

CM2403

MEIJERS COMMITTEE COMMENT ON PRIORITIES IN TRILOGUE ON THE LONG TERM RESIDENTS DIRECTIVE RECAST

FEBRUARY 2024

On 23 November 2023, Coreper adopted the Council's mandate for the negotiations with the Parliament on the Long Term Residents Directive (LTR) Recast. The last session of the current Parliament before the forthcoming EP elections will be mid-April 2024. Consequently, only a few months are left to reach an agreement on this file under the Parliament and the Commission in their current composition. Considering the short time left for the negotiations on this file, the Meijers Committee recommends the three institutions to focus in the trilogue on the following four essential issues:

1. The recast should not reduce the rights of third-country nationals under the current Directive 2003/109 as interpreted by the Court of Justice.
2. No obstacles should be put in the way of acquisition of the LTR status by the 4 million beneficiaries of temporary protection from Ukraine.
3. The grounds for loss of LTR status in Article 9 should not be expanded.
4. Acquisition of LTR status should be entitled to in-country born children and the admitted partner of the person with LTR-status.

In this comment, these recommendations will be elaborated on in further detail.

 **Meijers
Committee**

Meijers Committee comment on priorities in trilogue on the Long-Term Residents Directive recast

Introduction

In April 2022 the Commission presented a recast of Directive 2003/109. The European Parliament (EP) adopted its resolution with the 72 amendments to this proposal in April 2023. On 23 November 2023, Coreper adopted the Council's mandate for the negotiations with the EP.¹ Shortly afterwards, the trilogue on this recast on the Long-Term Residents (LTR) Directive started.

The EP's last session before the forthcoming EP elections will be mid-April 2024. Thus, only a few months are left to reach an agreement on this file under the EP and the Commission in their current composition.

Restrictive Council mandate

As a result of the amendments in the Council mandate most important improvements proposed by the Commission (e.g. more intra-EU mobility, reinforcement of the rights of family members, level playing field with the national status as regards requirements for obtaining and rights attached to that status) would be deleted. Several CJEU judgments interpreting the current Directive would de facto be annulled or their effects would be seriously reduced. Council's amendments would make the acquisition of the Long-Term-Resident (LTR) status more difficult, reduce rights currently attached to the status and increase the risks of losing the LTR-status.²

Four priorities

Considering the short time left for the negotiations, the Meijers Committee recommends the three institutions to focus in the trilogue on the following four essential issues.

1. The recast should not reduce the rights of third-country nationals under the current Directive 2003/109 as interpreted by the Court of Justice

Adoption of the Council's amendments would turn the proposed recast into its opposite. The recast would result in a serious regression considering the aims of the directive. If the Council does not want to accept the improvements proposed by the Commission, the consequence should be that the Council cannot use the recast to deteriorate the treatment of long-term residents. Several amendments proposed by the Council reflect a perspective of stricter immigration control, disregarding the aim of the directive to support the integration of third-country nationals (TCN) with at least five years of lawful residence in a Member State. The recast should not have a counterproductive effect. After all, Member States did not request the recast. It was

¹ COM(2022)650 – 2022/0134(COD), EUR-Lex – 52022PC0650 – EN – EUR-Lex (europa.eu), EP resolution A9-0145/2023, pdf (europa.eu) and Council document 16000/23 of 28 November 2023, pdf (europa.eu).

² See the detailed comparison of the Commission's proposal and the Council's amendments by the expert Steve Peers, EU Law Analysis: Taking Rights Away Seriously: the Council's position on the long-term residents Directive.

an own initiative of the Commission. If the Council does not withdraw their amendments reducing, the Commission should seriously consider withdrawing the proposal.

2. No obstacles to the acquisition of the LTR status by the 4 million beneficiaries of temporary protection from Ukraine

According to the Council's mandate, beneficiaries of the Temporary Protection Directive would be excluded from the scope of the LTR directive. Moreover, their years of lawful residence would not count for the five years of lawful residence required for the acquisition of the LTR status, whilst residence of other TCN as beneficiaries of international protection or as asylum seekers do count for the five years. War refugees from Ukraine would be treated worse than asylum seekers or students from other third countries. This unjustified deprivation could be avoided by replacing "subparagraph ea" in the second sentence of Article 4(2) of the Council's mandate by the words "subparagraph b and ae". The years of lawful residence as a displaced person under Directive 2001/55 would thus be taken into account for the acquisition of the LTR in case the person has acquired another residence right after the end of the temporary protection.

3. The grounds for loss of the LTR status in Article 9 should not be expanded

Security of residence and protection against expulsion is a central element of the LTR status (recital 16 of the current directive and recital 22 of the proposal). The Council mandate considerably increases the risk of loss of the LTR status on two of the four grounds mentioned in Article 9: threat to public policy or public security³ and absence from the EU. The new ground of loss in Article 9(1)(c) due to not having "main residence in the event of absence from the territory of the Union for a period more than 18 cumulative months during the last successive five-year period, counted from the day of validity of [...]" effectively annuls the recent CJEU judgement in case C-432/20 (*Z.K. v. Landeshauptman*). Moreover, this clause would violate the principle of legal certainty since it will be very hard for LTR to foresee and avoid its consequences in advance and will be difficult to administer for immigration authorities. All short or long absences and activities in the EU during the last five years potentially may become relevant for conservation or loss of the status. Moreover, this new ground complicates circular migration.

4. Acquisition of LTR status by family members

The Council has fundamentally amended the major innovation of Article 15 in the Commission's proposal. According to the Council mandate, children of LTRs at birth in the Member State and admitted family members only acquire an ordinary national residence permit. The Meijers Committee suggests that the admitted or in-country born children and admitted partner would be entitled to a LTR status after 3 or 5 years lawful residence in the family of the person with LTR-status. This would enhance unity

³ See the new recital 10a, the addition to recital 13, the new Article 7(2) and the new 'shall' in Article 9(3) inserted in the mandate, sse document 15662/23.

of residence status in the family and reinforce the integration of children born or raised in the Member State.⁴

Concluding remarks

Considering the Council's mandate, seriously enhancing intra-mobility based on the LTR Directive and extending the level playing field with the national permanent status both appear to be blocked.

All proposals for enhanced intra-EU mobility for immigrants with LTR-status are deleted in the Council mandate. The Council wants to introduce complex clauses on the cumulation of residence acquired in different Member States and on the administration of those rules are introduced. In our view, those rules should be deleted. In practice they would only apply to a very small group of migrants with higher education. Until Member States change their minds on this issue, these TCN will have to rely on other EU instruments, such as the revised Blue Card Directive, the ICT-directive or the Students & Researchers Directive or on the acquisition of the nationality of the Member State of residence.

The Meijers Committee urges the EU legislator to reintroduce all the level playing field clauses proposed by the Commission and extend the application of this principle to reduce the differences with regard to acquisition and rights of the national permanent residence status and grant those with the LTR-status the same benefits.

⁴ The non-German spouse of a German citizen is entitled to the national permanent residence permit (Niederlassungserlaubnis) after 3 years of lawful residence with the German spouse, § 28(2) Aufenthaltsgesetz.