ACADEMIC NETWORK FOR LEGAL STUDIES ON IMMIGRATION AND ASYLUM IN EUROPE

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RÉSEAU ACADÉMIQUE D'ÉTUDES JURIDIQUES SUR L'IMMIGRATION ET L'ASILE EN EUROPE

UN RESEAU FONDE AVEC LE SOUTIEN FINANCIER DU PROGRAMME ODYSSEUS DE LA COMMISSION EUROPEENNE

DIRECTIVE 2003/109 LONG-TERM RESIDENTS SYNTHESIS REPORT

by K.GROENENDIJCK,R.VAN OERS, R.FERNHOUT, D.VAN DAM with the assistance of C.GORTAZAR & M-J. CASTANO

STUDY ON THE "CONFORMITY CHECKING OF THE TRANSPOSITION BY MEMBER STATES OF 10 EC DIRECTIVES IN THE SECTOR OF ASYLUM AND IMMIGRATION" DONE FOR DG JLS OF THE EUROPEAN COMMISSION END 2007(CONTRACT JLS/B4/2006/03)

A Network coordinated by the Institute for European Studies
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I. LIST OF NATIONAL RAPPORTEURS

MEMBER STATES	NATIONAL RAPPORTEURS	EMAIL ADDRESS
Austria	Julia Abermann	j.abermann@gmail.com
Belgium	Marie-Claire Foblets	Marie-claire.foblets@ant.kuleuven.ac.be
Bulgeria	Zhivka Georgieva	zhivkageorgieva@gmail.com
Cyprus	Koula Michaelidou	Michaelidou.k@unic.ac.cy
Czech Republic	Vera Honuskova	Vera.honuskova@seznam.cz
Denmark	Nina Lassen	Nina.Lassen@drc.dk
Estonia	Lehte Roots	Lehte.roots@mail.ee
Finland	Eeva-Riikka Nykänen	eenyka@utu.fi
France	Henri Labayle	Henri.labayle@univ-pau.fr
Germany	Kay Hailbronner	Kay.Hailbronner@uni-konstanz.de
Greece	Kostas Papadimitriou	k.papadimitiou@parliament.gr
Hungary	Csaba Biro	Csaba.biro@mail.datanet.hu
Ireland	John Handoll	John.handoll@williamfry.ie
Italy	Alessia Di Pascale	Alessia.dipascale@unimi.it
Latvia	Ieva Kalnina	kalnina@gmail.com
Lithuania	Lyra Jakuleviciene	Lyra.jakuleviciene@undp.org
Luxembourg	François Moyse	fmoyse@mds-legal.com
Malta	Gabriella Pace	Gabriella.Pace@gmail.com
Netherlands	Jan-Coen de Heer	j.deheer@jur.ru.nl
Poland	Michal Kowalski	kowalsma@ists.pl
Portugal	Nuno Piçarra	nunopicarra@fd.unl.pt
Romania	Corneliu Popescu	Liviu.popescu@drept.unibuc.ro
Slovakia	Martin Skamla	skamla@gmail.com
Slovenia	Saša Zagorc	Sasa.zagorc@pf.uni-lj.si
Spain	Mariona Illamola	Mariona.illamola@udg.es
Sweden	Markus Gunneflo	Markus.Gunneflo@jur.lu.se
United Kingdom	Bernard Ryan	B.ryan@kent.ac.uk

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II. GENERAL INTRODUCTION TO THE STUDY

by

Philippe DE BRUYCKER
debruyck@ulb.ac.be
General Coordinator of the study

1. PRESENTATION OF THE STUDY

The study contains different types of reports:

1. Two hundred seventy **National Reports** about the implementation of each of the 10 directives in each of the 27 Member States.

2. Ten **Synthesis Reports** for each of the 10 directives about their implementation in the 27 Member States. The abbreviated names used in the study for the 10 directives concerned by this report are:

- Family reunification
- Long-term residents
- Temporary protection
- Reception conditions
- Victims of trafficking
- Qualification
- Assistance for transit
- Carriers Liability
- Facilitation of unauthorised entry and stay
- Mutual recognition (of expulsion)

Those two kinds of reports are all accompanied by a summary.

Each National report is accompanied by a **National Summary Datasheet**. This Summary underlines the most serious problems related to the transposition of the concerned directive in the concerned Member State. Moreover, translations of the most problematic national provisions have been included in this National Summary Datasheet as requested by the Commission.

Each Synthesis Report is accompanied by a **Summary Datasheet** which underlines the most important conclusions and the main problems related to the transposition of the concerned Directive in the 27 Member States. It contains also some recommendations addressed to the Commission.

There are also 27 **Executive Summaries** about the implementation of the 10 directives in each of the Member States.

Apart of the reports, the **Tables of Correspondence** are very important tools to check the transposition of the directives by Member States. One table has been prepared about the implementation of each of the 10 directives in each of the 27 Member States. They have been included in each National Summary Datasheet. It gives a precise overview of the transposition of each provision (sometimes even of each sentence) of the concerned directive: the state of transposition (has actually the provision or not been transposed?), the legal situation (in case

of transposition, is there or not a legal problem?) and a reference to the national provisions of transposition. Footnotes giving brief explanations have also been included in the tables. The reader who wants to have more information can easily find in column 2 of the tables a reference to the number of the question to consult the national report. Guidelines explain how the national rapporteurs were asked to complete the table and how they had to understand each mention proposed in the table.

The paper version of the reports is accompanied by a website. Apart from an electronic version of all the reports, the website gives also access to the full text of the national rules of transposition.

2. METHODOLOGY OF THE STUDY

The study has been done in the framework of the *"Odysseus" Academic Network for Legal Studies on Immigration and Asylum in Europe* by a very large team of persons organised as following:

1. The 120 national rapporteurs in charge of the national reports and tables in each Member State for one or several directives. A lot of the rapporteurs are members of the Odysseus Academic Network, but the Network has at this occasion been extended to other persons because of the very large scope of the study and the considerable amount of work to be done;

2. The 27 national coordinators in charge of ensuring progress of the work at national level and responsible for the drafting of the Executive Summary per Member State;

3. The six thematic coordination teams in charge of the synthesis reports per directive:
    - Prof. Kees Groenendijck assisted by Ricky Van Oers, Roel Fernhout and Dominique Van Dam in the Netherlands for Long-term residents as well as by Prof. Cristina Gortazar and Maria-José Castano from Madrid in Spain for certain aspects;
    - Prof. Kay Hailbronner assisted by Markus Peek, Simone Alt, Cordelia Carlitz and Georg Jochum in Germany for Assistance in cases of transit for removal, Mutual recognition of expulsion decisions, Carrier sanctions and Facilitation of unauthorised entry and residence;
    - Prof. Henri Labayle assisted by Yves Pascouau in France for Family reunification;
    - Prof. Gregor Noll assisted by Markus Gunneflo in Sweden for Temporary protection and Residence permits for victims of trafficking;
    - Prof. Thomas Spijkerboer assisted by Hemme Battjes and Bram Van Melle in The Netherlands for the part on Qualification of refugees and subsidiary protection & Prof. Jens Vedsted-Hansen assisted by Jesper Lindholm in Denmark for the part on Rights of refugees and of persons under subsidiary protection.

4. The General Coordination team in charge of the overall coordination, methodology and contacts with the Commission as well as for the update of the synthesis report on reception conditions previously done by the Odysseus Academic Network in 2006. Prof. Philippe De Bruycker based in Belgium was therefore assisted by Laurence De Bauche (researcher), Elona Bokshi (manager of the website and also in charge of gathering national rules of transposition) and Nicole Bosmans (administrative and financial secretariat).

The authors are indicated at the beginning of each report with their email address in order to allow the Commission to contact them easily in case of need. The General Coordinator wants to thank warmly all the persons who were involved in this enormous study for their work and in particular their patience because of the many versions of the reports that we exchanged through thousands of emails.

Four meetings were organised: a kick-off and an intermediate meeting with the general and thematic coordination teams, a meeting with the general coordinator and all the researchers assisting the thematic coordinators and a final plenary meeting including almost all national rapporteurs were drafts for the synthesis reports have been discussed.

NGOs were asked to contribute on a voluntary basis by completing the questionnaires or at least part of it. The Member States were given the possibility to comment about the draft national reports (without the table of correspondence). We got only a limited number of contributions and reactions.

The Commission has been closely associated to the study. It was in particular consulted at the beginning on the projects for questionnaires and for tables of correspondence.

All member States are covered by the study, including those not bound by several directives upon the request of the Commission which asked to be informed about the developments in those Member States in comparison with Community law. The reports and tables of correspondence have been completed as if those States were bound by the concerned directives.

3. EVALUATION OF THE RESPECT OF COMMUNITY LAW

The study is about the transposition of 10 directives by Member States. More precisely, it covers extensively the legal measures adopted by the Member States to transpose those directives. As the process of transposition was not finished in some Member States, the authors decided to take into consideration the projects of national norms of transposition when they were accessible. It is important to note that those projects have been analysed like if they had been adopted as standing, which means that subsequent changes at national level are not covered by the study. The cut-off date for the national rapporteurs is in general 1st October; later developments have only been taken into consideration whenever possible.

The practical implementation of the directives is covered as much as it has been possible to do so. The study came indeed early as the directives have just or even not yet been transposed, so that implementation by Member States is just starting and in particular that the jurisprudence available was very limited. The fact that no practical problems are mentioned does not mean that there are none, but that the rapporteurs have not been informed of their existence.

Explanations are given in the 10 synthesis reports about the transposition of the concerned directive. Fore the mandatory provisions which have not been transposed or pose a problem, the explanations are followed by boxes listing the Member States in order to help the Commission to draw clear conclusions and make the report easy to read. They have been built upon the basis of the tables of correspondence included in the national summary datasheets for each directive and Member State. The guidelines given to national rapporteurs to assess the situation in their Member State are reproduced with the tables to help the reader to understand the methodology.

Some important remarks about the way the transposition of directives was assessed have to be made. The research team had to find a way between different priorities: firstly and obviously, the jurisprudence of the Court of Justice which has strict requirements regarding legal certainty and is even quite rigid on some points. Secondly, pragmatism which leads to check if the directives are effectively applied in practice with less attention given to certain aspects of pure legal transposition. The coordinators tried to find a reasonable middle way between these two approaches and agreed together with DG JLS upon the following elements:

- Administrative circulars of Member States have been considered as formal means of transposition. As much as they are binding for the administrative agents in charge of individual cases, they indeed ensure that the directive is implemented in practice despite they might not be considered sufficient to fulfil the requirements of the Court of Justice regarding an adequate legal transposition. They are nevertheless mentioned in the tables of correspondence separately from laws and regulations.

- Pre-existing norms of transposition meaning laws, regulations and circulars which were adopted before the concerned directive and so obviously not to ensure its formal transposition, have been considered as a mean of transposition. Their content may indeed reflect the provisions of the directives in internal law. This is not in line with the jurisprudence of the Court which has considered that “legislation in force cannot in any way be regarded as ensuring transposition of the directive, which, in article 23(1), second subparagraph, expressly requires the Member States to adopt provisions containing a reference to that directive or accompanied by such a reference” (Commission v. Germany, Case C-137/96 of 27 November 1997). All the ten directives covered by the study contain such an inter-connexion clause. A rigid application of this jurisprudence to our study would have led us to conclude that there is no transposition even when pre-existing rules ensure the implementation of the directive. In line with the approach of DG JLS to assess not only the formal transposition but also the application in practice of the directives, we have not done so and considered pre-existing national rules as a mean of transposition. They are nevertheless mentioned in the table of correspondence as pre-existing law, regulation or circular not under the item “Yes formally” but “Yes otherwise” together with general principles of internal law which the Court has accepted to consider under certain condition as a mean of transposition (Commission v. Germany, Case C-29/84 of 23 may 1985).

Despite the fact that we agreed with the Commission about these choices, the authors of this study considered necessary to make them explicit as they might seem inadequate from a purely legal point of view. Moreover, they have also decided to present in the tables of correspondence these possibilities separately from the classical ones. The Commission will so be perfectly informed about the situation regarding the transposition of the directives in the

Member States. The transparency of the information given in the tables will allow it to take a final position which could depart from the choices done at the beginning of this study.

Finally, the provisions about human rights appearing here and there in the ten directives require some explanations. The obligation for Member States to formally transpose provisions like for instance article 20 §4 of the Qualification directive[1], article 15 §4 of the directive on temporary protection[2] or article 3, §2 of the directive on mutual recognition of expulsion decisions[3], gave raise to long discussions between all the rapporteurs involved in the study. It has been impossible to convince the group of 130 lawyers involved in this study to take a common position about the necessity to transpose or not that kind of provisions. The General Coordinator of this study decided in this context to leave the national rapporteurs free to express their own opinion in their report and table. This means that divergent views might be expressed on the same point by the national rapporteurs. This situation reflects the fact that the lawyers involved in the study face obviously very different situations and react sometimes in relation with the context of their Member State by considering that reminding human rights is either superfluous because they are generally respected, either necessary because they care about possible violations.

From a strictly legal point of view, it appears that all the provisions cannot be considered in the same way. Some articles have an added value and are more than repetitions of human rights provisions, like article 10 of the directive on permits for victims of trafficking which after a first clause on the best interests of the child requires specifically an adaptation of the procedure and of the reflection period to the child, or article 17 of the directive on family reunification which refers to the jurisprudence of the European Court of Human Rights on the right to family life and specifies its scope. Others may be considered as redundant with international treaties like article 20 §4 of the Qualification directive or article 15 §4 of the directive on temporary protection. One may consider superfluous to transpose such a provision in the case of Member States which have ratified the Convention on the right of the child and ensure its implementation, for instance by recognising it a direct effect. More in general it appears that references to human rights in secondary legislation require more attention and that their legal value needs to be clarified (see recommendation on this point below).

[1] « *The best interest of the child shall be a primary consideration for Member States when implementing the provisions of this chapter that involve minors* ».
[2] « *When applying this article, the Member States shall take into consideration the best interests of the child* ».
[3] « *Member States shall apply this directive with due respect for human rights and fundamental freedoms*».

4. RECOMMENDATIONS ABOUT THE EVALUATION OF THE IMPLEMENTATION OF DIRECTIVES

This part contains some general recommendations to the Commission about the way of checking transposition of directives by Member States (specific recommendations about the 10 directives are included in the Summary Datasheet of each synthesis report per directive). The following three recommendations are based on the experience acquired during this study covering 10 directives in 27 Member States.

- **Oblige the EU institutions to include tables of correspondence in the final provisions of any directive adopted**

It is clear that the method of checking the implementation of directives still needs to be improved. The increase of the number of Member States and of working languages makes it more and more difficult to check seriously the way they are legally transposed.

There is an absolute need to request the Member States to prepare a table of correspondence (also called concordance or correlation tables) indicating the national norms of transposition for each provision of a directive. The Member States which have prepared the transposition are the best authority to identify precisely these norms of transposition. Leaving it to the Commission or asking external experts to do this part of the job can be considered to large extend as a waste of time and resources. The Member States should be asked only to indicate the rules of transposition and of course not to evaluate its correctness. Even the NIF electronic database of the Commission used by the Member States to notify the rules of transposition is therefore not sufficient. It does not indicate precisely the national norm of transposition for each provision of the directives which might remain difficult to identify in very long national rules. Moreover, Member States send sometimes not only the norms of transposition as some directives require them to communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by the directive. If such a more or less standard provision has been included to allow the Commission to understand the general context of the transposition, it makes the search of the precise norm of transposition more difficult as some Member States transmit a lot of texts.

Remarkably, only one of the 10 directives under analysis contains a provision obliging the Member States to prepare a table of correspondence: following article 4 §2 of the directive on the facilitation of unauthorised entry, transit and residence, "*The Member States shall communicate to the Commission the text of the main provisions of their national law which they adopt in the field covered by this directive**, together with a table showing how the provisions of this directive correspond to the national provisions adopted**. The Commission shall inform the other Member States thereof*". The reasons explaining why only this directive contains such a requirement are not clear. This directive is the result of a State initiative, namely France. The other instruments proposed during the same period by France regarding carrier sanctions and mutual recognition of expulsion decisions do not contain such a clause. The same is true for the Commission's proposals at the origin of the other directives analysed.

There is a strong and urgent need to request such a table from Member States when they transpose a directive. The Commission should intensify its efforts undertaken since five years so that the European institutions are obliged to include such a clause in any directive adopted as envisaged in its Communication on "A Europe for results: applying Community law"[4].

[4] COM(2007)502 of 5 Septembre 2007.

- **Have a more in-depth debate about the choice of the right instrument instead of favouring directives**

A reflection on the type of instruments of secondary law to be used could also be fruitful. For instance, it seems that a Council decision would have been more appropriate than a directive to regulate the issue of assistance in cases of transit for the purposes of removal by air.

More important, directives should not be automatically chosen for reasons of subsidiarity or proportionality. One may wonder if they are not good reasons for choosing in certain cases a regulation instead of a directive, for example for the qualification of refugees and persons under subsidiary protection in order to ensure a more consistent implementation of the definitions of persons to be protected in the EU by the Member States.

- **Clarify the sense of including human rights references in secondary legislation in view of the future binding effect of the EU Charter on human rights**

As underlined above, many references to human rights have been included in directives adopted in the field of immigration and asylum. Their legal value is doubtful when they only repeat or refer to International or European provisions on human rights. As they may create long discussions during the transposition process by Member States about their need to be transposed and can even create confusion about the precise origin of the concerned human right, they could be omitted and included if relevant in the preamble of the instrument. The need to clarify this point will increase with the entry into force of the new Lisbon Treaty transforming the EU Charter of human rights into a legally binding instrument.

Clarify the sense of including human rights references in secondary legislation in view of the future binding effect of the EU Charter on human rights

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III SUMMARY DATASHEET AND RECOMMENDATIONS

1. MEMBER STATES COVERED AND NOT COVERED BY THE SYNTHESIS REPORT

The synthesis report concerning the transposition of the Long-Term Residents Directive covers all 27 European Union Member States.

2. MEMBER STATES BOUND AND NOT BOUND BY THE DIRECTIVE

The preambles nos. 25 and 26 explicitly stipulate that three Member States (Denmark, Ireland and the United Kingdom) have not participated in the adoption of this Directive and are not bound by the Directive or subject to its application. The other 24 EU Member States are bound by the Long-Term Residents Directive.

3. STATE OF TRANSPOSITION OF THE DIRECTIVE

Please note that the point of reference is the main norm of transposition and not all the secondary rules.

Number of Member States which have transposed the directive (meaning the norm of transposition has been adopted even if it is not yet into force; choose this solution even in case of partial transposition but explain very briefly what is still missing if it is interesting): 22

Number of Member States which have **NOT AT ALL** transposed the Directive (meaning even no project of transposition is known): 1

Number of Member States where the process of transposition is pending (meaning there is project of transposition but it is not yet adopted): 1

MEMBER STATES	STATE OF TRANSPOSITION
AUSTRIA	- TRANPOSED
BELGIUM	- TRANPOSED
BULGERIA	- TRANPOSED
CYPRUS	- TRANPOSED
CZECH REPUBLIC	- TRANPOSED
DENMARK	- NOT BOUND BY THE DIRECTIVE
ESTONIA	- TRANPOSED
FINLAND	- TRANPOSED
FRANCE	- TRANPOSED
GERMANY	- TRANPOSED
GREECE	- TRANPOSED
HUNGARY	- TRANPOSED
IRELAND	- NOT BOUND BY THE DIRECTIVE
ITALY	- TRANPOSED
LATVIA	- TRANPOSED
LITHUANIA	- TRANPOSED
LUXEMBOURG	- IN PROCESS OF BEING TRANSPOSED
MALTA	- TRANPOSED
NETHERLANDS	- TRANPOSED

POLAND	- TRANPOSED
PORTUGAL	- TRANPOSED
ROMANIA	- TRANPOSED
SLOVAKIA	- TRANPOSED
SLOVENIA	- TRANPOSED
SPAIN	- NOT TRANSPOSED
SWEDEN	- TRANPOSED
UK	- NOT BOUND BY THE DIRECTIVE

4. TYPES OF TRANSPOSITION OF THE DIRECTIVE

None of the 24 Member States bound by the Directive has transposed the Directive, or a significant part thereof, only by administrative circulars. France (Articles 8(3) and 17(2)), Lithuania (Articles 7(2) third indent, Article 20(1), Article 21(2) first indent), the Netherlands (Article 15(1) second indent) and Sweden (Article 8(3)) transposed certain Articles by (pre-existing) circular only.

5. EVALUATION OF THE NUMBER OF PROBLEMS (QUANTITATIVE approach based on the national tables of correspondence and not related to the seriousness of the problems)

Based on the sum of provisions not transposed and the number of provisions where the transposition raises legal or practical problems, the Member States bound by the Directive can be divided into four different categories: Member States that transposed more than 40 mandatory Directive provisions, Member States that transposed between 35 and 40 mandatory provisions, Member States that transposed between 30 and 35 mandatory provisions and Member States that transposed less than 30 mandatory Directive provisions. This categorisation is based on purely quantitative indications of the national tables of correspondence.

Eleven Member States transposed more than 40 of 43 mandatory Directive provisions. These Member States are: Belgium (43), Cyprus (41), Czech Republic (42), Germany (43), Greece (43), Malta (41), the Netherlands (41), Poland (43), Portugal (43), Slovenia (43) and Sweden (43). Of these Member States, Belgium reports most legal (14) and practical (12) problems. These problems mostly concern the fact that the regulation (Royal Decree) necessary to implement the provisions of the Act transposing the Directive has not yet been adopted. For the Czech Republic, 13 legal and 1 practical problem have been reported. According to the respective rapporteurs, the transposition in Germany and Malta does not give rise to any legal problem. The German rapporteur reports four practical problems. The Greek rapporteur mentions one legal problem. For Portugal, Sweden and Cyprus respectively three, four and five legal problems are mentioned. The Polish rapporteur reports seven legal problems concerning the transposition of the mandatory provisions of the Directive in Poland, whereas both the Dutch and the Slovenian rapporteur mention eight legal problems in their Member States.

Five Member States transposed between 35 and 40 mandatory Directive provisions. These Member States are Austria (36), Finland (39), France (35), Hungary (37) and Slovakia (38). Of these Member States, Finland transposed most mandatory provisions. In this country, transposition poses a legal problem on five occasions. Slovakia transposed 38 mandatory provisions, Hungary 37 and Austria 36. In all three countries, transposition creates nine legal problems. France transposed 35 mandatory provisions. The French rapporteur mentions five legal problems.

Six Member States transposed between 30 and 35 mandatory Directive provisions. These Member States appear to be Bulgaria (34), Italy (33), Latvia (32), Lithuania (33), Luxembourg (33) and Romania (34). Bulgaria and Romania both transposed 34 of 43 mandatory Directive provisions. The Romanian rapporteur mentions eighteen legal problems which arise in the transposition of the Directive, whereas the Bulgarian rapporteur notes 13 legal problems. Romania is the Member State with most legal problems occurring in the transposition of the Directive. In Italy and Lithuania, 33 Directive provisions have been transposed. In Italy, transposition gives rise to five legal problems, whereas twelve legal problems are reported for Lithuania. The Latvian rapporteur mentions transposition of 32 Directive provisions with two legal problems occurring.

Estonia and Spain transposed less than 30 mandatory Directive provisions. In Estonia, 29 provisions have been transposed, giving rise to 5 legal problems. The European Court of Justice on 15 November 2007 has held that the Directive has not been transposed in Spain at all. The Spanish rapporteur acknowledges that no legislative activity concerning the transposition of the Directive has taken place yet. However, since the national permanent residence status is granted under similar conditions as the EC long-term resident status, the rapporteur reaches the conclusion that eighteen mandatory Directive provisions have been transposed, causing seven legal problems.

Three countries mention a practice in cases where a mandatory Directive provision has not been transposed. These countries are Italy (4), Lithuania (1) and Romania (3).

6. EVALUATION OF THE SERIOUSNESS OF PROBLEMS (QUALITATIVE approach based on the national summary datasheets and VERTICAL approach as it envisages the situation per Member State)

Based on the national summary datasheets where the national rapporteurs highlight the most serious problems related to cases of non-transposition or to transposed provisions creating a legal or a practical problem in their Member State, the following qualitative categorisation of Member States can be made: Member States where the transposition of the Directive caused no legal or practical problems, Member States where the transposition of the Directive gave rise to five or less serious problems, Member State where the transposition of the Directive lead to between five and ten serious problems, and Member States that experience ten or more serious problems regarding the transposition of the Directive.

The German, Maltese, Portuguese and Swedish rapporteurs mention no serious problems linked to cases of non transposition or to transposed provisions. Furthermore, they have not been informed of serious practical problems of implementation. However, the fact that in Germany, Malta and Portugal the absence of appropriate accommodation is grounds for refusal of the status constitutes a serious problem of transposition of the Directive in the opinion of the authors of the synthesis report. Articles 6(2) and 17(2) have furthermore not been explicitely transposed in Germany, with constitutes a legal problem in the opinion of the authors of the synthesis report. Sweden has not explicitly tranpsoed Article 6(2), and therefore, in the view of the authors of the synthesis report, there is a legal problem of transposition in this Member State too.

In Belgium, Cyprus, the Czech Republic, France, Greece, Latvia and Luxembourg, five or less serious problems with the transposition of the Directive appear.

- The serious problems with transposition of the Directive in France relate to the absence of equal treatment with nationals of status-holders from another Member State residing in France provided by Article 21 Directive. Secondly, France obliges the status-holder from another Member State to comply with integration conditions,

regardless whether he or she already had to comply with such conditions when acquiring the status in the first Member State. Furthermore, Article 12 of the Directive has not been correctly transposed in France.

- In Greece, a serious problem of transposition of the Directive relates to the fact that certain categories of third-country nationals, such as artists, athletes and trainers, are permanently excluded from the personal scope of application of the Directive, no matter how long they are legally residing in Greece. Also, lack of appropriate accommodation can be the sole grounds for refusal of the status.
- The most serious problems of transposition in Latvia relate to non-transposition of Article 4(2) and the fact that the equal treatment of status-holders provided for under Articles 11(1) and 21(1) is not explicitly ensured in Latvian legislation. Lastly, Article 15(3) has not been transposed correctly.
- In Luxembourg Articles 4(2), 11(1), 21(1) and the obligation rising from Articles 14(3) and 21(1) second sentence read together have not been transposed.

<u>Finland, Hungary, Italy, the Netherlands, Poland, Romania and Slovenia mention between five and ten serious problems in the transposition of the Directive.</u>

- In Finland, the most serious problems relate to the non-transposition of Articles 6(2) and 17(2). Furthermore, transposition of Article 4(2) and the obligation created by Articles 14(3) and 21(2) second sentence read together is problematic. Articles 21(1) and 21(3) are not transposed correctly in cases where the status-holder from another Member State receives a temporary residence permit. Such a permit does not guarantee equal treatment, nor does it guarantee the rights provided for under Article 14 of the Family Reunification Directive for family members.
- In Hungary, the fact that there is no right for third-country nationals who fulfil the necessary conditions to obtain the status is a serious problem. Third-country nationals 'may' obtain the status, this is at the discretion of the immigration authorities. Articles 6(1) and 17(1) have not been correctly transposed. Articles 6(2) and 17(2) have not been transposed at all. Lastly, the status may be refused in case the third-country national does not have appropriate accommodation.
- In Italy, Articles 6(2), 10(2), 17(2), 20(2), 21(1) and 21(2) have not been transposed. The obligation rising from Article 14(3) read together with Article 21(2) second sentence has not been transposed either. Article 7(1) second indent has not been transposed correctly since the absence of appropriate accommodation may be the sole reason for refusal of the long-term resident status, in case the status is also applied for family members. Lastly, Italy has not correctly transposed Chapter III of the Directive, since it applies the same articles regarding the acquisition of a residence permit to status-holders coming from another Member State that apply to other third-country nationals.
- In the Netherlands, article 5(1)(a) of the Directive has not been correctly transposed, since in the national law, 'regular resources' are defined as resources that are available for at least one year after the application for the status has been filed. This interpretation implies that in practice, only third-country nationals having a permanent labour contract will be granted the status. Most workers who have a stable employment contract in the Netherlands have a one year contract or a permanent contract. Only in case the one year contract has been signed on the same day as the application for the EC status will the one year contract be sufficient. Furthermore, Articles 6(1), 8(3), 9(1), 11(1), 12(1) and 21(1) have not been transposed correctly. Lastly, the fees that have to be paid for obtaining the status or a residence permit in the Netherlands as the second Member State are very high and have no legal basis in the Directive. Depending on the aim of residence, they vary between € 188 and € 830.

- In Poland, the transposition of Articles 10(1), 6(1), 6(2), 17(1) second sentence, 17(2) and 20(2) poses serious problems. Furthermore, absence of appropriate accommodation may lead to an application not being taken into consideration, which is not allowed for by the Directive.
- Serious problems concerning the transposition in Romania relate to the incorrect transposition of Articles 10(1), 20(1) and 20(2) Directive. The mitigating elements in Article 6(1) second sentence have not been transposed, nor has the obligation emanating from Articles 14(3) and 21(2) second sentence read together. Furthermore, some matters related to the legal status of the long-term residents are not regulated by express rules of transposition, but by the general rules applicable to all third-country nationals. Therefore, in some cases this might have as a consequence the inexistence of specific rules for the long-term residents, meaning the absence of the special status imposed by the Directive, and a general status for all aliens in stead. A specific serious problem relating to the Romanian situation consist of the fact that there is a major contradiction between the legislation regarding aliens (transposing the Directive) and the legislation governing civil and family relations. The legislation regarding aliens makes a distinction between the right of permanent residence in Romania for aliens and the domicile in Romania for aliens. On the other hand, the Romanian civil legislation makes a distinction between 'residence' (which is exclusively temporary) and 'domicile' (which is permanent). Therefore the civil legislation does not allow 'permanent residence', while the legislation regarding the aliens explicitly provides the right of 'permanent residence'.
- In Slovenia, the mitigating elements of Articles 6(1) and 17(1) have not been transposed. Articles 4(2), 6(2), 17(2), 21(1), 21(2) first indent and 21(3) first indent have not been transposed correctly, nor has the obligation emanating form Article 14(3) read together with Article 21(2) second sentence.

<u>Austria, Bulgaria, Estonia, Lithuania, Slovakia and Spain experience ten or more serious problems with the transposition of the Directive.</u>

- In Austria, the personal scope of the Directive is limited, since certain categories of third-country nationals are permanently excluded from the scope of application. Artists, ministers or pastors, rotation-workers, social workers and researchers will never obtain the *Niederlassungserlaubnis* which is required to obtain the EC long-term resident status in Austria. Also, absence of appropriate accommodation can be the sole ground of refusal of the status in Austria. Articles 4(2), 6(2), 17(2) and 21(1) are not transposed in Austrian legislation. The transposition of Articles 10, 17(1), 15(3) and 20(2) is incorrect. Even though the EC long-term resident status is permanent, there is a problem in the transposition of articles 8(1) and 9(6) since, in case an application for prolongation of a long-term resident's EC residence permit is submitted six months after expiry, this application will be regarded as an initial application. This means the long-term resident will loose the status and will have to wait five years before the status can be obtained again. Austrian legislation provides for a quota for status-holders of another Member State. However, a quota for aliens wanting to work in Austria, besides a quota for key-workers, did not exist at the time of adoption of the Directive. Therefore, the introduction of a quota for status-holders may not be in compliance with the standstill clause of Article 14(4). Lastly, Austrian legislation applies the same articles to both status-holders from another Member States and all other third-country nationals. This means that the rights conferred to status-holders by the Directive in Chapter III have not been transposed.
- In Bulgaria, it is unclear whether Article 4(2) and 21(2) first indent have been transposed. Furthermore, Articles 6(1) second indent and 9(1)(c) have not been transposed correctly. Also, the granting of the status depends on the discretion of the

authorities and can, therefore, not be considered a right. This is contradictory to Articles 4(1) and 7(3) Directive. Lastly, Articles 6(2), the obligation emanating from Articles 14(3) and 21(2) second sentence, 17(1) second indent, 17(2) and 21(1) have not been transposed at all.

- In Estonia, Chapter III has not been transposed correctly, since Estonian legislation does not provide for special provisions for status-holders from another Member State. This means, inter alia, that status holders form another Member State will have to comply with an integration condition as a requirement for obtaining a residence permit, even if they already had to comply with such a condition when they obtained the status. It also means that the status-holder from another Member State will need to apply for a residence permit outside Estonia at an Estonian embassy. Also, the absence of appropriate accommodation may be a reason for refusing the status in Estonia. Due to their extraordinary working schemes, certain categories of third-country nationals, such as sailors, drivers of international motor vehicles, business men and persons who need to travel abroad frequently are permanently excluded from the personal scope of application of the Directive, since the term 'specific or exceptional reasons of a temporary nature' of Article 4(3) second paragraph has not been specified in Estonian law. Article 5(1) has not been correctly transposed, since there is an extra requirement for children of long-term residents. Articles 6(2) and 10(1) have not been explicitly codified. Article 11(1) has been transposed only partially and 19(1) has not been transposed correctly. Articles 14(1), 14(2), the obligation emanating from Articles 14(3) and 21(2) second sentence read together, 16(3), 17(2) and 21(1) have not been transposed.
- In Lithuania, it is unclear whether Article 4(2) has been transposed. Articles 10(1) and 20(1) have not been transposed correctly, since the principle of legal certainty needs further transposition in the Aliens Law besides the implementing legislation. Absence of appropriate accommodation can be used as grounds for refusal of the long-term resident status. Transposition of Article 15(3) is incorrect, since integration conditions are required to be fulfilled by status-holders from another Member State who already complied with such conditions in the first Member State. Article 21(1) has only been transposed partially. Articles 6(2) and 17(2) have not been transposed. Lastly, Chapter III of the Directive has not been transposed correctly, since the same articles for obtaining a residence permit in Lithuania apply to all third-country nationals, and no special articles are provided for status-holders from another Member State.
- In Slovakia, the transposition of Articles 10(2) and 20(2) pose a serious problem, since review by a Court is possible by lodging a complaint against a valid and enforceable decision, which, however, has no suspensive effect and is not effective, since the complaint is hardly ever considered to be valid. The third-country national will in most cases not be in the Slovak Republic anymore which prevents him or her from exercising the right to mount a legal challenge. The mitigating elements in Articles 6(1) and 17(1) have only partially been transposed and paragraph 2 of both Article 6 and 17 have not been transposed at all. Absence of appropriate accommodation may be grounds for refusal of the long-term resident status. The obligation to acquire free access to the labour market rising from Articles 14(3) and 21(2) second sentence read together is not respected in Slovakia. Lastly, article 21(1) and (2) have not been transposed correctly.
- Spain has not at all transposed the Directive.

7. TYPES OF PROBLEMS (HORIZONTAL approach throughout all the Member States)

Obtaining the national status as a pre-condition for obtaining the EC status: In some Member States the acquisition of the national permanent resident permit is a pre-condition for acquisition of the EC long-term resident status. This is the case in Bulgaria and the Czech Republic. Because applicants for the national status have to fulfil more conditions or present more documents in order to obtain the national status than are mentioned in the Directive, this form of transposition in our view is incompatible with the Directive.

Personal scope of the Directive: Article 3(2)(e) excludes from its scope of application third-country nationals who have been admitted solely on temporary grounds. By defining the status of certain categories of third-country nationals as temporary, three Member States permanently exclude these categories of third-country nationals from obtaining the EC long-term residence status. This is the case in Austria, Greece and the Netherlands.

- In Austria, artists, ministers or pastors, rotation-workers, social workers and researchers will never obtain the *Niederlassungserlaubnis* which is required to obtain the EC long-term resident status in Austria, no matter how long they are legally residing in Austria.
- In Greece, artists, athletes and trainers are permanently excluded from the personal scope of the Directive.
- In the Netherlands the same applies to ministers of religion. If Member States would be allowed to define the status of certain categories of third-country nationals as permanently temporary, this would mean that complete categories of third-country nationals could be excluded from the scope of the Directive on the basis of national law. This would restrict the scope and affect the "effet utile" of the Directive.

