

**PROPOSAL FOR A COUNCIL DIRECTIVE CONCERNING THE STATUS OF THIRD-COUNTRY NATIONALS WHO ARE LONG-TERM RESIDENTS**

**UNICE POSITION PAPER**

**I. INTRODUCTION**

1. UNICE has noted the proposal for a directive concerning the status of third-country nationals who are long-term residents<sup>1</sup>.
2. The Directive has the following objectives:
  - to put in place common criteria and conditions for all the Member States when granting long-term resident status to third-country nationals residing legally on their territory;
  - to determine the rights that go with the status;
  - to determine the conditions under which such long-term residents may exercise their right of residence in another Member State;
  - to determine the rights in the second Member State and the conditions for the acquisition of long-term resident status in that second Member State.

**II. GENERAL COMMENTS**

3. UNICE welcomes a Community initiative concerning the status of third-country nationals who are long-term residents. However, it does not understand the logic of the Commission launching a broad consultation on the overall objectives of a new EU immigration policy by means of a Communication if the results of the debate are largely pre-empted, inter alia by this proposed Directive.
4. UNICE attaches great importance to smooth integration of third-country nationals legally established in the EU and considers that:
  - creating a separate status for third-country nationals who have resided in a Member State for a number of years is justified;
  - with the removal of controls at internal borders, establishing common rules for the issue of long-term residence permits is necessary;
  - Community rules on long-term residence must also address the question of the acquisition of long-term resident status in a second Member State
5. However UNICE would like to point out that this proposal for a Directive contains provisions with regard to working conditions, social security and tax benefits which do not belong in the envisaged proposal for a Directive and should therefore not be included.

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<sup>1</sup> Community legislation on immigration will not be applicable to Ireland and United Kingdom unless they decide otherwise. It will not be applicable to Denmark. The UK government has indicated its intention to optout from this envisaged directive.

### III. SPECIFIC COMMENTS

#### A. Scope

6. In Article 3(2)(d), the Commission states that the Directive does not apply to third-country nationals who reside in order to pursue studies, with the exception of studies for a doctorate.
7. However in article 5, it foresees that half of the period of residence for pre-doctoral study can be taken into account and that periods of absence from the territory related to studies can be included in the period for calculation. This is in contradiction with a total exclusion of students from the scope.
8. Article 3(3) states that “third-country nationals who are members of the family of citizens of the Union who have exercised their right to free movement of persons may not acquire long-term resident status in the citizen of the Union’s host Member State until they have obtained the right of permanent residence in that Member State within the meaning of the legislation on the free movement of persons”.
9. This provision is unclear and it is difficult to understand what its application would imply in practice. Moreover, it seems that this is not a provision relating to the scope of the directive, but concerns conditions for granting the long-term resident permit in this specific case.

#### B. Duration of residence

10. Article 5(1) foresees that Member States should grant long-term resident status to third-country nationals who have resided legally and continuously for five years in the territory of the Member State concerned<sup>2</sup>.
11. Article 5(2)(b) proposes that for the purposes of calculating the period of legal and continuous residence the periods of residence for study purposes, with the exception of study towards a doctorate, will be taken into account as to half only.
12. UNICE would like to stress that the term “study towards a doctorate” is too vague and should be replaced by the term “study for a doctorate” as it could be interpreted as starting in the first year of the university studies instead of first year of doctoral study.
13. Article 5(3)(b) establishes that periods of absence from the territory of the Member State concerned related to discharge of military obligations, secondment for employment purposes, studies, with the exception of study for a doctorate, or research, serious illness, pregnancy or maternity will not interrupt the period of legal and continuous residence and will be included for the purposes of calculating that period. Article 5(3)(c) proposes that periods of absence related to residence in a second Member State as a member of the family of a long-term resident exercising the right to free movement of persons should also be included.
14. UNICE agrees that some degree of flexibility should be allowed for when applying the criterion of legal and continuous residence in order to take into account absences on

