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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents

I. INTRODUCTION

Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (LTRs) - hereinafter 'the Directive'[1] - was adopted on 25 November 2003. It was the second Directive[2] on legal migration adopted after the Treaty of Amsterdam introduced the competence to legislate in this field at EU level.

The new status created by the Directive was called for by the European Council in 1999 with a view to fostering the integration of LTRs in the Member States and promoting economic and social cohesion. To achieve that objective, LTRs 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 is therefore a major milestone in the development of EU immigration policy, which concerns more than half a million[3] third-country nationals in the 24 Member States[4] to whom the Directive applies. Its scope was recently extended to beneficiaries of international protection by the amending Directive 2011/51/EU of 11 May 2011.

The report complies with the Commission's obligation under Article 24 of the Directive. It gives an overview of the transposition and implementation of the Directive by Member States and identifies possible problematic issues. It has been drawn up on the basis of a study conducted on behalf of the Commission[5] and other sources, including a number of ad-hoc queries launched through the European Migration Network[6], individual complaints, questions, petitions, discussions with Member States on practical issues arising from application of the Directive and other studies[7].

Member States have been given the opportunity to revise and update the factual information.

II. MONITORING AND STATE OF TRANSPOSITION

As stipulated in Article 26 of the Directive, Member States had to comply with the Directive by 23 January 2006.

The Commission organised several meetings with Member States to discuss issues concerning the implementation and interpretation of the Directive between 2005 and 2010.

In 2007, the Commission initiated infringement proceedings against 20 Member States[8] under Article 258 (ex-226) of the Treaty on the Functioning of the European Union 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.[9] Since then, as all Member States

[1] OJ L 16 of 23.1.2004, p. 44.
[2] The first Directive was Directive 2003/86/EC on the right to family reunification.
[3] 567 100 in 2009 (source: Eurostat).
[4] DK, IE and the UK are not bound by the Directive.
[5] Study supported by the Commission and conducted by a consortium lead by Andersson Effers Felix (AEF) and involving Matrix Insight Ltd (Matrix) and the Centre for Migration Law (CMR), updating the study carried out in 2007 by the Academic Network for Legal Studies on Immigration and Asylum in Europe -'Odysseus'.
[6] See in particular ad-hoc queries n°7, 41, 46, 53, 57, 148, 180, 209.
[7] D. Acosta Arcarazo, The Long-Term Residence Status as a Subsidiary Form of EU Citizenship. An Analysis of Directive 2003/109, Martinus Nijhoff, 2011.
[8] All Member States except AT, SI, SK, PL.
[9] Cases C-5/07 (Commission/Portugal), C-59/07 (Commission/Spain) and C- 34/07 (Commission/Luxembourg).

have gradually notified the transposition measures, the infringement proceedings for non-communication have been closed.

III. COMPLIANCE OF THE TRANSPOSITION MEASURES

3.1. Personal scope (Article 3)

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 (Article 3(2)(e)). 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 AT, CY, EL, IT and PL. 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).

3.2. Conditions for acquisition of the status in a first Member State (Articles 4, 5, 6 and 7(1))

- **Lawful residence of 5 years (Article 4)**

Third-country nationals are required to have resided legally and continuously within the territory for five years prior to the submission of the application for LTR status.

Member States remain competent to define the notion of 'lawful residence' under national legislation, within the limits of EU law. However, once they have defined that notion, they cannot then narrow it down when transposing Article 4 of the Directive. Restricting lawful residence to residence under a residence permit and excluding as a matter of principle visas and other forms of authorisation for stay may constitute an incorrect transposition of this provision when these stays do not fall under the exceptions provided for under Article 3(2). Problems may arise in this regard with FR, IT, LU, SE and SK.

According to Article 4(3), a period of absence from the territory of the Member State that is shorter than six consecutive months and does not exceed a total of 10 months within five years does not interrupt the five-year period of residence[10]. LT has not transposed this provision[11]. Many Member States[12] have made use of the possibility to allow longer periods of absence in cases of "specific or exceptional" circumstances (such as serious illness, pursuit of studies, employment reasons) without the five-year period being interrupted.