Exclusion of residence spent under Article 3(2)(b), (c) and (d): For calculating the five-years period that a third country national has to reside legally in the country in order to qualify for long-term resident status, Article 4(2) opens up the possibility of taking into account half of the period of stay as a student and clearly rules out the possibility of taking into account the period of legal residence on temporary grounds or as a diplomat. Reasoning *a contrario*, the conclusion can be reached that the periods of residence mentioned under Article 3 paragraph 2 sub (b), (c) and (d) should be taken into account in cases where the third-country national has obtained a non-protection status at the time of application for long-term resident status. In Austria, Cyprus, France, Latvia, Luxembourg and Slovakia the periods of residence a third-country national spent on the basis of a protection status are not taken into account when calculating the five-year period. In Finland and Slovenia, periods of residence on the basis of temporary protection are taken into account for the calculation of the five-years period.

In Austria, periods of residence spent under protection status will not be taken into account, simply because asylum seekers, refugees and other persons enjoying protection status will never be granted a settlement permit, which is a precondition for obtaining the long-term resident status. The relevance of this issue will be reduced once the recent proposal of the Commission to extend the scope of the Directive to refugees and persons enjoying international protection has been adopted.

Requiring appropriate accommodation as a condition for granting the status: When lodging an application for the EC long-term resident status, Article 7(1) provides that documentary evidence shall be submitted on the basis of which the authorities can determine whether the applicant fulfils the conditions of Article 4 and 5. These conditions do not include a housing requirement. Whereas Article 7(1) last sentence mentions that the documentary evidence may include documentation with regard to appropriate accommodation, the absence of appropriate accommodation may not be used as the sole ground for refusal of the status. However, the absence of appropriate accommodation is or could be grounds for denial of the status in Austria, Cyprus, the Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy,

Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal and Slovakia. In Italy, the status can be refused due to lack of appropriate accommodation only in case the status the person concerned also applies for the status for his or her family members. In Poland, a third-country national's application for the status not containing documentation regarding appropriate accommodation may have as a consequence that the application will not be examined.

Equal treatment: According to Article 11 of the Directive, long-term residents should enjoy equal treatment comparable to nationals. Article 21 provides for equal treatment for status-holders exercising their mobility rights provided by Chapter III of the Directive in another Member State. In some Member States great care has been taken to review the national legislation outside the immigration domain and to amend, if necessary, that legislation in order to transpose Articles 11 and 21. In the Czech Republic, Poland, Slovenia, Sweden transposition of the Directive lead to the amendment of several Acts outside the direct immigration domain. Those amendments concerned legislation on education, study grants, social security, tax, administrative courts or remedies, legal aid, integration and other domains. In Belgium and Lithuania various pre-existing acts and decrees in other domains, covered by equal treatment clause of Article 11, are considered to be in conformity with the Directive. The reports for the other Member States contain no indication of such systematic review of other legislation than the immigration legislation or contain references to general equal treatment law. In other Member States there may not have been a systematic review of the relevant legislation in other domains. In our opinion a systematic review of the national legislation outside the immigration domain, as performed in the above mentioned Member States, should be conducted by the national authorities. In the Netherlands, the Minister for Aliens Affairs and Integration declared that the equal treatment provisions of Article 11 did not need any special transposition because a clause in the Dutch Aliens Act provides that non-nationals lawfully residing in the Netherlands are not excluded from social and public benefits, other public facilities and permits. In our opinion such a clause does not grant long-term residents the same treatment as nationals. The same applies in our view if an Equal treatment Act prohibits discrimination on grounds of nationality. In our view such an Act is not sufficient to transpose Articles 11 and 21, if the Act allows for example for exemptions to be made in other legislation, as for example in the relevant Dutch Act.

Free access to employment in the second Member State: Article 14(3) read together with Article 21(2) second sentence create the obligation for the second Member State to allow a third-country national who has acquired EC long-term resident status in another Member State free access to employment after he or she has been lawfully employed in the second Member State for a period of twelve months. However, several Member States continue to apply the work permit requirement after the first twelve months. This is true for Belgium, Bulgaria, Finland, France, Italy, Luxembourg, Romania, the Slovak Republic, Slovenia and Spain. In Finland, a new permit has to be applied for if the status-holder wishes to change the professional field. This restriction applies until the person concerned has received a permanent residence permit, i.e. up to four years. In other words, in cases where a work permit is required under the Aliens Act, unlimited access to employment (including a change of professional field) is granted at the earliest after four years, unless a new permit is required in the mean time. France continues to require a work permit if the long-term resident wants to work in another type of job or another zone than that covered by his first permit. Bulgaria, Romania and Spain maintained their national work permit legislation that applies to third-country nationals in general.

Incorrect Transposition of Chapter III: From the first judgement of the Court on the Directive it appears that the national legislation of a Member State has to provide rules on the conditions for residence of third-country nationals having acquired the long-term resident status in another Member State (judgment 15 November 2007, case C-59/07 Commission vs.

Spain, para. 18). In several Member States Chapter III of the Directive has been partially transposed or implemented either because Member States were still applying the general rules on the admission of third-country nationals to persons who had had acquired EC long-term resident status in another Member State or because those persons, after admission, were issued with a regular national (temporary) residence permit without any reference to their special status under the Directive being made on that permit. The result is that those persons will either be refused admission under the general national admission rules or, if they are admitted, third parties and organisations in the second Member State will be unable to recognise those third-country nationals as having a special status under the Directive, that entitles them, for instance, to equal treatment under Article 21 and to special protection against expulsion. This form of implementation will increase the likelihood that those rights under the Directive will not be granted in practice. Austria, Estonia, Finland, France, Italy, Latvia, Lithuania, Romania and Spain have not introduced specific articles for status holders coming from another Member State or have only partially transposed the obligations emanating from Chapter III of the Directive. These Member States still (partially) apply the general rules applicable to all third-country nationals to status-holders from another Member State. In Bulgaria and Slovakia, there is no legislative instrument mentioning the EC status.

Requiring status-holders to comply with integration conditions in the second Member State: Article 15(3) provides the possibility for Member States to require long-term residents applying for a residence permit to comply with integration measures in accordance with national law. The wording of Article 15(3) clearly differs from that of Article 5(2), which provides the possibility for Member States to require third-country nationals to comply with an integration *condition* if they want to obtain long-term resident status. During the negotiations, an explicit difference was made between 'conditions' and 'measures'.[5] In our view, the last sentence of Article 15(3), gives an example of an integration measure: the attendance of a language course. Passing an exam is an example of an integration condition.[6] The second sentence of Article 15(3) states that Member States may not require long-term residents from other Member States to comply with integration measures in cases where the long-term resident already had to comply with an integration condition in order to be granted the status in the first Member State. According to the third sentence of 15(3), third-country nationals may in any case be required to attend language courses. Austria, Estonia, France, Latvia and Lithuania require status-holders from another Member State exercising their mobility rights in those countries to comply with the same integration requirements as all other third-country nationals. In all these countries, compliance with the integration requirement entails the passing of an exam.[7] In all countries, non-fulfilment of the integration requirement has negative consequence for the right of residence. By creating an extra barrier for the exercise of the mobility rights of Chapter III which is not mentioned in the Directive, the national legislations of these countries are not in conformity with the Directive.

The public policy exception of Articles 6(1) and 17(1) Directive: According to Article 6(1) Member States may refuse to grant long-term resident status based on public policy or public security grounds. In reaching this decision Member States should take into account four mitigating elements mentioned in the second sentence of paragraph 1. In our opinion this provision and the similar clause in Article 17(1), both need to be explicitly transposed. Member States can not rely on general principles of administrative law, on clauses in national law stating that all relevant circumstances should be taken into account, on sliding scales that only take into account two of the elements of Article 6(1) or on national public order clauses

[5] Council Document 7393/1/03 of 14 March 2003, p. 5.
[6] See Groenendijk, C. and J. de Heer (2006, Richtlijn Langdurig Ingezeten Derdelanders, losbladig commentaar, The Hague: SDU.
[7] In Latvia and Lithuania, integration is a condition for permanent, not temporary, residence.

that allow the immigration authorities discretion if the third-country national has committed a minor crime but prescribe refusal or withdrawal of a residence permit in case of a conviction for certain serious crimes. Such national rules may reduce or even deny the "effet utile" of Articles 6(1) and 17(1). National law should guarantee that each of the elements specified in these two provisions of the Directive will be taken into account in each case where a decision to refuse the status is made. The German rapporteur did not agree with this view.

Restrictions of the grounds for refusal in national case law or a ministerial circular do not qualify as full transposition of the Articles 6 and 17. In the Orfanopoulos judgement (C-482/01) and its recent judgment Commission vs Netherlands (C-50/06), the European Court of Justice did not accept that generally formulated national public order rules or sliding scales are applied to Union citizens who use their freedom of movement instead of or before the application of the community law rules on the public order exception.

The possibility to refuse to grant the long-term resident status on public policy grounds exists in all Member States' legislations. In the large majority of the Member States the concepts public order and public security are used in the national legislation. However, a legal problem regarding the transposition of Article 6(1) arises because the national legislation of an important number of Member States does not make any or an incomplete reference to the four elements of Article 6(1): the severity or type of the offence or the degree of danger posed by the individual, the duration of residence in and personal links with the country of residence.

The transposition of Article 6(1) is problematic in Austria, Belgium, Bulgaria, Czech Republic, Finland, Hungary, Latvia, Lithuania, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden:

- In Austria the elements mentioned in Article 6 are taken into account only with regard to the expulsion of the long-term resident, not in cases of refusal or withdrawal of the permit.
- In Bulgaria and the Netherlands the elements have only partially been codified.
- In the Czech Republic, Hungary, Lithuania, Romania, Slovakia, Slovenia, Spain the obligation to take into account the elements of Article 6(1) paragraph 2 has not been codified and the elements are not taken into account.
- Finland has formally transposed the provision, but the main transposition norm allows refusal on grounds of punishment or suspicion. This open formulation includes a wide range of crimes which differ in severity. Therefore, even though the severity and nature of the criminal act shall be taken into consideration, this provision could lead to a decision in which a person could be refused a long-term residence permit on grounds that are not examined rigorously.

Article 17(1) has not been transposed at all in Latvia, Romania and Spain. Transposition is problematic in Austria, Belgium, Bulgaria, the Czech Republic, Finland, Germany, Hungary, Lithuania, Poland, Slovakia and Slovenia. In Belgium, Bulgaria, Finland, Hungary and Lithuania, the mitigating elements of 17(1) second indent have not been codified and the elements are not taken into account on the basis of a statutory rule. In Slovenia, transposition has taken place. However, the pre-existing legislation refers to some elements only for the determination of residence permits of family members and the relevant elements mention only the ties to the Member State concerned. There is no mention of the severity of the offence against public policy or public security or the danger posed by the applicant. In Slovakia paragraph 2 of Article 17(1) has been transposed in vague terms and incompletely. According to the German and Polish rapporteurs general rules of constitutional, respectively administrative law apply. It appears that in Austria the elements of Article 17(1) are only taken into account regarding the expulsion of the long-term resident of another Member State, not in cases of refusal or withdrawal of the permit. It is unclear whether the elements have to

be taken into account in the Czech Republic. In any case the elements have not been explicitly transposed.

Economic considerations: According to Article 6(2) and 17(2) the decision to refuse the granting of the long-term resident status or a residence permit on grounds of public policy or public security may not be based on economic considerations. These provisions in our view have to be explicitly transposed in national law. The reasoning with regard to the public order clauses in Articles 6(1) and 17(1) also applies to the clause in Article 6(2) and Article 17(2). Explicit transposition of Article 6(1) alone is not sufficient, because economic considerations traditionally were covered by the *ordre public* clauses in the national law of many European states and in Council of Europe conventions. That was the main reason why economic considerations were explicitly excluded in Article 2(2) of Directive 64/221. This applies to Articles 6(2) and 17(2) of the Directive as well. Member States can not rely on general public order provisions for the transposition of these Articles. However, Articles 6(2) and Article 17(2) are transposed correctly if the grounds for refusal are listed exhaustively and in a very detailed manner in the national legislation. In such a case, a refusal to grant the status or a residence permit on economic grounds can be implicitly excluded by such catalogue. This is, for instance, the case in the Czech Republic.

Transposition of Article 6(2) poses a legal problem in most Member States. In Austria, Belgium, Bulgaria, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Spain and Sweden the public order grounds on which a permit can be refused are not listed exhaustively. In these Member States there is only a general formulation that the status can be refused on public order grounds. Therefore, the legislation in these 17 Member States is not in accordance with Article 6(2) of the Directive.

Article 17(2) has not been transposed explicitly Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, Germany, Hungary, Italy, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia and Spain.

High fees as an extra condition for obtaining the status: Cyprus and the Netherlands both demand high fees to obtain the long-term resident status. In Cyprus, € 430 for obtaining the status and € 170 for renewal of the document need to be paid. Depending on the aim of residence, fees for a residence permit in the Netherlands for a person who acquired the long-term resident status in another Member State vary between € 188 and € 830. The Directive does not provide a basis for the levy of such fees; on the contrary: Article 7(3) and Article 19(2) both provide that the permit has to be issued once the conditions mentioned in the Directive are fulfilled. The Directive does not allow Member States to add other conditions. Moreover, allowing the Netherlands and Cyprus to continue demanding high fees for the issue of the permit might establish a precedent for other Member States.

8. IMPACT OF THE DIRECTIVE ON THE MEMBER STATES

We asked the rapporteurs about the main changes to national law or practice as a result of the Directive and whether those changes made the national rules stricter or more liberal from the perspective of long-term resident third-country nationals.

From the answers it is clear that, in almost all 24 Member States bound by the Directive, transposition resulted in a liberalisation of national immigration law for non-citizens covered by the personal scope of the Directive. Only four rapporteurs mention changes that made the national law more restrictive:

- In Lithuania the residence requirement for national permanent status was extended from four to five years.
- In Luxembourg the category of family members entitled to this status will be more limited than under the present administrative practice.
- In the Netherlands both the EC residence permit for long-term residents and the national permanent residence permit will only be granted once the applicant has passed an integration and language test. But the introduction of this new condition had already been announced before adoption of the Directive. The Directive legitimised the introduction of this new requirement.
- In Polish immigration law the income and residence requirements became stricter when the Directive was transposed.

In Spain there has been no change to the national law because of a lack of any legislation transposing the Directive. In some Member States no permanent residence status existed under national law (Cyprus and Romania). In other Member States long-term residents had no right to this status. Granting of the status was left to the discretion of the immigration authorities (Greece, Portugal and Slovakia). In Hungary the EC long-term resident status was merged with the pre-existing national status, the new status being more liberal. In several Member States, the EC status was added to the pre-existing national status. In Belgium and Poland the rules on the acquisition of the national permanent residence status and the rights attached to that status are more liberal than in the Directive. In the Netherlands the grounds for loss of the national status were made identical to those mentioned in the Directive, making the national rules more liberal.

Examples of the main changes to internal law resulting from the transposition of the Directive are liberalisation of the conditions for acquisition of the status (Poland and Slovakia), reduction of the grounds for refusal or withdrawal of the status (Austria), more precise formulation of these grounds (Slovenia) and better protection against expulsion (Belgium, Finland, Italy and Luxembourg). Several rapporteurs mentioned the granting of more rights and opportunities than under previous national law to third-country nationals with the status, such as equal treatment and access to employment and benefits and extension of the rights of the long-term resident's family members (Malta, Poland and Portugal).

The changes in national law mentioned most frequently were the right of entry and admission of third-country nationals who have obtained the status in another Member State (Bulgaria, France, Germany, Poland, Sweden), the abolition of the visa requirement for those long-term residents (France, Germany and the Netherlands) and exemption from the integration test abroad (the Netherlands). Here, the 'revolutionary' character of Chapter III of the Directive is clearly visible.

The Austrian rapporteur observed that the transposition of the Directive resulted in many changes to the national law, extending old rights or granting new rights to third-country nationals, whilst the political climate in the country tended to induce changes in the national law in the opposite direction, making the national law more restrictive for third-country nationals who do not have the new EC status. This observation may apply to many other Member States too.

9. RECOMMENDATIONS TO THE EUROPEAN COMMISSION

In several Member States the true nature of provisions on intra-EU mobility in Chapter III of the Directive, the meaning of the public order exceptions in the Articles 6 and 17 and the extent of the equal treatment provisions of Articles 11 and 21 are not yet clear. It would be

advisable for the Commission to use its competence to monitor the application of EC law to bring clarity on those three issues as soon as possible, considering the large number of Member States involved.

Other issues that deserve attention by priority, considering their far reaching effect in practice, are the limitations of the personal scope and the levying of high fees.

Finally, Article 23 raises a problem that may be solved either by interpretation or by future legislation. This Article provides for the right of long-term residents of the first Member State to obtain this status in the second Member State. The status-holder will have to fulfil the same requirements as third-country nationals applying for the status for the first time, as provided for by the Directive in Articles 3, 4, 5 and 6. The Directive contains an apparent incongruence on this point. Whereas Article 15(3) explicitly prohibits requiring status-holders from another Member State to comply with an integration condition when applying for a residence permit in case they already complied with such a condition when acquiring the status, Article 23 opens up the possibility to apply such a condition to a status-holder from another Member State when applying for the status in the Member State concerned. This condition appears to be applicable regardless whether the status holder had to comply with an integration condition when obtaining the status in the first Member State. This may result in the undesirable situation that a status holder may loose the status he obtained in the first Member State due to absence from the territory, whereas he will not be able to obtain the status in the second Member State because of the integration condition. The result would be that the status-holder may be forced to return to the first Member state where he or she obtained the status. The same line of reasoning can be applied to the income requirement and the requirement to have sickness insurance, but for these conditions, Article 15 Directive does not contain a similar restriction as in the case of the integration requirement.

10. ANY OTHER INTERESTING PARTICULARITY TO BE MENTIONED ABOUT THE TRANSPOSITION AND THE IMPLEMEMTNATION OF THE DIRECTIVE IN THE MEMBER STATES

None.

IV. EUROPEAN SYNTHESIS OF THE NATIONAL REPORTS

Synthesis Report Regarding the Transposition of Directive 2003/109 on the Status of Third-Country Nationals who are Long-Term Residents

1. National Legal Basis and Competent Authorities

1.1 General issues of transposition (Q1-Q4)

1.1.1 Actual status of transposition (Q.1, Q.4)

In the large majority of the 24 Member States bound by the Directive, the legislative activities concerning the transposition of the Directive in the domestic legal order had been completed by the summer of 2007. In most Member States some or all of the provisions of the Directive have been formally transposed in one or more national instruments adopted after 25 November 2003, the date of adoption of the Directive. The situation in the three Member States not bound by the Directive (Denmark, Ireland and the United Kingdom) will not be taken into account below. An overview of the relevant legislation of those three Member States will be presented in Chapter 4.

In September 2007, the legislation on the transposition was not yet in force in three Member States. In Belgium, the Act on the transposition of the Directive had been adopted but had not yet entered into force. The Act will enter into force at the latest on 1 June 2008, but it may enter into force before that date, if the Royal Decree with the necessary rules implementing the Act will have been adopted before. In Luxembourg, a draft bill had been made public. The information in this report concerning Belgium is based on the adopted Act and concerning Luxembourg on the draft legislation. Only in Spain had no legislative proposal on this issue been published by September 2007. On 15 November 2007 the Court of Justice held that Spain had not even partially transposed Directive 2003/109 (Case C-59/07, Commission vs. Spain). The Spanish rapporteur acknowledges that no legislative activity concerning the transposition of the Directive has taken place yet. However, since the national permanent residence status is granted under similar conditions as the EC long-term resident status, the rapporteur reaches the conclusion that eighteen mandatory Directive provisions have been transposed, causing seven legal problems.

1.1.2 Transposition in a legislative or a regulatory act?

In 19 of the remaining 21 Member States, the transposition was performed by an Act amending the national Immigration Act or the Aliens Act. In Italy transposition was achieved by legislative decree with the same legal effect as an Act and in Malta by a regulation (Legal Notice) having the force of law and to be considered as a legislative instrument. In some Member States certain provisions of the Directive have been transposed by a circular.

In Greece some provisions of the Directive were transposed in the national immigration law, while most of the rules transposing the Directive are to be found in the special separate presidential decree on the Directive.

Latvia was the only Member State where a special Act on the status of an EU permanent resident was adopted in addition to amendments to the national immigration legislation.

In most cases the laws adopted amended both the national legislation on immigration and asylum and the legislation regarding access by third-country nationals to employment. However, in several Member States, several other Acts were also amended. Those

amendments concerned legislation on education, study grants, social security, tax, administrative courts or remedies, legal aid, integration and other domains. In the Czech Republic 12 Acts outside the direct immigration domain were amended: in Poland fifteen acts and decrees in other domains; in Slovenia fourteen other acts and in Sweden two other acts. In Finland the Aliens Act and the Act on study grants were amended. The Belgium notification on the transposition to the Commission mentioned four pre-existing Acts and 29 decrees in other domains that are covered by the equal treatment clause of Article 11 and are considered to be in conformity with the Directive. This also applies to eleven acts and nine decrees mentioned in the Lithuanian report.

Apparently, in some of those seven Member States great care has been taken to amend the national legislation outside the immigration domain in order to transpose the provisions of the Directive on the equal treatment of long-term residents (Articles 11 and 21), to procedural guarantees (Articles 10 and 20) and on their access to administrative and judicial remedies and to legal aid (Article 12). It appears that in other Member States no such systematic review of the relevant legislation in other domains has occurred. According to the report on the Netherlands, the Dutch Minister for Alien Affairs and Integration declared that the equal treatment provisions of Article 11 did not need any special transposition because a clause in the Dutch Aliens Act states that non-nationals lawfully resident in the country are not excluded from social and public benefits, other public facilities or permits. In our opinion such a clause does not grant long-term residents the same treatment as nationals.

In some Member States ministerial circulars were issued in order to instruct the immigration authorities on Directive 2003/109, requiring those authorities to act as far as possible in conformity with the Directive in the time before the legislation transposing the Directive was to enter into force. Such circulars were issued, for example, by the authorities of certain *Länder* in Germany in January 2006 and the Netherlands in September 2006.

For the purpose of this study, transposition by circular in stead of a legislative instrument is considered transposition as well, even though this is not in conformity with the constant case law of the European Court of Justice. France (Articles 8(3) and 17(2)), Lithuania (Articles 7(2) third indent, Article 20(1), Article 21(2) first indent), the Netherlands (Article 15(1) second indent) and Sweden (Article 8(3)) transposed certain Articles by (pre-existing) circular only. In Bulgaria (Articles 11(1) and 21(3)), the Czech Republic (Article 12(3)), Finland (Article 5(1)), Germany (Articles 21(1) and 21(3)) Lithuania (Articles 10(1), 11(1), 17(1), 19(2), 21(1) and 21(3)) and Sweden (Article 6(2)), transposition of certain Directive Articles took place by circular and legislative instrument.

The tables included in this report correspond to the Tables of Correspondence (ToCs) completed by the national rapporteurs. In a few cases the conclusions drawn in the text of this report does not correspond to the tables, because of a difference in opinion between the authors of this report and the national rapporteurs. These differences will be highlighted in the text of the report.

1.1.3 Not all regulatory instruments have yet been adopted

In most Member States bound by the Directive, the intended regulatory instruments implementing the transposing legislation have also been adopted. In Italy the pre-existing general immigration regulations on third-country nationals still have to be coordinated with the new provisions on long-term residents. In France some but not all have been adopted. In the Czech Republic the main law does not provide for regulations. Regulations are not expected to be adopted. In Finland, Slovakia and Slovenia, the main norm of transposition does not foresee in any regulatory instruments. Hence, these have not been adopted. In those Member States where the relevant Act recently entered into force (Portugal), had been

adopted but not yet entered into force (Belgium) or a bill is still under preparation (Luxembourg), the necessary regulatory instruments have not yet been adopted. In Spain no legislative instruments on the transposition of the Directive are under preparation.

1.2 Situation in federal or assimilated Member States (Q.2)

The adoption of immigration law forms part of the competence of the federal government in all five Member States with a federal structure. In those states the competence to adopt legislative instruments transposing the provisions of the Articles 11, 14 or 21 of the directive may lie with the regional authorities.

In Austria certain social benefits are granted on the basis of *Länder* legislation and there is anti-discrimination legislation in the *Länder* as well. In Belgium access by third-country nationals to employment (work permit legislation), education, culture, social security and the integration of immigrants is substantially or entirely within the competence of the regions. This applies in Germany with regard to education and culture and in Italy with regard to social services, mediation, housing and the reception and integration of immigrants. In Spain immigration law is the competence of the central government. With regard to integration measures, education and social security, the central government has the competence to legislate on the main issues of the Immigration Act. Subsequently, the Autonomous Communities, depending on the nature of their autonomous statute, may develop the central legislation in more detail.

1.3 Competent authorities (Q.3)

The question which authorities are competent for the practical implementation of the norm of transposition by taking the decisions in individual cases was interpreted differently by the national rapporteurs. The Belgian and Spanish rapporteurs answered the question by listing the authorities responsible for adopting the legislative instruments of transposition.
The other rapporteurs answered the question by listing the competent authorities concerning the granting, withdrawal and refusal of the status. All Member States in this category have some sort of specialised aliens body that in most cases resorts under the ministry of the interior or of justice, responsible for the main norm of transposition.
In Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia and Slovenia, the Ministry of the Interior is the central ministry responsible for decisions regarding the long-term resident status.
In Austria, the Ministry of the Interior is the competent authority regarding decisions concerning long-term resident permits. The other level of administration is the Governor of the federal provinces, the *Landeshauptmann*. The provincial governor may, by provision, authorize the district administrative authorities (*Bezirksverwaltungsbehörde* or *Magistrat*) to render decisions on his behalf in all or specific cases. In Bulgaria, the Migration directorate at the General Police Directorate is the direction in the Ministry of the Interior which is responsible for granting, rejecting and withdrawing the long-term resident status. In the Czech Republic, this is the Regional Directorate of Alien's and Border Police service of the Ministry of the Interior. In France, the Ministry of the Interior is the authority responsible for decisions regarding the long-term residence permit. However, a ministerial reorganisation is taking place, in order to create a new immigration, integration, national identity and co-development ministry, dealing with all the immigration questions. Part of the decision-making competences, notably the granting and withdrawal of permits, is transferred to the *préfects* in

the departments. In certain cases, the *préfects* consult the mayor of the place of residence of the alien before taking a decision concerning his or her status.
In Germany, the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge, BAMF*) is the direction in the Federal Ministry of the Interior (*Bundesinnenministerium*) competent for the decision-making concerning the granting of the long-term residence permit. At *Länder* level, the Ministries of the Interior of the *Länder* (*Landesinnenministerien*) and the Aliens Administration (*Ausländerbehörden der Länder*) are competent.
In Malta, the Director for Citizenship and Expatriate Affairs, which forms part of the Ministry of Justice and Home Affairs, is responsible for granting and refusing the long-term resident status. The Immigration Appeals Board is responsible for determining the appeal where the Directorate for Citizenship and Expatriate Affairs fails to determine the application within six months. The Principal Immigration Officer issues the orders for removal of long-term residents. Both directions reside under the Ministry of Justice and Home Affairs.
A special situation exists in Poland, where the decisions on granting, refusing and withdrawing a long-term resident permit are taken by the Voivod (*wojewoda*), who is the local representative of government. Poland is divided into sixteen regions named voivodships (*województwo*). The appellate authority from a decision taken in the first instance by a voivod is the head of the office for Aliens, which is an independent organ of administration. Although the Minister of Interior and Administration has the general competence to coordinate, control and supervise its activities and to give binding orders and guidelines, they cannot concern decisions taken in individual cases. The administrative courts are responsible for the judicial review of the administrative decisions.
In Slovakia, the Bureau of Border and Foreigners Police of the Police Corps is the direction within the Ministry of the Interior responsible for all issues related to granting and withdrawing residence permits and expulsion.
In Hungary, the Netherlands and Sweden, the competent authority is not the Ministry of the Interior, but the Ministry of Justice. In Hungary, the granting and withdrawal of long-term residence permits is the responsibility of the Regional Directorates of the Office of Immigration and Nationality (OIN). Since July 2006, the OIN is subordinated to the Ministry of Justice and Law Enforcement. Before, the OIN formed part of the Ministry of the Interior.
In the Netherlands, the Immigration and Naturalisation Service (IND) is responsible for taking decisions on application for long-term resident permits and withdrawal of such permits and the residence permits of status holders coming from another Member State.
In Sweden, the Swedish Migration Board (www.migrationsverket.se) is the direction within the Department of Justice responsible for decisions on the status of long-term residents in Sweden and decisions on Swedish residence permits for third-country nationals with the status of long-term resident in other Member States. The Swedish Migration Board is independent of the competent minister,
In Luxembourg, the Ministry for Foreign Affairs is the competent authority. The Direction for Immigration (Direction de l'Immigration) is the direction within the Ministry responsible for taking decisions regarding immigration issues.

1.4 References to relevant bilateral and multilateral agreements (Q.5.C)

According to Article 3(3) the Directive shall apply without prejudice to more favourable provisions in agreements concluded by the Community or by the Community and its Member States with third countries or in bilateral agreements between a Member State and third countries adopted before the entry into force of the Directive. In addition, the Directive does not prejudice more favourable provisions of the 1955 European Convention on Establishment,

the European Social Charter (both the original Charter of 1996 and the revised Charter of 1987) or the 1977 European Convention on the Legal Status of Migrant Workers. Those conventions have been adopted within the Council of Europe.

Only in six of the 24 Member States bound by the Directive has reference been made, at the time of transposition, to the bilateral and multilateral agreements mentioned in Article 3(3) of the Directive. In Cyprus and Greece an explicit provision was included in the instrument transposing the Directive that those national instruments were without prejudice to more favourable provisions of the relevant bilateral and multilateral agreements or that these more favourable provisions would prevail. The Luxembourg draft bill contains an explicit general reference to more favourable provisions in bilateral or multilateral treaties. In the Netherlands it was observed that nationals of Turkey and their family members could be granted lawful residence, as provided in Article 3(1) and Article 4(1), on the basis of the EEC-Turkey Association Council Decision 1/80 even without holding a valid Dutch residence permit. In the documents on the transposition of the Directive in Portugal, reference was made to a clause in the bilateral agreement between Portugal and Brazil converting applications for a work visa into an application for a residence authorisation exempt from the obligation to obtain a visa. In Sweden reference was made to the agreement between the EU Member States and Switzerland.

1.5 More favourable national provisions (Q.15)

Member States, according to Article 13, are free to issue national residence permits of permanent or unlimited validity on terms that are more favourable than those laid down by the Directive. However, such permits do not confer the right of residence in other Member States described in Chapter III of the Directive.

Eight Member States have used this possibility to retain or introduce more favourable provisions in their domestic legislation: the Czech Republic, Finland, Greece, Hungary, the Netherlands, Poland, Slovenia and Sweden. In those Member States a national permanent residence permit is granted to categories of long-term resident third country nationals who are either excluded from the personal scope of Directive 2003/109 by Article 3(2) or under conditions that are more liberal than the conditions for acquisition of the EC long-term resident status. One Member State applies more favourable conditions with respect to the loss of EC status.

Most of the categories concerned are either persons enjoying international protection or third-country nationals who have a special relationship with the Member State: birth or very long residence on the territory, or marriage to a national of the Member State. In the Czech Republic the national status is granted *inter alia* for humanitarian reasons or in cases deserving special consideration or to a third country national whose request for international protection has been rejected after four years of continuous stay in the country, if at least two of those four years have been spent in the international protection procedure and the application for the permanent residence permit has been lodged within two months after the end of the international protection procedure. In Finland third-country nationals, including refugees and beneficiaries of subsidiary forms of protection, may obtain the national permanent residence permit after four years of continuous residence in the country. The Greek Act of 2006 provides that those third-country nationals who obtained the permanent residence permit under the previous Greek immigration law enjoy the rights provided for in Chapters I and II of the Directive.

In Hungary national permanent residence status is granted, after three years of residence, to spouses of refugees, to family members of persons with a settlement permit and to persons who have lost their Hungarian nationality or whose ascendant is or was a

Hungarian citizen. The Netherlands does not apply the income requirement to third-country nationals who were born in the Netherlands or who resided for more than ten years in the country. The Dutch national permanent residence permit can be denied to children of immigrants when the child reaches 18 years of age on public order grounds only in case the child has been convicted of large-scale drugs trafficking. In Poland national permanent residence status is granted under more favourable conditions to children born in Poland, children of Polish nationals and third-country nationals who have been married to a Polish national for at least three years. The residence requirement for the latter category the residence requirement is only two years. The immigration law of Slovenia provides for a residence requirement of less than five years for non-nationals of Slovenian origin and for members of the nuclear family of a third-country national who holds a permanent residence permit. Finally, in Sweden, third-country nationals admitted for family reunification receive a permanent residence permit under domestic law at the time of admission if the persons concerned lived together in their home country for at least two years.

It is clear from the above that the scope of application of Article 13 will be considerably reduced in some of these eight Member States once the proposal tabled by the Commission to extend the personal scope of the Directive to persons with international protection and refugees has been adopted by the Council.[1]

The fact that only eight Member States decided to maintain or introduce more favourable rules in their domestic legislation may be considered an indication of the extent of the improvement of the status of long-term resident third-country nationals in the Member States and of the degree of harmonisation realised by the Directive.

1.5.1 Different documents and different rights?

In five Member States national permanent residence is documented in the form of a residence card, similar to the one described in Article 8 of the Directive, but instead of the mention 'EC long-term resident' the official name of the national permanent residence status is mentioned (Hungary, the Netherlands, Poland and Sweden). In the Czech Republic, Finland and Greece the national status is documented by a sticker in the holder's passport. According to the Slovenian report, the national law does not make a distinction between documents concerning the EC and national status, although the documents are differentiated in practice according to the acquired status.

In five of the eight (see paragraph 1.4) Member States concerned, third-country nationals with the national permanent residence status are granted the same rights as those granted to persons with the EC long-term resident status under Chapters I and II of the directive. In those states (the Czech Republic, Greece, the Netherlands, Slovenia and Sweden) the main difference between the two categories is found in the conditions for acquisition of the status, the national rules being more liberal or applied to persons other than the Directive. In Finland and Poland the secondary rights of third-country nationals with permanent residence under domestic law may differ from the rights granted to EC long-term residents in the Directive. In Finland the rights attached to the two statuses are more or less equal, but the grounds for expulsion differ to some extent.

The question arises of whether a Member State that uses its competence under the first sentence of Article 13 and issues a permanent residence permit under its domestic law is bound to grant third-country nationals who hold that permit the secondary rights described in the Chapters I and II of the Directive. The fact that the Directive is silent on this issue may justify a negative answer. On the contrary, one could argue that an *a contrario* reading of the

[1] COM (2007)298def.

second sentence of Article 13 explicitly excludes those third-country nationals from the right of residence in the other EU Member States provided for in Chapter III of the Directive and, by implication, confers the rights of Chapters I and II upon those persons.

1.5.2 Other forms of more favourable treatment

Application of the EC long-term resident status to other third-country nationals
In paragraph 2.1.2.1 we will observe that two Member States apply the Directive to categories of third-country nationals excluded from the personal scope of the Directive by Article 3(2) and that this extension of personal scope is not compatible with the Directive.

Application of more favourable rules to persons with the EC status
In the Netherlands the pre-existing rule that a permanent residence permit can no longer be withdrawn on the grounds of fraud twelve years after the permit was granted applies to the EC long-term residence status as well. We did not find other examples of more favourable treatment granted under national law to third-country nationals with the EC long-term resident status. The Dutch rule is, in our view, compatible with the Directive. Article 9(1) provides that the long-term resident 'shall' no longer be entitled to obtain the status if the status has been acquired fraudulently. This implies that it is a mandatory provision. However, the introduction of this statute of limitations after twelve years can be considered a correct implementation of the Community law principle of proportionality.

1.6 Some trends in transposition and implementation

From the detailed analysis of the transposition of the Directive in Member States, presented in the following chapters of this report, it appears that three categories of Member States can be distinguished. In some Member States the EC long-term resident status effectively replaced the national permanent resident permit. In a second group of Member States the EC long-term resident status and the national permanent status co-exist. In those Member States a third-country national may apply for either status or for both. Finally, in some Member States the acquisition of the national permanent resident permit is a pre-condition for acquisition of the EC long-term resident status. This is the case in Bulgaria and the Czech Republic. Since applicants for the national status have to fulfil more conditions or present more documents in order to obtain the national status than those mentioned in the Directive, this form of transposition is, in our view, incompatible with the Directive.

