

# Status of third-country nationals who are long-term residents

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In accordance with the requirements of Directive 2003/109/EC, the Commission presents a report on the application of the Directive concerning the status of third-country nationals who are long-term residents (LTRs). Such residents are granted a secure residence status, including a set of uniform rights which are as close as possible to those enjoyed by the citizens of the EU and, under certain conditions, the right to reside in other Member States. The Directive promotes the principle of non-discrimination and lays down for the first time provisions to facilitate mobility from one Member State to another. It applies to more than half a million third-country nationals in 24 Member States. Its scope was recently extended to beneficiaries of international protection by the amending Directive 2011/51/EU.

The report gives an overview of the transposition and implementation of the Directive by Member States and identifies problematic issues. It has been drawn up on the basis of a study conducted on behalf of the Commission and other sources, including a number of ad-hoc queries launched through the European Migration Network, individual complaints, questions, petitions, discussions with Member States on practical issues arising from application of the Directive and other studies.

**Transposition:** Member States had to comply with the Directive by 23 January 2006. In 2007, the Commission initiated infringement proceedings against 20 Member States for not having implemented the Directive in time or for not having properly informed the Commission of the adoption of national legislation implementing the Directive. Judgments were handed down by the European Court of Justice against three Member States (Spain, Portugal and Luxembourg).

**Implementation:** the report discusses the implementation by Member States of the provisions of the Directive, including personal scope, the requirement for lawful residence of 5 years, resources and sickness insurance, integration requirements, public order and public security, documentary evidence, loss of status and right to equal treatment.

The Commission states that the **weak impact of the LTR Directive in many Member States is to be deplored**. In 2009, around four fifths of these third-country nationals having LTR status were living in four Member States: Estonia (187 400), Austria (166 600), Czech Republic (49 200) and Italy (45 200). In France and Germany, only 2 000 third-country residents had acquired the LTR permit. Moreover, the available data indicates that **only small numbers of LTR third-country nationals have made use of this new avenue for mobility within the EU so far** (fewer than 50 per Member State). Even though third-country nationals residing for more than 5 years do not automatically meet the conditions for being granted LTR status (for example, because they do not meet the income requirement) or may qualify for citizenship and prefer to acquire such status, the difference between potential LTRs and those granted this specific status is important.

This report reveals a **general lack of information among third-country nationals about the status of LTR** and the rights attached to it, as well as many deficiencies in the transposition of the Directive, which may be summarised as follows:

- **Restrictive interpretation of the scope:** the Directive applies to third-country nationals lawfully residing in the territory of a Member State . However, a series of exclusions are provided for. Specific problems arise with respect to the exclusion of third-country nationals who have been admitted solely on temporary grounds. Some Member States apply a very broad reading of the

exception contained in the provision and define the status of certain categories of third-country nationals as temporary, even though their residence permit may be renewed for a potentially indefinite period, without any definite time limit and regardless of the total duration of residence in the Member State. Artists, athletes, ministers of religion, social workers, researchers, family members of permanent third-country nationals, low skilled migrant workers or other third-country nationals whose stay is unduly labelled 'temporary' may thereby be excluded from EU long-term residence status in Austria, Cyprus, Greece, Italy, and Poland. This restriction of the personal scope of the Directive seriously affects the 'effet utile' of the Directive. This issue is the subject of a preliminary referral to the European Court of Justice by the Dutch Raad van State in case C-502/10 (M. Singh).

- **Additional conditions for admission, such as high fees:** the report cites the Member States in which fees range from EUR 260 to EUR 600 and states that this can be seen as problematic. This issue is the subject of an infringement procedure before the Court of Justice.
- **Illegal obstacles to intra-EU mobility:** such mobility is much enhanced in those Member States where LTRs who obtained that status in another Member State are exempted from the labour market test (and in some cases from the work permit requirement as well), namely in Belgium, Cyprus, Hungary, Latvia, Poland, Portugal and Sweden. In Italy, Romania and Slovenia, national quotas - as distinct from those provided for by Article 14(4)35 - apply. The conformity of these quotas with the Directive depends on whether they are based on a labour market assessment. Therefore, the Italian quotas broken down by nationality appear to be in breach of the Directive.

The report also discusses the **watering down of the right of equal treatment and protection against expulsion**.

These problems should lead to further steps being taken, at EU and national levels.

**Steps to be taken:** the Commission will increase its efforts to ensure that the Directive is correctly transposed and implemented across the EU, making full use of its powers under the Treaty and launching infringement proceedings when necessary. Five years after the deadline for the transposition of the Directive, it is now high time to put it to full use. At the same time, the Commission will continue working with Member States at the technical level, and clarify certain issues such as: integration measures and conditions; specific rules on the admission of LTR in the second Member State; protection against expulsion; and exchange of information between Member States.

Moreover, LTRs should be better informed about their rights under the Directive. The Commission will make the best use of existing websites, mainly via the future Immigration Portal, and is considering preparing a simplified guide for LTRs. The Commission could also encourage and support Member States in launching awareness-raising campaigns to inform LTRs of their rights.

Lastly, in order to promote LTR status, advance the integration of third-country nationals and improve the functioning of internal market, amendments to the Directive could also be considered, such as:

- taking better account of temporary stays in the calculation of the 5-year period;
- further encouraging circular migration through more flexible arrangements as regards periods of absence of the EU territory, in line with the EU Blue Card scheme;
- facilitating access to the labour market of the second Member State; and
- further simplifying the acquisition of LTR status in the second Member State.