[10] For third country nationals holders of the so-called 'Blue Card' according to Directive 2009/50 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, this period of absence is extended up to 12 consecutive months for a total period of maximum 18 months.
[11] Amendments in preparation.
[12] AT, CY, CZ, DE, ES, FI, IT, LU, LV, MT, NL, PL, RO.

Specific (optional) rules for calculation are laid down for students and vocational trainees under Article 4(2) which a majority of Member States[13] have transposed.

- **Resources and sickness insurance (Article 5 (1))**

The income requirement varies across Member States, as it is usually set by reference to the level of social assistance, minimum living standard or minimum wage/pension. Many Member States provide for thresholds which are raised in proportion to the number of family members and take account of the costs of accommodation. In order to prove stability and regularity of resources, CY requires that the employment contract be valid for at least 18 months, which in practice may prove a serious obstacle in a labour market characterised by short-term employment contracts.

The handling of applications of family members raises further issues. In BG, EE, EL, MT, PL and RO, the legal framework requires that family members applying for LTR status must prove that they have appropriate resources and that these do not include the income of the sponsor. This restrictive interpretation of the resources requirement prevents family members from achieving a stable situation and runs counter to the aim of fostering the integration of LTRs.

- **Integration requirements (Article 5 (2))**

In addition to these conditions, Member States may require third-country nationals to comply with integration conditions, as is the case in AT, CZ, DE, EE, EL, FR, IT, LT, LU, LV, MT, NL, PT and RO[14]. These integration conditions include language proficiency, though of varying levels. They may also include further knowledge about the host society, typically its history, legal order and values[15]. Some Member States require third-country nationals to pass an exam[16], which may be preceded by compulsory courses. Others only make it compulsory to attend integration courses[17].

When transposing this provision, Member States must be in line with the purpose of the Directive and take due account of the general principles of EU law, such as the principle of preserving its effectiveness ("effet utile") and the proportionality principle. In order to perform such an assessment, the nature and level of the knowledge expected from the applicant, also by comparison to the knowledge of the host society, the cost of the exam, the accessibility of the integration training and tests, the comparison between the integration requirements imposed on a prospective LTR and those applied to prospective citizens (which are expected to be higher), are all valuable indicators.

- **Public order and public security (Article 6)**

Taking account of the fact that, by definition, the LTR has already resided in the Member State concerned for at least 5 years, the possibility for Member States to refuse an application on public policy or public security grounds is more limited than in the other Directives on legal migration, as Member States have to take into account the following four elements: the severity or type of offence against public policy or public security; the danger posed by the person concerned; the duration of the person's residence; and the existence of links with the country of residence.

[13] All Member States except CY, FI, FR, IT, LT, SE.
[14] However, this requirement is lifted for family members in DE, EE, LT, LU, LV, MT, RO.
[15] AT, FR, DE, EL, LT, MT, NL.
[16] AT, DE, EE, EL, IT, LT, LV, MT, NL, PT, RO.
[17] Civic courses in FR.

The completeness of the transposition is difficult to assess in this area: it is not only the wording of the corresponding national transposition measures that often differs slightly from the text of the Directive, but typically they are also based on various sources of law, the combination and legal force of which may be difficult to assess. Subject to these reservations, national law does not appear to guarantee that each of the elements specified in this article of the Directive is taken into account every time a decision is made to refuse the status in AT, BE, ES, FR, HU, LT, LV, PL, RO, SI[18] and SK (incomplete transposition of the criteria, excessively vague formulation, automatic link between certain custodial sentences/criminal records and refusal).

- **Documentary evidence (Article 7(1))**

Apart from a valid travel document and documentation confirming appropriate accommodation, the documentation that can be required in support of the application is specified under Articles 4 and 5. Therefore, national legislation systematically requiring additional documents, such as an extract from the judicial record (CY, CZ, HU, IT, RO, SI) or detailed curriculum (BG[19]) does not appear to comply with the Directive.

Another problematic issue under some national laws concerns the consequences of the absence of documentation regarding appropriate accommodation - this notion usually refers to normal accommodation that meets the general health and safety standards or to accommodation meeting welfare-based social housing standards. As this is not a condition for admission, Member States' legislation stating that the absence of such evidence is a ground for refusing an application is in breach of the Directive[20]. In addition, the specific requirement under MT legislation that the accommodation must not be shared by another person/other person(s) who are not family members does not seem justified.