During the discussion on the draft version of this report with the national experts on 22 October 2007 in Budapest, it appeared that in several Member States Chapter III of the Directive has been partially transposed or implemented either because Member States were still applying the general rules on the admission of third-country nationals to persons who had had acquired EC long-term resident status in another Member State or because those persons, after admission, were issued with a regular national (temporary) residence permit without any reference to their special status under the Directive being made on that permit. The result is that those persons will either be refused admission under the general national admission rules or, if they are admitted, third parties and organisations in the second Member State will be unable to recognise those third-country nationals as having a special status under the Directive, that entitles them, for instance, to equal treatment under Article 21 and to special protection against expulsion. This form of implementation will increase the likelihood that those rights under the Directive will not be granted in practice. Austria, Estonia, Finland, France, Italy, Latvia, Lithuania, Romania and Spain have not introduced specific articles for

status holders coming from another Member State or have only partially transposed the obligations emanating from Chapter III of the Directive. These Member States still (partially) apply the general rules applicable to all third country nationals. In Bulgaria and Slovakia, there is no document on which the EC status is mentioned. On the other hand, in several Member States the national law explicitly exempts third-country nationals who have acquired EC long-term resident status in another Member State, from some of the national rules on admission of third-country nationals (see para. 2.3.2).

From the first judgement of the Court on the Directive it appears that the national legislation of a Member State has to provide rules on the conditions for residence of third-country nationals having acquired the long-term resident status in another Member State (judgment 15 November 2007, case C-59/07 Commission vs. Spain, para. 18).

By October 2007, in several Member States, implementation of the Directive was defective because the regulations implementing the national legislation transposing the Directive had not yet been adopted (e.g. in Belgium and Portugal), or because application forms for the status had not yet been printed or the documents certifying the EC long-term resident status were not yet available (e.g. Cyprus and France). The Netherlands started to issue these documents at the end of 2006. However, contrary to Article 8(3) of the Directive, the documents do not show the words 'EC long-term resident' on the front, but only in small print on the back. This will make it more difficult for the authorities and third parties, both in the Netherlands and in other Member States, to recognise the status of the holder of the document.

According to Article 8(3) the words 'EC long-term resident' have to be mentioned in the official language of the first Member State only. Certain Member State also add those words in English or French or in both languages. This clearly enhances the usefulness of the document outside the first Member State. In our view, Article 8(3) should be amended accordingly. The negotiations on the proposal COM(2007) 298 provide the opportunity to realise this simple amendment, which may be essential for the fulfilment of one of the central aims of the Directive: the mobility of long-term residents within the EU.

2. Analysis of the Content of the Transposition Norms

2.1 Personal Scope of the Directive (Q.5.A, Q.5.B, Q.6.B, Q.6.C)

2.1.1 Lawful Residence (Q.5.A)

According to Article 3(1), the Directive applies to third-country nationals residing legally in the country of residence. Article 4(1) contains the obligation for Member States to issue the long-term resident status to third-country nationals, 'who resided legally and continuously within its territory for five years'. The term 'lawful residence' has not been defined in the Directive. Has the term been specified in the national laws of the Member States?

This appears to be the case in most Member States. The national laws of Austria, Bulgaria, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, the Netherlands, Portugal, Romania, Slovenia and Sweden have defined what is to be understood by 'lawful residence' and, hence, which forms of residence can be taken into account when calculating the five-year period.

In Austria, third-country nationals holding a residence title guaranteeing either legal residence (*Rechtmäßiger Aufenthalt*) or settlement (*Niederlassung*) are legally resident. It is important to note that only third-country nationals holding the latter form of settlement residence (*Niederlassungserlaubnis*) for the entire five years preceding the application for the long-term resident status can obtain the status. Third-country nationals residing in Austria

enjoying other forms of legal residence which do not grant the right of settlement will never obtain long-term resident status. Since certain categories of third-country nationals, such as artists and researchers, will never obtain a settlement permit, they will never be able to obtain long-term resident status, even if they have been residing in Austria legally for five years or more (see also paragraph 2.1.2.2). The permanent exclusion of these categories is not compatible with the Directive.

The Bulgarian Law on Foreigners in the Republic of Bulgaria (LFRB) mentions two forms of legal residence, i.e. continuous residence, which guarantees legal residence for a period of one year, and permanent residence, allowing legal residence for an unlimited duration. Only third-country nationals benefiting from a permanent residence right can obtain the EC long-term resident status. Permanent residence status can be obtained by third-country nationals who have resided legally and continuously in Bulgaria for a period of five years.

In Sweden, lawful residence is defined as having a valid residence permit. In this country, as in Austria, long-term resident status will only be granted to third-country nationals who, at the time of application and for the entire five years preceding the application, have held a permanent residence permit.[2] At first sight, the Swedish law appears to be contradictory with the Directive, which only requires legal and continuous residence for a period of five years. However, residence permits for the *purpose* of settling in Sweden are also taken into account when calculating the period of stay. This means that third-country nationals who have held a temporary residence permit for the five years in Sweden can also obtain the status but, at the time of application, they are required to hold a permanent residence permit. In Sweden there are no categories of immigrants residing legally in Sweden for a period of as long as five years without receiving a permanent residence permit.

In Estonia, anyone who does not have the right to stay in Estonia is staying there illegally. Residence is legal with a permit or a visa. In Lithuania, 'illegal residence' is specified. A third-country national resides in Lithuania illegally if he has no residence permit or an invalid permit.

In France, the term 'lawful residence' is not used literally but, from the Aliens Act, it becomes apparent that only third-country nationals with a residence permit can apply for the status. When the decision on the application for the status is taken, the intention of the applicant to settle in France permanently is taken into account.

For the definition of 'lawful residence' in the other Member States that define the term in their national laws, see paragraph 2.1.1.1.

In Belgium, Cyprus, the Czech Republic, Greece, Hungary, Luxembourg, Malta, Poland, Slovakia and Spain, the term 'lawful residence' has not been specified in national law. Belgian, Maltese and Spanish law mention the term, but do not define it, even though the Spanish legislation contains some indirect definitions.

In Member States where the term 'lawful residence' is neither mentioned nor specified in law, national law usually provides for an implicit definition of the term.

2.1.1.1 Possibility of having lawful residence without a residence permit (Q.5.A)

When defining the term 'lawful residence', account should be taken not only of the definition in national law, but also of the directly applicable rules of Community law from which third-country nationals can derive residence rights. In this context, one can think of directives that have been determined on the basis of Article 63 EC Treaty and the association agreements

[2] Foreigners holding long-term resident status in another EU state and a residence permit in Sweden or holding a residence permit in Sweden as the family member of a person with long-term resident status in another EU state will also be granted long-term resident status in Sweden.

and the case law of the Court, interpreting those instruments.[3] The meaning of 'lawful residence' cannot therefore be limited to the possession of a residence permit.[4]

From the national reports, it appears that in some Member States residence, for the purpose of calculating the five year period, can only be considered legal in cases where a third-country national holds a residence permit. In Cyprus, France, Greece, Italy, Latvia, Lithuania[5], Luxembourg, Malta, Spain and Sweden residence without a residence permit can not be considered legal. In France and Spain, every third-country national should be in possession of a residence permit after three months present in the country.[6] In Portugal, residence is only lawful once in case a foreigner has a residence permit valid for at least one year.

In Austria, Belgium, Bulgaria the Czech Republic, Estonia, Finland, Germany, Hungary, the Netherlands, Poland, Portugal, Romania, Slovakia and Slovenia, residence without a permit can be legal and will be taken into consideration for the calculation of the five year period.. In Belgium, the Immigration Act refers to an entitlement to enter or stay in the country, not to actual possession of a residence permit. Therefore, periods of residence in which the third-country national was not in possession of a residence permit can be considered legal and can be taken into account when calculating the five years of residence required for the long-term resident status. In the Czech Republic, only residence on the basis of a long-term visa (valid for the period of one year) and a long-term residence permit are taken into account for the calculation of the five year period. Both forms of legal residence are temporary.

In Austria, Bulgaria Estonia, Germany, Hungary, Poland, Portugal and Slovenia, residence on the basis of a visa is also explicitly considered to be legal. However, residence on the basis of a visa during a period of five years does not qualify as legal residence for the purpose of obtaining the long-term resident status.

In Bulgaria and Slovenia, residence may also be legal on the basis of a legal act, government resolution (Slovenia) or an international treaty. Furthermore, in Slovenia, a provision providing for lawful residence by aliens that acquired long term resident status in another Member State for a period until expiry of the permit, with a maximum of three months, will enter into force on the day the Schengen Convention becomes fully binding and effective for Slovenia.

The Finnish Aliens Act mentions eight forms of legal residence. In this country, residence is considered legal on the basis of a residence permit, while an application is being processed and as an EU citizen. Furthermore, legal residence on the basis of a Schengen visa and other Schengen-related forms of legal residence are specified.

In Estonia, asylum seekers cannot be expelled before a decision on their status is made.

Bulgaria and Slovenia mention international treaties as grounds on which foreigners may reside legally without the actual possession of a permit. Periods spent in Bulgaria and Slovenia on the ground of an international treaty can therefore be taken into account when calculating the period of five years of residence for the purpose of obtaining the EC residence permit.

In the Netherlands, the different forms of legal residence are specified in the Aliens Act. Residence is lawful, even without a residence permit, pending a decision on an application for a residence permit, on the basis of the EC-Turkey Association Agreement, as a

[3] See, for example, C-434/93 (*Bozkurt*) on decision 1/80 of the EC-Turkey Association Agreement.
[4] Groenendijk, C. and J. de Heer (2006), Losbladig Commentaar Richtlijn Langdurig Ingezeten derderlanders, p. 15. The Hague: SDU.
[5] In Lithuania, the only other form of legal residence is temporary territorial asylum.
[6] An exception is made for EU nationals (France) and for EU and EEA citizens (Spain).

Union citizen, while awaiting an administrative decision or a decision in appeal regarding the denial of a residence permit and on the basis of a Schengen visa. Furthermore, residence is legal in cases where medical grounds oppose expulsion and in cases where the alien wants to use the possibility of article 273a of the Criminal Code to report trafficking in human beings.

In Romania, lawful residence means that no expulsion measure from the Romanian territory has been decided upon.

2.1.2 Application of the Directive to immigrants mentioned in Article 3(2) Directive (Q.5.B, Q.6.B, Q.6.C)

2.1.2.1 Categories excluded by Article 3(2) (Q.5.B)

Article 3(2) considerably limits the personal scope of the Directive. In this Article, the Directive excludes: (a) students, (b) third-country nationals who enjoy temporary protection, or, (c) subsidiary protection, (d) refugees, (e) third-country nationals residing on temporary grounds and (f) diplomats from its scope of application. This means that these categories of immigrants cannot obtain the long-term resident status that will grant them the right to reside in other Member States provided for in Chapter III of the Directive. Member States are, however, free to issue permanent residence permits that do not confer the right of residence in other Member States as provided by Chapter III (see paragraph 1.4).

From the questionnaires, it appears that in two Member States the Directive, including Chapter III, does apply to categories of immigrants that have been excluded by Article 3(2). This is the case for the Czech Republic and Romania. In the Czech Republic, the Directive also applies to students and persons pursuing vocational training. In Romania, the Directive also applies to third-country nationals residing on temporary grounds. In these two countries the scope of application of the Directive is broader than is allowed for by Article 3(2).

In Lithuania, the Directive has only been partially transposed on this point, since only diplomats are explicitly excluded. From the Aliens' Law it can be implied, however, that the Directive also does not apply to other categories of third-country nationals that have been excluded by Article 3(2).

Spain has not yet transposed the Directive. The national permanent residence status is granted under similar conditions as the EC long-term resident status. Refugees are also granted the permanent residence status. Only after Spain has transposed the Directive will it become clear whether refugees will be excluded from the personal scope of the Directive in this country.

2.1.2.2 Exclusion of other categories of temporarily admitted third-country nationals (Q.5.B)

In Article 3(2) under (e), the Directive excludes from its scope of application third-country nationals who have been admitted solely on temporary grounds, such as au pairs, seasonal workers, seconded workers and cross-border service providers. Article 3(2)(e) furthermore excludes from the personal scope of the Directive those third-country nationals who hold residence permits which have been formally limited. From the wording of sub (e) it becomes apparent that Member States can not determine what can be considered temporary residence within the meaning of the Directive and what cannot.[7]

However, from the answers of the rapporteurs it appears that, in eight Member States, other categories of temporarily admitted third-country nationals than those explicitly

[7] Groenendijk, K. & J. de Heer (2006), Losbladig Commentaar Europees Migratierecht; Richtlijn Langdurig Ingezeten Derderlanders. The Hague: SDU.

mentioned in Article 3(2)(e) are also excluded from the application of the Directive, i.e. in Austria, Belgium, the Czech Republic, Finland, Greece, Italy, the Netherlands and Poland.

In Austria, a 'formally limited residence permit' is defined as a residence permit for non-permanent limited residence in the federal territory for a specific purpose. This form of legal residence is granted to artists, ministers and pastors, rotation workers, social workers and researchers. Only third-country nationals who have had a settlement permit for the entire five years preceding the application can obtain the long-term resident status. Since artists, ministers and pastors, rotation workers, social workers and researchers will not be granted a settlement permit, they will never qualify for the long-term resident status, even if they have been legally resident in Austria for five or even ten consecutive years. The possibility of obtaining a settlement permit exists, but only in theory. In practice it appears that the conditions for obtaining a settlement permit, especially the condition of having a quota place, are very difficult to meet.

Likewise, in Greece, members of artists' groups, athletes and trainers are only granted limited residence permits, which excludes them from the scope of the Directive. Presidential Decree 131/2006 furthermore excludes workers who work in a European or third-country business who travel to Greece for a specific reason, the adult children of diplomatic employees, leaders of groups of tourists and employees of public research centres of human commerce.

In the Netherlands, third-country nationals to whom any one of the nineteen categories of residence permits is granted for an aim that is defined as temporary in the Aliens Decree are excluded from the personal scope of the Directive. The categories listed include ministers (*geestelijk voorgangers*). This category of immigrants is thus excluded from the scope of application of the Directive, even if they have resided in the Netherlands for a period of well beyond five years.

As in the Netherlands, in Belgium and Finland the Directive does not apply to third-country nationals holding a residence permit for a temporary purpose only. In Belgium, the Directive only applies to third-country nationals who have already been granted a residence right for an unlimited duration, thereby excluding all temporarily admitted persons. In Italy, the term 'formally limited residence permit' has been transposed in very general terms. Here, third-country nationals holding a short-term residence permit, such as a permit for medical treatment, are excluded from the scope of application of the Directive.

The Czech Republic only grants the status to third-country nationals who hold a permanent residence permit. Permanent residence permits are awarded after a period of five years in the territory of the Czech Republic.

In Finland, foreigners can be issued with temporary residence permits for work on a temporary basis, the pursuit of trade on a temporary basis, study and 'other special reasons'. What exactly is to be understood by 'other special reasons' has yet to be defined by case law of the Finnish courts.

Poland excludes from the scope of application of the Directive aliens residing on the basis of an extraordinary residence visa, aliens who reside in Poland on the basis of a residence permit for a period specified under the circumstances and aliens who reside in Poland on penal grounds. It should be noted that the exclusion of aliens residing in Poland as family members of aliens who reside on the territory of Poland on grounds of long term residents permit does not have any basis in Article 3(2) of the Directive.
This regulation is regarded as contrary to the provisions of the Directive also by the Helsinki Foundation for Human Rights who noted that this particular provision is problematic and creates unjustified unequality in the treatement of the family members of long term residents.
Thus, the standard of the Directive is not met in this respect.

Article 3(2), Q.5.B	
Legal Problem	Austria, Czech Republic, Estonia[8], Greece, Netherlands, Poland, Romania

2.1.2.3 Transposition of the special rule concerning students of Article 4(2) (Q.6.B)

Even though students and persons pursuing vocational training are excluded from the personal scope of the Directive by virtue of Article 3(2)(a), Article 4(2) opens up the possibility of partly repairing the effects of the exclusion of this category of third-country nationals. Here, the Directive creates the opportunity for Member States to take into account half of the period of residence as a student or a person pursuing vocational training once a residence title that allows the granting of the long-term resident status has been obtained.

More than half of the Member States bound by the Directive have transposed the optional provision of the Directive: Belgium, Bulgaria, the Czech Republic, Germany, Greece, Hungary, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia and Slovenia.

2.1.2.4 Taking into account periods of residence referred to in article 3(2)(b), (c) and (d) (Q.6.B)

For calculating the five-year period that a third country national has to reside legally in the country in order to qualify for long-term resident status, Article 4(2) opens up the possibility of taking into account half of the period of stay as a student and clearly rules out the possibility of taking into account the period of legal residence on temporary grounds or as a diplomat. Reasoning *a contrario*, the conclusion can be reached that the periods of residence mentioned under Article 3 paragraph 2 sub (b), (c) and (d) should be taken into account in cases where the third-country national has obtained a non-protection status at the time of application for long-term resident status.[9]

From the national reports it appears that, in thirteen Member States, periods of lawful residence in situations covered by letters (b), (c) and (d) are taken into account when calculating the five-year period once the third-country national has reached non-protection status: the Czech Republic, Germany, Greece, Hungary, Italy, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania, Spain and Sweden. In Italy, the Legislative Decree states that for the purpose of calculating the five year period of lawful residence, the periods of stay for the reasons indicated under article 3, paragraph 2, under (e) and (f) are not taken into consideration. Reasoning *a contrario* it should be assumed that situations covered by letters (b), (c) and (d) should be taken into account.

In Slovenia, only residence referred to under letters (c) and (d) is to be taken into account when calculating the five-year period. Residence as a temporary protected person (3(2)(b)) is not to be included.

In Austria, Cyprus, France, Latvia, Luxembourg and Slovakia the periods of residence a third-country national spent when having a protection status are not taken into account when calculating the five-year period.

[8] In Estonia, the legal problem concerning Article 3(2) Directive consists of the fact that in this Member State, refugees and persons benefiting from another kind of international protection fall within the personal scope of application of the Directive.

[9] The relevance of this issue will be reduced once the recent proposal of the Commission to extend the scope of the Directive to refugees and persons enjoying international protection has been adopted.

In Austria, periods of residence spent under protection status will not be taken into account, simply because asylum seekers, refugees and other persons enjoying protection status will never be granted a settlement permit, which is a precondition for obtaining the long-term resident status.

Belgian law requires the foreigner to have resided for five years on the basis of an unlimited residence right. It is, however, not a requirement that the foreigner must have resided for 5 years with a *vestigingsvergunning* (permanent residence permit). In addition to the *vestigingsvergunning*, a foreigner can hold a *bewijs van inschrijving in het vreemdelingenregister* (proof of registration in the register of foreigners) which also covers an unlimited right of residence and thus also constitutes a permanent residence permit. This means that the periods of residence mentioned under 3(2)(b), (c) and (d) will be taken into account when calculating the five-year period.

It is unclear whether periods of residence mentioned under 3(2)(b), (c) and (d) can be taken into account in Bulgaria and Finland. In Bulgaria, amendments to the LFRB, adopted on 29 June 2007, add a new provision to article 23(4), which explicitly states that periods of time with respect to long-term residence (continuous and permanent) shall not apply to persons who have been granted refugee, subsidiary or temporary protection status. It is difficult to say what the exact meaning of the provision is and how it will be applied by the administrative authorities. Nor is it clear whether residence on the basis of refugee status, temporary protection status or a subsidiary form of protection is taken into account for calculating the five-year period. According to information provided by immigrants, the administrative authorities do not take into account the duration of the asylum procedure when calculating the five-year period of legal residence.

The Finnish Aliens Act rules out the possibility to take into account periods spent on the basis of temporary protection (Article 3(2)(b)). It does not directly touch upon the issue whether periods of residence spent on the basis of a subsidiary form of protection or as a refugee. According to the Aliens Act, only residence by virtue of a continuous residence permit is taken into account when counting the five year period. According to the Act refugees and beneficiaries of subsidiary protection reside in Finland by virtue of a continuous residence and they do, thus, meet the condition of continuous residence. However, as beneficiaries of international protection are excluded from the long term resident's status, it could be argued that the national legislation allows excluding residence by virtue of a residence permit issued on ground of international protection when counting the five-year period even despite of the continuous nature of this residence. As the domestic law is open for interpretation, this issue is left to be determined in the administrative and judicial practice.

In Portugal, the law explicitly mentions that periods of residence solely on temporary grounds and on the basis of the Vienna Conventions are not taken into account when calculating the five-year period. Reasoning *a contrario* this could mean that periods of residence referred to under 3(2)(b), (c) and (d) are to be taken into account. However, in the article of the Portuguese law referring to the calculation of the five-year period, only residence under the cover of a work visa or a permanent authorisation is considered relevant.

Article 4(2), Q.6.B	
No Transposition At All	Austria, Cyprus, Finland, France, Latvia, Luxembourg, Slovakia
Legal Problem	Bulgaria, Lithuania[10], Romania[11], Slovenia

[10] In Lithuania, the legal problem consists of the fact that correct transposition of the Directive can be implied from the Aliens Law, but the by-law on the calculation of the residence period is still not adopted.

2.1.2.5 Periods of absence from the territory (Q.6.B)

Paragraph 3 of Article 4 contains rules concerning residence outside the territory of a Member State. The first paragraph determines that a period of absence from the territory of a Member State of under six months shall not interrupt the required period of residence of five years, provided that the absence does not exceed a period of a total of ten months in the five-year period.

From the country reports it appears that, in twenty Member States, a period of absence of six months shall not interrupt the requirement of five years of residence in cases where the absence does not exceed a total of ten months. This is true for Austria, Belgium, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary,[12] Italy, Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Sweden and Spain. In this last country, a total period of absence of one year rather than ten months is not regarded as interrupting the five-year period which is a condition for acquiring the national permanent residence status.

In two Member States, the first part of the first paragraph of Article 4(3) is implemented incorrectly. In Bulgaria, absence from the territory for a period of longer than six months within the period of one year, rather than ten months within a five–year period, shall interfere with the residence requirement.

In Lithuania, periods over 6 months are grounds for termination of the residence permit. The national law, however, contains no provisions on calculating the long-term residence period.

Article 4(3) first paragraph, Q.6.B	
Legal Problem	Bulgaria, Lithuania

2.1.2.6 Specific and exceptional circumstances (Q.6.C)

Paragraph two of Article 4(3) contains an exception to the first paragraph. It opens up the possibility for Member States to allow for longer periods of absence in cases of 'specific and exceptional circumstances', without the five-year period being interrupted. From the country reports it becomes apparent that half of the Member States bound by the Directive make use of the exception to the limited period of absence that is allowed for by paragraph 1. This applies to Austria, Cyprus, the Czech Republic, Finland[13], Germany, Italy, Latvia, Luxembourg, Malta, the Netherlands, Poland and Romania. The other Member States have not transposed the second paragraph of Article 4(3).

In Austria, severe diseases and the fulfilment of a social obligation or military service qualify as specific and exceptional circumstances. In Cyprus, the Czech Republic, Italy, Latvia and Luxembourg, serious diseases also qualify as 'specific and exceptional circumstances'. Poland mentions medical treatment as a reason for allowing longer absence

[11] Romania mentions a legal problem, since the period a third-country national spent in Romania as a trans-border worker is also taken into account when calculating the five year period. Hence, the personal scope of the Directive in Romania is broader than allowed for by Artcile 3(2).

[12] In Hungary, the absence may not exceed a total of 300 days, so there is a slight difference from the wording of the Directive.

[13] In Finland, the issue is regulated in the explanatory text of the government proposal regarding the Act amending the Aliens Act. The government proposals offer guidance in interpreting the broadly formulated legislation and are not legally binding. However, they are followed in practice as an expression of the 'will of the legislator'. The status of a government proposal can be compared to the status of a circular.

from the country. In Finland, serious illness affecting a close relative is seen as a specific and exceptional reason for which absence of longer than six months is authorised.

The Czech, Finnish and Luxembourg rapporteurs mention that the pursuit of a course of study or vocational training justifies an exception to the limited period of absence from their countries. Absence for employment reasons is seen as sufficiently specific and exceptional to justify longer absence from the territory of Cyprus, Finland, Germany and Poland. In Romania, third-country nationals who have invested 1,000,000 euros or created 100 full-time jobs are allowed longer period of absence. This is also allowed for aliens who are Romanian ethnics, aliens born in Romania and aliens whose residence is important for the Romanian national interest.

In the Netherlands, two categories of immigrant can remain outside the territory for longer without interrupting the period of residence necessary for acquisition of the status: former nationals who have a right to return to the Netherlands under the Re-migration Act and third-country nationals whose residence has been interrupted without their domicile having transferred outside the Netherlands.

Italy and Latvia define 'specific and exceptional circumstances' in general terms. In Italy, an interruption for longer than six consecutive months or exceeding a total of ten months is not regarded as interrupting the five-year period in the event of a need to comply with military obligations, serious and documented health reasons and 'other proved reasons'. In Latvia, all circumstances independent of the persons own will, such as disease or force majeure, qualify as specific and exceptional circumstances.[14]

In Austria and Cyprus, a total absence of a maximum of 24 months where special circumstances apply is allowed. In the Czech Republic and Luxembourg, this period is twelve months. In Germany, which only allows for longer periods of absence in cases where the absence is job-related, no absences may exceed a period of six months each. All other Member States making use of the exception provided for by the second paragraph of Article 4(3) do not specify the maximum length of the absence.

Malta uses the possibility of allowing for a longer absence from Maltese territory in the event of 'specific or exceptional' reasons, but does not define what these reasons are under national law.

Bulgarian law contains a legal definition of the notion 'specific and exceptional circumstances', but there is no provision concerning the rule of Article 4(3), subparagraph 2 of the Directive allowing third-country nationals to be absent for longer than six months in cases of specific and exceptional circumstances.

2.2. Specific rules relating to the Status of Long-Term Resident in the first Member State

2.2.1 Conditions for acquiring the status in the first Member State (Q.6.A, Q.7.A-B-C, Q.9.C)

Five years of legal and continuous residence is not the only condition third-country nationals have to meet in order to qualify for long-term resident status. To obtain the status, third-country nationals also have to comply with the conditions that are exhaustively enumerated in Article 5 of the Directive. Paragraph 1 of this Article requires applicants for the status to have

[14] The list of reasons that qualify for longer absence is not exhaustive. For a complete survey, we refer to the national reports.

(a) sufficient resources and (b) sickness insurance.[15] Paragraph 2 provides the Member States with the possibility of asking third-country nationals to comply with integration conditions.

2.2.1.1 Income Requirement (Q.7.A)

The long-term resident status can be denied to third-country nationals who do not have 'stable and regular' resources which are sufficient to maintain themselves and their family members without recourse to the social assistance system of the Member State concerned. How is the income requirement of Article 5(1)(a) specified in the national laws of the Member States?

From the reports of twelve Member States it appears that applicants for long-term resident status fulfil the income requirement if they have enough resources to maintain themselves (and their family members). This counts for Austria, Belgium, Cyprus, the Czech Republic, France, Germany, Greece, Lithuania, Luxembourg, Poland, Portugal, Romania and Sweden. The requirement that the resources be stable and regular is explicitly demanded by Austria, Belgium, Estonia, France, Germany, Latvia, Luxembourg, the Netherlands, Poland and Portugal. What is the exact level of income to be earned by the applicant for long-term resident status and what are the other demands?

In Bulgaria, a third country national applying for permanent resident status is required to provide evidence of resources during his/her stay in the country. Any official document certifying available resources, securities or other property rights can serve as proof of sufficient resources. According to the implementing regulation of the LFRB, the daily income for a foreigner is € 50 per day. However, it is not clear whether this level of income is applied to long-term residence applicants or only for those foreigners residing on a short-term basis. According to information provided by third-country nationals, in practice national authorities require foreigners to present a notary-certified declaration signed by a Bulgarian citizen in which the latter guarantees resources and accommodation for the foreigner.

Level of resources vs. level of social assistance for nationals

In Austria, the Czech Republic, Estonia, Finland, Hungary, Lithuania, Malta, Poland and Slovakia, the level of income which needs to be earned by a third-country national applying for the status is higher than the level of social assistance for nationals. In Austria, the level of social assistance varies. It is highest in Oberösterreich (€ 542) and lowest in Vienna (€ 420). The minimum income to qualify for the status is € 726 per month for single persons. Furthermore, in each *Land*, € 231,45 has to be added for housing.

In Bulgaria, the level of social assistance is € 27 per month, whereas the minimum income a person has to earn in order to qualify for the status is € 50 per day. However, as has been stated before, it is not clear whether the authorities will apply this standard for those applying for the long-term resident status as well.

In the Czech Republic, the level of income a third-country national needs to earn in order to qualify for the long-term resident status is derived from a 'subsistence minimum' which is determined by the Act on the Subsistence Minimum. The level of the subsistence minimum varies according to the number of persons in a family.[16] The income of the third-country national must be at least equivalent to the level of the subsistence minimum. The

[15] The latter requirement will not be treated in this report regarding the acquisition of the status in the first Member State. For the requirement of sickness insurance as a condition for obtaining a residence permit in the second Member State, see paragraph 2.3.2.1.

[16] The level of the subsistence minimum for a single person is € 111,47, the level of subsistence minimum for a family with two children is € 345,54 (based on the rate of exchange published in the Official Journal on 3 August 2007, No. 2007/C 182/07).

level of the subsistence minimum is higher than the level of social assistance. This is also true for Slovakia. Since, in this country, the minimum wage is higher than the level of social assistance, the level of resources which has to be earned by applicants for the status is higher than the level of social assistance.

In Belgium[17], Italy, the Netherlands, Romania and, in most cases, in Slovenia, the level of income which has to be earned by applicants for the status must be at least equal to the level of social assistance for nationals. In Germany, the level of resources can be either higher or lower than the level of social assistance. The relevant criterion in this country is whether the applicant can earn his or her livelihood and the livelihood of his or her dependent relatives. In France, the *Revenu Minimal d'Insertion*, which is granted to nationals with no job or income, is lower than the minimum wage (SMIC), which is the minimum level of income a third-country national needs to have if he wants to obtain the status.

Level of resources vs. minimum income

In Estonia, the minimum level of resources of an applicant for the status must be higher than the minimum wage for nationals. In France, Greece, Latvia, Lithuania, Malta, Romania, Slovakia and Slovenia, the level of resources an applicant for long-term resident status needs to posses must be at least equivalent to the minimum wage. Greece demands an additional 15% of the minimum wage for each family member, compared to 20% in Malta. In Portugal, minimum wages are taken into account when deciding whether the income requirement is met by an applicant for long-term resident status.

In Hungary, no account is taken of the level of the minimum wage. Applicants for the long-term resident status are required to have a secure income. Income from employment can be considered secure, but other types of income also qualify in order to fulfil the income requirement, such as savings held in a Hungarian bank, the possession of assets or valuable rights and interests or a statement from a family member ensuring the proper care and support of the applicant. When calculating whether an applicant meets the requirement of sufficiently secure income, account will be taken of the number of persons in a household earning a living or dependent on the sponsor and whether or not the applicant is the owner of real estate. In cases where an applicant relies on income from regular employment when applying for this status, the average monthly income is calculated on the basis of the taxed income in the year before the application and the income received during the three months preceding the application.[18] In cases where income is irregular, the average monthly income is based on the total income earned in the twelve months before the application.

In Cyprus and Sweden, it is unclear whether the minimum level of resources of an applicant for the status is higher or lower than the minimum wage or the level of social assistance. In Luxembourg, this still has to be defined. In Sweden, the Swedish Migration Board has not yet issued detailed regulations concerning the income requirement. According to the Board, this is due to the fact that there have been so few applications for the status.

Stability and regularity of the income

To prove the stability and regularity of the income, Cyprus requires that an employment contract be valid for at least eighteen months at the time of application for the long-term resident status. In the Netherlands, the income must be available for at least one more year from the time of application, or six months if the applicant has received income from employment in the three years preceding the application. In practice this means that only

[17] In Belgium, the minimal amount of income still has to be specified in a regulation.
[18] In exceptional cases, it is possible to claim proper financial resources without having a taxed income.

third-country nationals with a permanent employment contract will be granted the status. Most workers who have a stable employment contract in the Netherlands have a one-year contract or a permanent contract. Only in cases where the one-year contract is signed on the same day as the application for EC status will the one-year contract be sufficient.

In Slovakia, applicants for the status are also required to have an employment contract available for at least one year. The worker must at least earn the minimum wage (€ 227 per month) in order to qualify for this status. If an applicant applies for a purpose other than work, he will have to prove that the amount of twelve times the minimum wage is in his account. In this case, no employment contract is required.

France requires applicants to have earned (at least) the minimum wage in the entire five years preceding the application for this status. This requirement can be waived if the applicant owns the accommodation he lives in or if the income has become stable and regular in the five years before the application or since the time of application. In Latvia, the applicant must have the earned minimum wage (or more) for at least 12 months to prove regularity.

In Germany and Greece, the regularity of the income is proven by the fulfilment of tax and (health) insurance obligations. In cases where an applicant has also made social security contributions, the income requirement is fulfilled in Germany.

Recourse to social assistance

Recourse to social assistance benefits does not prevent the granting of the status in Finland and Sweden. In Finland, income is considered to be secure in case a third-country national is not expected to become dependent on social assistance. When an extended residence permit is granted, temporary resort to social assistance does not stand in the way of the extension. Compensatory benefits such as benefits paid in case of accidents, parental benefits and sick leave money or benefits that compensate costs such as housing and child benefits are taken into account as part of the income when assessing whether the income is secure. The permit will, however, not be granted or extended in case the income consists mainly of regularly admitted income assistance or assistance which guarantees minimum subsistence. In Sweden, where a third-country national will only be granted the long-term resident status if the applicant is fully able to support himself from his own means, applications for the status will not be denied in cases where a person benefits from the general welfare system. Most social assistance benefits in Sweden are based on general criteria such as residence and employment. However, if there is a risk that a person will benefit from social assistance which is based on an individual assessment of income and wealth, the application for the status can be denied.[19] Benefiting from individual benefits will not automatically lead to a denial, since all the relevant circumstances will be considered.

Spain is probably the most liberal Member State when it comes to the income requirement. Here, only immigrants who are applying for temporary admission to Spain are required to have sufficient income. The requirement does not have to be fulfilled by applicants for the national long-term resident status.

Article 5(1), Q.7.A	
No Transposition At All	Spain
Legal Problem	Belgium[20], Netherlands,

[19] Examples of social benefits that are based on an individual assessment of income and wealth are social allowance and housing benefits.

[20] The minimal amount of the income has to be specified further in a regulation (Royal Decree).

Exclusion of certain types of income

In judging whether an applicant meets the requirement of possession of sufficient resources, have certain types of income been excluded by the Member States? This appears not to be the case in any Member State, even though the Estonian and Dutch rapporteurs note that income from illegal employment is not taken into account when assessing whether a third-country national meets the income requirement. Note should be taken of the fact that in Belgium the regulation determining the level of income is still to be drafted. The German rapporteur notes that, even though no types of income have been excluded, the income must derive from an occupation for which the alien is eligible and has all the necessary qualifications.

Contribution to the pension system and the applicant's tax record

Are contributions to the pension system and the applicant's tax record taken into account for the fulfilment of the income requirement? It appears that in most Member States this is not the case, specifically in Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Finland, France, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovakia, Slovenia and Sweden.

The situation in Cyprus, Finland, Germany, Greece and Hungary is different. In Cyprus, payment to the tax authorities and contributions to the state pension system are necessary conditions for obtaining the status. In case of renewal of the permit, the tax record must be presented in Finland if such a record is available to prove the sufficiency of the income. In Germany and Greece, the stability and regularity of the income is proven by the fulfilment of tax obligations. As stated above, whether the status is granted to immigrants applying in Hungary who want to rely on regular income depends on the taxed income in the year before the application. An application will be turned down if an applicant has failed to fulfil his tax obligations.

Whether contributions to the pension system and the tax record can be taken into account in Luxembourg is not yet defined.

The situation is unclear in Romania, where there is no explicit norm that the contributions be taken into account, not is there a prohibition on taking them into account either. The Maltese rapporteur could not answer this question due to a lack of information.

2.2.1.2 Integration Conditions (Q.7.B)

Article 5 paragraph 2 of the Directive allows Member States to require third-country nationals to comply with integration conditions 'in accordance with national law' when applying for long-term resident status. The reference to national law does not imply that Member States, when making use of the possibility of introducing an extra condition for the acquisition of the status, have carte blanche when determining the integration conditions. The integration requirements will have to satisfy the communitarian principle of proportionality. Furthermore, the Member States, when making use of this competence, will have to respect the goal and purpose of the Directive.[21] On the other hand, the Article has also been criticised as being the 'Achilles heel' of the Directive, since there are no explicit limits on the 'integration conditions' and because the Directive contains no standstill provision on this issue.[22]

[21] Groenendijk, C. & J. de Heer (2006), 'Richtlijn langdurig ingezeten Derdelanders', in *Commentaar Europees Migratierecht*, The Hague: SDU.

