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

2001/0074(CNS) - 29/03/2019 - Follow-up document

The Commission presents its second report on the implementation of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (LTR). As a reminder, the first report in 2011 on the implementation of the Directive revealed a general lack of information among third-country nationals about the EU long-term residence (LTR) status and the rights attached to it, as well as a number of shortcomings in the transposition of the Directive into national law (for example, restrictive interpretation of its scope, additional conditions for admission, high administrative fees, illegal obstacles to intra-EU mobility, watering down of the right of equal treatment and protection against expulsion).

The original exclusion of refugees from the scope of the Directive was lifted in 2011. However, the Directive still does not apply to third-country nationals who have a form of protection other than the one laid down in the Asylum Qualification Directive. The question as to how national protection statuses should be distinguished from other national legal residence statuses has not been fully clarified so far by the case-law of the European Court of Justice or national courts.

Findings

The report states that since 2011, the implementation state of play of the long-term residents Directive across the EU has improved, thanks to the numerous infringement cases launched by the Commission and judgements issued by the European Court of Justice. The 2011 report highlighted the low impact that the Directive had had in many Member States, with few EU LTR permits issued, and 80% of them issued by only four Member States. In 2017, though a higher general uptake can be reported (3 055 411 EU LTR permits compared to 1 208 557 in 2008), the same four countries account for an even higher percentage of EU LTR permits issued (90%), with Italy having issued around 73% of them. This low uptake can be attributed to the lack of information available about the LTR status among not only third-country nationals but also the national migration administrations; and to the "competition" with long-established national schemes, which are allowed under the Directive (21 Member States out of 25 have retained their national schemes).

The Directive's main objectives are to:

- constitute a genuine instrument for the integration of third-country nationals who are settled on a long-term basis in the Member States; and

- contribute to the effective attainment of an internal market.

On the first objective, most Member States have not actively promoted the use of the EU LTR status, and continue to almost exclusively issue national long-term residence permits unless third-country nationals explicitly ask for the EU permit. In 2017, in the 25 Member States bound by the Directive there were around 3.1 million third country nationals holding a EU LTR permit, compared to around 7.1 million holding a national long-term residence permit. However, as highlighted by academic literature, if it was ascertained that the national immigration authorities actively promoted the national permit instead of the EU permit, this would undermine the point of the Directive.

The Commission will monitor this aspect of the implementation of the Directive and will encourage the Member States to take up the EU LTR permit as an instrument that is beneficial to the integration of third-country nationals.

On the second objective, the way that most Member States have implemented the intra-EU mobility provisions of the Directive has not really contributed to the attainment of the EU internal market. Only few long-term residents have exercised the right to move to other Member States. This is also because in some cases exercising this right is subject to as many conditions as the ones for a new application for a residence permit, or the competent national administrations do not have enough knowledge of the procedures.

In addition, the following points should be noted:

Conditions for acquiring long-term resident status: as clarified by the European Court of Justice with reference to the Family Reunification Directive, Member States may not impose a minimum income level below which all applications will be refused, irrespective of an actual examination of the individual case. This interpretation can also be applied to this Directive.

Application fees: the Directive does not contain any provisions on application fees. However, the 2011 report highlighted the fact that excessively high fees should be regarded as contrary to the principle of proportionality and as equivalent to an unlawful additional condition for admission endangering the "*effet utile*" of the Directive. This was confirmed by the ECJ in two judgements of 2012 and 2015 (*C-508/10 (Commission v. Netherlands),* and *C-309/14 (CGIL & INCA*)) respectively. On the basis of this, the Commission launched infringement procedures on disproportionate fees against a number of Member States: the Netherlands, Italy, Bulgaria, and Greece and Portugal. All cases were closed after remedial action, except proceedings against Portugal, which remains open.

Equal treatment: as highlighted in the 2011 report, several Member States have not adopted specific transposition measures of the equal treatment principle in their immigration legislation. The Commission has received numerous complaints on this issue and has taken action against some Member States. In 2018 the Commission launched infringement proceedings against Hungary with regard to a national law barring long-term residents access to the veterinary profession.

The Commission will encourage Member States to improve the implementation of the intra-EU mobility provisions by promoting the cooperation and exchange of information between national authorities, and will continue to monitor the implementation of the Directive.