Moreover, the absence of any specific legal provision regarding documentary evidence, as seems to be the case in DE, SE and NL, is difficult to reconcile with the general principle that third-country nationals must be able to ascertain their rights and obligations[21].

- **Additional requirements**

In AT, the issuance of the EU LTR permit is formulated as a 'may' clause and is conditional upon the acquisition of a settlement permit, which itself depends on the fulfilment of a quota criterion or on the achievement of a sufficient number of points (skilled-based point system), which is not compatible with the Directive.

As regards fees levied by all 24 Member States for processing the application, they may, when they are excessively high, 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. In this regard, the following group of Member States: BG, CY, EL, FR, NL and PT, in which fees range from 260 euro to 600 euro, can be seen as problematic. This issue is the subject of an infringement procedure before the Court of Justice22.

[18] Amendments in preparation.
[19] Amendments in preparation.
[20] A transposition issue may arise in this area in AT, CY, CZ, DE, FR, HU, IT, LT, LU, LV, MT, PL, RO, SK.
[21] CJUE, 30/05/1991, case C-361/88.
[22] Case C-508/10 (Commission c/Netherlands).

3.3. The LTR permit and status (Article 8 (1) (2) and (3))

The Directive establishes a fundamental distinction between LTR status and the residence permit, as LTR status is permanent and the permit only certifies that status[23]. In the light of this, the absence of explicit provisions under national law (in FR, LV, NL, PT and SE) about the permanent nature of the status could give rise to a legal issue.

Member States correctly transposed the provision on the period of validity of the permit (Article 8(2)), generally setting it at 5 years, with some exceptions[24].

The rules applying to the form of the permit (Article 8(3)) were changed by Council Regulation 380/2008 of 18 April 2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals. As regards the compulsory mentions on the permit, they were not laid down in a number of Member States (e.g. ES[25], IT and RO) during the initial years following the entry into force of the Directive, which caused problems as regards intra-EU mobility.

3.4. Conditions of renewal of the permit and loss of status (Articles 8 (2) and 9)

- **Renewal of the LTR permit (Article 8(2))**

Concerning the provision of Article 8(2) relating to automatic renewal**,** which is closely linked to Article 9(6) on the expiry of the LTR permit, transposition is correct in those Member States where there is no renewal procedure since the permit is valid for an indefinite period. It is also correct in the Member States where the LTR permit is automatically renewed upon expiry or on request. The high fees applied on this occasion (CY) do not seem compatible with the concept of automatic renewal, nor the high fines (up to 1659 euro) that are reportedly applied in SK to LTRs that do not apply for the renewal of their permit in time.

- **Withdrawal or loss of the LTR status (Article 9)**

Article 9 regulates the conditions for withdrawing or losing LTR status. Withdrawal must take place in five specific cases listed in Articles 9 (1) and (4) and may take place in the circumstances referred to in Article 9(3). Withdrawals of LTR status cannot be justified on other grounds.

In addition, Article 9(2) allows Member States to withdraw the permit in the case of absence from EU territory for more than 12 months, unless longer periods are allowed[26] for specific or exceptional reasons (e.g. development of a project in the country of origin). Incorrect transposition is reported in SK and NL, providing additional grounds for loss of status in the event of a 180-day period of absence from the national territory.

Under the terms of Article 9(3), Member States may provide that the LTR shall no longer be entitled to maintain his or her status in cases where s/he constitutes a threat to public policy, but such a threat is not a reason for expulsion. The national laws of most Member States provide for this possibility; however, it is not always clear whether consideration is given to the seriousness of the offences committed. In particular, FR legislation providing that LTR status may be withdrawn in the event of employment of a third-country national without the required work permit seems to go beyond the grounds for withdrawal set out in Article 9.

[23] See Recital 11.
[24] 10 years: CZ, FR; indefinite duration: FI, IT, DE, SI.
[25] Amendments in preparation.
[26] AT, BE, CZ, FI, LU, MT, PT, SI.