[22] Boelaert-Suominen, S. (2005), 'Non-EU Nationals and Council Directive 2003/109/EC on the Status of Third-Country Nationals who are Long-Term Residents: Five Paces Forward and Possibly Three Paces Back', *Common Market Law Review* 42: 1011-1052.

From the country reports it appears that twelve Member States require third-country nationals to comply with integration conditions to obtain the status. This is true for Austria, the Czech Republic, Estonia, France, Germany, Greece, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal and Romania. Whether or not a third-country national will have to fulfil an integration requirement in Slovakia is up to the discretion of the competent authority. In Luxembourg, third-country nationals who want to reside there permanently will be offered measures in order to facilitate their integration. The measures are mostly focused on language acquisition. When a decision on the granting of the status is taken, the Minister can take into account the degree of integration of the immigrant. If the immigrant is not sufficiently integrated, this might lead to a rejection of the application for the status. Insufficient integration will, however, not necessarily lead to a rejection of the application.

All of the Member States mentioned above require the third-country national wishing to qualify for the status to have language skills. In Austria, Czech Republic, France and the Netherlands, future holders of the status need to have oral and written language skills. In all three countries language skills are tested in an exam. The Estonian rapporteur speaks of a 'minimum level' of knowledge of Estonian, whereas Latvia demands a 'very basic knowledge' of Latvian. Germany and Greece require 'sufficient' language skills. Applicants for the status in Portugal have to be 'fluent in basic Portuguese', whereas third-country nationals in Romania have to master Romanian at a 'satisfactory level'. The level of the language skills required to obtain the status can raise issues of proportionality.

In Austria, France, Germany, Greece, Lithuania and the Netherlands, only knowledge alone of the language of the Member State concerned is not enough to fulfil the integration requirement. Applicants for this status in Austria also need to have knowledge of the European democratic values to allow participation in the social, economic and cultural life of Austria.

In France, immigrants have to fulfil the requirement of *intégration républicaine* for the issue of an initial residence permit. In addition to oral and written knowledge of the French language, this means that the third-country national has to respect the fundamental principles that govern the French Republic. In order to verify whether a third-country national meets the requirement of republican integration, the competent authority has to take into account the signature of the *contrat d'accueil et d'intégration* (reception and integration contract) by the third-country national during his first year in France. Furthermore, the mayor of the municipality of residence has to be consulted. By signing the reception contract, the third-country national is obliged to follow civic integration training (*formation civique*) and, if necessary, a language course. The civic integration training comprises a presentation concerning the French institutions and the values of the Republic, such as equality between men and women and France as a lay Republic. The alien will also be offered an information session about life in France.

In Germany, third-country nationals who wish to qualify for long-term resident status have to know basic facts concerning the legal and societal order and living conditions in Germany. Third-country nationals applying for the status in Germany are not obliged to participate in integration courses, unlike long-term residents that acquired the status in another Member State (see paragraph 2.3.2.2).

Greece requires sufficient knowledge of Greek history and Lithuanian immigrants wishing to obtain a permanent residence permit, which is a condition for obtaining the long-term resident status, need to pass a language and Constitution exam. In the Netherlands, knowledge of Dutch society is required. This is also tested in an exam.

Even though Belgium and Finland do not require applicants for the status to comply with an integration requirement, it is worth describing the situation in these countries in this context.

In Belgium, integration is the competence of the communities (Flemish, French and German-speaking). The Flemish Parliament passed the Flemish Decree on Integration a few years ago. Its purpose is to set up training programmes for new immigrants, providing them with the necessary knowledge that will subsequently allow them to participate as citizens in society. However, the obligation or right to participate in integration courses has no impact on the residence status.

In Finland, an integration plan is in place for certain categories of immigrant. According to the Act on Integrating Immigrants and the Reception of Asylum Seekers, an immigrant who meets the requirements laid down in this Act (i.e. his domicile is in Finland and he has been registered with the employment authority) has the right to an integration plan. During the plan period the person concerned has the right to an integration allowance provided he participates in the integration measures defined in the plan. These measures include language courses, for example. The costs of integration measures are covered by the annual budget of the state. Drafting an integration plan and participating in the integration measures is not compulsory.

Integration Facilities?

Are integration facilities made available in the Member States that require third-country nationals to fulfil an integration requirement? This appears to be the case in Austria, Estonia, France, Germany, Latvia, Netherlands and Romania. In Austria, the costs of fulfilling the so-called integration agreement are partially paid for by the Federation. In Estonia and the Netherlands, third-country nationals can be partially reimbursed if they pass the required exam. In the Netherlands, reimbursement only takes place if the immigrant passes the exam within the required period. In this case, he can obtain a refund of 70% of the costs up to a maximum of € 500. The government provides special loans for the purposes of participating in integration courses. In France, the facilities are financed by the national agency for the reception of foreigners and migration. In Germany and Latvia, immigrants have to pay for the facilities themselves. The Romanian government provides Romanian language courses, information regarding the opportunities for integration in the Romanian society, courses of Romanian history, culture, civilisation and legal system and meetings with the Romanian citizens for the purpose of mutual knowledge and understanding.

The Czech Republic, Portugal and Slovakia do not have integration facilities. In Lithuania, facilities only exist for persons who have been granted asylum. They are entitled to special integration support. In Greece, a ministerial Decree providing for integration facilities still has to be adopted.

2.2.1.3 Family Members (Q.7.C)

Are family members applying for the status required to fulfil all three conditions themselves? This appears to be the case in the Malta, Poland and Romania. In all these countries, in order to qualify for the status spouses and partners will need to prove that they have sufficiently stable and regular resources, without the possibility of relying on the income of the sponsor. In Slovakia and Romania, spouses will also need to fulfil an integration requirement. In the Czech Republic, family members also need to fulfil an integration requirement. However, in order to fulfil the income requirement, the family members can rely on the sum of the income of all the family members who wish to obtain the EC status.

In Lithuania, the family members do not need to meet the conditions separately if they arrive together with the main applicant. If they arrive separately, the will have to fulfil the conditions themselves.

The question cannot be answered for Italy. In Italy, according to the rapporteur, the issue needs to be clarified. The enactment regulation of the Single Text on Immigration states that family members applying for a *carta di soggiorno* are required to fulfil the conditions relating to accommodation and income. However, this provision was considered unlawful by many commentators. Now that the Directive has been implemented, whether or not that provision still applies needs to be clarified.

Minimum age for the issue of the long-term resident status

There appears to be no minimum age for the issue of the long-term resident permit in the Member States.

2.2.1.4 Right or Discretion? (Q.6.A, Q.9.C)

Article 4(1) of the Directive provides for an entitlement to long-term resident status for third-country nationals who meet the requirement of five years of legal and continuous residence immediately before application for the status. Article 7(3) of the Directive formulates an explicit obligation to grant the status if the conditions of Articles 4 and 5 are met and if the third-country national does not represent a threat to public order or public security within the meaning of Article 6. Is there an actual codified right to the status in the Member States for third-country nationals who meet the residence requirement and the requirements of Articles 4 and 5, or does the granting of the status depend on the discretion of the competent authorities?

From the country reports it appears that in 21 of the 24 Member States that are bound by the Directive a right to obtain the status has been codified once the third-country national meets the necessary requirements. In Sweden, the provision in the national legislation is not formulated as a right of the third-country national to obtain the status, but rather as an instruction to the Swedish Migration Board to grant long-term resident status to certain third-country nationals. Still, the right to the status is codified and does not depend on the discretion of the competent authority.

In Austria and Bulgaria the granting of the status is at the discretion of the competent authorities.

According to the legislation of the Czech Republic, long-term resident status will be issued to a person who fulfils the necessary criteria; the authorities have no discretion but, due to the fact that long-term residence status will only be granted to holders of a permanent residence permit, the applicant has to meet the criteria of the law associated with the acquisition of the permanent residence permit. To be granted a permanent residence permit, more documents are required than the Directive stipulates, such as excerpts from the applicant's criminal record. Furthermore, the applicant needs to have proper accommodation available.

The right to obtain the EC long-term resident permit has not been codified in French legislation. In France, the granting of the status is at the discretion of the authorities, who judge whether the applicant intends to settle permanently in France, taking into account the applicant's job and his means of subsistence. Even though the French authorities have discretionary competences when it comes to issuing residence permits, they are obliged to grant applications for such permits in case all the conditions are fulfilled. Furthermore, the decisions of the authorities are controlled by the Courts.

Article 4(1), Q.6.A.	
Legal Problem	Austria , Bulgaria, Czech Republic, Hungary
Practical Problem	Belgium

Article 7(3), Q.9.C.	
Legal Problem	Austria, Bulgaria, Czech Republic, France, Hungary
Practical Problem	Belgium

The EC status together with another status

A third-country national may have residence rights based on other Community law instruments, e.g. Directive 2004/38/EC or the EEC-Turkey Association Council decision 1/80, in addition to EC-long term resident status.

In eleven Member States the national law does not provide for the possibility that the long-term resident also holds another residence status under Community or national law. These eleven Member States are Austria, Belgium, Estonia, Finland, Germany Greece, Malta, Poland, Romania, Slovenia and Spain. In eight Member States (Bulgaria, the Czech Republic, France, Latvia, Lithuania[23], the Netherlands, Portugal and Sweden) it is possible to hold another residence status besides the long-term residence status. The Cypriot rapporteur could not give an answer to this question because the national law is silent on this issue. Although in Bulgaria and Lithuania no special provision exists it could be assumed that this possibility is available. The Czech Republic and Sweden occupy a special position. In these Member States, a long-term resident will always have dual residence status since the issue of long-term residence status depends on the possession of a permanent residence permit. Thus, every holder of EC long-term residence status is at the same time holder of the national permanent residence permit.

Moreover, there is no rule in the Directive that forbids a third-country national family member of a Union citizen who has used his freedom of movement and is residing in another Member State from applying for the EC long-term resident status and thus acquiring the mobility rights under Chapter III of the Directive.

2.2.2 Procedural rules in the First Member State (Q.9 A-B, Q.10.A-B)

2.2.2.1 Documentary Evidence (Q.9.A)

According to Article 7(1) of the Directive, an application for long-term resident status should be accompanied by documentary evidence that the third-country national meets the requirements of Article 4 and 5 of the Directive, more specifically the residence duration requirement (see para. 2.1.1), the resources requirement (see para. 2.2.1.1) and the sickness insurance requirement. According to Article 5(2), Member States may also require third-country nationals to comply with integration conditions in accordance with national law. Thus documentary evidence of compliance with integration conditions could also be required on the basis of Article 7(1). The required documentary evidence should be determined by law. If required, the application has to be accompanied by a valid travel document or a certified copy of that document. In this paragraph we focus on some trends; see the schedule in Annex I for a specification by Member State.

Documentary evidence

[23] The Lithuanian Aliens Law does provide, however, that a residence permit issued by Lithuania will become invalid in case the holder obtains a residence permit in another Member State

The list of documentary evidence required varies among Member States. Austria, Cyprus and Hungary in particular specify a very detailed list of required documents. Austria and Hungary are the only Member States that require the third-country national applying for long-term residence status to attach a birth certificate (or certificate serving the same purpose) and, if relevant, the applicant should enclose a marriage certificate and/or divorce certificate. If relevant, an adoption certificate, a certificate concerning family membership and death certificate should also be submitted in Cyprus. In Hungary a special requirement applies to minor applicants. If the applicant is a minor a certified document according to the personal law is required, stating that there is no legal obstacle to his settlement.[24] In the Czech Republic a long list of documents will also be required if a third-country national applies for long-term residence status. The problem in the Czech Republic is that long-term residence status will be granted only to holders of the permanent residence permit. A person applying for long-term resident status must therefore also submit the documents necessary for application of the permanent residence permit. This means more documents are required than provided for in the Directive. Five Member States (Cyprus, the Czech Republic[25], Italy, Romania and Slovenia) require an extract from the judicial record concerning the applicant. In Spain the authorities do not require the applicant to submit an extract from his judicial record but they will verify the judicial record. In Italy the authorities themselves gather the information about whether an applicant is on the list of foreigners who are barred from entry and whether the applicant is a threat to national security, public order or public health. The same applies to Latvia regarding the potential threat to public order and security.

In eight Member States the application has to be accompanied by one or more photographs (Austria, Bulgaria, the Czech Republic[26], Estonia, Italy, Latvia, Poland, and Slovakia). In four Member States (the Czech Republic[27], Estonia, Greece, Latvia) the application has to be accompanied by a language exam certificate. In Portugal evidence 'demonstrating fluency in the basic Portuguese' has to be submitted. In Slovakia the police may request a document confirming completion of a Slovak language course. In Greece a certificate of sufficient knowledge of the main elements of the history has to be submitted as well. In several Member States (Bulgaria, Cyprus and Estonia) tax statements are required. Though in Estonia tax statements are not really required but can be a proof of permanent income.

In Bulgaria and Estonia a detailed curriculum vitae has to be submitted. In Estonia also information about participation in an Estonian or foreign organisation, military organisations, foreign intelligence organisations should be provided. In Luxembourg a health exam certificate is required. In Germany and the Netherlands it is not specified which documentary evidence is required except the requirement of a valid travel document. In Germany and the Netherlands there is formulated that 'all aspects favourable for the application as far as those aspects are not obvious or known to the authorities' (Germany) or 'documents necessary to prove that he meets the conditions for granting a residence permit' (the Netherlands) have to be proven respectively submitted. In Slovenia some documents are specified but the applicant must also attach 'other evidence and documents proving fulfilment of the conditions' and, upon request, the applicant must contact the body in person. In Spain some documents are specified as well but the legislation states further that documents have to be submitted which the administration considers to be relevant for the procedure and

[24] Personal law refers to the laws of the country according to the Decree Law no. 13 of 1979 on private international law. Personal law of a foreigner who does not have Hungarian citizenship, is the law of the country of citizenship. If one has more citizenships or is stateless, the personal law is the law of country of residence.
[25] requirement for permanent residence permit
[26] requirement for permanent residence permit
[27] requirement for permanent residence permit with some exceptions

resolution of the demand. In practice it depends on each provincial administration, on each civil servant and the internal instructions which documents are required. It should be possible to require evidence of resources or accommodation, but is not usual, according to the Spanish rapporteur, at least in Catalonia. In Sweden there is no specification of what documents the applicant has to produce with his application in national law but the preparatory works states that according to general principles of national law the authorities shall investigate the matter concerned with the necessary means.[28] This includes requiring evidence from the applicant, for example concerning the income requirement, a certificate of employment or statement of accounts from the bank. In Belgium the law provides in the possibility to specify the application procedure by regulation.

Valid travel document

In nineteen Member States (Austria, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, Germany, Greece, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain) the application has to be accompanied by a valid travel document. In Hungary a valid travel document has to be submitted on request. In Belgium the applicant has to provide a copy of a valid travel document only in cases where the identity of the applicant cannot be determined. In nine of the Member States (Austria, Bulgaria, Finland, Germany, Hungary, Italy, Luxembourg, the Netherlands and Slovakia) the absence of a valid travel document is grounds for denial of the status. In Estonia the absence of a valid travel document is, according to the Ministry of Interior, not a reason to reject the application as many long term residents in Estonia do not have a passport but just and ID card as they are not interested to travel. In Spain it is not possible to start the procedure to apply for a residence permit if a valid travel document is unavailable.

Documentation with regard to the residence requirement and income requirement

Only seven Member States (Bulgaria, France, Latvia, Lithuania, Poland, Portugal and Spain) require evidence that the third-country national meets the residence duration requirement of five years. The absence of explicit provisions on this issue may be explained by the fact that the duration of legal residence can in most cases be easily checked by the immigration authorities in their administration. Evidence that the third-country national meets the requirement of stable and regular resources is required in all Member States except Spain.[29] In Spain this is up to the discretionary power of the authorities. In Spain each province can, if it wants to or if it considers it necessary, require evidence of stable and regular resources, but this is not usual according to the national rapporteur The documents required to prove a certain level of resources differ by Member State. *Sickness insurance*

Evidence that the third-country national has (adequate) sickness insurance is required in twelve Member States (Austria, Belgium, Cyprus, Estonia, Greece, Hungary, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia). In the Czech Republic the third-country national is not obliged to submit a document proving that the applicant has sickness insurance since the applicant becomes a beneficiary of the public health insurance system as holder of a permanent residence permit.[30]

Appropriate accommodation

[28] see government proposition 2005/06:77 p. 166).
[29] See par. 2.2.1.1. for the implementation of the term ‘stable and regular’ resources in the Member States.
[30] The health insurance is a condition for the residence status issued before the permanent residence permit and the permanent residence permit is a condition for granting the long-term resident status.

According to subparagraph 2 of Article 7(1) the evidence to be provided by the applicant may also include documentation with regard to appropriate accommodation. During the negotiations, two Member States campaigned for the addition of a separate housing requirement next to the other requirements for obtaining this status. The resulting compromise was that sufficient accommodation cannot be required as a condition for obtaining the status, but that documentation could be required. Article 7(1) refers to the conditions for obtaining the status mentioned in Articles 4 and 5. These conditions do not include a housing requirement. The *effet utile* of the last sentence of Article 7(1) is that it offers the authorities the possibility of assisting those who apply for this status in their search for appropriate accommodation. The aim of the Directive is to further the integration of long term residents, not to keep people out (Article 1 and preamble to the Directive). This aim is clearly different from the aim of having suitable accommodation as one of the conditions for first admission, present in the national immigration law of some Member States.

The German rapporteur does no agree with this view. According to him, a mere requirement of providing documentation with regard to appropriate accommodation without having an actual background is not what was meant by the Directive. The wording of the Directive actually allows the Member States to stipulate a requirement with respect to accommodation. Therefore, according to the German rapporteur, it may also be used as the sole ground for refusing the long-term residents status.

In all Member States bound by the Directive except Belgium, Finland[31], the Netherlands, Slovenia and Sweden the applicant is required to provide documentation regarding appropriate accommodation. In Estonia there is no explicit residence requirement but the applicant has to be registered in the population registry and the authorities can themselves check whether the person is registered there or not. However, the possession of a rent contract or ownership of accommodation is a condition for registration.

In Italy documentation with regard to appropriate accommodation is only required if the person concerned also applies for a residence permit for family members.

In Spain appropriate accommodation is not officially required, but each province can, if it wants to or if it considers it necessary, require such documentation, although it is not a usual requirement according to the national rapporteur. In Slovakia an applicant is required to provide this documentation only at the request of the police.

In sixteen Member States the absence of appropriate accommodation is or could be grounds for denial of the status or grounds for rejecting the application: Austria, Cyprus, the Czech Republic[32], Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Poland, Portugal and Slovakia.

In Italy, the status can be refused due to lack of appropriate accommodation only in case the person concerned also applies for a residence permit for his family members. Under Polish law the absence of appropriate accommodation does not form grounds for denial of the status itself. However, documentation with regard to appropriate accommodation must be included in the application. If it is not, the application will not be examined. The relevant authority is obliged – before it rejects the application – to summon the applicant to amend the formal irregularities present in the application within a fixed period. Eleven Member States (Bulgaria, Estonia, France, Hungary, Latvia, Luxembourg, Poland, Portugal, Romania,

[31] In Finland, no documentation regarding housing is required, since the (non-binding) net monthly income as defined in the guidelines of the Directorate of Immigration is considered high enough to cover housing expenses. Therefore, no separate accommodation requirement is applied.

[32] Requirement for permanent residence permit. The EC status can be also asked after the permanent residence permit, the national status has been granted (earlier than after five years) and then this will not be ground for refusal.

Slovakia and Lithuania) require evidence of appropriate accommodation but do not require a certain level of accommodation. In the remaining seven Member States, the level of accommodation required varies. The required accommodation should:

- be 'habitually in place' (Austria)
- be regarded as normal for a comparable family (Cyprus and Malta)
- be adequate with regard to the numbers of persons who will live there (Czech Republic)
- satisfy the needs of the applicant (Greece)
- have space comparable with accommodation demanded by welfare-based social housing (Germany, Italy)
- meet the general health standards (Austria)
- meet the safety standards (Austria and Cyprus)
- meet the general standard of security (Cyprus)
- meet the hygiene standard (Cyprus, Czech Republic, Italy)
- satisfy the general standard of decent living (Cyprus)

2.2.2.2 Length of Procedure (Q.9.B)

If a third-country national submits an application for long-term resident status Member States should give a written notification of the decision to the third-country national as soon as possible but in any event no later than six months from the date the application was lodged (Article 7 (2) first sentence).

In ten Member States the competent authority should decide at the latest six months after the application has been lodged (Austria, Cyprus, Finland[33], Greece, Lithuania, Malta, the Netherlands, Portugal, Romania and Sweden).

Under exceptional circumstances linked to the complexity of the examination of the application, the decision period of six months may be extended according to subparagraph 2 of Article 7 (2). The Directive does not determine how long the decision period may be extended. With the exception of Austria, all the aforementioned Member States made use of the possibility of extending the decision period under exceptional circumstances. Malta and Portugal literally copied the clause: '*exceptional circumstances linked to the complexity of the examination of the application'*. In the Netherlands the decision period may be extended if, according to the Minister of Justice, advice or investigation by third parties or the Public Prosecutor is necessary. The other Member States only copied part of the clause. The decision period may be extended under exceptional circumstances (Greece) or depending on how complicated an application or the case is (Cyprus, Lithuania and Sweden). In Sweden the complexity of the application is not the only ground on which the decision period may be extended. The decision period may be extended in Sweden if there are *special grounds*.[34] In Finland the decision period may be extended if the applicant has not submitted all the necessary documents or for other specific reasons.[35]

The period for which the decision period may be extended varies. According to Cypriot, Maltese and Dutch legislation the extension period may be six months. In Greece,

[33] The Finnish Act does not acknowledge the term long-term residence status. In Finland the EC residence permit declares both the status and regulates the residence

[34] E.g. if the authorities did not receive the necessary documents or if the investigation is complicated, see Government proposition 2005/06:77 p. 167

[35] E.g. the complexity of the case or difficulties that have arisen during the procedure, see Government proposition HE 94/2006.

Lithuania, Malta and Romania a period of three months applies. The Swedish, Finnish and Dutch legislations do not determine for how long the decision period may be extended.

While, in ten Member States, a time-limit of six months applies, in the other fourteen Member States a decision should be taken within a shorter period. In Slovenia for example a decision should be taken 'as soon as possible' but in any event no later than within one month. In cases involving a 'special fact-finding procedure', a maximum period of two months applies. In the Czech Republic the decision should be taken 'without delay'. If this is not possible, a maximum period of 180 days applies. In Bulgaria a decision should be taken within 60 days from the date the application is lodged. If the necessary documents have been lodged through the diplomatic or consular Bulgarian mission, a longer decision period applies. In this case, a decision should be taken within 180 days from the date of submission. Italian and Slovakian legislation provide for a period of 90 days. In Estonia, Latvia, Poland and Spain a decision period of three months applies. In Hungary a decision should be taken within 120 days. In France and Luxembourg the decision period has been formulated in a negative way; if no decision has been taken within four months (France) or three months (Luxembourg), the decision is understood to be negative, in other words a silent refusal. Germany is the only Member State that does not provide for any explicit (maximum) period. In Germany a decision should be taken 'within an appropriate period of time'. In Belgium the law does not provide a time limit for making a decision on the application for long-term resident status.

Articles 7(2) subparagraph 1, first sentence, Q.9.B	
Legal Problem	Belgium

Consequence of exceeding the decision period

In four Member States (Belgium, Finland, Italy, Luxembourg[36]) there are no consequences if no decision is taken within the stipulated period although, in these Member States, a decision period applies. In the other Member States the consequences of the decision not being made within the time limit provided in Article 7(2) differ. Failure to decide within the time limit has the most far reaching consequences in Portugal and Spain. In these Member States the absence of a decision is the equivalent of granting the long-term residence status. In Austria and Poland a request for devolution to a higher competent authority can be made under the relevant administrative act. In the Czech Republic, Romania and Slovenia a judicial review is provided for in such cases. In Estonia the applicant has the right to submit a claim for the delayed procedure. In Latvia an interim decision will normally be taken to extend the decision period. If there is no (interim) decision, the applicant has the right to mount a legal challenge. In Germany and Greece the applicant can file a motion against the authorities and in Malta the application shall automatically be referred for appeal. The right to file a motion against the authorities as the sole consequence of exceeding the time limit is, according to the Greek rapporteur, not in conformity with the Directive.

In the Netherlands the applicant may file a request for review. In Bulgaria, Luxembourg and France the legislation stipulates that, if the competent authority has failed to take the decision in time, this should be considered a silent refusal. In Cyprus and Slovakia the consequence is an extension of the temporary residence permit of the applicant; the temporary residence permit will mention that the holder has applied for long-term resident status. In Sweden supervisory authorities can perform a special investigation which could lead to a critical statement directed at the public authority concerned or at a certain official. It can

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also lead to disciplinary action or prosecution and the state can be held liable for damages for the erroneous exercise of authority. In Hungary the supervisory authority (Central Immigration Authority) shall, upon request or ex officio, examine the cause of the omission and shall order the authority (Regional Directorates) to proceed within an appropriate deadline. If the authority fails to take a decision before the deadline, the supervisory authority will appoint another authority which has the same competence as the defaulting authority. The superior authority shall inform the person concerned regarding these measures and examine whether the appointed authority is fulfilling its obligations. If the supervisory authority fails to proceed and take measures, the competent court will order the local authority to proceed, based on the request from the person concerned

Notification of the decision

According to the last sentence of Article 7(2) subparagraph 1 of the Directive, the decision about acquisition of the status should be notified in accordance with the notification procedures under the relevant national legislation.

Belgium is the only Member State where a specific provision is lacking. Although Belgian law does not provide for a special rule concerning this issue, it provides for the possibility of specifying the application procedure in more detail by regulation.

According to the German and Greek reports the notification procedures in Germany and Greece respectively are in accordance with the national administrative legislation. In Germany the Administrative Procedures Act applies, the rules on formal notification by post, public announcement or electronic delivery are additionally laid down in the notification statutes of the federal states. In all the other Member States the decision will be notified in writing. Though in Cyprus the law provides the applicant must be informed in writing there are no practical rules as how the letter should be send. According to the Cypriot rapporteur this should be considered as a legal problem. In Spain the decision will be notified by certified letter. In the Netherlands the decision could also be notified by issuing the long-term residence permit. In almost every Member State written notification will be sent by (regular) post. According to Finnish legislation a positive decision will be sent by regular post; a negative decision should be sent by post with confirmation of delivery or, if the authorities consider this necessary, the decision will be notified by a bailiff, police or border control authorities. Estonia and Italy also distinguish between positive and negative decisions. In Estonia a decision will be sent by e-mail, if the decision is negative the decision will be sent also by regular post. In Italy a positive decision will be notified to the person concerned by registered letter; if the decision is negative, it will be passed or notified in a way that ensures confidentiality. In Poland the decision will be sent by post with acknowledgement of receipt or by administrative officers. In Slovenia the decision could be sent by post, as well as by e-mail, by an official of the authorities or by 'legal or natural persons that perform postal deliveries as their professional activities'. In Spain the notification will be sent by a system that can prove reception. In two Member States (Lithuania and Romania) there could be a problem with the Directive. In Lithuania and Romania the decision should be sent to the applicant or to the foreigner within three (Lithuania) or fifteen (working) days (Romania). According to the Directive, written notification should be made to the applicant in any event no later than six months from submission. In both Member States the decision period for the authorities is six months. If the Member States want to use this maximum period to decide and notification is made outside the six-month period, this could present a conflict. However, in practice the decision will often be taken within six months.

The third-country national should be informed of his rights and obligations under the Directive according to Article 7(2) subparagraph 3. In five Member States (Germany,

Lithuania, Malta, the Netherlands and Sweden) explicit reference to the Directive is made. However, in most Member States a general provision in the administrative legislation applies. In Finland a general provision applies as well. According to the Finnish rapporteur this should be considered a legal problem. In five Member States even a general provision is lacking (Italy, Latvia, Romania, Slovakia and Spain). Nevertheless, in Spain, in practice the immigration offices have information papers regarding certain rights, e.g. education, social assistance, access to employment. According to the national rapporteur, in the Czech Republic there is a practical problem since the information routine does not function satisfactorily.

Articles 7(2) subparagraph 2 and 3, Q.9.B	
Legal Problem	Belgium, Cyprus, Finland, Italy, Latvia, Lithuania, Romania, Slovakia, Spain
Practical Problem	Czech Republic

2.2.2.3 The EC Long-Term Residence Permit (Q.10.A, Q.10.B)

Period of Validity (Q.10.A)

Long-term resident status shall be permanent (Article 8(1)). According to Article 8(2) Member States should issue an EC long-term residence permit to long-term residents. The permit should be valid for at least five years and it shall, upon application if required, be automatically renewable upon expiry. The permit certifies the status and expiry of the permit shall in no event entail the withdrawal or loss of the long-term residence status (see para. 2.2.3.6).

Only one Member State (Belgium) has not yet regulated the issue of the validity of the EC long-term residence permit. In Belgium the law states that the period of validity of the EC long-term residents permit will be specified by Royal Decree, which has yet to be drafted. In four Member States (Finland, Italy, Germany, Slovenia) the EC long-term residence permit certifying long-term resident status is valid for an indefinite or undetermined period. In Italy however the EC long-term residence permit, which is issued for an undetermined period, could be regarded as an identity card. If the long-term resident wants to use the document as an identity card, the document must be renewed after five years, since the permit has to be considered an identity card which has a maximum validity of five years. The Italian rapporteur mentions a problem of coordination between the law of transposition and the Enactment regulation of the single text on immigration. In thirteen Member States the EC long-term residence permit (the document certifying the status), has a validity of five years (Austria, Cyprus, Estonia, Greece, Hungary, Latvia, Lithuania, Malta, the Netherlands, Poland, Romania, Spain and Sweden). In one Member State (Portugal) the permit is valid for at least five years. In France and Slovakia the permit has a validity of 10 years. In the Czech Republic the document certifying the long-term resident status also has a validity of ten years if the long-term resident is 15 years or older, otherwise the document is valid for 5 years. Although Article 8(2) states that the residence permit should be valid for at least five years, in one Member State the EC long-term residence permit could be valid for less than five years. This is the case in Bulgaria. In Bulgaria the EC long-term residence permit corresponds to the permanent residence permit. Therefore the validity of the EC long-term residence permit depends on the validity of the passport of the third-country national under which the person concerned entered Bulgaria. On the grounds of the permanent residence permit, an identity

card will be issued to the foreigner and the validity of this identity card depends on the validity of the national passport. In our view this should be considered a legal problem.

Renewal

In three Member States (Greece, Latvia and Poland) the EC long-term residence permit will be automatically renewed upon expiry.

In the majority of Member States the permit is automatically renewable upon request. This is the case in Bulgaria, Cyprus, the Czech Republic, France, Hungary, Luxembourg, Malta, the Netherlands, Portugal, Romania, Slovakia and Spain. In four Member States (Austria, Estonia, Lithuania and Sweden) the long-term resident has to reapply for the permit (not for the status). In Austria the authority can only refuse the renewal request if reasons exist under the Aliens Police Act. According to the Lithuanian report no new examination will take place in Lithuania. Nevertheless, in Lithuania renewal does depend on the fulfilment of some formal requirements. The long-term resident has to submit a valid travel document, a request to formalise the residence permit, the residence permit itself, three photographs, a document confirming that he has sufficient means of subsistence in Lithuania, a document proving the availability of accommodation and a document showing payment of the fee. The Lithuanian authority should take a decision on the renewal within two months. Only the Lithuania rapporteur considers the fact that the long-term resident has to reapply for the permit as a legal problem.

In Belgium, this issue has not been regulated. In Belgium the renewal procedure should be specified by the Royal Decree which is yet to be drafted.

In Estonia long-term residents (and Estonian citizens) must have an identity card. Since the permit is printed on the backside of the identity card the long-term resident has to apply for the extension of the identity card and if he has got a new travel document issued by another country then the long-term resident has to apply for a new sticker that is inserted to the travel document. It is unclear whether the long-term resident has to fulfil some (formal) requirements.

Given that the EC long-term residence permit in Finland, Germany, Italy and Slovenia has a validity of an indefinite or undetermined period, no renewal procedure exists in these three Member States. However, if the long-term resident wants to use the permit as an identity card in Italy, the identity card must be renewed after five years. The renewal of the identity card will be performed upon request.

Article 8 (2), Q.10.A	
Legal Problem	Belgium, Lithuania
Practical Problem	Italy

Form (Q.10.B)

In ten Member States (Austria, Cyprus, Finland, Greece, Hungary, Latvia, Luxembourg, Malta, Slovenia and Sweden) the EC long-term residence permit takes the form of a sticker in the travel document of the third-country national. If the long-term resident does not have a valid travel document, a special document will be issued to the long-term resident in Slovenia. In seven other Member States the residence permit is issued as a special document (Germany, the Netherlands, Poland, Portugal, Romania, Slovakia and Spain). In Romania and Spain there is a legal problem because the document does not mention ‘long-term residence-EC’. In the Netherlands there is a legal problem because the words ‘long term resident – EC’ are not on the designated place at the front side of the document and therefore the document is not in

accordance with Council Regulation No 1030/2002. Although in Lithuania in practice a separate document is being issued the issue has not been regulated by legislation. In Bulgaria the long-term resident receives an identity card and the competent authority stamps a sticker or seal in the national travel document of the status-holder to register the issue of the residence permit. According to the Bulgarian rapporteur there is a problem since no internal provisions are adopted concerning the rules for a uniform format as set in Council Regulation No 1030/2002. In the Czech Republic the residence status will be marked in the passport but the permit could be issued as a sticker or as a special document. According to the authority the permit in practice will be issued as a sticker. In Estonia all Estonian citizen and also long term residents must have an identity card. The EC LTR status is printed on the back side of the identity card. The permit can also be issued as a sticker inserted to the travel document. In France the long-term residence permit takes the form of a plastic card and a sticker in the passport.

One Member State uses a completely different form. In Italy the residence permit is in electronic format with a microchip containing the holder's personal data, photograph and fingerprints in digital format. In Belgium this issue has not yet been regulated; the law states that the model of the EC long-term residence permit will be specified by regulation. It is clear that in Cyprus and Luxembourg no model exists but it seems that in the majority of the Member States the model is not yet available or is not accessible to the national rapporteurs. Nevertheless this is only considered a problem by the Cypriot and Luxembourgish rapporteurs. Only eight Member States (Austria[37], Estonia, Finland, Latvia[38], the Netherlands[39], Slovenia, Spain and Sweden) provided a copy of the EC long-term residence permit. See Annex IV for these copies. The German rapporteur referred to a provision in the *Aufenthaltsverordnung***.**[40] In the Czech Republic and Slovakia a model exists but the model is not attached to the national reports.

Article 8(3), Q.10.B	
No transposition at all	Lithuania, Luxembourg
Legal Problem	Belgium, Bulgaria, Netherlands, Romania, Spain
Practical Problem	Cyprus

2.2.3 Loss of the status in the First Member State (Q 11.A-B-C-D-E-F)

2.2.3.1 Loss of the status (Q.11.A)

According to Article 9(1), long-term residents shall no longer be entitled to maintain their status in cases of:

- detection of fraudulent acquisition of the status (sub a);
- an expulsion order under Article 12 (sub b);
- absence from the European Community territory for a period of 12 consecutive months (sub c).

[37] Austria provided a link to the residence permit.
[38] The Latvian document was too big to be added in Annex IV.
[39] In the Netherlands the long-term resident will be issued a permanent residence permit with the registration «EG-langdurig ingezetene» (EC long-term resident) (Article 20 jo 21(3) Vreemdelingenwet jo. 7b document II Voorschrift Vreemdelingen). The Dutch rapporteur provided us with a copy of the permanent residence permit since a model with the registration «EG-langdurig ingezetene» is not digitally available.
[40] Cf. BGBl. I 2004, 2945, 3028 (D 14).

In cases of the detection of fraudulent acquisition of the status and in the event of an expulsion order under Article 12, long-term residents are no longer entitled to maintain their status in any of the Member States. Though it is not completely clear whether the detection of fraudulent acquisition of the status, results in loss of the status in Austria.