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<sup>2</sup> The Confederation of German Employers’ Associations (BDA) considers that for granting a long-term residence permit other qualifying minimum criteria (such as professional qualifications, language skills and age) must be defined at EU level. In its opinion, the duration of the previous residence alone does not provide enough evidence that third country nationals can be integrated in the job market and society in the long term. Moreover, this confederation believes that the proposed period of 5 years of previous residence is too short and should be prolonged to 7 years, when third-country nationals fulfil only the minimum criteria for long-term integration in labour market and society.

certain grounds. However, the provisions in article 5(3)(b) and article 5(3)(c) are far too loose. Except in very specific cases, the principle should be that these periods simply interrupt the count, which will continue once the third-country national is back in that Member State.

#### C. Conditions as to resources and sickness insurance

15. Article 6(2) provides that the conditions related to adequate resources and sickness insurance cover will not apply to refugees or to third-country nationals born on the territory of a Member State.
16. UNICE fully understands the need to exclude refugees from such a requirement but does not accept the logic of extending this exception to people born in Member States.

#### D. Withdrawal of status

17. Article 10(1)(a) foresees that Member States will withdraw long-term resident status in the case of absence from the territory for a period of two consecutive years (with derogations for certain reasons). However, in article 10(2) provision is made that absences related to the exercise of the right of residence in a second Member State will not entail withdrawal of long-term resident status.
18. The two paragraphs of the same article contradict each other. Clarification is therefore needed in order to make them compatible.

#### E. Equal treatment

19. Article 12(1) establishes that long-term residents will enjoy equal treatment with nationals as regards:
  - (a) access to employment and self-employed activity, provided that such activities do not entail even occasional involvement in the exercise of public authority, and conditions of employment and working conditions, including conditions regarding dismissal and remuneration;
  - (b) education and vocational training, including study grants;
  - (c) recognition of diplomas, certificates and other qualifications issued by a competent authority ;
  - (d) social protection, including social security and health-care;
  - (e) social assistance;
  - (f) social and tax benefits;
  - (g) access to goods and services and the supply of goods and services made available to the public, including housing;
  - (h) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations;
  - (i) free access to the entire territory of the Member State concerned.
20. UNICE agrees that the Directive should foresee that the long-term resident permit is also equivalent to a work permit in that Member State.
21. However, UNICE would like to stress that details on conditions of employment and working conditions, social protection and tax provisions do not belong in a directive on the status of third-country nationals who are long-term residents. Moreover, most of these issues are already dealt with in existing national or EU legislation.

#### F. Rights in the second Member State

22. Article 24(1) establishes that as soon as they have received the residence permit in the second Member State, long-term residents will in that Member State enjoy the same rights as in the first Member State, with the exception of social assistance and study grants.
23. UNICE would like to stress that these provisions would establish a more favourable treatment for third-country nationals long-term residents exercising their right of free movement than for EU citizens exercising the same right. They should therefore be brought in line with the rights of the EU citizens who exercise their right to free movement.
24. Finally, article 24(1) implies that a third-country national who acquires the status of long-term resident in a Member State will not be subject to restrictions or to a work permit and will be entitled to change employer or occupation or to move from employed to self-employed status, without any restrictions in all EU Member States.
25. UNICE considers that the access of a long-term resident of a Member State to the employment market of another Member State should be facilitated and that this category of third-country nationals could constitute a privileged source of labour supply.

#### **IV. CONCLUSION**

26. To summarise, UNICE welcomes a Community initiative concerning the status of the third-country nationals who are long-term residents.
  27. European employers agree on the need for a EU framework establishing common rules for the issue of long-term residence permits and for the acquisition of long-term resident status in a second Member State.
  28. However UNICE would like to point out that this proposal for a Directive contains provisions with regard to working conditions, social protection, tax provisions which do not belong in such a proposed Directive.
  29. UNICE hopes that its comments will be taken into account.
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