Article 9(4), which relates to the loss of the LTR status in the first Member State upon acquisition of the LTR status in a second Member State or after six years of absence from the territory of the first Member State, has been transposed in all Member States.

Regarding Article 9(5) and the facilitated procedure for LTR status (e.g. removal or relaxing of the residence or integration requirement) with regard to the cases referred to in Article 9(1)(c) and Article 9(4), CY, ES[27], LT and MT do not show that they have transposed this provision.

3.5. Right to equal treatment in the first Member State (Article 11)

Under the terms of Article 11 of the Directive, LTRs enjoy equal treatment with nationals in a number of areas, including access to employment, education, social protection and access to goods and services. As a result, in particular, of the absence of explicit provisions under the laws of many Member States, there is an information gap in this area which is to be regretted. It is therefore difficult to assess whether national legislation is in compliance with Article 11. However, the number of complaints lodged in this area indicates that transposition of this provision may be problematic, especially where the principle of equal treatment has to be implemented by a range of different regional and local authorities.

12 Member States[28] have made use of the possibility provided by paragraph 2 of Article 11 to restrict equal treatment to cases where the registered habitual place of residence of the LTR or that of his or her family members lies within the territory of the Member State concerned. In addition, EL is the only Member State where, in accordance with paragraph 4, the national legislator limits equal treatment to core benefits in respect of social assistance and social protection[29]. Regarding access to employment, the legislation in 17 Member States[30] contains a restriction or excludes LTRs from activities involving the exercise of public authority.

Transposition issues arise as regards: access to education in NL (universities are allowed to charge higher fees for non-EEA nationals, including LTR); acquisition of real estate in PL; free access to the territory in LT (freedom of movement of foreigners may be restricted on the basis of an extended list of grounds, including protection of the rights and freedoms of other persons).

The compatibility with Article 11 of a national housing allowance restricted to EU nationals is the subject of a preliminary referral to the CJ by an IT tribunal[31].

3.6. Relationship with the national permanent residence permit – more favourable provisions (Article 13)

Article 13 of the Directive allows Member States to issue national permanent residence permits under more favourable terms. Those permits do no confer a right to move to a second Member State. 13 Member States[32] have made use of this possibility, including to the advantage of persons enjoying international protection, major investors or third-country nationals who have a special relationship with the Member State concerned, because they were born or resided for a long time on its territory, or married a national.

[27] Amendments in preparation.
[28] AT, BE, CY, CZ, DE, EL, ES, FR, HU, IT, LU, PL.
[29] Understood as those benefits which affect the protection of childhood, of indigents and of the family.
[30] AT, BE, BG, CY, CZ, DE, EL, ES, FR, HU, IT, LT, LU, PL, RO, SE, SI.
[31] Case C-571/10.
[32] BE, BG, CZ, DE, EL, ES, FI, FR, HU, NL, PL, SE, SI.

Possible problems arise in the Member States[33] where third-country nationals are not allowed to hold a LTR permit and another residence permit at the same time and must choose between the two permits. Such a choice is not in accordance with Articles 4(1) and 7(3), which provide that Member States should grant LTR status when the applicant fulfils the conditions of the Directive. In addition, this situation creates a risk of competition between national and EU permits, which will not necessarily result in more favourable provisions being applied to the third-country national, given that the comparison of the advantages respectively granted by the two kinds of permits is often a delicate issue requiring in-depth knowledge of immigration law and a thorough assessment.

3.7 The conditions for residence and work in another Member State (Articles 14, 15, 16, 18)

The facilitation of intra-EU movement for LTRs is one of the main added values of the Directive, contributing to the effective attainment of an internal market. Transposition falls short of this ambition. In many Member States, Chapter III of the Directive dedicated to residence in the other Member States has been only partially transposed or has seen its implementation delayed. In addition, problems have arisen as regards residence permits which were not issued in accordance with the specifications of the Directive (see point 3.3.). This situation has resulted in LTRs of another Member State being refused admission on grounds not provided for by the Directive, or not being granted their rights.

Intra-EU 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 BE[34], CY, HU, LV, PL, PT and SE. In IT, RO and SI, 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 IT quotas broken down by nationality appear to be in breach of the Directive.