In cases of expulsion orders under Article 12 (sub b), long-term residents are no longer entitled to maintain their status in any of the Member States. Expulsion is not explicitly mentioned as grounds for losing the status in all Member States but, in these Member States (Belgium, Cyprus, Czech Republic, Estonia, Germany, Italy, Latvia, Lithuania, the Netherlands, Poland, Slovakia and Slovenia), the status could be lost/withdrawn if the long-term resident constitutes a (serious) threat to public order or public security. It could be assumed that, in cases involving an expulsion order under Article 12, the third-country national will undoubtedly lose his status. According to both Maltese and Swedish legislation, an expulsion order and a threat to public order and/or security are grounds for loss/withdrawal of the status. Although, according to Bulgarian law, the right to reside in Bulgaria will be withdrawn in the event of an expulsion measure, some differences exist regarding the conditions which have to be met as set forth in Article 12 of the Directive and those implemented in national law (see par. 2.2.4.1.). In Finland the long-term residence permit can also be withdrawn if another Schengen State asks Finland to cancel the permit on grounds that the holder of the permit has been issued a prohibition of re-entry and has been ordered to be removed from the Schengen territory on the grounds that he constitutes an actual and sufficiently serious threat to public policy or public security.

Posing a threat to public policy could be grounds for withdrawal/loss of the status according to Article 9(3) but the seriousness of the offences the person concerned has committed has to be considered. It is unclear whether this is the case in the aforementioned Member States since only the Slovak report mentions that the provision on public policy in Slovak legislation is incompatible with the Directive. (See para. 2.2.3.2.)

Although Article 9 has been formulated imperatively, in Estonia and Germany, these grounds *could* be a reason for losing the status. In Finland the status could be withdrawn in cases of the detection of fraud. In expulsion cases, the status shall be withdrawn.

Absence from EU territory

In the event of absence from the European Community territory for a period of 12 consecutive months, long-term residents are no longer entitled to maintain their status in 21 Member States (Austria, Belgium, Cyprus, the Czech Republic[41], Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden). In Slovakia the status of a long-term resident will be jeopardised as well if he stays abroad for over 180 consecutive days without written notification submitted to a police department. In the Netherlands the long-term resident could loose his status if the long-term resident has been outside the territory for more than six months.

In two Member States (Bulgaria and Spain) the legislation conflicts in two ways with the Directive; not only because Article 9 (1) sub c has not been implemented, but also because a long-term resident will lose his status in these Member States after a shorter period of absence than allowed by the Directive or in the event of absence of twelve consecutive months from the territory of the Member State instead of absence from the territory of the European Union. In Bulgaria the long-term resident status will be withdrawn if the person has

[41] Ground for withdrawal of the permanent residence status. Because the long-term residents status depends on the validity of the permanent residence permit the status holder will not be entitled to maintain his status.

resided outside the territory of Bulgaria for more than six months in the previous year. In Spain the long-term resident will lose his status if he has been outside the territory of Spain for more than twelve consecutive months or 30 months in five years. In France the long-term resident will loose his status only after a three years absence of the territory of the European Community. The national rapporteur does not point this out as a legal problem.

Only in Austria and Germany does absence of more than twelve months from the EU result in an automatic loss of status. In Romania it depends on the grounds for losing the status. Some grounds require an administrative decision; loss of the status on other grounds is automatic. Although in Slovenia a legal provision is not explicitly provided, in practice the competent authorities issue the decision on the loss of status against which a long term resident may appeal. In Bulgaria the norm is not implemented.

In the other Member States a decision by the administration is required.

Other grounds

In some Member States there are other grounds (than provided for in article 9) on which the long-term resident could lose his status.

For instance in Austria the third-country national can lose his status if he fails to submit an application for a residence permit within six months after expiration of the old one.

In Bulgaria the long-term status could also be withdrawn on the grounds mentioned in the LFRB, which contains general grounds for denial of a visa and access to the country.

In the Czech Republic the law stipulates several reasons for withdrawing the national permanent residence permit which exceed the framework given by the Directive. Due to the fact that the long-term resident status is connected to the permanent residence permit, the long-term resident will not be entitled to maintain his status. The national residence permit could for example be withdrawn if the third-country national did not fulfil the duty to apply for a residence status for his/her child.

In France, the status will be withdrawn in case of polygamy and in case the holder has been involved in a crime which has caused permanent invalidity to a child younger than 15 years of age. Lastly, the status can be withdrawn in case the holder is an employer who employed an alien without the required work permit.

In Lithuania a permanent residence permit will become invalid if the foreigner receives a residence permit from another Member State**.**

In Slovakia there are several reasons for loss of the status which are not provided for in the Directive like reasonable suspicion that the alien would endanger the health or the rights of freedoms of others and, on determined territories the nature.

Besides the grounds of Article 11, the right of residence will end in Romania if a permanent right of residence is acquired for the territory of another state.

Only the Bulgarian, the Czech, Slovakian and Spanish rapporteurs consider the fact that there are other grounds than provided for in the Directive as a legal problem.

In most Member States the long-term resident will also lose his status after acquisition of the status in another Member State and absence for more than six years from the territory of the Member State (see para. 2.2.3.4).

Article 9(1), Q.11.A	
Legal Problem	Bulgaria, Czech Republic, Netherlands, Slovakia, Spain

2.2.3.2 Period of Absence (Q.11.B)

According to article 9(2) Member States may, by way of derogation from paragraph 1 sub c, stipulate that absences exceeding 12 consecutive months or for specific or exceptional reasons shall not entail withdrawal or loss of the status.

Only seven of the Member States (Austria, Belgium, the Czech Republic, Finland, Malta, Portugal and Slovenia) used the possibility to derogate from the 12-month period in specific and/or exceptional cases.

In Austria, for example, in cases of serious illness or fulfilment of a social or military service obligation, the person is entitled to reside out of the state for up to 24 months within a five-year period.

In Belgium the law states that the conditions under which the foreigner does not lose his/her right to return after an absence of over 12 months from the territory of the Community will be specified by regulation;

In the Czech Republic, derogation from paragraph 1 (c) exists based on pregnancy and childbirth, serious illness, studies, vocational training or when the third country national had been posted as employed worker to another country by an employer/service provider;

In Finland the long-term resident has to submit an application within 12 months to maintain his status, special or exceptional reasons include studying, working on a long-term project, illness or family grounds.

According to Maltese legislation, exceptional and specific circumstances may be determined by the Director. According to the national report, studying could be such a circumstance.

In Portugal special and exceptional grounds could be found where the long-term resident remains in his country of origin to develop a professional or business-related activity of a cultural and social nature.

In Slovenia absences may exceed 12 months in the event of absence due to work, study or medical treatment.

In France there is a general derogation. In France the long-term resident will loose his status only after an absence of 3 years. For specific reasons the status holder is allowed to maintain his status even in case of absence of more than 3 years.

2.2.3.3 Threat to public policy (Q.11.C)

Article 9(3) states that Member States may provide that the long-term resident shall no longer be entitled to maintain his status in cases where he constitutes a threat to public policy but such threat is not a reason for expulsion.

In only four Member States (Belgium, Bulgaria, Hungary and Latvia) national law does not provide for the possibility that the long-term resident is no longer entitled to maintain his status because he presents a threat to public policy or public security, but is not expelled from the country. The criteria for non-expulsion in the other Member States differ per Member State. In some of the Member States the criteria are based on general principles of non-refoulement or family life (8 ECHR). Other reasons are for example that the person concerned is stateless or special circumstances. Health reasons could prevent expulsion as well.

Differences also exist between Member States regarding which status the former long-term resident may enjoy and reside in the country.

If the long-term resident status is to be withdrawn in Germany, Poland, Slovakia and Slovenia, residence by the person concerned will (usually) be tolerated (for a certain period). In Romania the person concerned could also be granted a right of temporary stay instead of tolerated stay without a permit. In Poland it is possible to grant refugee status instead of tolerated stay. In seven Member States (Austria, Estonia, Finland, France, Italy, the Netherlands and Portugal) the former long-term resident will/could be issued with a

(temporary or continuous) residence permit. In Greece the person concerned may submit an application for a residence permit. In Lithuania there is no status provided in cases when expulsion is not possible, because in case of suspension of expulsion the foreigner will have to wait (most probably accommodated or detained in the Foreigners' Registration Centre with minimum subsistence guaranteed) until it will become possible to execute expulsion. However, if the circumstances preventing expulsion persist for a period of one year, the foreigner would be issued temporary residence permit. The person concerned will be authorised to stay in Luxembourg for more than three months.

In two Member States (the Czech Republic and Sweden), where the long-term resident constitutes a threat to public policy but this threat is not a reason for expulsion, the person concerned is allowed to stay and hold the permanent residence permit, although he loses the long-term resident status.[42]

Cyprus provides for the possibility that the long-term resident who is no longer entitled to maintain long-term resident status on the grounds of public order and/or public security may reside in the Member State, but further legislation is needed. In Cyprus the status under which the person concerned may stay in Cyprus in cases of the withdrawal of long-term resident status on public order and/or security grounds has not yet been regulated. The situation in Malta is unclear. In Spain the provision has not been transposed.

2.2.3.4 Acquisition of Status in another Member State (Q.11.D)

According to Article 9(4) first paragraph, a long-term resident who acquires the long-term resident status in a second Member State according to Chapter III of the Directive shall no longer be entitled to maintain his/her long-term residence status in the first Member State.

According to paragraph 2, after six years of absence from the territory of the Member State, the person concerned shall in any event no longer be entitled to maintain his/her long-term resident status in the said Member State.

In all Member States except Bulgaria and Spain the provision has been transposed. It is not clear whether the long-term resident is entitled to maintain his status in Estonia if he acquires the status in another Member States.

Although Article 9(4) has been transposed in the Czech Republic, a legal problem exists: noting that in the Czech Republic the long-term resident will obtain a national permanent residence permit and an EU long-term resident permit, the following problem has arisen. In the Czech Republic, obtaining the long-term resident permit in another Member State is grounds for loss of the permanent residence permit, not for the EC long-term residence permit. The problem is that it is not possible to hold an EC long-term residence permit without the national permanent residence permit, therefore a gap in national legislation can be observed.

Article 9(4), Q.11.D	
No Transposition At All	Bulgaria, Spain
Legal Problem	Czech Republic, Estonia

2.2.3.5 Facilitated Re-Acquisition (Q.11.E)

According to Article 9(5), Member States should provide for a facilitated procedure for the re-acquisition of the long-term resident status with regard to the cases referred to in Article 9(1)(c) and Article 9(4).

[42] In these Member State it is not possible to obtain the status without obtaining a permanent residence permit

This procedure shall apply in particular to cases of persons who have resided in a second Member State on grounds related to the pursuit of studies. The conditions for re-acquisition of the long-term resident status shall be determined by national law. We asked the national rapporteurs whether the legislation of their Member State provides for a facilitated re-acquisition procedure for the situation where a long-term resident has lost his status because he has been absent for more than twelve months from the territory of the EU (article 9(1)(c)).

Five Member States (Austria, Bulgaria, the Czech Republic, Lithuania and Spain) do not provide for a facilitated procedure in this situation. The Member States where, according to the national rapporteurs, a facilitated procedure is envisaged for reacquiring the status in the event of loss of status due to absence from the territory for more than twelve months are Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Italy**,** Latvia, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Sweden

However, important differences exist in the procedures. In five Member States a shorter period of residence is required. In Romania the person concerned should have been resident in Romania for one year. In Latvia a two-year period applies. In Italy and Poland a period of three years' residence will be required. In Germany periods of time spent in Germany while holding long-term residence status could be taken into account for a maximum of four years. This means that if a long-term resident has been resident in Germany for 3 years before he loses his status, he could submit an application for the requisite two years after his return to Germany. In the Netherlands, Slovenia and Sweden the person concerned does not have to fulfil the residence requirement. This seems to be the case in Portugal as well. In Sweden this is only the case if the person concerned is granted a permanent residence permit or a residence permit for the purpose of settling in Sweden. In France, the procedure is facilitated in the sense that to prove certain requirements have been fulfilled a 'declaration of honour' is sufficient. In Slovakia a former long-term resident who applies for the status and fulfils the general criteria for granting a subsequent permit (criteria for granting the status) does not have to fulfil other criteria regarding his stay in Slovakia. In Hungary, no checks are performed as to whether the applicant meets the residence requirement of Article 4 of the Directive. In case of re-acquisition of the status in Greece the person concerned does not have to proof that he meets the integration requirement and has sickness insurance.

In Finland, the procedure for re-acquiring the status is 'lighter' since the municipality, not the Directorate of Police, takes the decision. In Estonia a simplified procedure exists for re-acquisition of the status in cases of absence of more than six years from the territory of the State and it is not applicable to cases of absence from the EU of more than 12 months and in the case of acquisition of the long term residence status in another member state. In Estonia studies in another Member States is not given as a reason to re-establish the residence permit in a simplified procedure. For us it is not clear in what way the reacquisition procedure in Estonia is simplified. The same applies to Cyprus, Luxembourg and Malta. According to the national report the person concerned has to fulfil all criteria to obtain the long-term residence status again in Cyprus. In Belgium a procedure exists for facilitating re-acquisition provided by law; however, the conditions of the procedure are not provided in national law and still have to be specified by regulation. The expectation is that the existing conditions of the Royal Decree of 8 October 1981 will be applicable.

Article 9(5), Q.11.E	
No Transposition At All	Austria, Bulgaria, Czech Republic, Lithuania, Spain
Legal Problem	Belgium

2.2.3.6 Expiry of the permit (Q.11.F)

According to Article 9(6), expiry of the EC long-term resident permit shall in no event entail the withdrawal or loss of the long-term resident status.

The majority of Member States have determined in national law that expiry of the long-term residence permit shall not in no event entail the withdrawal or loss of the status. In four Member States the long-term residence permit is issued for an undetermined/indefinite period, so the permit cannot expire. This is the case in Finland, Germany, Italy and Slovenia.

In three Member States (Austria, Luxembourg and Spain) the issue has not been regulated. In Austria, applications submitted after expiry of the period of validity of the long-term residence permit shall be treated as extension applications only if the application has been submitted within a period of six months. Afterwards the application shall be considered as an initial application and no exceptions for long-term residents are mentioned. In Luxembourg and Spain the long-term resident becomes an irregular immigrant after expiry of the EC long-term resident permit. In Spain, in practice the long-term resident will lose the status when the permit expires, thus the person becomes an irregular immigrant.

In three Member States (Belgium, Estonia and Romania) no explicit provisions are made in the legislation but, in practice, expiry of the long-term residence permit does not automatically mean loss of the status. In Belgium practical problems may arise since a foreigner is obliged to hold a permit. In Estonia the EU long-term resident permit is no different from the national long-term residence permit. In Romania, although there is no explicit provision on the rule provided by the Directive, Article 9(6), expiry of the long-term residence permit shall not entail the withdrawal or loss of the status through interpretation and application of the general alien law.

Hungary represents a different case. Legally, the status of long-term resident cannot be lost. However, in practice, the person concerned will not be able to certify entitlement to the benefits of permanent resident status.

Article 9(6), Q.11.F	
No Transposition At All	Austria, Luxembourg, Spain
Legal Problem	Estonia, Romania
Practical Problem	Belgium, Hungary

2.2.3.7 Authorisation to remain in the Member State (Article 9(7))

Article 9(7) states that where the withdrawal or loss of long-term resident status does not lead to removal, the Member State shall authorise the person concerned to remain on its territory.
When taking this decision Member States shall consider:

- whether the person concerned fulfils the conditions provided for in its national legislation;
- and/or whether the person concerned constitutes a threat to public policy or public security.

According to the national reports, all Member States with the exception of Bulgaria, Hungary, Luxembourg and Spain have correctly transposed this provision. Bulgaria, Hungary and Spain have not transposed Article 9(7) at all. Luxembourg has transposed Article 9(7) incompletely.

Article 9(7)	
No Transposition At All	Bulgaria, Hungary, Spain
Legal Problem	Luxembourg

2.2.4 Protection from Expulsion in the First Member State (Q.14.A, Q.14.B, Q.14.C)

2.2.4.1 Expulsion on public order grounds (Q.14.A)

Article 12(1) states that Member States may make a decision to expel a long-term resident solely in cases where she or he constitutes an actual and sufficiently serious threat to public policy or public security.

A significant majority of Member States have correctly transposed the provision that long-term residents may be expelled on public policy or public security grounds only if they constitute an actual and sufficiently serious threat.

In some Member States transposition has taken place but some legal problems still remain.

In the case of Bulgaria, for example, the transposition norm refers to a 'serious threat to public policy or public security' but does not use the term 'an actual and sufficiently serious threat'.

In France there is a legal problem while the refusal to grant or to renew a residence permit may also lead to expulsion, in which case this measure will not be based on public policy or security reasons.

In Estonia specific provisions for long-term residents are missing in the Obligation to Leave and Prohibition to Enter Act but, according to the Aliens Act, the long-term residence permit can be declared void in the event of a serious threat to public policy, which can lead to expulsion.

Hungary explicitly adds the term 'national security' to the term 'public security'.

In the Netherlands the transposition norm does not mention that the threat has to be 'actual and sufficiently serious', but instead employs a 'sliding scale' which links the expulsion possibility on the one hand to the length of the detention to which the person concerned is sentenced and, on the other hand, to his or her period of legal residence in the country.

In Romania makes no specific provision on the issue and possible expulsion is provided for any threat to public policy or national security without the guarantees specified by Article 12(1).

In Spain transposition is incomplete since the element of 'actual and sufficiently serious threat' is not mentioned and is ambiguous. The external relations between Spain and other states are also added as grounds for expulsion.

Article 12(1), Q.14.A	
No Transposition At All	Estonia
Legal Problem	Bulgaria, France, Hungary, Netherlands, Romania, Spain

Article 12(2) states that the decision referred to in paragraph 1 shall not be based on economic considerations.

Most Member States have also correctly transposed Article 12(2), providing that the expulsion of a long-term resident shall not be based on economic considerations.

Belgium, Bulgaria, Estonia, France, Hungary, Italy, Lithuania, Poland, Romania, Slovakia and Spain have not transposed the provision at all.

Article 12(2)	
No Transposition At All	Bulgaria, Estonia, France, Hungary, Italy,

	Lithuania, Romania, Slovakia, Spain
Legal Problem	Belgium, Poland

2.2.4.2 Relevant Considerations (Q.14.B)

Article 12(3) states that before taking a decision to expel a long-term resident, Member States shall take into account the following factors:

-the duration of residence in their territory;

-the age of the person concerned;

-the consequences for the person concerned and his/her family;

-links with the country of residence or the absence of links with the country of origin.

A significant number of Member States have transposed this provision in the sense that all the elements mentioned in the Directive are taken into consideration before taking a decision on the expulsion of a long-term resident.

Although France does not explicitly transpose the provision, the general principles of French law apply.

Estonia's transposition is incomplete and somewhat ambiguous. Expulsion can be based on the refusal and the nullification of a residence permit. For refusal, a limited list of criteria applies: nullification is regulated by a longer list. In Spain, although transposition is otherwise incomplete and ambiguous, the administration will give weight to the personal and family circumstances of the resident**.**

In Hungary, the obligation to take into account 'the consequences for the person concerned and his/her family' has not been transposed.

In Sweden transposition has taken place but a legal problem has arisen because the four elements that Member States shall consider are not taken into consideration in all instances of expulsion of a long-term resident.

In the case of Bulgaria, the norm refers only to long-term residents from another Member State, not to long-term residents in Bulgaria; therefore, there is no transposition of the above provision.

In Cyprus the four elements are taken into consideration when refusing to grant long-term resident status, however, there is no provision for regarding these elements in the event of an expulsion decision.

Neither Latvia nor Romania has explicitly transposed the provision.

Article 12(3), Q.14.B	
No Transposition At All	Cyprus, France, Latvia, Romania
Legal Problem	Bulgaria, Estonia, Hungary, Spain, Sweden
Practical problem	Germany

2.2.4.3 Legal remedies against expulsion in the First Member State (Q.14.C)

According to Article 12(4) a judicial redress procedure shall be available to the long-term resident where an expulsion decision has been passed. A comparable provision concerning removal decisions in the second Member State is missing. The decision to leave the territory of the second Member State will be executed 'in accordance with the procedures provided for by national law, including removal procedures' (Article 22). The Directive provides only for the right to mount a legal challenge if the permit is not renewed or is withdrawn (Article 20(2)).

Formal transposition of Article 12(4) has taken place in Austria, Bulgaria, Estonia, Finland, Greece, Lithuania, Luxembourg, Malta, Portugal and Romania.

In Austria redress is available to a long-term resident through the Security Director, which is a federal authority in the regions. In Bulgaria the expulsion decision is subject to a single-instance procedure before the Supreme Administrative Court (without suspensive effect). The same applies in Romania: an appeal to the Court of Appeal only. In Estonia the long-term resident may appeal to a court or to the Citizens and Migration Board (which is an independent identity within the Ministry of the Interior).
The ordinary judicial remedies (see Q.12.B) are also available in expulsion cases in Finland (administrative courts), Greece (administrative courts), Lithuania (administrative courts), Luxembourg (administrative courts), Malta (Immigration Appeals Board) and Portugal (administrative courts),

In Belgium, Cyprus, the Czech Republic, France, Germany, Hungary, Italy, Latvia, the Netherlands, Poland, Slovenia, Slovakia, Spain and Sweden Article 12(4) has not formally been transposed but pre-existing domestic law is in conformity with this provision. In some of these Member States court proceedings are preceded by an internal administrative review procedure.

In France, in the event of an expulsion order, the person concerned will be heard by an independent commission (cases of absolute urgency excluded). The right to appeal against the decision of this commission is provided. In Italy it is possible to lodge an appeal before the court of the place where the authority that has issued the expulsion order is located. In Slovenia an appeal to the High Court is guaranteed in cases of conviction for a criminal offence. In other instances the ordinary remedies against annulment of the residence permit only (administrative review and appeal, see Q.12.B.) are available. In expulsion cases Spanish legislation provides for a preferential procedure (a simplified administrative injunction procedure).

The same judicial remedies as those available for refusal, non-renewal or withdrawal of residence permits (see Q.12.B) are also available in expulsion cases in Belgium (right of appeal to the *Conseil du contentieux des étrangers*), the Czech Republic (administrative courts), Germany (administrative review and appeal), Latvia (administrative review and appeal), the Netherlands (administrative review and appeal), Poland (administrative review and appeal), Slovakia (administrative review and appeal) and Sweden (administrative review and appeal). In Slovakia the remedy is not considered effective while review and appeal have no suspensive effect and suspensive effect is rarely granted by the courts.

The relevant pre-existing domestic law in Cyprus is Article 146 of the Constitution which provides for judicial review in the Supreme Court. This remedy is not considered effective, while it is expensive, time-consuming and has no suspensive effect (see also Q.12.B.).

Article 12(4), Q.14.C	
Legal Problem	Cyprus, Slovakia

2.3 Specific rules related to residence in another Member State

2.3.1 The right to reside in another Member State (Q.16.A, Q.16.D, Q.18)

Chapter III of the Directive (Articles 14 – 23) sets forth the rules concerning the movement of long-term residents to a second Member State. Article 14(1) contains the obligation for Member States to allow long-term residents from another Member State to reside on their territory for a period exceeding three months. Article 14(2) specifies that the status-holder from one Member State can obtain residence in the second Member State on three grounds:

a) exercise of an economic activity;
b) pursuit of studies or vocational training;
c) other purposes.

As has been described under 1.5, several Member States have only partially transposed or implemented the Directive, because Member States were still applying the general rules on the admission of third-country nationals to persons having acquired the EC long-term resident status in another Member State or because, after admission, those persons were issued with a regular national (temporary) residence permit without any mention of their special status under the Directive on that permit. The result is that those persons will either be refused admission under the general national admission rules or, if they are admitted, third persons and organisations in the second Member State will be unable to recognise those third-country nationals as having a special status under the Directive, which entitles them, for instance, to equal treatment under Article 21 and to special protection from expulsion. This form of implementation will enhance the chance that those rights under the Directive will not be granted in practice. Austria, Estonia, Finland, France, Italy, Latvia, Lithuania, Romania and Spain have not introduced specific articles for status holders coming from another Member State or have only partially transposed the obligations emanating from Chapter III of the Directive. These Member States still (partially) apply the general rules applicable to all third country nationals. In Bulgaria and Slovakia there is no document on which the EC status is mentioned. In Estonia, one sentence is dedicated in the law to the situation of status holders coming to Estonia stating that these status holders will have the rights attributed to them by Chapter III of the Directive. Paragraph 2 of Article 14 has not been transposed. Therefore, there is a chance that status-holders from another Member State might not be admitted. A status holder's right to reside on their territory has not been transposed into the national laws of Hungary and Spain. In Hungary, status-holders from another Member State 'may' obtain a residence permit. Spain has not yet transposed Chapter III of the Directive.

In all other Member States a residence right for status-holders from other EU countries is provided on all three grounds mentioned in Article 14(2), except in Bulgaria and Lithuania. Bulgaria does not grant a residence right to long-term residents from other Member States wishing to reside in Bulgaria for 'other purposes' than the exercise of an economic activity or the pursuit of study. The possibility of residing in Lithuania as a long-term resident from another Member State for 'other purposes' is not explicitly addressed in national law.

Articles 14(1) and (2) have also been formally transposed in Romania. However, the article in the Aliens Act transposing the first paragraph of Article 14 is drafted in a very unclear way. It provides for the right to extension of the right of temporary stay of over 90 days. Paragraph 2 has not been transposed, but is recognised in Romanian law by way of interpretation.

Article 14(1), Q.16.A	
No Transposition At All	Estonia, Spain
Legal Problem	Hungary, Lithuania, Romania

Article 14(2), Q.16.A	
No Transposition At All	Estonia, Spain

Legal Problem	Bulgaria, Lithuania, Romania
Practical Problem	Austria[43]

Restriction of the number of long-term residents

Article 14(4) provides for a derogation from Article 14(1) by providing the possibility for Member States to limit the total number of persons entitled to be granted right of residence. A condition for making use of this derogation is that the rules concerning the limitation were already in force at the time of adoption of the Directive, 25 November 2003. From the reports, it appears that only Austria, Italy and Lithuania restricted the number of persons entitled to be granted a residence right at the time the Directive was adopted. At that time, however, the Austrian and Italian law did not recognise a special quota for third-country nationals who were residing in other EU Member States. The Aliens Law currently in force in Lithuania does not provide for a fixed restriction of the total number of persons to be granted a right of residence.

2.3.1.1 Family members (Q.18)

In Article 16(1), the Directive provides for the right for members of the nuclear family, i.e. the spouse or partner and minor children, to join the long-term resident if he chooses to exercise his right to reside in another Member State. The family is required to have already been reunited in the first Member State. If this is not the case, Directive 2003/86 on the right to family reunification applies.[44]

From the reports, it appears that almost all Member States bound by the Directive provide for family reunification for family members of long-term residents of other Member States in accordance with the Directive. Problems arise in Estonia, Hungary and Lithuania where the general rules regarding family reunification apply.

In Lithuania this means that the sponsor being a long-term resident from another Member State needs to have resided in Lithuania for at least two years before his third-country national family members are allowed to join him. Slovenian legislation will be adapted when the Schengen Convention becomes fully binding upon this country. Slovenian legislation will then provide for the right to family reunification for long-term residents of another Member State, except for those status-holders intending to reside in the Republic of Slovenia to carry out seasonal work or to provide cross-border services as a worker on secondment for a period of a maximum of one year.

Italy handles an accommodation requirement. As mentioned before, Estonia and Spain have not transposed Chapter III of the Directive.

In Hungary, family members ‘may’ get a temporary residence permit. They have no right to join the long-term resident in case he or she wishes to exercise his or her mobility rights in Hungary.

Problems concerning family reunification with long-term residents from another Member State also arise in the Czech Republic, where a family member has to fulfil the same conditions as the long-term resident who applies for the long-term residence permit in the Czech Republic. She or he therefore has to provide more documents with the application than provided for by the Directive. Even if the family member would ask for another type of stay, namely the long term visa, the requirements will still be contrary to the Directive).

[43] A quota is provided for this group of people. This quota might limit the possibility to profit from the right to move to a second Member State.
[44] Article 16(5) Directive.

An example of a country being more lenient than prescribed by the Directive on this point is Sweden, which also allows family formation, and not only reunification, for long-term residents.

Article 16(1), Q.18	
No Transposition At All	Estonia, Lithuania, Spain
Legal Problem	Czech Republic, Hungary, Italy

2.3.2 Conditions to reside in the second Member State (Q.17.B, Q.17.C)

Article 15 determines the conditions for residence in a second Member State. Paragraphs 1 and 4 stipulate that the application for a residence permit shall be made no later than three months after the status-holder from another Member State has entered the territory and that the application must be accompanied by documentary evidence. Paragraphs 2 and 3 exhaustively sum up additional conditions that the Member State may require. Paragraph 2 contains the possibility for Member States to require sufficient resources and sickness insurance. Paragraph 3 opens up the possibility for Member State to require status-holders from another Member State to comply with an integration measure when they apply for a residence permit.

2.3.2.1 Income Requirement and Sickness Insurance (Q.17.B)

The income requirement and the requirement of sickness insurance are formulated in the same way as in Article 5(1) of the Directive. However, as already mentioned, contrary to Article 5(1), Member States are not obliged to require status-holders from another Member State to comply with the income and sickness insurance requirement.

From the national reports it appears that 18 of the 24 Member States bound by the Directive demand that status-holders from another Member State fulfil the requirement of stable and regular resources and to have sickness insurance when they apply for a residence permit.

Belgium only imposes the requirement of sickness insurance if a status holder wishes to reside in Belgium for ‘other purposes’. Students are required to provide a certificate proving that they do not suffer from any illness that would form an obstacle to entry to the territory. In Hungary, sickness insurance is not required in cases where the long-term resident has enough resources to cover the costs of medical treatment. In Italy, both requirements only have to be met in cases where the status-holder wants to reside in Italy for ‘other purposes’. In the other cases mentioned in Article 14(2), the requirements of stable income and sickness insurance do not apply. Finland and Portugal do not require sickness insurance in any of the cases mentioned in Article 14(2).

In Sweden, having stable resources and sickness insurance may be circumstances under which a status-holder from another Member State will be granted a residence permit. But a permit might also be granted under other circumstances. An important measure is the level of social assistance provided for nationals. Since few applications for a residence permit by status-holders from another Member State have been processed, there is as yet no established practice concerning the requirement of sufficient resources.

Finally, Spain has not transposed Chapter III of the Directive.

Difference between income requirement of Article 5(2) and 15(2)

Is there a difference in the level of the income requirement under Article 15 and Article 5? From the reports, it appears that the same level is applied in most Member States. Spain has not transposed Chapter III of the Directive and, in Estonia, the provisions that a third-country national who has long-term residence status in another EU country have not been adopted either. When an application for a residence permit is made, Estonia does not check whether a person has long-term residence status in another EU Member State. It is unclear which income requirement will be applied for status-holders from another Member State applying for a residence permit in Belgium, since the income requirements still have to be further specified in a Regulation. In France, Germany, Greece, Lithuania, Romania and Slovakia, a different income requirement applies to long-term residents from another Member State than to third-country nationals applying for the status for the first time.

Germany and Greece, a more flexible income requirement is applied to status-holders from another Member State who apply for a residence permit.

In Germany, the requirements imposed on third-country nationals applying for the first time are more specific in terms of fulfilling tax obligations, having appropriate health and nursing insurance coverage and receiving income from lawful employment. In contrast to this, the income requirement for status-holders from another member State is considered to be fulfilled in cases where stable and regular resources already exist if the alien does not rely on public support or benefits, including appropriate health insurance coverage.

In Greece, there is a difference in formulation of the income requirement. The monthly income of status-holders from other Member States should be at least equal to the minimum wage, whereas the income of third-country nationals applying for the status in Greece for the first time should be sufficient for him/her and the members of his/her family without recourse to the Greek social assistance system. However, there is no difference between the two ways of calculation of the income.

In Lithuania, a less strict income requirement only applies in case of studies or in case the applicant is a minor. In these cases, 50% of the income which is in other cases required will be applied. In all other cases, the same income requirement is applied. France, Italy, Malta and Romania apply a stricter income requirement for status holders from other Member States. In France, third-country nationals applying for the status will have to earn at least the minimum wage (SMIC). For the calculation of the income of a status holder from another Member State who wants to obtain a residence permit in France, account will be taken of the size of his or her family. This means that a sum of one fifth of the SMIC might be added to the SMIC in case this is required by the size of the family of the status holder.

In Italy, the level of resources of status-holders that want to obtain a residence permit for self-employment or ‘other purposes’ is linked to the amount to be exempted from health contribution. This amount is equal to approximately € 8.500. As far as other purposes are concerned the amount required must at least equal double, i.e. € 17.000. The level of resources that is required from third country nationals applying for the status in Italy must be at least equal to the yearly amount of social allocation, which amounts to €5.000. However, students that hold the EC long-term resident status and who apply for a permit in Italy are required to have half of the level of social allocation as income (approximately (€ 2500).

In Malta, status holders from another Member State applying for a residence permit will have to earn the average gross wage, which amounts to €12,113 (5200 Maltese Lira) a year, whereas third country nationals applying for the status in Malta need to earn the minimum wage, which amounts to €7221 a year. In Romania, status-holders from another Member State have to earn more than the minimum net salary which is required for third-country nationals applying for the status in Romania. Slovakia applies a stricter income requirement for status-holders applying for a residence permit for the purposes of undertaking business. In such cases, status-holders, like all other aliens, have to prove financial cover up to

the amount of five times the minimum wage for each month of residence. In other cases, the same income requirement applies as to those third-country nationals applying for the status in Slovakia.

Possibility of obtaining sickness insurance cover before receiving a residence permit

If sickness insurance is required, is it possible for the long-term resident to obtain cover in the second Member State before the residence permit has been received? This question might be relevant, since a vicious circle might arise in cases where a residence permit is not issued when an applicant is not covered by sickness insurance while, at the same time, sickness insurance will not be provided in cases where the status-holder has not acquired a residence permit in the second Member State.

Cover can be obtained before a residence permit has been issued in Austria, Bulgaria, Cyprus, Estonia, France, Germany, Greece, Hungary, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovakia, Slovenia and Sweden. In France, the long-term resident is required to have lodged an application for a residence permit. In Germany, the long-term resident should at least be able to apply for cover before having obtained a permit. In Hungary, it is only possible to obtain state health insurance, which is far more expensive than regular health insurance, which can be obtained after the settlement permit has been issued. In Luxembourg and Slovakia in such cases sickness insurance can only be obtained from private insurance companies. In Greece, cover from an institution in another Member State is sufficient. For sickness insurance to be obtained in Greece, professional activity is required.

It is not possible to obtain sickness insurance before a residence permit is granted in the Czech Republic. An exception is made if the long-term resident cannot acquire sickness insurance in the first Member State for reasons beyond his control. He or she must then acquire the insurance no later than three days after entry into the Czech Republic.

In Belgium, the provisions of national law only require the presentation of sickness insurance and do not explicitly specify that this insurance must be obtained in Belgium. In Italy, the issue has not been specified.

2.3.2.2 Integration Measures (Q.17.C)

Article 15(3) provides the possibility for Member States to require long-term residents applying for a residence permit to comply with integration measures in accordance with national law. The wording of Article 15(3) clearly differs from that of Article 5(2), which provides the possibility for Member States to require third-country nationals to comply with an integration *condition* if they want to obtain long-term resident status. During the negotiations, an explicit difference was made between 'conditions' and 'measures'.[45] In our view, the last sentence of Article 15(3), gives an example of an integration measure: the attendance of a language course. Passing an exam is an example of an integration condition.[46] The second sentence of Article 15(3) states that Member States may not require long-term residents from other Member States to comply with integration measures in cases where the long-term resident already had to comply with an integration condition in order to be granted the status in the first Member State. According to the third sentence of 15(3), third-country nationals may in any case be required to attend language courses.

[45] Council Document 7393/1/03 of 14 March 2003, p. 5.
[46] See Groenendijk, C. and J. de Heer (2006), Richtlijn Langdurig Ingezeten Derdelanders, losbladig commentaar, The Hague: SDU.

The Czech Republic, Greece, the Netherlands, Portugal, Romania and Slovakia require third-country nationals to fulfil an integration condition when applying for the status. These countries, however, do not ask status-holders who have already complied with integration conditions in the first Member State to comply with integration measures again, not even the attendance in a language course, when they apply for a residence permit.

The other countries that apply an integration requirement for third-country nationals applying for the status, namely Austria, Estonia, France, Germany, Latvia, Lithuania and Luxembourg, do require status-holders from another Member State to comply with integration measures if they have already fulfilled an integration condition in the first Member State. In all of these countries, complying with the integration measure entails more than the mere attendance of a language course.

