be reduced from five to three years, as proposed by the European Commission in COM(2020)609, p. 26. This would improve their intra-EU mobility and accept job offers in other Member States;
- e) For international students, their time in a Member State as a student currently only counts for half for the five years residence requirement. If the words “only half of the” in Article 4(2) are deleted, students would still remain outside the personal scope of the Directive. In case they are admitted for another purpose after graduation, their residence as a student would count in full for the EU-LTR status. This would make the EU status attractive for international talent and allow for mobility of graduates within the EU.

These five amendments in our view do not justify a full recast of the Directive. Policy options 1 and 2 of the Inception Impact Assessment should be pursued together. Option 3 (recast) is not necessary for reaching the aims and creates risks avoided in the other two options.

### **2. The Single Permit Directive 2011/98**

Concerning this Directive we make the following six recommendations.

1. Add in the Single Permit Directive (SPD) a provision specifying the grounds for refusal of the renewal of the single permit. Such clauses are present in several legal migration directives, such as the Family Reunification Directive, the Blue Card Directive and the Students & Researchers Directive, but not in the SPD. The inclusion of that clause will reinforce the security of residence of workers and reduce their dependence on their employers. Consequently, Article 12(3) SPD should be redrafted along the lines of Article 15(4) of the proposed recast Blue Card Directive.
2. The Single Permit Directive should explicitly provide equal access to courts and legal aid, and exempt third-country workers from providing security for costs before legal action is brought, specifying the rights granted by Article 47 of the EU Charter of Fundamental Rights (see CJEU 22 December 2010, C-279/09 (*DEB*) ECLI:EU:C:2010:811 points 47-48) and ensuring compliance with Article 6 of the ILO Migration for Employment Convention no. 97.
3. Trade unions and recognized NGO's representing the interest and rights of migrant workers should be entitled to act in administrative and civil proceedings to enforce the rights of third-country workers granted by the SPD. Similar provisions are included in the Employers Sanctions Directive 2009/52 and Directive 2014/54 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.
4. The Commission should identify all differences between the equal treatment clauses in Article 12 SPD and the equal treatment clauses in Article 15 of the proposed recast of the

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Blue Card Directive, systematically check whether those differences are justified or not, and draft a new Article 12 SPD on the basis of that check.

5. As proposed under point 6 with regard to the LTR directive, the inconsistencies and uncertainties in the clauses on social security and social assistances occur should be solved by a horizontal revision of those clauses in all directive concerned not by amending the clauses in one directive only. This horizontal review should be used as an opportunity to check that the new provisions are in compliance with the equal treatment clauses regarding social security in Article 6(1)(b) of the ILO Migration for Employment Convention no. 97 and the Equality of Treatment (Social Security) Convention no. 118.
6. Avoid the use of the terms "medium- and low skilled workers". They carry a negative connotation. The EU needs technically skilled and other workers, not solely highly skilled ones. Many immigrant workers without technical skills and health care workers proved to be essential in our societies during the pandemic. Words matter.