Some Member States have removed the requirements of stable and regular resources and evidence of sickness insurance from LTR status-holders from another Member State when they apply for a residence permit. The application under Article 15 of income requirements that are stricter than those of Article 5, as provided for in FR, IT and RO for some categories of LTRs, hampers intra-EU mobility and raises compliance issues on the basis of the principles of proportionality and effectiveness of the Directive.

Article 15(3) provides for Member States to require LTRs applying for a residence permit to comply with integration 'measures', provided that the integration condition has not been applied to the LTRs concerned in the first Member State. As demonstrated by the wording used and the limitations provided for as regards their application and content, these integration 'measures' are not equivalent to the integration 'conditions' referred to in Article 5(2). Therefore, national legislation providing that LTR status-holders from another Member State must, despite the application of an integration condition in the first Member State, comply with integration measures entailing more than the mere attendance of a language course is in breach of the Directive. This is the case in AT, EE[36], FR, DE and LV.

[33] AT, BE, DE, EE, EL, FI, IT, LT, LU, PL, PT, RO, SI, SK.
[34] During the application of transitional measures for EU citizens, only for occupations in short supply
[35] only used by AT
[36] However, this requirement is not applicable to temporary residence permits.

Article 18(1) of the Directive regulates the possibility for Member States to refuse applications in the event of a threat to public health. In some Member States it is unclear whether the diseases mentioned are also subject to protective measures in relation to nationals. BE, HU, IT, LV and RO[37] did not transpose Article 18(3) which forbids Member States to refuse the permit because of diseases contracted after the first residence permit. Further, despite Article 18(4) which bans the performance of a medical examination on a systematic basis and charges for such examination, in EL and LT medical documentation is required in all cases, and in CY, CZ, LV, LT and RO the applicant must pay the costs of the examination or of the medical documentation.

As regards Article 16(1) which provides that the spouse and minor children have the right to accompany the LTR if the family was already constituted in the first Member State, problems of transposition arise in EE and LT[38], where the general rules regarding family reunification apply, and in ES and IT which apply an accommodation requirement. Moreover, the 'may' clause contained in HU legislation may also be misleading as regards the right of the family to accompany the LTR.

3.8 Residence permit issued to a LTR in a second Member State (Articles 19(2), (3) and (21))

According to Article 19(2), the second Member State must grant a renewable residence permit to the LTR if the conditions are met and must inform the first Member State of its decision. This obligation to provide information is not transposed in FR, IT, LT, LV and RO.

As soon as the LTR receives a residence permit in the second Member State, s/he should enjoy equal treatment in the areas covered by Article 11 in the second Member State, as provided for by Article 21(1). Specific issues of transposition arise: in FI, LT, SI, SK, where full equal treatment applies only to LTRs who hold a permanent permit; in NL, where the temporary residence permit of a LTR may be withdrawn if s/he applies for social assistance.

BG, FI, IT, RO, SI[39] and SK continue to apply restrictions to access to employment after the first 12 months in breach of the Directive. The national legislation on this point is not clear in CY and EL.

As regards family members (Article 19(3)), the second Member State should issue them with renewable residence permits that are valid for the same period as the permit of the LTR. This specific provision was not transposed in RO and SK, and undue restrictions apply in SI and LT[40]. As soon as family members have received this residence permit, they should enjoy the rights listed in Article 14 of the Family Reunification Directive. This provision is not transposed in EE, LV and RO, and is not properly transposed in SI as regards access to labour market and in FI as regards education.

3.9. Protection from expulsion (Articles 12 and 22)

Expulsion from the first Member State is strictly regulated under the Directive (Article 12): only when the third-country national constitutes 'an actual and sufficiently serious threat' to public policy or public security, exclusive of economic considerations, may a Member State expel a LTR. The expulsion decision must be preceded by a thorough assessment of the

[37] Amendments in preparation.
[38] Amendments in preparation.
[39] Amendments in preparation.
[40] Amendments in preparation.

particular circumstances of the person and the consequences of the decision, based on a set of specified criteria (Article 12(3)). Legal issues arise under those national laws which do not expressly refer to a specific threat (ES, RO, SE); do not take account of the whole set of criteria (BE, BG, FR, HU, LU, LV, NL, RO, SE); provide for further grounds than those of public policy or national security; or do not specifically exclude economic considerations as stipulated by Article 12(2).