In Austria, the Federal Act concerning settlement and residence in Austria contains the obligation for *every third-country national* to fulfil an integration requirement regardless of whether the person concerned is a status-holder who has already had to comply with integration conditions in the first Member State. Long-term residents from another Member State have to fulfil the same integration requirements as all other third-country nationals applying for a residence permit in Austria, which ultimately includes passing an exam. The positive result of the exam is a precondition for extending the residence permit.

In Estonia, no special provisions for long-term residents from another Member State have been adopted. Therefore, as in Austria, the same integration requirement applies to both 'ordinary' third country-nationals and to status-holders from another Member State. This means that the status-holder will have to submit language test results, even if he has had to comply with integration conditions in the first Member State.

In France, all third-country nationals who have been admitted for residence in France for the first time and wish to reside there on a regular basis are required to fulfil the condition of 'republican integration', even if they are long-term residents from another Member State who have already fulfilled an integration condition when obtaining the status in the first Member State. This means that they will also have to sign a reception and integration contract. This even applies to status-holders who were already resident in France before, if they did not sign such a contract then. The integration contract comprises civic training, linguistic training and, if necessary, an information session concerning life in France. The civic training is compulsory and entails a presentation about French institutions and values, such as the French Republic as a lay Republic, equality between men and women, France as a constitutional state and the fundamental liberties. Knowledge of the French language is tested in an oral and written exam.

In Germany, status-holders are generally obliged to participate in integration courses if they are not able to communicate in the German language at a basic level or if they receive social benefits. Aliens can, however, be relieved of the obligation to participate in the course on basic facts about Germany if he or she has already participated in a similar course in another Member State. The most recent legislation by the federal government provides that satisfactory participation in the integration course alone is not sufficient, but that the alien also has to pass a final exam. However, if a status-holder fails the exam, this does not entail a refusal to prolong his or her residence permit, but it can negatively affect the receipt of social benefits on the grounds of unemployment compensation.

Latvian law contains practically no reference to those third-country nationals who have been granted the status in another Member State, hence, as long as they are applying for a permanent residence permit in Latvia, the regular procedure on permanent residence applies, including the requirement of knowledge of the Latvian language, which is tested in an exam. Applicants for a temporary residence permit are not required to fulfil the language requirement.

In Latvia, status-holders who apply for a permanent resident permit in Latvia are required to pass a language exam. Those applying for a temporary residence permit are not required to take the exam.

In Lithuania, status-holders who apply for a temporary permit will not have to comply with an integration condition. However, if they wish to obtain a permanent residence permit, they will need to pass the language and Constitution exam.

In Luxembourg, a person is not required to pass an exam to fulfil the integration requirement. It is not clear yet how the language skills will be evaluated. All persons residing in Luxembourg for the first time will be offered measures to improve integration. They will be obliged to follow a course, but it does not seem that passing an exam will be necessary in order to fulfil the integration requirement. When an application for a renewal of the residence permit is issued, account will be taken of the degree of integration of the third-country national, who might also be a status-holder from another Member State. In cases where a third-country national is not sufficiently integrated (i.e. does not sufficiently master German, French or Luxembourgish), the residence permit may not be renewed.

In Austria, Estonia, France, Latvia and Lithuania, non-compliance with the integration requirement which entails passing an exam has or can have negative consequences for the right of residence. By requiring long-term residents from another Member State who already had to fulfil integration conditions when obtaining the status in another Member State to comply an integration condition, the Member States mentioned above are in breach of Article 15(3) of the Directive.

Consequences of not meeting the integration requirement

What are the consequences of not meeting the integration requirement? This question is not relevant for the countries that do not require status-holders who already fulfilled an integration condition in the first Member State to comply with integration measures when they apply for a residence permit in their country, but only for Austria, Estonia, France, Germany, Latvia and Luxembourg.

In Austria, failure to fulfil the integration requirement will mean that the residence permit will not be renewed. The possibility of non-renewal of a residence permit exists in France. In Germany, social benefits – if granted – can be reduced by up to 90 percent of the original amount, however, in return the aliens receive coupons. In Estonia, the application for a long-term residence permit might possibly be rejected. Consequently, the status-holder might have to continue residence in Estonia on the basis of a temporary residence permit. In that case, he or she will never be able to obtain the status in Estonia. Equally, in Latvia, failure to pass the exam will mean that the person will not be granted a permanent residence permit. In Luxembourg, the permit may be withdrawn if the status holder does not comply with the integration measures.

Integration measures for family members

Article 16(1) provides the right to family reunification for status-holders who exercise their right of residence in the second Member State. The members of the nuclear family mentioned in Article 4(1) of the family reunification Directive shall be authorised to join the status-holder in cases where the family was already constituted in the first Member State. In that case, the second Member State may not require anything else other than the family member's ability to maintain himself or herself without recourse to the social security system (Article 16(4)(c)). The integration requirement of Article 7(2) of the family reunification Directive may only be applied if the family members join the status-holder on the territory of the

European Union for the first time. Five Member States (Austria, France, Germany, Latvia and the Netherlands) require the family members of long-term residents of another Member State to comply with integration measures, even if the family was constituted in the first Member State. In all five countries, compliance with the integration measures is not a condition for family reunification. However, failure to fulfil the residence requirement will or may have consequences for the right to residence in all five Member States.

In Austria, every single third-country national is obliged to fulfil the integration agreement in order to extend the residence permit. Family members of long-term residents of another Member State are therefore subjected to the same integration requirement as the status-holder himself and as third-country nationals applying for this status for the first time. Non-compliance with the integration requirement will lead to non-renewal of the residence permit. This cannot be considered compatible with ECJ case law, which has repeatedly stressed that sanctions have to be proportional.

In France, as in Austria, the provisions of the Immigration Act relating to integration into French society apply to all third-country nationals who have been admitted to reside in France for the first time and wish to reside there on a regular basis. Therefore, like the long-term resident himself, family members are required to sign an integration contract. When the residence permit is renewed for the first time, account will be taken of compliance with the integration requirement. In France, there is a serious possibility that non compliance with the integration conditions will lead to non renewal of the residence permit.

In Germany, once the spouse and children have entered the country, they are obliged to participate in integration measures. Failure to pass the final exam of the language course may lead to a reduction of social security benefits of up to 90%.

In Latvia, all persons applying for a permanent residence permit need to comply with the language requirement. As long as the family member applies for a temporary residence permit, no integration requirement needs to be fulfilled. If the integration requirement is not fulfilled, the family member will have to continue residence in Latvia on the basis of a temporary residence permit.

The Netherlands also requires the family members of a long-term resident of another Member State to comply with integration measures. Failure to pass the integration exam means that the family member will not obtain a permanent residence permit. Furthermore, administrative sanctions may be applied. Family members of status-holders from another Member State cannot be asked to pass the integration requirement abroad, since this constitutes a requirement to enter the Netherlands.

2.3.3 Conditions for Employment in the Second Member State (Q.16.B, Q.16.C)

2.3.3.1 Employment permits (Q.16.B)

According to Article 14(3) the second Member State may, if a long-term resident wants to pursue an economic activity in an employed or unemployed capacity, examine the situation of its labour market and apply its national procedures regarding the requirements for filling a vacancy or exercising such economic activities. The second Member State may also give preference to Union citizens or third-country nationals who reside legally and receive unemployment benefits in that Member State or who are entitled to preferential treatment under Community law.

Most of the Member States bound by the Directive have used this possibility to maintain or introduce the obligation to apply for an employment permit for a long-term resident who has acquired that status in another Member State and wants to work in the

second Member State. In those countries the national rules on applications for an employment permit or a residence permit that allow a third-country national to work are applicable and the Member State may apply a labour market test. In some Member States (e.g. France, Germany and Luxembourg) the employment permit may be restricted to a certain profession, a specific sector or a geographical area. In Spain the general legislation on access by third-country nationals to employment continues to apply because Chapter III of the Directive has not yet been implemented in national law. In Estonia there is no automatic recognition of the status acquired in another Member State. The long-term resident must apply for a temporary residence permit and a work permit.

In only four Member States (Hungary, Poland, Portugal and Sweden) long-term residents who obtained that status in another Member State are completely exempt from the work permit requirement.

2.3.3.2 Change of employer (Q.16.C)

In most Member States a long-term resident who has obtained that status in another Member State will have to apply for and obtain a new work permit if he wants to change to another employer. The long-term resident is free to change his employer only in the four aforementioned Member States which exempt long-term residents from the work permit requirement. In Finland a new work permit is required only for a change to another professional field. In Germany, France and Luxembourg no new work permit is needed if the new job falls within the professional or geographical restrictions attached to the original permit.

According to the first sentence of Article 21(2) of the Directive, long-term residents shall have access to the labour market in accordance with the provisions of the first paragraph of Article 21. This paragraph provides that, as soon as a long-term resident has received a residence permit under Article 19 of the Directive in the second Member State, he shall enjoy equal treatment in that Member State in the areas and under the conditions referred to in Article 11 of the Directive. This equal treatment also covers access to employment as provided for in Article 11(1)(a) and Article 11(3). The principle of equal treatment applies only after the residence permit has been granted in the second Member State. The possibility of applying national work permit legislation, as discussed above in para. 2.1.1.1, is an exception to the principle of equal treatment. The scope of that exception is limited, however, by the second sentence of Article 21(2) of the Directive, stipulating that 'Member States may provide that the persons referred to in Article 14(2)(a) shall have restricted access to employed activities different than those for which they have been granted their residence permit under the conditions set by national legislation for a period not exceeding 12 months.' This provision implies that a Member State may, during the first year, apply its national work permit legislation to the extent allowed by Article 14(3) of the Directive. But at the end of one year a Member State may no longer restrict access to employment to the job for which the first work permit was granted. During that first year the national legislation may be applied in cases where the worker wants to change employment. After that year, the long-term resident has free access to all employment except the public service-related jobs excluded from the equal treatment provision of Article 11(1)(a) or the jobs reserved for nationals within the limits of Article 11(3) of the Directive.[47]

[47] K. Groenendijk, Access of Third-Country Nationals to Employment under the New EC Migration Law, in: F. Julien-Laferrière, H. Labayle and O. Edström (eds.), *The European Immigration and Asylum Policy: Critical Assessment Five Years After the Amsterdam Treaty*, Brussels (Bruylant) (ISBN 2-8027-2082-1), p. 141-174 at p. 157-160, S. Boelaert-Suiminen Non-EU nationals and Council Directive 2003/109/EC on the Status of Third-Country Nationals Who Are Long-Term Residents: Five Paces Forward and Possibly Three Paces Back,

From the table below it appears that thirteen Member States have correctly transposed the first sentence of Article 21(2) on access to employment: Cyprus, the Czech Republic, Finland, France, Germany, Greece, Lithuania, Malta, the Netherlands, Poland, Portugal, Romania and Sweden. This provision has not been transposed in Estonia, Latvia or Spain. In four other Member States transposition poses a problem (Bulgaria, Italy, Luxembourg, Slovakia and Slovenia). In Belgium transposition will have to take place in a regulation that has not yet been adopted.

Article 21(2), first sentence	
No Transposition At All	Estonia, Latvia, Spain
Legal Problem	Bulgaria, Italy, Luxembourg, Slovakia, Slovenia

The second sentence of Article 21(2) does not allow Member States to require a work permit after the first year. This rule has been correctly transposed in the Czech Republic, Germany, Greece, Hungary, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal and Sweden which either do not require a new employment permit for a change of employer after the first year or do not require work permits for long-term residents at all. However, several Member States continue to apply the work permit requirement after the first twelve months (Belgium, Bulgaria, Finland, France, Italy, Luxembourg, Romania, the Slovak Republic, Slovenia and Spain). In Finland, a new permit has to be applied for if the status-holder wishes to change the professional field. This restriction applies until the person concerned has received a permanent residence permit, i.e. up to four years. In other words, in cases where the work permit is required under the Aliens Act, unlimited access to employment (including a change of professional field) is granted at the earliest after four years, unless a new permit is required in the mean time. France continues to require a work permit if the long-term resident wants to work in another type of job or another zone than that covered by his first permit. Bulgaria, Romania and Spain maintained their national work permit legislation that applies to third-country nationals in general. In Belgium the implementing regulations have not been published.

Free access to employment (Q.16.C)

In reply to our question 'When do long-term residents of another Member State acquire free access to employment in your country?' the rapporteurs for eleven Member States (the Czech Republic, Estonia, Finland, Germany, Greece, Latvia, Lithuania, Malta, the Netherlands, Poland, Portugal and Sweden) answered 'either immediately after the residence permit is granted' or 'after one year of employment' In Luxembourg an admitted long-term resident acquires free access to employment only after three years. In Austria and France free access to employment is acquired only after the long-term resident has obtained the national establishment permit (the *unbefristete Niederlassungserlaubnis* or the *carte de résident*). In the Slovak Republic free access is allowed only once long-term resident status has been acquired in that country. In Slovenia long-term residents are only granted preferential treatment with regard to the application of the labour market test. Bulgaria, Romania and Spain continue to apply their national work permit legislation regarding third-country

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Common Market Law Review (42) 2005, pp. 1011-1052 at p. 1032 and K. Groenendijk and C.J. de Heer, Artikelsgewijs commentaar op de Richtlijn inzak de status van langdurig ingezeten onderdanen van derde landen, in: H. Battjes e.a. (red.), *Europees migratierecht*, The Hague: SDU, p. 1-69 at p. 57.

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nationals generally. Italian national legislation is unclear at this point. The implementing rule read together with pre-existing legislation appears to require a new work permit in case of change of employment. In belgium, the issue will be further discussed by the federal Ministry of Work.

2.3.4 Public Health Exception in the Second Member State (Q.20.A, Q.20.B)

2.3.4.1 Refusal on public health grounds (Q.20.A)

Article 18(1) of the Directive provides that Member States may refuse applications for residence from long-term residents and their families if the person constitutes a threat to public health. According to Article 18(2) the only diseases that may justify refusal of entry or the right of residence in the second Member State shall be those defined by the relevant applicable instruments of the WHO and such other infectious or contagious parasite-based diseases subject to protective provisions in relation to nationals of the host Member State. Member States shall not introduce more restrictive provisions or practices.

In some Member States national law does not provide for the refusal of an application for a residence permit by a long-term resident coming from a first Member State on public health grounds. This is the case in Austria, Estonia, Finland, Hungary and Sweden.

In five Member States the general rules on the refusal of third-country nationals on public health grounds apply (Lithuania and Romania), or there is no limitation on the kind of diseases as required by the Directive (Luxembourg and Slovakia), or it is unclear whether the diseases mentioned in the national immigration law are also subject to protective measures in relation to nationals of the country (France). In Italy the wording of the national rule does not exclude that a refusal on public health grounds may be justified under a general public order clause in the immigration law. Chapter III has not been transposed in Spain.

Consequently, the legislation of the large majority of Member States is in conformity with the first two paragraphs of Article 18.

2.3.4.2 Diseases contracted after the first residence permit was issued (Article 18(3))

According to Article 18(3) diseases contracted after the first residence permit is issued by the second Member State shall not justify a refusal to renew the permit (or expulsion from the Member State). This provision has been transposed in a significant number of Member States

The Belgian report states that long-term resident status can only be withdrawn on public policy grounds; therefore, it is to be understood that a disease contracted after the first residence permit issued by the second Member State shall not justify a refusal to renew the permit.

In the case of Bulgaria, Article 18 (3) is not explicitly included in national regulations: the national norms contain an exhaustive list of grounds for refusal to renew a permit and, nevertheless, diseases contracted after the first permit is issued are not included. In Lithuania, although posing a threat to public health is one of the general grounds for refusing to replace a residence permit, no exceptions for long-term residents of another Member State are provided. The transposition of this provision in Portugal is incomplete.

Article 18(3) has not been transposed at all in Italy, Latvia, Romania or Spain.

Article 18(3)	
No Transposition At All	Italy, Latvia, Romania, Spain
Legal Problem	Lithuania, Portugal

2.3.4.3 Medical examination (Q.20.B)

Article 18(4) stipulates that a Member State may require a medical examination in order to certify that the persons to whom the Directive applies do not suffer from any of the diseases mentioned. This medical examination shall not be performed on a systematic basis. The examination may be free of charge.

In ten Member States no medical examination is required, either because public health is not grounds for refusal (see above), or because the national law does not provide for medical examinations (Bulgaria, Germany, Lithuania, Poland, Slovenia)

In France, Malta and the Netherlands the national law provides that, if a medical examination is required, the applicant does not have to pay the costs. In Cyprus, the Czech Republic, Latvia, Lithuania, Luxembourg and Slovakia the applicant has to pay the costs of the examination or of the medical documentation that has to be presented with the application. It appears that in Greece and Lithuania medical documentation is required in all cases- a rule that is hardly compatible with the second sentence of Article 18(4).

2.3.5 Procedural Rules in the Second Member State (Q.17.A, Q.17.D, Q.21.A, Q.21.B, Q.21.C)

2.3.5.1 Place of Application for Residence (Q.17.A)

The long-term resident should apply for a residence permit to the competent authorities of the second Member State as soon as possible and no later than three months after entering the territory of the Member State concerned (Article 15(1) subparagraph 1). The Member State may also accept submission of the application while the long-term resident is still residing in the first Member State (Article 15(1) subparagraph 2). The majority of Member States do provide the possibility for the long-term resident to submit his application for a residence permit while still residing in the first Member State although the issue is not specified in the law of every Member State (Austria). In Bulgaria it is not clear whether it is possible to submit an application while still residing in the first Member State. Bulgarian legislation does provide for the possibility of lodging the relevant documents for national permanent residence status via a diplomatic or consular mission but it is uncertain whether the competent authorities would also apply these provisions to long-term residents from another Member State. In seven Member States it is not possible to lodge the application for the residence permit while still residing in the first Member State (Hungary, Latvia, Portugal and Romania) or the issue has not been regulated (Greece, Italy and Spain). It is not clear whether it is possible to lodge an application in Malta while still residing in the first Member State. From the wording of the relevant provision it appears that it is not possible to lodge an application while still residing in the first Member State, since the legislation states that the long-term resident has to apply to the Director of Citizenship and Expatriate Affairs as soon as possible and no later than 3 months after entering Malta.

Visa-requirement

In five Member States the long-term resident is required to hold a visa before entry (Bulgaria, Estonia, Lithuania, Poland and Slovakia), although in Estonia the long-term resident is not required to have a visa if he holds a residence permit of another Schengen State. In Lithuania draft amendments propose amending the Aliens Law stipulating that a foreigner who is in possession of a residence permit issued by a Schengen State should be entitled to enter Lithuania without a visa; the draft amendments to the Aliens Law are currently pending

before parliament. In Slovakia the Act transposing the Directive (Foreigners Act Amendment) introduced a provision in 2005 under which long-term residents do not need a visa to enter the state. Another Amendment Act which came into force on 1 January 2007 changed the provision introduced by the 2005 Amendment Act and persons enjoying long term residence were removed from the provision listing those, who do not need to have a visa. Therefore, long-term residents do need a visa to enter Slovakia. In Spain there are no special rules for long-term residents of another Member State, which means that long-term residents will be treated in the same way as any other third-country nationals. The situation in Luxembourg is unclear.

In fourteen Member States (Austria, Belgium, Cyprus, the Czech Republic, Finland, France, Greece, Hungary, Italy, Latvia, the Netherlands, Portugal, Romania, Slovenia) the long-term resident is not required to hold a visa. In Germany it depends on the status of the first Member State with respect to the Schengen Treaty. If the Member State is a party to the Schengen Treaty and the alien wishing to apply holds a long-term residence permit there, he does not need a visa to enter Germany. However, if a long-term resident applies for the long-term residence permit from a Member State which does not fully apply the Schengen rules, he does need a visa. According to the national rapporteur this should, in any case, not constitute a serious problem because the German embassy or a consulate can easily issue the necessary form.

In Sweden it depends on the place of application as to whether or not a visa is required. If the long-term resident applies for the residence permit abroad and the residence permit has been granted, a visa is not required. If the long-term resident wants to submit his application in Sweden, he needs a visa unless he has a residence permit from a Schengen State. It is unclear whether a valid visa is only a requirement to enter or also a requirement in order to be granted the residence permit. The Aliens Act states that an alien should have a visa to enter Sweden unless he or she has a residence permit or has a long-term resident status. The Swedish Migration Board has chosen a restricted interpretation. Only long-term residents with the long-term resident status in Sweden are allowed to enter Sweden without a visa. Long-term residents from other Member States are not exempt from the visa obligation. It is unclear whether a long-term resident is required to hold a visa in Malta and if he does need a visa, whether he will be obliged to leave the second Member State in order to apply for the visa.

2.3.5.2 Documentary Evidence (Q.17.D)

According to article 15(4) first subparagraph an application for residence in a second Member State should be accompanied by documentary evidence, to be determined by national law, that the person concerned meets the relevant conditions as well as by his long-term resident permit and a valid travel document or certified copies. In this paragraph we focus on some trends; see the schedule in Annex II for the general documentary evidence per Member State and Annex III for a specification by Member State related to the purpose of residence.

Valid travel document

All Member States except France and Malta require a valid travel document. In Belgium the law only explicitly states that a valid travel document is required if the application is submitted in Belgium. In ten Member States (Austria, Cyprus, Finland, Germany, Greece, Hungary, Latvia, Portugal and Romania) the right of residence could or will (Slovakia) be withheld if the long-term resident does not have a valid travel document. According to the Ministry of Interior in Estonia the absence of a valid travel document is not a reason to withhold the resident status although the law asks the third-country nationals to submit one.

In Malta the issue concerning the absence of a valid travel document has not been regulated. In Sweden the situation is unclear: the Circular of the Swedish Migration Board contradicts with the wording of the applicable government regulation saying that a 'passport *or* identity card' has to be presented. Since the government regulation has a higher normative value, it prevails over the Circular. This means that an identity card should be sufficient and that the right of residence cannot be withheld in the event of the lack of a valid travel document. However, it remains unclear whether the Swedish Migration Board will apply the government regulation or the Circular in this particular case.

Long-term residence permit

Thirteen Member States (Belgium, Cyprus, the Czech Republic, Greece, Hungary, Latvia, Luxembourg, Malta, Poland, Portugal, Romania, Slovakia and Sweden) require (a copy of) the long-term resident permit. Although this is not explicitly determined in the law, in Germany the long-term residence permit should in general be submitted. It is unclear whether an application in Slovenia should be accompanied by the long-term residence permit. In Finland the long-term residence permit probably has to be submitted if the long-term resident wants to reside in Finland on grounds other than work, self-employment or study, since, in this case the required documents are determined on a case-by-case basis. In Finland a Government Proposal[48] states that the cabinet may issue a decree which lists the required documents; a list of requirements is currently lacking. According to the national rapporteur such a decree shall not be issued because the matter is sufficiently defined in the Aliens Act, the Government Proposal for the Aliens Act and the guidelines given by the Directorate of Immigration on Income Requirements.

Differentiation related to the purpose of residence

A long-term resident may reside in a second Member State on the grounds of exercising of an economic activity in an employed or self-employed capacity, to pursue studies or vocational training or for other purposes (Article 14(2)). It seems that in five Member States (the Czech Republic, Germany, Luxembourg, Romania and Spain) no differentiation at all is made regarding the purpose of stay in terms of documentary evidence. In Spain documentary evidence is different depending on the purpose of initial entry. In Germany all aspects favourable for the application should be submitted if these aspects are not obvious or known to the authorities. The long-term resident must –regardless of the purpose of residence- produce evidence of his personal situation and all other appropriate documents and permits to support his case. According to the Dutch rapporteur it is impracticable to specify the documentary evidence regarding the purpose of stay in the Netherlands. However, documents required depend on the purpose of residence in the Netherlands. In Luxembourg, Romania and Spain only general requirements apply. It is not clear what documentary evidence is required in Latvia.

Estonia does not recognise long-term residents of another Member State. Therefore, the same requirements apply as to the application for long-term resident status in Estonia. Basically the person concerned can apply for the temporary residence permit in Estonia.
The documentary evidence required, irrespective of the purpose of stay, differs per Member State. In France, Greece and Latvia, for example, a health certificate is required. In the Czech Republic and Slovakia a confirmation that the person concerned does not suffer a grave illness may be required. In the Czech Republic this confirmation must be presented only

[48] Government proposal (HE 94/2006).

upon request of the authorities, the authorities may ask for it only in case that they have reasonable suspicion that the person suffer a grave illness. In some Member States an extract from the judicial record of the applicant is required (Cyprus, the Czech Republic, Hungary, Luxembourg and Spain). In Slovakia a document confirming that the foreigner will not constitute a burden to the social security system of the Slovak Republic (statutory declaration) must be presented upon request. In Slovenia the person concerned must present a certificate that he was not convicted for a crime in the country of origin. The applicant must attach also other evidence and documents proving fulfilment of the conditions and the applicant must upon request contact the body in person. In at least four Member States (Austria, Cyprus, Estonia and Romania) (almost) the same general documentary evidence is required as is required to obtain the status in this Member State. In Spain the documentary evidence required is the same as required for first entry. In the Czech Republic most of the documentary evidence required to obtain the residence permit is the same as the documentation required to obtain the permanent residence permit and thus long-term resident status in the Czech Republic. Only some slight differences exist.

In Poland all the documentary evidence should be translated into Polish by sworn translators.

Different categories

One Member State (France) applies five different categories; another Member State (Slovakia) distinguishes nine different categories. Three Member States (Bulgaria, Greece and Portugal) distinguish three categories: employed, self-employed and studying or receiving vocational training. However, in Bulgaria the competent authority may require the long-term resident to provide other relevant documents depending on the grounds on which the person concerned has resided in a Member State for the past five years. Only five Member States (Belgium, Finland, Hungary, Italy and Malta) have regulated the documentary evidence for the (general) category of 'other purposes'. However in two of these Member States the documentary evidence could be decided on a case-by-case basis (Finland) or shall be determined by the Director with regard to the purpose of residence (Malta). In two Member States differentiation in documentary evidence exists for only one category: for self-employment (Austria) or for study (Cyprus).

If a long-term resident want to reside in a Member State to pursue a course of study, in most Member States a certificate of enrolment in an educational establishment or similar document is required. If, for example, a long-term resident wants to reside in Finland for the purpose of study, he has to submit not only a certificate of enrolment in a Finnish educational establishment but also documents required to prove the existence of sufficient means of support. In Italy an income requirement applies. A student has to submit documents that show a yearly income of not less than half of the social security allowance. The student also has to submit documents proving that he possess the amount necessary for travel to the country of origin after completing the study period and the competent authority in Italy will assess whether the study or vocational training the person wants to follow is in compliance with the educational background of the country of origin. This is not in conformity with the Directive.

If a long-term resident wants to reside in a Member State for the purpose of employment, an employment contract will be required in most Member States. In some Member States the long-term resident has to submit a work permit or other authorisation (Belgium, Bulgaria, Lithuania, Malta, Slovakia and Slovenia). It appears that in the other Member States where a work permit is required, the work permit should not be submitted as documentary evidence. In Italy the employment contract should include a guarantee from the employer in relation to availability of adequate accommodation and the employer's obligation

to pay travel expenses to the country of origin. The legislative transposition decree in Italy stipulates, that the enactment regulation indicated the documentation should be amended in the months ahead. Until then the current regulation applies.

In cases of self-employment, in several Member States the long-term resident has to prove that he has a certain level of income or a financial deposit. In Greece for example, a long-term resident of another Member State has to submit a copy of his personal bank account showing a deposit of at least € 60.000. In Italy the long-term resident should submit evidence that he has 'appropriate funds which are needed to exercise an economic activity in such a capacity' and proof of a yearly income higher than defined in the law in order to be exempt from participation in the health system. In Portugal the long-term resident should submit evidence of appropriate funds as well.

Appropriate accommodation

According to the second subparagraph of Article 15(4) the evidence referred to in the first subparagraph may also include documentation with regard to appropriate accommodation. In thirteen Member States the long-term resident's application should be accompanied by documentation regarding appropriate accommodation. These Member States are Austria, Bulgaria, Cyprus, the Czech Republic, Estonia, France, Hungary, Latvia, Malta, Poland, Portugal and Slovakia. Maltese legislation does require appropriate accommodation but it is not clear whether appropriate accommodation should be documented. In Estonia documentation is not required but a person has to be registered in the population registry. In order to do that he has to have a rent contract or he needs to own the accommodation place. In Italy the long-term resident only has to provide documentation regarding appropriate accommodation if he wants to reside in Italy for the purpose of self-employment. From the joint interpretation of the transposition norm and the enactment regulation, it may be inferred that in relation to employment, the third-country national is to provide a guarantee issued by the employer and attesting that he has adequate accommodation. In nine Member States (Austria, Cyprus, the Czech Republic, Estonia, France, Hungary, Italy, Poland and Slovakia) the right of residence of a long-term resident from another Member State could be withheld in the event of absence of appropriate accommodation. Although Maltese legislation has not regulated this issue explicitly, it could be assumed that the absence of appropriate accommodation could also constitute grounds for withholding the right of residence of the long-term resident in Malta. Romanian legislation requires accommodation, but without any conditions concerning its 'appropriate' character.

2.3.5.3 Length of Procedure (Q.21.A)

According to the first paragraph of Article 19 of the Directive an application for a residence permit should be processed within four months of the date the application was lodged. The period of four months is a maximum period. In most Member States a fixed processing period applies (1, 2, 3 or 4 months). In eleven Member States (Austria, Belgium, Bulgaria, Cyprus, Finland, France, Greece, Lithuania, Malta, the Netherlands and Sweden) a decision period of four months applies. In all Member States except Austria and France the decision period could be extended by three months if the necessary documents are not provided and/or in exceptional cases where the application is very complex. In Greece and the Netherlands the decision period could also be extended by three months but a reference to an incomplete application and/or exceptional cases is lacking. In the other Member States, except Spain which did not implement the provision, a shorter period has been laid down in national legislation. Italy has the shortest period. According to Italian legislation an application should

be processed within twenty days. Nevertheless, according to the national rapporteur, in most cases this term is not respected. To deal with the lengthiness of the procedure, another new procedure has been implemented in Italy, but is heavily criticised regarding its suitability for reducing delays. In Poland and Romania the decision should be taken within 30 days with the possibility of extending this period by another 30 days (Poland) or 15 days and in special cases 90 days (Romania). In Poland general administrative rules apply. In Hungary a decision should also be taken within 30 days according to general administrative legislation. In Latvia the time taken depends on the type of residence permit. Upon application for a temporary residence permit, a decision must be taken within 30 days; for a permanent residence permit a period of 90 days applies. According to Estonian legislation an application should be processed within three months. The same period applies in Portugal and Slovakia (six months in exceptional cases). In three Member States (the Czech Republic, Germany and Slovenia) more open norms apply. In the Czech Republic an application should be processed 'without delay'. If this is not possible the application should be processed within 120 days. In Slovenia an application should be processed 'as soon as possible', but no later than one month (or two months in cases involving a 'special-fact finding procedure'). In Germany the decision should be taken 'within an appropriate period of time'. No maximum period is mentioned by the German rapporteur.

Article 19 (1), Q.21.A first indent	
No Transposition At All	Spain

Right to reside in the second Member State pending the process

In sixteen Member States (Austria, Belgium, Bulgaria, Cyprus, Finland, France, Germany, Greece, Hungary, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovenia and Sweden) the long-term resident is allowed to stay in the country pending the processing of his application for a residence permit. In Estonia the long-term resident of another Member State has to leave if there is no legal ground to stay in Estonia. Legal ground to stay is a visa or a residence permit or a right of free movement. In the Czech Republic, Italy and Slovakia the right to stay is limited. If a long-term resident wants to obtain a residence permit in the Czech Republic or Italy he has the right to stay for 90 days (without a visa). In Slovakia the long-term resident is allowed to stay for the time a visa is issued. The long-term resident is not allowed to stay pending the processing of his application in Latvia or Lithuania. In Spain there is no legislation on this matter. In Spain for the first entry the person is not allowed to stay in Spain pending the processing of his application for a residence permit, because the person concerned can only enter with the permit. In Romania the law only explicitly provides for the right to remain on the territory if the decision period is extended by 90 days extension.

2.3.5.4 Obligation to grant a residence permit (Q.21.B, Q.21.C)

According to Article 19(2) a Member State should issue the long-term resident with a renewable residence permit if the conditions are met.
Only one Member State (Spain) display a lack of regulation on this point. In Estonia there are no special provisions for long-term residents of another Member States therefore general rules for application of a residence permit apply. They can apply for a temporary residence permit for work, study or 'entrepreneurship'.

It is unclear whether the obligation to grant a residence permit has been regulated in Belgium. The other Member States have regulated this issue. Almost all of the Member States

implemented Article 19(2) in a positive and imperative way, in other words as an obligation, and made use of the word 'shall' as in the Directive.

Hungary and Romania are the only two Member States to have implemented Article 19(2) contrary to the Directive as a 'may' clause, in other words as a possibility rather than an obligation.

The residence permit should, according to the Directive, be renewable upon expiry. In all Member State with the exception of two (Estonia and Spain) residence permits are renewable upon expiry. In Estonia and Spain have no regulation concerning this point.

According to Article 19(2) last sentence, the second Member State should inform the first Member State of its decision about the issue or renewal of a residence permit. This part of the provision is not implemented in six Member States (Austria, France, Italy, Latvia, Lithuania and Spain). Although the obligation to inform the first Member State has not been implemented in Latvia, the EU Commission is officially informed of the contact person who is responsible for providing such information at the request of the first Member States. Although there are no special provisions for long-term residents of another Member State the Citizen and Migration Board is the contact point in Estonia. However, it is unclear how the obligation of article 19 (2) last sentence has been implemented in Estonia. It seems that not all the rapporteurs consider it as a problem that article 19 (2) last sentence has not been transposed. However, it could also be that the rapporteurs did not keep in mind that question Q.21.B. covers a number of issues. This could apply to the Austrian and French rapporteur.

In most Member States a general obligation is formulated. The authority which is obliged to inform differs per Member State. For example, in Belgium, the Minister or his authorised representative has to inform the first Member State while, in the Czech Republic, the Aliens Police has the obligation to inform. In Slovakia the Police department should inform the first Member State. In Slovenia the Ministry for Internal Affairs or the police is the competent body.

Articles 19(2), Q.21.B	
No Transposition At All	Spain
Legal Problem	Belgium, Bulgaria, Estonia, Hungary, Italy, Lithuania, Romania

Residence permit for family members (Q.21.C)

According to Article 19(3) the second Member State should issue family members with renewable residence permits valid for the same period as the permit of the long-term resident.

In all Member States except Luxembourg, Romania, Slovakia and Spain the family member will be issued a renewable residence permit valid for the same period as the permit issued to the long-term resident although in Slovenia a restriction applies. In principle the family member will be issued a residence permit valid for the same period, but the validity of the residence permit cannot exceed a period of two years. If the long-term resident has a permanent residence permit the immediate family member may be issued a permanent residence permit after two years. According to the Estonian report, the general principles of family reunification apply. These general rules are laid down in the national legislation. According to these general rules a renewable residence permit with the same duration of the permit of the long-term resident can be issued to family members of the long-term resident. In Romania family members are not issued with a residence permit valid for the same period as the permit issued to the long-term resident. In Slovakia the provision has not been transposed. According to the (pre-existing) legislation family members may be granted a permit for a

maximum period of two years, where long-term residents from another Member States may be granted a residence permit of five years. In Luxembourg and Spain there is no regulation at all on this point.

Article 19 (3), Q.21.C.	
No Transposition At All	Luxembourg, Slovakia, Spain
Legal Problem	Romania, Slovenia

Rights of family members in the Second Member State (Article 21 (3))

As soon as family members have received the residence permit provided for in Article 19 in the second Member State, family members should enjoy the rights listed in Article 14 of the Family Reunification Directive[49] (Article 21 (3)). According to Article 14 of the Family Reunification Directive, family members should be entitled to access to education, access to employment and self-employed activity, access to vocational guidance, initial and further training and retraining. Member States are allowed to set out conditions, according to national law, under which family members shall exercise an employed or self-employed activity. These conditions should set a time limit which should in no case exceed 12 months, during which Member States may examine the situation on their labour markets before authorising family members to exercise an employed or self-employed activity (paragraph 2). Member States may also restrict access to employment or self-employed activity by first-degree relatives in the direct ascending line or adult unmarried children to whom Article 4(2) of the Family Reunification Directive applies (paragraph 3).

In Finland it depends on which type of residence permit is issued to the family Member. Long-term residents of another Member State could be granted a temporary residence permit or a continuous residence permit depending on the ground for residence. Family members will be issued a permit of the same type and duration as the permit of the long-term resident. For example students and their family members are issued with a temporary residence permit. Those who reside in Finland on a temporary basis are not entitled to education because municipalities are obliged to arrange education only for their permanent residents, but they do have unlimited access to the labour market.

In France, children have free access to employment in case they have entered France when they were minors and they have been residing in France for at least a year. The other family members may not exercise a professional activity in the first year after they have been issued a residence permit.

In Slovenia, access to employment for status-holders of other Member States is not levelled with citizen's access to employment, his or her family members are also in a less favourable position in comparison with citizens of the Republic of Slovenia.

The provision has not been tranposed in Estonia, Latvia, Luxembourg, Romania and Spain.

Article 21(3)	
No Transposition At All	Estonia, Latvia, Luxembourg**,** Romania, Spain.
Legal Problem	Finland, France , Slovenia

[49] Council Directive 2003/86/EC of 22 September 2003

2.3.6 Refusal to renew and withdrawal of the residence permit in the Second Member State (Q.22.A-B-C)

2.3.6.1 Refusal to renew and withdrawal of the resident permit (Q.22.A)

Article 22 concerns the situation of a long-term resident of a Member State who has obtained a residence permit in a second Member State on the basis of this Directive, but who has not yet obtained long-term resident status in the second Member State. The first paragraph provides the possibility for the second Member State to refuse to renew or to withdraw the resident permit of the third-country national in question and to require that he or she and his or her family leave the territory in accordance with national procedures. A Member State may do this in the following cases:

a) on grounds of public policy or public security according to Article 17;

b) where the conditions for residence in a second Member State (following the Directive) are no longer met;

c) where the third-country national is not lawfully residing in the Member State

The grounds for refusing to renew or for withdrawing the residence permit and to remove a status-holder from another Member State from the territory of the Member State of residence are exhaustively summed up. It is unclear how the reason for refusal or withdrawal of a residence permit mentioned under (c) can arise, since the third-country national already is in possession of a residence permit.[50] This ground has, however, been transposed in Bulgaria, where it is a reason to refuse to renew the permit.

What grounds for the refusal or withdrawal of a residence permit and the removal from the territory of a long-term resident of another Member State are provided for in the national laws of the Member States?

In most Member States no special provision is made regarding grounds for the refusal or withdrawal of the residence permit of a long-term resident coming from another Member State: therefore, the same grounds for refusal or withdrawal of any other residence permit are valid. Only Malta and Sweden seem to have adopted special rules for status-holders from another Member State. In Malta, Article 22(1) has been almost literally transposed.

From the national reports, it appears that the national laws of most Member States provide for more grounds for refusing to renew or withdrawing the permit of status-holders from another Member State and to expel them from their territory than are allowed for by Article 22(1). This appears to be the case in Belgium, Bulgaria, Cyprus, the Czech Republic, Finland, Germany, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Slovakia, Slovenia and Sweden.

In Belgium, the status holder will lose his or her right to reside in Belgium in cases where he or she has resided in Belgium for a period exceeding the right of limited residence. In case there is evidence that the person concerned did not reside in the country for at least 6 months and one day during the previous calendar year, the permit will be withdrawn in Bulgaria. In Cyprus, a residence permit will be refused on public health grounds. In the Czech Republic, a residence permit can be refused if the third country national does not submit the documents required by the law or if he or she is an undesirable person. Furthermore, a residence permit may be withdrawn, for instance, if reasons exist for sentencing for a serious

[50] Groenendijk, C. & J. de Heer (2006), Richtlijn langdurig ingezeten derdelanders. In : Commentaar Europees Migratierecht, Den Haag: SDU.

intentional crime or for non-fulfilment of the reason of stay, if the holder of the permit does not have accommodation or if a well-founded danger exists of a serious violation of public policy by the third-country national or if he might endanger public security. However, the impact on the private or family life of the person concerned is taken into account when a decision concerning withdrawal of the permit is taken.

In Finland, absence from the territory for a period of two years is grounds for withdrawal of the residence permit. In Germany, withdrawal of the residence permit is possible if the status-holder from another Member State does not hold a valid passport, loses or changes his nationality or has not entered the country. A status-holder from another Member State can be expelled from Germany in the event of interference with 'important interests' of the Federal Republic of Germany. This may be the case if false information has been provided during in the procedure for obtaining the residence permit, if the alien poses a risk to public health, if he has been homeless for some time or has benefited from social security benefits.

In Lithuania, a residence permit will be refused to be renewed or withdrawn in cases where the alien has repeatedly failed to fulfil obligation, within the fixed period, to inform the immigration authorities about a change involving:

1) documents confirming the alien's personal identity or citizenship;
2) the alien's marital status;
3) the alien's place of residence.

The permit will be withdrawn in cases where the third-country national is to reside or has been residing in another country for a period of longer than 6 months.

In Luxembourg, the permit of a status holder will be withdrawn and he or she will be expelled form the territory of Luxembourg in case he or she has been sentenced and prosecuted for a crime in another country which, by law or treaty, justifies extradition. Also, the permit will be refused to be renewed, withdrawn and the person will be expelled in case he or she is no longer equipped with an EC long-term residence permit.

In the Netherlands, a residence permit will not be renewed in cases where the holder has established his principal place of residence outside the Netherlands. Furthermore, the permit will not be renewed in cases where a restriction governing issue of the permit or a regulation applicable to the permit is no longer fulfilled. Lastly, refusal to renew will be issued if the alien is performing work for an employer in breach of the provisions of the Foreign National (Employment) Act.

In Poland, a residence permit will not be renewed on public health grounds, in case the purpose of the alien's residence in Poland is different from that declared, if the reason for which a residence permit was issued has ceased to exist, if an alien has used the permit to achieve a different goal than that for which it was granted, if an alien has permanently left the territory of the Republic of Poland or if an alien has not complied with fiscal obligation towards the State Treasury.

In Portugal, the permit will be withdrawn or refused to be renewed in case the conditions for obtaining a residence permit are no longer met. This means that such a decision can, inter alia, be taken in case the person concerned no longer has appropriate housing. This, however, is not a requirement for obtaining a residence permit under the Directive. Hence, this practice is not in conformity with the Directive.

In Romania, the permit will be withdrawn or not renewed in case the status holder did not satisfy the conditions for obtaining the permit at the moment he obtained the permanent residence permit. Furthermore, the residence permit will not be renewed or will be withdrawn in case the status holder infringed the rules concerning the crossing of the state border or the rules concerning the employment of aliens. If the alien is ill and his illness might jeopardise the public health and he refuses to compel with the medical treatment decided by the

competent authorities, this is also a reason for not renewing or for withdrawing the permit in Romania.

In Slovenia, a residence permit will be refused (for renewal) if reasons exist for assuming that the alien will not voluntarily leave the Republic of Slovenia once his permit expires. A residence permit will be withdrawn if a third-country national appears to be residing in Slovenia in contravention of the purpose for which the permit was issued. After withdrawal of the residence permit, the third-country national will be expelled.

In Slovakia, withdrawal of a residence permit may occur in many cases which are not listed in Article 22(1) of the Directive. Withdrawal may take place in the following cases: if the purpose for which the temporary residence permit was granted to a foreigner has ceased to exist; if the third-country national constitutes a burden on the social security system and the health care system of the Slovak Republic; if the third-country national has entered into marriage with the sole aim of obtaining a residence permit or the marriage involves another spouse of a foreigner who has been granted a temporary residence permit in the event of a polygamous marriage and if the temporary residence of the third-country national is not in the public interest of Slovakia. Lastly, a residence permit will be withdrawn in cases where the third-country national resides outside Slovakia for a period over 180 days without a written notification submitted to a police department. The third-country national will be expelled from the territory of Slovakia in cases where he or she has submitted a forged or modified document or a document belonging to another person with the application for the residence permit, in cases where the third-country national performs an activity other than that one for which the temporary residence permit was granted or if the purpose for which the permit was granted has ceased to exist and the third-country national fails to notify the police department; in cases where he or she has entered into marriage with the aim of obtaining a residence permit.

In Sweden, the permit will be withdrawn if the long-term resident from another Member State is no longer a resident in Sweden.

In Spain, Chapter III of the Directive has not been transposed. The residence permit will be withdrawn in case the holder changes nationality, resides outside Spain for more than six months in one year, or in case the permit holder has not had economic resources or medical assistance for more than three months.

Furthermore, all Member States refuse to renew and withdraw residence permits from third-country nationals who are a threat to public policy or public security. In most cases, it is unclear whether the special circumstances mentioned in Article 17 are taken into account when the decision to refuse to renew or withdraw the residence permit and to oblige the status holder from another Member State to leave the territory is taken. In Austria, someone is considered to be a serious threat to public order or public security in case he or she has been sentenced to certain serious crimes, such as crimes under the Addictive Drugs Act. Furthermore, a residence permit is not renewed or will be withdrawn in any case if someone has been sentenced to imprisonment for a period of more than six months. In Luxembourg, a danger to public health is also considered to be a reason for non renewal or withdrawal of the residence permit and for subsequent expulsion for the territory. In Luxembourg and Portugal, the special circumstances mentioned in Article 17 that need to be taken into account when a decision to refuse to renew or withdraw the residence permit are explicitly taken into account. In Romania, the fact that ‘criminal offences’ have been committed in Romania justifies non-renewal or withdrawal of the residence permit.

Most Member States also use non-compliance with the conditions mentioned in Articles 14, 15 and 16 as grounds for refusal to renew, for withdrawal or expulsion. In some Member States, fraudulent acquisition of the permit will lead to withdrawal or non-renewal and expulsion for the Member State. This is the case in Belgium, Czech Republic, Finland,

Germany, Lithuania, Luxembourg, the Netherlands, Poland, Romania, Slovenia, Spain and Sweden. Refusal to renew or withdrawal of the residence permit and expulsion from the territory due to fraud can be considered to be in conformity with Article 22(1)(b) of the Directive.

The issue has not been regulated in Estonia. The Aliens Act does provide, however, that the permit of a long-term resident can be declared void in case the permit has been obtained in case of fraud or on public policy or security grounds. If the residence permit is declared void and a person has no other legal reason to stay in Estonia he or she will get a precept to leave. If the person does not leave within the specified time limit, an expulsion order will be issued.

2.3.6.2 Obligation to readmit (Q 22. B)

Article 22(2) contains an obligation upon the first Member State to readmit a status holder who has been expelled from the second Member State on one of the grounds mentioned in Article 22(1). How has this obligation to readmit been codified in the national legislations of the Member States?

It appears that only a few Member States have explicitly transposed Article 22(2). This is the case in Belgium, Cyprus, Greece, Italy, Malta, Portugal and Sweden. In Italy, the right to be readmitted is subject to the condition that there is no danger for the public order and the security of the State.

Most Member States have transposed the obligation to readmit long-term residents that have been expelled from the territory of the second Member State where they obtained a residence permit via *a contrario* reasoning: it is derived from the right to enter into and reside in the territory of the Member State concerned that is attributed to third-country nationals holding a residence permit. This is true for the Czech Republic, Finland, Germany, Hungary, Lithuania, the Netherlands, Poland, Slovakia and Slovenia. In Finland and Slovakia, the status-holder will only be readmitted if he does not constitute a threat to public order or public security. Furthermore, in Slovakia, a person will have to inform the police of the fact that he or she will be spending more than 180 days outside the Slovak Republic. If the status holder fails to do this, his permit will be withdrawn and the person concerned will no longer have access to the territory of the Slovak Republic.

It is questionable whether the *a contrario* transposition is in line with the Directive. Article 22(2) is a provision which regulates the relationship between the first and the second EU Member State, rather than the relationship between an individual (the status-holder) and the first Member State. It could therefore be argued that Article 22(2) needs to be transposed explicitly, in order to create the certainty for the second Member State that the first Member State will take back the third country national to whom it awarded the EC long-term resident status. In this respect, Article 22(1) is comparable to Article 27(4) of Directive 2004/38 on the obligation of a Member State to take back a national who has used it freedom of movement in case of expulsion by another Member State.

Some rapporteurs considered that using the right of status holders to enter and reside in their Member State due to the fact that they hold a valid residence permit can not be considered to be sufficient transposition of Article 22(2) of the Directive. This counts for the rapporteurs for Austria, Estonia, Hungary, Latvia, Luxembourg, and Romania. A special situation exists in Bulgaria and France.

Instead of introducing an obligation to readmit as an obligation of the first Member State, the Bulgarian Aliens Act provides for an obligation to the competent Bulgarian authorities to turn back the long term resident to the first Member State. The fact that the

Bulgarian legislation is not in conformity with the Directive on this point might be due to a translation problem: in Bulgarian, 'readmit' has the same meaning as 'to return back.' In France, the Aliens Act provides that the authorities of the Member State who issued the third country national with the status will readmit the status holder in case he or she will be expelled from France because he or she has not lived up to the rules that apply to staying in France. Furthermore, in case another Member State has decided to expel a status holder to France for serious public order or public security reasons, France has the right to withdraw the status. In such a case, the former status holder will no longer have a right to enter and reside in France.

Spain has not transposed the Directive.

Article 22(2), Q.22.B	
No Transposition At All	Austria, Estonia, Hungary, Latvia, Luxembourg, Romania, Spain
Legal Problem	Bulgaria

Possibility of moving to a third Member State

Article 22(5) states that the obligation to readmit contained in paragraph 2 shall be without prejudice to the possibility of the long-term resident and his or her family members moving to a third Member State. It appears that Cyprus, Greece and Portugal have explicitly transposed this provision. In the other Member States, the provision has not been explicitly transposed. However, *a contrario* reasoning might lead to the conclusion that the provision has been transposed. Transposition might be guaranteed in case a Member State does not prohibit the status holder to move to a third Member State. This line of reasoning is applied in Austria, Belgium, the Czech Republic, Germany, Poland, Slovakia, Slovenia and Sweden.

Some rapporteurs considered that the *a contrario* reasoning does not qualify as sufficient transposition. They argue that Article 22(5) needs explicit transposition. Since Article 22(5) has not been explicitly transposed in their legislation, they judge that the article has not been transposed. This counts for Bulgaria, Estonia, Finland, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Romania and Spain.

Article 22(5), Q.22.B	
No Transposition At All	Bulgaria, Estonia, Finland, France, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Romania, Spain

2.3.6.3 Removal from the territory of the Union (Q 22.C)

According to Article 22(3), until the third-country national has obtained long-term resident status (and without prejudice to the obligation to readmit mentioned above) the second Member State may adopt a decision to remove a third-country national from the EU. In such cases, the second Member State shall consult the first Member State. The Article contains the fourth public order clause of the Directive, since it states that removal from the Union may only take place on grounds of 'serious public policy or public security, in accordance with and under the guarantees of Article 12.'

The possibility offered by Article 22(3) has been transposed in Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Finland, France, Germany, Greece, Italy, the Netherlands, Portugal, Slovakia and Slovenia. However, the condition that Member States

may only remove a status-holder from another Member State from the territory of the Union on 'serious grounds of public order' in accordance with and under the guarantees of Article 12 has not been transposed in all Member States. Only Germany and Slovenia take into account the elements mentioned in Article 12 before making a decision regarding the expulsion of a status-holder. Belgium has merely copied the term 'serious grounds of public policy or public security' from the Directive. The issue will have to be further evaluated in due course, when transposition is complete and case law can be studied. Likewise in the Czech Republic, the wording of the Directive is copied and not further specified. In Cyprus, the length of stay and the close links of the person concerned will be taken into account when taking a decision concerning the removal from the territory of the EU. However, the other two elements of Article 12, namely the age of and the consequences for the person concerned and his family members, are not taken into account. The legislation transposing the Directive in Greece refers to 'an actual and justified threat' and the elements of Article 12 are taken into account. Finland and the Netherlands specify the types of crime after which a decision concerning removal from the territory of the EU can be taken. In Finland, conviction of a crime for which the maximum penalty is a minimum sentence of one year is considered a 'serious ground of public policy or public security'. This is also the case where continuous criminality is involved, in cases of conduct which constitutes a danger to the security of others and in cases where previous behaviour raises the suspicion that the person concerned will take action to jeopardise the national security. In the Netherlands, conviction of any crime leading to a sentence of unconditional imprisonment, unpaid labour or an unconditional fine is sufficient reason for expulsion from the EU. Italy mentions the fight against terrorism. In the Slovak Republic, status-holders from another Member State shall be expelled to a territory outside the EU for 'particularly serious reasons'**.** This term has not been specified in the law. Although all these countries mention public order and public security concerns as reasons for expulsion from the territory of the EU, none of them seems to take into account the elements of Article 12, except Germany and Slovenia. Most Member States have transposed the elements mentioned in Article 12 in their legislation concerning the expulsion of status-holders from their country. This does not necessarily imply, however, that these elements will also be taken into account when expelling a status-holder from another country from the territory of the Union.

In Bulgaria, the serious grounds of public policy or public security have not been transposed. The competent authorities have a margin of appreciation when deciding on the expulsion of a status holder from another Member State. No information is available regarding the criteria for the authorities' decision-making.

Most Member States that make use of the possibility of removing a status-holder from the territory of the EU have codified the obligation to consult the first Member State, with the exception of Austria. Cypriot legislation states that the first Member State will be 'notified' of any final decision to remove the long-term resident. Greek legislation stipulates that the competent Greek authorities shall request from the Member State all the necessary information concerning the issue and execution of the expulsion decision.

The situation is unclear in Malta.

2.3.7 The right to obtain the status in the Second Member State (Q.23)

Article 23 of the Directive contains the right of long-term residents of the first Member State to obtain this status in the second Member State. The status-holder will have to fulfil the same requirements as third-country nationals applying for the status for the first time, as provided for by the Directive in Articles 3, 4, 5 and 6. It is questionable whether the transposition of Article 23 is in order if a Member State applies the same national rules to third-country

nationals who acquired the status in another Member State and to third-country nationals applying for long-term residence status for the first time. For instance, if the second Member State requires the status-holder to fulfil integration conditions if he wants to obtain the status after such conditions have been fulfilled in the first Member State, the result could be that the third-country national loses his status in the first Member State without acquiring the status in the second Member State, because Article 9(4) second paragraph states that the status will be lost after six years of absence from the territory of the Member State. The same line of reasoning can be applied to the income requirement. The solution to this problem might come from the first Member State if it uses the possibility provided under Article 9(4), third indent, of refraining from withdrawing the status in cases where a long-term resident has spent more than six years abroad.

It appears that in nine Member States, explicit provision is made for the right of long-term residents from another Member State to acquire the status in the second Member State: Belgium, Cyprus, Greece, Italy, Luxembourg, Malta, Portugal and Sweden. In Belgium, in contrast to the regime used when granting the status for the first time, temporary residence is also calculated for the required period of five years of residence in Belgium for long-term residents of another Member State. Bulgarian legislation also explicitly mentions the possibility of status-holders from another Member State to acquire the status in Bulgaria, but, in this Member State, the granting of the status is at the discretion of the authorities. Furthermore, the article in the Bulgarian Aliens Act transposing Article 23 Directive lacks clarity. It states that a long-term resident of another Member State may acquire a long-term residence permit, without specifying which kind of permit will be acquired.

It appears that thirteen Member States do not make special provisions leading to the acquisition of the status by status-holders from another Member State. In Austria, Estonia, Finland, France, Germany, Hungary, Latvia, Lithuania, Malta, the Netherlands, Poland, Romania, Slovakia, and Slovenia the article which is used for third-country nationals applying for the status for the first time also applies in this case. In Austria and France the granting of the status is at the discretion of the authorities.

In Estonia and Spain, no article providing for the acquisition of the status by status-holders from another Member State exists, since Chapter III has not been transposed.

Article 23(1), Q.23	
No Transposition At All	Estonia, Romania, Spain
Legal Problem	Bulgaria

Integration Requirement?

Is the long-term resident required to fulfil an integration condition when applying for the status in the second Member State? The answer is affirmative for the following eleven countries: Austria, the Czech Republic, France, Germany, Greece, Latvia, Lithuania, Luxembourg, the Netherlands, Romania and Slovakia. In Slovakia, the compliance with integration conditions is at the discretion of the police. In Germany, it is important to note that persons applying for the long-term status for the first time there are not obliged to participate in integration courses, whereas long-term residents from another Member State who intent to reside in Germany are obliged to do so. However, even without the obligation to participate in integration courses sufficient German language skills are a prerequisite for acquiring the long-term residence status for the first time. Though, aliens holding a long-term residence permit from another Member State are generally required to participate in integration courses, their obligation will be lifted with respect to the course on basic facts about Germany if they already participated in a similar course in another Member State. In contrast to this, the

obligation to participate in the language course remains in force for persons holding long-term residence permits from another Member State. For the content of the integration conditions in the eleven countries mentioned above, see paragraph 2.2.3.

In our opinion, the requirement that integration conditions be fulfilled in the second Member State after such conditions have been fulfilled in the first Member State would be contrary to the system of the Directive. The result could be that the third-country national loses his status in the first Member State without acquiring the status in the second Member State.

Similar application of the Articles 7, 8 and 10

Article 23(2) provides that Articles 7, 8 and 10 of the Directive shall apply when a status-holder from another Member State applies for this status in the second Member State. The transposition of this provision appears not to cause problems, except in the Czech Republic, and Italy. In the Czech Republic, more documents are required than provided for by the Directive. In Italy, the same procedure applies as that applied to third country nationals applying for the first time, so the same concerns are relevant. In Estonia, France, Luxembourg, Romania and Spain the provision has not been transposed.

Article 23(2)	
No Transposition At All	Estonia, France, Luxembourg, Romania, Spain
Legal Problem	Czech Republic, Italy

2.4 Rules relating both to obtaining the status in the first Member State and to the right of residence in the second

2.4.1 The Public Policy Exception in the first and second Member States (Q.8.A-B, Q. 19)

2.4.1.1 The Public Policy Exception in the first Member State (Q.8.A)

According to Article 6(1) Member States may refuse to grant long-term resident status based on public policy or public security grounds. In reaching this decision, Member States should 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.

In our opinion, this provision and the similar clause in Article 17(1) which contains the first and the second elements both need to be explicitly transposed. Member States cannot rely on general principles of administrative law, on clauses in national law stating that all the relevant circumstances should be taken into account, on sliding scales that only take into account two of the elements of Article 6(1) or on national public order clauses that allow the immigration authorities to use their discretion if the third-country national has committed a minor crime but to order refusal or withdrawal of a residence permit in the event of a conviction for certain

serious crimes. Such national rules may reduce or even deny the *effet utile* of Article 6(1) and Article 17(1). National law should guarantee that each of the elements specified in these two provisions of the Directive have been taken into account in each case where a decision to refuse the status is made. The Cypriot and German rapporteur did not agree with this view.
Restrictions of the grounds for refusal in national case law or a ministerial circular do not qualify as full transposition of Articles 6 and 17. In the Orfanopoulos judgement (C-482/01) and its recent judgment Commission vs. Netherlands (C-50/06), the Court did not accept that generally formulated national public order rules or sliding scales are applied to Union citizens who use their freedom of movement instead of or before the application of the Community law rules on the public order exception.

The possibility of refusing to grant long-term resident status on public policy grounds exists in all Member States' legislations. In the vast majority of Member States the concepts of public order and public security are used in the national legislation. The obligation to take into account all four elements when taking a decision on public order or public security grounds has been codified in nine Member States (Estonia, Finland, France, Germany, Greece, Italy, Luxembourg, Malta and Portugal). Some of these Member States literally copied the provision from the Directive. A legal problem regarding the transposition of Article 6(1) arises because the national legislation of a significant number of Member States makes little if any reference to the four elements of Article 6(1): the severity or type of the offence or the degree of danger posed by the individual, the duration of residence in and personal links with the country of residence.

Although in Finland the obligation to take into account the elements of Article 6(1) has been codified, a problem remains. Finland has formally transposed the provision; nevertheless, the main transposition norm allows for refusal on the grounds of punishment or suspicion. This open formulation includes a wide range of crimes which differ in severity. Therefore, even though the severity and nature of the criminal act has to be taken into consideration, this provision could, according to the reporter, lead to a decision in which a person could be refused a long-term residence permit '*on grounds that are not examined rigorously*'.

In two Member States (Bulgaria and the Netherlands) the elements have been partly codified. In Bulgaria the obligation to take into account the severity or type of offence and the existence of links with the country of residence has not been transposed. Bulgaria does take into account links with the country of origin.

In seven Member States (Czech Republic, Hungary, Lithuania, Romania, Slovakia, Slovenia and Spain) the obligation to take into account the elements of Article 6(1) paragraph 2 has not been codified and the elements are not taken into account. The national legislation of Slovenia states that the competent authority has to automatically refuse a request for a permanent residence permit if an alien has been sentenced to a prison term of more than one year in the last three years.

Although the obligation to take into account these elements when taking a decision on public order or public security grounds has not been codified in Cypriot legislation, according to the national rapporteur, in practice the elements have to be considered by the authority that examines the applications. The same applies in Belgium, Latvia and Poland. In Belgium the explanatory memorandum, accompanying the bill, makes reference to the fact that the gravity or nature of the offence or the danger posed by the person concerned will be taken into account, as well as the duration of the residence and the existence of links with the country of residence.[51] According to the Latvian rapporteur the elements have to be taken into account in Latvia by virtue of the Law on Administrative Procedure and its principle of proportionality

[51] Page 27 http://www.dekamer.be/FLWB/PDF/51/2845/51K2845001.pdf.

and justice. According to the Polish rapporteur, in Poland it is guaranteed by the general rules of administrative law that the elements will be taken into consideration since the administrative legislation obliges the competent authority to take all the necessary steps to clarify the facts and decide on the case with due respect for public interest as well for the legitimate interest of individuals. According to the Polish report, this is also supported by the case law of administrative courts. In Sweden the obligation to take into account the elements of Article 6 (1) has not been codified in the law either but the preparatory work states that the competent authority should balance the threat the person constitutes with the period of residence and links with Sweden.

In Austria the elements mentioned in Article 6 are taken into account only with regard to the expulsion of long-term residents, not in cases of refusal or withdrawal of the permit.

Article 6(1), Q.8.A	
Legal Problem	Austria, Belgium, Bulgaria, Czech Republic, Finland, Hungary, Latvia, Lithuania, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden

2.4.1.2 Economic Considerations (Q.8.B)

According to Article 6(2) refusal of the long-term residence status on the grounds of Article 6(1) shall not be based on economic considerations. With regard to the free movement of workers, a similar clause has been in force since 1964 in Article 2(2) of Directive 64/221, presently part of the second sentence of Article 27(1) of Directive 2004/38. The provision that the refusal to grant long-term residence status can not be based on economic considerations has been codified in the national laws of five Member States (Cyprus, Greece, Luxembourg, Malta, and Portugal).

This provision in our view has to be transposed explicitly in national law. The reasoning mentioned in para. 2.4.1.1 with regard to public order clause in Article 6(1) and Article 17(1) also applies to the clause in Article 6(2) and Article 17(2) that the status or a residence permit in the second Member State should not be refused or withdrawn on economic grounds. Explicit transposition of Article 6(1) alone is not sufficient, because economic considerations were traditionally covered by the *ordre public* clauses of the national laws of many European states and Council of Europe conventions. That was the main reason why economic considerations were explicitly excluded from Article 2(2) of Directive 64/221. This applies to Article 6(2) of the Directive too. Member States cannot rely on general public order provisions in their national law to refuse the status or the permit for economic reasons, other than the income requirement of Article 5(1)(a) and Article 17(2)(a). However, Article 6(2) and Article 17(2) are transposed correctly if the grounds for refusal are listed exhaustively and in a very detailed manner in the national legislation. In such cases, a refusal to grant the status or a residence permit on economic grounds may be implicitly excluded by such catalogue. This is, for instance, the case in the Czech Republic.

In most Member States the public order grounds on which a permit could be refused are not listed exhaustively (Austria, Belgium, Bulgaria, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Spain and Sweden). In these Member States only a general formulation is made that the status could be refused on public order grounds. Therefore, the legislation in 17 Member States is not in accordance with Article 6(2) of the Directive. The German and Swedish rapporteurs do not agree with this view. In the view of the German and Swedish rapporteurs, transposition of Article 6(2) is in

order in their Member State since economic considerations are not mentioned as ground for refusal of the status.

Article 6(2), Q.8.B	
No Transposition At All	Austria, Belgium, Bulgaria, Estonia, Finland, France, Hungary, Italy, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Spain

2.4.1.3 The Public Policy Exception in the second Member State (Q.19)

According to Article 17(1) Member States may refuse applications for residence from long-term residents or their family members if the applicant constitutes a threat to public policy or public security. When taking this decision, the second Member State should consider the severity or type of offence against public policy or public security or the danger posed by the applicant. The elements of duration of the person's residence in the European Union and the existence of links with the Member State, mentioned in Article 6, do not have to be taken into account. As explained in the previous paragraph, Article 17(1) paragraph 2 needs to be transposed explicitly.

In the national legislation of most Member States the concepts of 'public order' and 'public security' are used. In a few Member States, the terms public order or security are specified by defining threats to public order or security by means of conviction of certain crimes or sentences. The obligation to consider the severity or type of offence against public policy or public security or the danger posed by the applicant has only been codified in nine Member States (Cyprus, Estonia, France, Greece, Italy, Luxembourg, Malta, the Netherlands and Portugal).

In eight Member States (Belgium, Bulgaria, Finland, Hungary, Latvia, Lithuania, Romania and Spain) the obligation to take into account the severity or type of offence against public policy or public security or the danger posed by the applicant has not been codified and the element is not taken into account under another statutory rule.

In Slovenia, transposition has taken place. However, pre-existing legislation refers to some elements only for determining residence permits for family members and the relevant element mentions only the ties to the relevant Member State. There is no mention of the severity of the offence against public policy or public security or the danger posed by the applicant. In Slovakia paragraph 2 of Article 17(1) has been transposed in vague terms and incompletely. According to the German and Polish rapporteurs, the general rules of constitutional, respectively administrative law apply and the elements of Article 17(1) are taken into account when decisions are made on the basis of general rules. In Poland the rules of administrative procedure force the relevant authorities to take all the necessary steps to clarify the facts and decide on the case with due respect for public interest as well as the legitimate interests of individuals. According to the Polish rapporteur, this is supported by the case law of administrative courts regarding the public policy exception. It seems that in Austria the element is only taken into account regarding the expulsion of long-term residents, not in cases of refusal or withdrawal of the permit In Sweden the obligation to take into account the element of Article 17(1) paragraph 2 has not been codified in national law, but it is stated in the preparatory work[52] that the elements referred to in the second sentence shall be

[52] *Travaux préparatoires* are an important source of interpretation in the Swedish legal system. An act of Parliament is accompanied by an opinion in which the Parliament develops and clarifies the objective of the act and the meaning of its wording. This is written to afford guidance in the application of the law. It is disputed in the Swedish legal literature whether *travaux préparatoires* are sources of law in a technical sense, that is, if their contents are formally binding upon everyone. There is no straightforward answer to this question, but it is at

taken into account.[53] It is unclear whether the elements have to be taken into account in the Czech Republic. In any case the elements are not explicitly transposed.

Article 17(1), Q.19	
No Transposition At All	Latvia, Spain
Legal Problem	Austria, Belgium, Bulgaria, the Czech Republic, Finland, Hungary, Lithuania, Poland, Romania, Slovakia, Slovenia, Sweden

2.4.1.4 Economic Considerations

According to Article 17(2) the decision of paragraph (1) shall not be based on economic considerations. As explained in paragraph 2.4.1.2. with regard to article 6(2), Article 17(2) paragraph 2 needs to be transposed explicitly. Article 17(2) has not been transposed explicitly in the majority of the Member States. From the tables of correspondence it appears that Article 17(2) has not been transposed (explicitly) in Austria, Belgium, Bulgaria, Czech Republic, Estonia, Finland, Germany, Hungary, Italy, Latvia, Lithuania, Poland, Romania, Slovakia and Spain. Though in the Czech Republic the grounds for refusal seem to be listed exhaustively and in a very detailed manner in the national legislation. Thus, as explained in the paragraph 2.4.1.2. a refusal to grant the status or a residence permit on economic grounds can be implicitly excluded by such catalogue. However, according to the Czech rapporteur there could be a problem with the interpretation of the scope of public policy. From the tables of correspondence it appears that transposition is in order in nine Member States (Cyprus, France, Greece, Luxembourg, Malta, the Netherlands, Portugal, Slovenia and Sweden). The table below shows that some rapporteurs consider it as 'no transposition at all' if article 17(2) has not been transposed explicitly, while other rapporteurs consider it as a legal problem. However, it is a fact that the legislation of most Member States is not in conformity with article 17(2) of the Directive. The German rapporteur does not agree with this view. According to the German rapporteur transposition of article 17(2) should be considered as in order on the basis of an *a contrario* reasoning.

Article 17(2)	
No Transposition At All	Austria, Bulgaria, Estonia, Finland, Hungary, Italy, Latvia, Lithuania, Romania, Slovakia, Spain
Legal Problem	Belgium, Czech Republic, Poland

2.4.2 Remedies in the First and Second Member State (Q.12.A-B, Q.14.D)

2.4.2.1 Procedural guarantees in the First and Second Member State (Q.12.A)

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least not contentious to hold that these opinions are seen as of great importance in the interpretation of the content of an act. This is especially true for interpretations made in the introductory phase, before any accepted practice has been established. In general, the courts and lawyers in Sweden pay closer attention to the legislator's express will than is the case in other countries. Thus, one can conclude that the *travaux préparatoires* function as an important source for interpretation and are followed in legal practice, although they are not in fact formally binding. (This is based on 'General Public Law – the Constitution' by Fredrik Sterzel in *Swedish Law - a survey* by Tiberg, Sterzel, Cronholt (eds.), 1994, pp. 52- 55 and 'Sources of Swedish Law' by Hans-Heinrich Vogel in *Swedish Law in the new Millennium*, Bogdan (ed.), 2000, pp. 57- 60).

[53] See government proposition 2005/06:77 p. 155.

According to Article 10(1) reasons shall be given for any decision rejecting an application for long-term resident status or for withdrawing that status. Any such decision shall be notified in accordance with the notification procedure under the relevant national legislation. The notification shall specify the redress procedures and the time limit for taking action.
According to Article 20(1) the same procedural guarantees apply to comparable decisions concerning residence permits in the other Member States.

In Austria in certain cases no formal decision is taken concerning the withdrawal or the refusal of LTR status. In those cases the competent authority has to inform the applicant after obtaining the opinion of the Aliens Police that his right of residence is about to be terminated. The authority has to explain why the measures do not violate the applicant's private and family life. The applicant has to be informed of his right to express his views within a period not exceeding fourteen days. Nevertheless, in other respects, no reasons are given for that decision nor will the decision be notified or the available redress procedures specified. A redress procedure to the Minister of the Interior is available against negative decisions concerning third-country nationals of another Member State.

Formal transposition (after the date of the adoption of the Directive) of the provisions of the Articles 10(1) and 20(1) has taken place either in a legislative or regulatory instrument in Bulgaria, Cyprus, the Czech Republic[54], Greece, Luxembourg, Malta, Portugal, Romania and Sweden.

In Lithuania only the obligation to notify is formally transposed, but in a circular rather than in binding legislation. Explicit written provisions concerning the reasoning behind the decisions and specification of the redress procedures are lacking, but, in practice reasons are given and redress possibilities are indicated.

In Bulgaria, Cyprus, the Czech Republic, Greece, Luxembourg, Portugal and Sweden the decisions which include a specification of the available redress procedures are notified in writing to the persons concerned. In Luxembourg the authorities may refrain from giving reasons when State security is at stake.

In Malta oral notification by the Director (of Citizenship and Expatriate Affairs) appears to be the practice.

In Romania the decision is notified in writing but an explicit norm concerning the inclusion of specification of the available redress procedures is lacking.

In Belgium, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Luxembourg, the Netherlands, Poland, Slovenia and Slovakia Articles 10(1) and 20(1) have not been formally transposed, but the pre-existing *domestic law is in conformity* with these provisions. The same applies to Spain, although Article 20 has not been implemented in the Spanish legislation.

According to the Polish Aliens Act the authorities may refrain from justification wholly or partially for reasons of state defence or security or public security or policy which according to the rapporteur, contradicts Article 10(1) and 20(1) of the Directive.
In Estonia notification in writing and specification of redress procedures are regulated in a Regulation.