Article 22 covers the possibility of expelling a LTR who has been granted a residence permit in a second Member State, but who has not yet obtained LTR status in this Member State. Except for MT, PT and SE, Member States have not adopted special provisions in this regard, which is problematic since most Member States lay down a number of further grounds for refusing or withdrawing residence permits.

Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals had an impact on Article 22(2) and (3) as, according to Article 6 of this Directive, third-country nationals staying illegally on the territory of a Member State and holding a valid residence permit issued by another Member State must be required to go to the territory of that other Member State immediately. It is only in the event of non-compliance by the third-country national concerned with this requirement that Member States can issue a return decision. Procedural guarantees and provisions regarding the entry ban as provided by Directive 2008/115/EC should also be respected.

3.10. Procedural guarantees (Articles 7 (2), 10, 19 (1) and 20)

- **Time-limit to process the application (Articles 7(2) and 19(1))**

In accordance with Article 7(2), most Member States respect the 6-month deadline to process the application for a LTR residence permit[41] and make use of the possibility of extending this deadline in "exceptional circumstances". BE and DE are legally problematic cases as there is no provision for an explicit maximum time period in these countries. In addition, in some Member States practice may differ from the official deadlines[42].

In most Member States, the LTR is allowed to stay in the second Member State pending the processing of the application for a residence permit.

Member States are required to determine the consequences of no decision being taken within the deadline (e.g. extension of the temporary residence permit of the applicant; positive decision or a negative decision after which the applicant can file an appeal). Transposition is not correct in this respect in EE, FI and IT, where no provisions have been made.

In accordance with the observance of the 'effet utile' of the Directive, the positive decision should equate to having the actual LTR permit, as provided for by BE and NL, or in any event to not delaying access to rights attaching to the permit.

- **Other procedural safeguards (Articles 7(2) (3rd par.) 10 and 20)**

[41] 30 days: SI; two months: CZ; three months: BG, CZ, EE, ES, IT, LV, PL, SK; four months: FR, HU.
[42] E.g. IT.

The obligation of information as it is laid down by Article 7(2), third subparagraph, appears to be insufficiently fulfilled in practice, especially as regards the range of rights granted to the LTR in accordance with Article 11.

As for the other procedural guarantees laid down in Articles 10 and 20, these are included in most national legislation. However, in CZ the loss of LTR status according to Article 9(4) of the Directive cannot be challenged.

IV. CONCLUSIONS

Promoting the integration and non-discrimination of third-country nationals, and particularly of LTRs, is a long-standing commitment of the EU. The LTR Directive is a crucial tool for achieving this objective and a pillar of EU immigration policy. An innovative scheme inspired both by the regime applicable to EU citizens and by immigration policy, this Directive guarantees to third-country nationals who are LTRs an extended set of rights throughout the EU, promotes the principle of non-discrimination and lays down for the first time provisions to facilitate mobility from one Member State to another.

Against this ambitious objective, 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: EE (187 400), AT (166 600), CZ (49 200) and IT (45 200). In FR and DE, only 2 000 third-country residents had acquired the LTR permit[43]. 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 fifty 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 (for example, restrictive interpretation of the scope of the Directive, additional conditions for admission, such as high fees, illegal obstacles to intra-EU mobility, watering down of the right of equal treatment and protection against expulsion) which should lead to further steps being taken, at EU and national levels.

V. STEPS TO BE TAKEN

The Commission will increase its efforts to ensure that the Directive is correctly transposed and implemented across the EU. In order to achieve this result, the Commission will make full use of its powers under the Treaty and continue to launch 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 the Member States at the technical level. The Contact Committee will continue to identify difficulties, facilitate the

[43] Source: Eurostat.

exchange of views on interpretation of the Directive and offer guidance. Some legal and technical issues could be further discussed and clarified, 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.

Finally, 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[44]; facilitating access to the labour market of the second Member State; and further simplifying the acquisition of LTR status in the second Member State.

[44] Directive 2009/50/EC