In Belgium specific rules concerning the notification and specification of the available redress procedures should, under existing law, be formulated in a regulation (a Royal Decree), which still needs to be drafted.

In Finland, France[55], Germany[56], Italy[57], Latvia, the Netherlands, Poland, Slovenia, Slovakia and Spain the decisions (including redress possibilities) are notified in writing.

[54] Similar provisions had already existed in the Czech Republic before the transposition.
[55] By mail or personal delivery.
[56] The mode of delivery of the written decisions depends on the Länder.

Although in Hungary according to the regulations decisions are notified by mail, in practice a copy will most probably be handed over in person.

Article 10 (1), Q.12.A	
Legal Problem	Austria, Poland, Romania

Article 20 (1), Q.12.A	
No Transposition At All	Spain
Legal Problem	Lithuania, Poland, Romania

2.4.2.2 Judicial review in the First and Second Member State (Q.12.B)

According to Article 10(2) the third-country national shall have the right to mount a legal challenge where an application for long-term resident status is rejected or where that status is withdrawn or lost, or the residence permit is not renewed.

According to Article 20(2) the long-term resident shall also have the right to mount a legal challenge where a residence permit in another Member State is rejected, or the permit is not renewed or is withdrawn.

No transposition of the Articles 10(2) and 20(2) has taken place in Italy. In Austria in certain cases no formal decision is taken concerning the withdrawal or refusal of the LTR status (see Q.12.A). No remedies are available.

Under previous legislation in Italy the right to challenge decisions concerning refusal or revocation of residence permits before an administrative court has been clearly affirmed, but the relevant provision has not been re-inserted in the transposition legislation. Although the possibility of appeal could be derived from the general principles of administrative law, it must be emphasised that this right has not yet been specified and this may give rise to doubts about the competent authority for lodging an appeal.

Formal transposition of the provisions of Articles 10(2) and 20(2) took place in Bulgaria (law), the Czech Republic (law), Estonia (law), Finland (law), Greece (regulation), Latvia (law), Lithuania (law), Luxembourg (law), Malta (regulation), Portugal (law) and Romania (law). In Sweden Article 10(2) is formally transposed by law, but pre-existing domestic law was already in conformity with Article 20(2).

Of these Member States, the relevant legislation in Estonia, Finland, Greece, Luxembourg, Portugal and Romania provides for an appeal to a judicial court specialising in administrative cases. According to the national reports, the remedies are considered effective. In this respect, the Portuguese report explicitly mentions the full jurisdiction of the administrative courts (facts and law) and the suspensive effect of an appeal. The full jurisdiction is also mentioned in the Finnish and the Romanian reports.

In Lithuania the Aliens Act also provides for an appeal to an administrative court, but the remedy is not considered effective in cases where national security or public order considerations are involved. In these cases, the factual data constituting the national security or public order risk may be kept secret. Therefore, it is almost impossible for the applicant to present arguments to the contrary.

In Malta access to a court is not guaranteed, while the regulation only provides for an appeal to the Immigration Appeals Board.

[57] The (as yet) non-amended Immigration Act provides that the decision rejecting the application be handed over or notified.

The transposition of Article 20(2) is considered problematic in Romania because the decision to reject, not to renew or to withdraw a residence permit is taken together with the expulsion order and only the expulsion order can be appealed.[58]

In Bulgaria, the Czech Republic and Latvia an appeal to an administrative court is preceded by a review procedure within the administration. According to the national reports, the remedies are considered effective. Nevertheless, in the Czech Republic the loss of LTR-status according to Article 9(4) of the Directive can not be challenged. While loss of status is a legal fact and not a legal decision, loss of status is not subject to an administrative procedure.

In Belgium, Cyprus, France, Germany, Hungary, the Netherlands, Poland, Slovenia and Slovakia, Articles 10(2) and 20(2) have not been formally transposed but pre-existing *domestic law is in conformity* with these provisions. The same applies to Spain concerning Article 10(2), but Article 20 has not been implemented in Spanish legislation. In Sweden Article 20(2) was already in conformity with pre-existing legislation, but Article 10(2) is formally transposed.

In these Member States an appeal to a court is preceded by a review procedure within the administration in France, Germany, Hungary, the Netherlands, Poland, Slovenia, Slovakia and Spain. According to the national reports, these remedies are considered effective. In this respect, the French report explicitly mentions the full jurisdiction of the administrative courts, while the Dutch and Polish reports refer to the suspensive effect of an appeal.

In Slovakia the remedy is not considered effective, while an appeal has no suspensive effect and suspensive effect is rarely granted by the courts.

In Belgium the persons concerned have the right to appeal the decision before a newly-created specialist court (*Conseil du contentieux des étrangers*). Recently, specialist courts have been set up in Sweden as well. Decisions by the Swedish Migration Board may be appealed to a migration court and, in the second instance, to the Migration Court of Appeal. According to both national reports these remedies should be considered effective.

The relevant pre-existing domestic law in Cyprus is Article 146 of the Constitution, which provides for judicial review at the Supreme Court. This remedy is not considered effective, while it is expensive, time-consuming and has no suspensive effect.

Article 10(2), Q.12.B	
No transposition at all	Italy
Legal Problem	Austria, Cyprus, Czech Republic, France, Slovakia

Article 20(2), Q.12.B	
No Transposition At All	Italy, Spain
Legal Problem	Austria, Cyprus, Romania, Slovakia

2.4.2.3 Legal Aid in the First Member State (Q.14.D)

[58] Two interpretations are possible: 1. although the law of transposition does not explicitly provides for a legal remedy against the refusal, not renewal or withdrawal of the permit, a remedy would result from a pre-existing general principle of domestic law (with constitutional value), concerning the right to a judicial remedy against any administrative act; 2. whereas the law of transposition does provide for the existence of two distinct decisions (the decision regarding the refusal, not renewal or withdrawals and the decision of expulsion), the fact that the law explicitly allows a judicial remedy only against the second decision, may be interpreted as not allowing a judicial remedy against the first decision.

According to Article 12(5) legal aid shall be given to long-term residents on the same conditions as apply to nationals. Although an explicit provision concerning legal aid in the second Member State is lacking, it may be assumed that Article 12(5) applies by analogy to the second Member State as well.

Article 12(5) is *not transposed* in Latvia, Lithuania and Malta.

In Latvia, the Administrative Procedure Law does not provide for an entitlement to compulsory legal aid for anybody.

Formal transposition of Article 12(5) has taken place in Bulgaria (law), Cyprus (law), Greece (regulation) and Portugal (law).

In Austria, Belgium, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Luxembourg, the Netherlands, Poland, Romania, Slovenia, Slovakia, Spain and Sweden Article 12(5) has not formally been transposed but *pre-existing domestic law is in conformity* with this provision.

Although in most Member States that have formally transposed Article 12(5) or where national law is in conformity with this provision, legal aid is provided on the same footing as for nationals, the following situations require special attention.

In Austria legal aid has to be given only in cases where a person has to be represented by a lawyer (e.g. before the Supreme Administrative Court). In other instances the competent authority has 'to inform and guide' the persons concerned if they are not represented by a lawyer. In Poland current legislation limits legal aid to (administrative) appeals and does not provide for legal aid in administrative (review) proceedings (for neither migrants nor nationals). A draft is currently pending which extends legal aid to proceedings concerning the withdrawal of residence permits. In Slovakia too, free legal aid is limited to court proceedings and is not provided in administrative (review) proceedings. Romanian legislation provides for legal aid but an explicit norm regarding equal treatment is lacking. In Cyprus legal aid means counselling, legal representation and translation. In Spain free legal aid also includes translation. In Sweden free legal aid is given to third-country nationals who are at risk of expulsion because they have committed a crime or who fear expulsion on any other grounds because of a decision by the Swedish Migration Board. Public counsel shall be appointed, unless it is to be assumed that there is no need for counsel.[59]

[59] Overview of the relevant provisions:
Austria: § 13a General Administration-Procedure Law and § 63 Civil Procedure Law
Belgium: the Law of 23 November 1998 on legal aid
Bulgaria: Article 22 of the Law on Legal Aid
Cyprus: Migration Act section 18 and Legal Aid Law 2002
Czech Republic: Sec. 30 para. 1, para. 2 Civil Procedure Code and Sec. 36 para. 3 Code of Administrative Justice
Estonia: Article 6 State Legal Aid Act
Finland: § 2 of the Act on Legal Aid (5.4.2002/257)
France: Article 3 de la loi n° 91-647 du 10 juillet 1991 relative à l'aide juridique
Germany: Sec. 166 Administrative Court Act (VwGO) in connection with sec. 114 seq. Civil Procedure Act (ZPO)
Greece: Article 11 sentence 5 of the Presidential Degree. 150/2006
Hungary: §4(1) of the Act on Legal Aid no LXXX of 2003
Italy: Section 13, para. 8, of the Single Text on Immigration Law
Luxembourg: Règlement grand-ducal du 18 septembre 1995concernant l'assistance judiciaire
Malta: Section 911(1) of the Code of Organisation and Civil Procedure
Netherlands: Article 12 of the Legal Aid Act
Poland: Articles 243 to 263 of the Law on Procedure at Administrative Courts of 30 August 2002
Portugal: Law no. 34/2004 of 29 July on the access to law and courts and on legal aid
Romania: Code of Civil Procedure
Slovakia: Article 30 of the Code on Civil Procedure

Article 12(5), Q.14.D	
No Transposition At All	Latvia, Lithuania, Malta
Legal Problem	Romania
Practical Problem	Poland

2.4.3 Equal Treatment in the First and Second Member States (Q.13.A-B-C-D-E)

2.4.3.1 Equal Treatment with nationals (Q.13.A)

According to Article 11 of the Directive, long-term residents should enjoy equal treatment alongside nationals on the following grounds:

a Access to employment;
b Education and vocational training;
c Recognition of diplomas, certificates and other qualifications;
d Social security, social assistance and social protection;
e Tax benefits;
f Access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing;
g Freedom of association and affiliation and membership of certain organisations;
h Free access to the territory of the Member State.

It is clear that in some Member States great care has been taken to review the national legislation outside the immigration domain and to amend that legislation, if necessary, in order to transpose the provisions of the Directive on Equal treatment (Article 11 and Article 21). As discussed in para. 1.1.2, in the Czech Republic, Poland, Slovenia and Sweden the transposition of the Directive led to the amendment of several Acts outside the immediate immigration domain. Those amendments concerned legislation on education, study grants, social security, tax, administrative courts or remedies, legal aid, integration and other domains. The Belgian and Lithuanian reports mention that various pre-existing acts and decrees in other domains, covered by the equal treatment clause of Article 11, are considered in conformity with the Directive. The other reports contain no indication of such a systematic review of legislation other than the immigration legislation or they contain references to general equal treatment legislation. In other Member States a systematic review of the relevant legislation may not have been performed in other domains by the authorities or the rapporteurs. In our opinion a systematic review of the national legislation outside the immigration domain, as performed in the aforementioned Member States, should be conducted by the national authorities.

At first sight the national legislation of the majority of Member States seems to be in compliance with Article 11 of the Directive but this conclusion may not be based on a systematic review of the national legislation. Further research seems to be necessary in order to give a clear answer to the question of the extent to which equal treatment is granted to long-term residents in the fields relevant to Article 11.

In Belgium, Estonia, Lithuania and the Netherlands, although equal treatment is envisaged in most of the fields covered by Article 11, the national legislation does not

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Slovenia: Article 10(1) of the Free Legal Aid Act (ZBPP)
Spain: Article 22 Act on the Rights of Foreigners in Spain and their social integration (LOEX)
Sweden: Chapter 21 of the Code on Judicial Procedure and Chapter 18 section 1 of the Aliens Act

explicitly provide for equal treatment for long-term residents.[60] In Belgium equal treatment is based on pre-existing law so no explicit provision is made for equal treatment for long-term residents or Belgian nationals in the areas covered by Article 11. Hence, according to the Belgian rapporteur, it appears from an initial study of the relevant legislative provisions that long-term residents enjoy equal treatment. In Lithuania the Aliens' Law does not contain specific provisions, but equal treatment is according to the national rapporteur ensured by general legislation since long-term residents will have the status of permanent residents who have the same treatment as nationals with regard to most of benefits. In the Netherlands long-term residents are protected from discrimination by the General Equal Treatment Act, irrespective of their residence status or nationality. Formal transposition of the Directive only gave rise to an amendment of the Aliens Employment Act, but did not result in changes beyond the national immigration and asylum legislation or to the legislation in other fields such as education, social security, study grants, tax law or other domains. Although most of the relevant laws may not provide special rights or privileges reserved for nationals only, the parliamentary debate on the transposition leaves us with the impression that no systematic checking of the relevant legislation has been conducted by the Dutch authorities in order to guarantee equal treatment in all the fields mentioned in Article 11. In the Netherlands, the Minister for Aliens Affairs and Integration declared explicitly that the equal treatment provisions of Article 11 did not need any special transposition because a clause in the Dutch Aliens Act states that non-nationals lawfully residing in the Netherlands are not excluded from social or public benefits, other public facilities or permits. In our opinion such a clause does not grant long-term residents the same treatment as nationals. The same applies in our view if an Equal Treatment Act prohibits discrimination on the grounds of nationality. In our view an Equal Treatment Act prohibiting discrimination on the grounds of nationality is not sufficient to transpose Articles 11 and 21 if the Act allows, for example, for exemptions to be made in other legislation.

In Austria a general tendency towards equal treatment can be observed but hidden clauses containing exceptions exist in various laws and directives, for example regarding access to employment. According to the Aliens Employment Act, a long-term resident has unlimited access to the labour market but limitations are imposed in special laws. With regard to education and vocational training and the recognition of diplomas, hidden clauses containing exceptions can occasionally be found in various pieces of legislation. Therefore, the Austrian rapporteur is not able to give what she regards as a satisfactory response to the question of whether a long-term resident enjoys equal treatment in the areas covered by Article 11 of the Directive. In the Czech Republic some provisions grant equal treatment to the holders of a permanent residence permit. Since long-term residence status is always associated with a permanent residence permit, these provisions apply to long-term residents as well. In Latvia the law merely states that long-term residents shall have all the respective rights pursuant the Latvian Constitution and other relevant laws but does not explicitly specify any equality with nationals.

In Luxembourg there is not explicitly provided for equal treatment. It is not clear whether long-term residents enjoy equal treatment (on some fields) or on which issues long-term residents are excluded from equal treatment.

[60] The question (Q.13.A) was whether national legislation explicitly provides that long-term residents shall enjoy equal treatment with nationals in this respect. Since the Directive does not require that national law explicitly provide equal treatment, we think that (some of) the national reporters did not notice the additional word 'explicitly'. We assume that Belgium, Lithuania and the Netherlands are not the only three Member States where equal treatment for long-term residents is not explicitly envisaged.

In all Member States except Luxembourg[61] and Latvia long-term residents seem to enjoy equal treatment alongside nationals concerning access to employment (sub a). Only in Latvia long-term residents do not enjoy equal treatment in this area. In Latvia, EU citizens have priority as regards access to employment. According to the Belgian rapporteur it appears from an initial study of the relevant legislative provisions that long-term residents enjoy equal treatment regarding employment, but it is not certain.

It seems that, in all Member States, except for Luxembourg[62] long-term residents enjoy equal treatment alongside nationals as regards education and vocational training (sub b). However, Lithuania and the Netherlands do not explicitly make provision for long-term residents to enjoy equal treatment compared to nationals. In the Netherlands access to equal treatment in education and vocational training depends on the period of legal residence. Dutch Law does provide for equal treatment for aliens who have enjoyed legal residence for (more than) five years. Thus, in fact, long-term residents do enjoy equal treatment in this field but national law does not explicitly envisage equal treatment on these grounds. However, Dutch legislation on higher education allows universities to charge higher fees for non-EEA nationals generally; this therefore also applies to long-term residents. Lithuanian legislation stipulates that holders of a permanent residence permit enjoy equal treatment in this area; since the long-term residence permit is a permanent residence permit, long-term residents will enjoy equal treatment in education and vocational training.

With regard to the recognition of diplomas (sub c) Luxembourg[63] and the Netherlands seem to be the only Member State that do not provide for equal treatment. In Germany it is hard to assess exactly the extent to which equal treatment is guaranteed since the recognition of diplomas depends on bilateral and multilateral agreements among the sixteen German *Länder* as a matter of German federalism. According to the national rapporteur it can be assumed that the *Länder* have fulfilled their obligation with respect to the equal treatment clause of the Directive in most, if not all, cases.

According to the national reports all Member States, except for Luxembourg[64], provide for equal treatment on the grounds of social security, social assistance and social protection (sub d).

From the national reports it seems that long-term residents enjoy equal treatment regarding tax benefits in all Member States except for Luxembourg[65] (sub e). Though it is unclear whether the long-term resident enjoys equal treatment in France. At least three of the Member States (Bulgaria, Lithuania and the Netherlands) do not have an explicit provision granting equal treatment with regard to tax benefits. Nevertheless, in the Netherlands long-term residents in practice enjoy equal treatment because most Dutch tax legislation applies irrespective of the nationality of the person concerned. In Bulgaria third-country nationals with a permanent residence permit are regarded as local persons within the meaning of the law and thus subject to the same treatment as nationals. In Lithuania the tax law applies on residents. Resident inter alia encompasses any *'natural person whose permanent place of residence during the tax period is in Lithuania'*.

In all Member States except for Luxembourg[66] long-term residents seem to enjoy equal treatment regarding access to goods and services (sub f). However, the Austrian reporter could not give what she believed to be a satisfactory response because many different goods

[61] In Luxembourg there is not explicitly provided for equal treatment. It is not clear whether long-term residents enjoy equal treatment (on some fields) or on which issues long-term residents are excluded.
[62] See footnote 61.
[63] See footnote 61.
[64] See footnote 61.
[65] See footnote 61.
[66] See footnote 61.

and services exist at the different levels of administration. Many of them are unknown and the authorities can exercise discretion.

Long-term residents have free access to the territory of all Member States except for Luxembourg[67] (sub h) based on their status, with the exception of Bulgaria, Lithuania and Romania. Although long-term residents have free access to the entire territory of Bulgaria, an explicit provision in Bulgaria is lacking. The right to free access is not based on their status, but on the right to free movement and is guaranteed by the Bulgarian Constitution. In Lithuania an explicit provision is lacking as well, but long-term residents have free access to the territory. In Lithuania the Aliens Law provides that a residence permit in the Republic of Lithuania should grant a foreigner the right to choose a place of residence or to change his place of residence in the Republic of Lithuania. The Aliens Law further stipulates that the foreigner's freedom of movement may be restricted in the Republic of Lithuania only in the interests of state security or public policy, public health or morals, for crime prevention purposes or when seeking to protect the rights and freedoms of others. According to the national rapporteur, the latter provision may raise concerns with regard to the extended list of grounds for restriction of the foreigners' freedom of movement in general which, pursuant to the provision, can be also applied to long-term residents. According to the Romanian report Romania does not explicitly provide that long-term residents should enjoy equal treatment with nationals regarding free access to the entire territory of Romania but the solution to allow freedom of movement on the entire territory of the state results from pre-existing law in the field of human rights (freedom of movement).

Article 11(1), Q.13.A	
Legal Problem	Estonia, Latvia, Luxembourg, Netherlands, Romania
Practical Problem	Austria**,** Germany

2.4.3.2 Exceptions to equal treatment (Q.13.B)

The right to equal treatment is not unrestricted. According to the second paragraph of Article 11 of the Directive, Member States are allowed to restrict equal treatment in education and vocational training (sub b), social security, social assistance and social protection (sub d), tax benefits (sub e), access to goods and services (sub f) and freedom of association, affiliation and membership of certain organisations (sub g), to cases where the registered habitual place of residence of the long-term resident or that of family members lies within the territory of the Member State concerned.

It is possible to restrict equal treatment, but this is not an obligation. Eight Member States (Austria, Belgium, Cyprus, the Czech Republic, France, Greece, Poland and Spain) have made use of the possibility given by paragraph 2 of Article 11 to restrict equal treatment in some areas. Under Hungary's, legal system only permanent residents can benefit from equal treatment if they have a valid registered permanent address in Hungary. Thus, the restriction in Hungary is based on pre-existing law.

In Austria all social assistance laws are limited to persons who have their habitual place of residence in the country. Concerning access to goods and services, the tendency is to restrict equal treatment to cases where the person is registered or where he has his habitual place of residence.

[67] See footnote 61.

According to the rapporteur, an initial study of the relevant legislative provisions in Belgium leads to the conclusion that in several cases equal treatment requires the long-term resident to have his main residence in Belgium. This applies, for example, in order to obtain unemployment benefits.

In Cyprus and Greece equal treatment of long-term residents is restricted with regard education and vocational training, to social security, social assistance and social protection and to tax benefits. Equal treatment regarding access to (some) goods and services has also been restricted.

The Czech Republic has limited access to some of the social benefits and tax benefits to persons with a registered place of residence.

In France access to some areas of social security and social insurance has been restricted, as has access to some goods and services, for example, medical help, social security benefits for children and old-age benefits.

In Poland the right to social assistance and a social pension is limited to long-term residents who have registered and have their actual place of residence in Poland. Another restriction is that a long-term resident may only acquire real estate without any restrictions after a period of five years.

Spain has made use of the possibility of restricting equal treatment in three of the five areas mentioned in paragraph 2. According to Spanish legislation an alien must reside in Spain to enjoy the benefits of equal treatment regarding education, vocational training and study grants (sub b), social security, social assistance and social protection (sub d) and access to goods and services (sub f). Spanish legislation is silent regarding restrictions in the areas sub e (tax benefits) and sub g (freedom of association). The national rapporteur interprets this silence in the sense that no restriction in equal treatment applies in these two fields.

2.4.3.3 Exercise of Public Authority (Q.13.C)

According to Article 11(1) long-term residents should enjoy equal treatment alongside nationals with respect to access to employment, provided that such activities do not entail even occasional involvement in the exercise of public authority.

A large majority of the Member States have made use of the possibility to restrict the equal treatment of long-term residents or to exclude them from activities concerning the exercise of public authority. The legislation in Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Poland, Romania, Slovenia, Spain and Sweden contains a restriction or excludes long-term residents from activities concerning the exercise of public authority. Most of these Member States reserve such exercise to their own nationals. This is the case in Belgium, Bulgaria, Cyprus, the Czech Republic, France, Germany, Greece, Hungary, Italy, Lithuania, Luxembourg, Poland, Romania, Slovenia, Spain and Sweden. In Germany EU citizens also have access to (some of) these positions.

In Austria, Greece and Romania there is a general provision as well; according to this provision long-term residents are not allowed access to activities involving the exercise of public authority. In Cyprus the Public Servants Acts require Cypriot nationality but a general provision also applies, according to which long-term residents are not allowed access to activities involving the exercise of public authority.

2.4.3.4 Social security (Q.13.D)

According to Article 11 of the Directive, Member States are not simply allowed to restrict equal treatment to cases where the registered or habitual place of residence of the person concerned is within the territory of the Member State concerned or in the cases mentioned in paragraph 3 of Article 11. According to paragraph 4, Member States may also limit equal treatment, with respect to social assistance and social protection, to core benefits. Greece is the only Member State to have made use of the possibility of limiting equal treatment on these grounds. The benefits which are included in equal treatment on these grounds are benefits which only affect the protection of childhood, of indigents of the family.

2.4.3.5 Equal Treatment in the Second Member State (Q.13.E)

As soon as the long-term resident receives a residence permit in the second Member State, he should enjoy equal treatment in the areas covered by Article 11 in the second Member State. Only four Member States have laws providing explicitly for equal treatment for long-term residents of another Member State (Cyprus, Hungary, Malta and Romania).

In five Member States (Italy, Latvia, Poland, Portugal and Sweden) an explicit provision is lacking, but the long-term resident of another Member State shall enjoy equal treatment in the areas covered by Article 11 of the Directive. In Italy, equal treatment may be inferred from the fact that the third-country national is issued a long-term residence permit. In Latvia national law does not explicitly provide for equal treatment either but, from a combination of a wide range of national and EU laws, it appears that the long-term resident will be treated equally. In Portugal the interpretation of the relevant law should allow the inclusion of long-term residents of another Member State in its personal scope. The Swedish government concluded in its preparatory work that, in a few areas, long-term residents of another country faced discrimination.[68] The Swedish government consequently amended the law in these areas so that long-term residents can enjoy equal treatment. An initial study of the relevant legislative provisions leads the Belgian rapporteur to conclude that long-term residents benefit from equal treatment in the fields mentioned in Article 11 of the Directive in Belgium. However, this issue will have to be further evaluated in due course, i.e. when transposition is complete and when Belgian case law can be studied

In most Member States national law does not provide for equal treatment for third-country nationals who acquired EC long-term resident status in another Member State. The differences are:

- long-term residents who acquired the status in another Member State are not covered by the provisions (Austria, Bulgaria);
- access to employment is limited for the first year (Czech Republic and Germany);
- access to some services is limited for the first year (Czech Republic);
- outside the scope of application of the social benefit legislation if the long-term resident is granted a temporary stay (Finland);
- the right to study is reserved for continuous, permanent or long-term EC permit-holders (Finland);
- no right to a study grant (Finland[69], the Netherlands and Slovenia)**;**
- third-country nationals who have long-term status in another Member State need an employed person's residence permit if their purpose of stay is employment (Finland and the Netherlands);

[68] Government proposition 2005/06:77 p. 159 ff.
[69] No right to a study grant in cases involving a temporary residence permit.

- the temporary residence permit of a long-term resident may be withdrawn if he applies for social assistance (the Netherlands);
- some legislation applies to permanent residence only, which means that a long-term resident who is issued with a temporary residence permit will enjoy fewer rights (Lithuania, Slovakia).

According to the Lithuanian rapporteur, long-term residents of other Member States generally enjoy equal treatment. Nevertheless, in Lithuania examples of legislation that apply to permanent residents only include the law on State Support for Acquiring or Renting Housing, the law on Financial Social Assistance for Low-Income Families and Single Persons and the Law on State Social Security Pensions. In France there are no special rules for long-term residents; the general rules for migrants apply. In Luxembourg the law does not explicitly provide for equal treatment. It is unclear what differences there are. In Portugal there is not explicitly provided for equal treatment either but an extensive interpretation of article 133[70] should, according to the national rapporteur, allow to include in its personal scope the third country nationals who have the EC long-term resident status in another Member State and received a residence permit in Portugal. With respect to the recognition of diplomas in Germany no general answer can be given since the recognition depends upon bilateral and multilateral agreements and the laws of the German *Länder* as a matter of federalism. However, according to the German rapporteur it can be assumed that the *Länder* have fulfilled their obligation with respect to the equal treatment clause of the Directive in most, if not all, cases. Chapter III of the Directive has not been implemented into Spanish legislation at all.

Article 21(1), Q.13.E	
No Transposition At All	Austria, Bulgaria, Estonia, France, Latvia, Luxembourg, Netherlands, Spain
Legal Problem	Czech Republic, Finland, Italy, Lithuania, Slovakia, Slovenia
Practical Problem	Belgium, Germany

2.5 Contact points and cooperation

Article 25(1) states that Member States shall appoint contact points responsible for receiving and transmitting the information referred to Articles 19(2), 22(2) and 23(1). It is not necessary for Member States to appoint the contact points in their legislation.

Most Member States have transposed Article 25(1). In Belgium, the national law refers in general to the fact that certain information will be transferred to other Member States. No further specifications are provided. This is also the case in Luxembourg, where this provision has been incompletely transposed.

Finally, Bulgaria, France, Hungary, Latvia, Romania and Spain have not transposed Article 25(1). Even though there is no specific transposition of this provision in Hungary, the authorities with jurisdiction have the duty to undertake the obligations mentioned in Article 25.

Article 25(1)	
No Transposition At All	Bulgaria, France, Hungary, Latvia, Luxembourg, Romania, Spain
Legal Problem	Belgium

Article 25(2) states that Member States shall provide cooperation in the exchange of information related to paragraph 1.

Several of Member States have transposed Article 25 (2). However, in some Member States the transposition has been incomplete. This is true of Belgium and Luxembourg. Different situations prevail in Lithuania and the Netherlands, where Article 25(2) has not been transposed. However, it is operational in practice (Lithuania) or the law contains a similar provision for purely national administrative bodies (the Netherlands).

Finally, Estonia, France, Hungary, Latvia, Lithuania and Spain have not transposed Article 25 (2).

Article 25(2)	
No Transposition At All	Estonia, France, Hungary, Latvia, Lithuania , Luxembourg, Netherlands, Spain
Legal Problem	Belgium

2.6 Reference in National Law (Q.24)

Article 26 states that Member States, when bringing into force laws, regulations and administrative provisions in order to transpose the Directive, these shall contain a reference to the Directive or shall be accompanied by such reference when the official publication appears.

A significant majority of Member States bound by the Directive include references to it or have included this reference with official publication of the main transposition norm(s). Only Austria and Italy do not make any reference to the Directive. Spain has not transposed the Directive.

3. Impact of the Directive

3.1 Strengths and Weaknesses of the Directive (Q.25)

3.1.1 Strengths

The possibility of 'free movement' for long-term residents is regarded in the majority of the reports as the main strength of the Directive (Belgium, Bulgaria, the Czech Republic, France, Germany, Greece, Latvia, Luxembourg, the Netherlands, Poland, Slovenia and Spain). In particular, positive reference is made in several reports to the equal treatment standard (the Czech Republic, Lithuania, Poland and Portugal) although according to the Austrian rapporteur, the equal treatment provisions are difficult to execute or to monitor. The Netherlands adds as a positive point the limited possibilities for derogation by national law and Finland adds the enhanced protection from expulsion and the maximum lengths of the procedures.

Furthermore, another strength of the Directive is that, in assessing the first Member State issuing the long-term resident status, accountability for the person concerned remains clear until another Member State grants him long-term resident status (Germany). Nevertheless, the Netherlands sees a weakness in this respect because if a person stays in more than one country, his status in the first Member State will eventually be lost without the possibility of obtaining a new status in the second Member State because the five-year period may well have not yet been reached.

More generally, the benefits of the Directive lie in the fact that it further harmonises the status of third-country nationals in the European Union (Austria, Belgium, Hungary and Romania). According to the Hungarian rapporteur, this harmonisation prevents ‘forum shopping’. In Austria, Bulgaria, the Czech Republic and Greece, transposition of the Directive

has had an unmistakably positive influence on the situation of third-country nationals in these Member States.

3.1.2 Weaknesses

The Directive contains two 'Achilles heels'. The first is the possibility for Member States to apply an integration condition as a requirement for obtaining the status. This possibility is not expressly limited in the Directive and no standstill provision is made on this issue.[71] The possibility of requiring a work permit in the first year of residence can be considered a second Achilles heel, since this might severely restrict the possibility to move from the first Member State to the second.

The limited personal scope (Slovenia) is considered one of the weaknesses of the Directive, in particular the exclusion of students (the Czech Republic) and the exclusion of refugees and persons enjoying complementary forms of protection (Finland, Greece, Lithuania and Sweden).[72] The Directive is a compromise and a mixture of very precise and very general provisions (Austria) and is imbalanced in several respects (the Netherlands). In this context, the Dutch report mentions Article 9 on the withdrawal or loss of status as an example. The Hungarian rapporteur regrets the relatively strict conditions of Article 4(3) which prevent Member States facilitating acquisition of the status. On the other hand, the wide margin of appreciation (France and Greece) and the optional character of some provisions (Poland) are also regarded as serious weaknesses. In this respect, Finland mentions Article 14(3) which allows Member States to exercise economic considerations when granting residence permits to third-country nationals who have obtained long-term residence status in another Member State. According to the Bulgarian report the term 'lawful residence' is not precise enough. The same applies to public policy and national security clauses (the Czech Republic and the Netherlands): in particular the Dutch rapporteur regrets that these clauses are not similar or close to those found in the Free Movement Directive 2004/38/EC.

The implementation of the free movement provisions for long-term residents needs to be further evaluated in due course (Belgium). In this context, Germany foresees a bureaucratic data storage problem. If, in fact, large numbers of persons holding long-term residence permits were to begin to move, it would be very difficult to follow the individual third-country nationals' movements. It may seem like a great deal of effort to store the data for persons originally residing in one Member State and then moving to another, but if this process were repeated several times, the situation would be even worse. More generally, the Romanian rapporteur considers the mechanism for cooperation between the Member States rather weak. Hungary fears a proliferation of different types of long-term resident status, while national long term settlement permits also remain into force. According to the Netherlands the possibility denying free access to employment during the first year in the second Member State (Article 21(2) of the Directive) may in practice prove to be a major obstacle to free movement.

The Dutch report is also very critical on the issue of the integration requirements (Article 5(2) and 15(3) of the Directive), which on the contrary are regarded as positive in Poland and Spain.

[71] The term 'Achilles heel' was first used to describe this weakness by Boelaert-Suominen, S. (2005), 'Non-EU Nationals and Council Directive 2003/109/EC on the Status of Third-Country Nationals who are Long-Term Residents: Five Paces forward and Possibly Three Paces Back', *Common Market Law Review* 42: 1011-1052.
[72] Recently, the Commission issued a proposal for a Council Directive amending the LTR-Directive 2003/109/EC to extend its scope to beneficiaries of international protection (COM(2007) 298, 6.6.2007).

3.2 Political and Public Debates on the Implementation of the Directive (Q.26)

The Directive had not provoked much debate in the Member States, neither public nor political. In Austria the Directive itself was rarely at the centre of discussions. If there is a public awareness of the Directive, as far as the Austrian national rapporteur can see it is concentrated on the provisions concerning equal treatment. In Belgium the Directive led to a very limited debate in parliament. In Cyprus the Ministries involved and some NGOs sent representatives to Parliament before transposition. Parliament's discretion was limited however since the compulsory provisions of the Directive have to be implemented. The Czech Republic also saw almost no public or political debate. In the Czech Republic the Directive has largely been welcomed by all persons involved. In Estonia there has been some discussion on the integration norm and the rights and obligations of long-term residents. In Latvia the only debate concerned the change in status of a special category of Latvian residents (to be completed). In Lithuania, no significant political or public debate took place either. According to the Lithuanian report, during the debates on the Directive the presumption prevailed that the Aliens legislation was already in line with the Directive. In the Netherlands a limited debate also took place. The debate concentrated on the failed implementation and the question of whether the Directive envisages a fee or not. Interventions by the House of Representatives led to provisional implementation by circular. In Luxembourg the debate has just started because everybody was waiting for the draft legislation. In Spain a question was asked in Parliament about the time of transposition of the Directive. An academic debate has also taken place.

Twelve Member States saw no political or public debate at all (Finland, France, Germany, Greece, Hungary, Italy, Malta, Poland, Portugal, Romania, Slovakia and Sweden). The debate in Poland was limited to expert circles only and generally place within the legislative process.

3.3 Directly Effective Provisions (Q.27)

During transposition of the Directive, have statements been made about whether certain provisions have direct effect or not? According to the Czech rapporteur, the instruction issued by the Minister to ensure transposition of the Directive, since the transposition period had been exceeded, guaranteed the right to long-term resident status after five years of continuous stay in the Czech Republic.

In Spain, an individual lawyer, in association with the Lawyers of Girona and the Lawyers of Catalonia, has asked the administration about the implementation of Chapter III of the Directive. At the same time, the lawyer referred to the start of legal action making use of the directly effective provisions of Chapter III.

3.4 Jurisprudence

3.4.1 Issues of Controversy (Q.28.)

In transposing the rules on the Long-Term Residents Directive, no controversies have yet arisen in the Member States.

3.4.2 Interesting Decisions by National Courts (Q.32)

Have any interesting decisions been passed by national courts related to the Directive, its transposition or implementation? In most Member States, no Court decisions are available

yet. In Austria, the Directive has played a role in Court cases. However, in the relevant case law no decisions have been made relating to the acquisition of the long-term resident status. In Cyprus, a decision was taken by the Supreme Court on 27 May 2005 relating to the Directive. In this country, a Yugoslavian couple appealed against the decision of the Ministry of the Interior regarding their deportation, stating that they had legally resided in Cyprus for a period of five years and therefore were entitled to the long-term resident status. The Ministry replied that their stay in Cyprus had not been legal for the entire five years and that they could not rely on the Directive since it had not yet been implemented. The Court ruled that the Ministry had mistakenly reached its decision regarding the couple's illegal stay and therefore annulled the deportation decision. No statements were made concerning violation of the Directive.

In Germany, no decisions regarding the actual rules of transposition of the Directive have yet been made. However, some German courts have discussed issues of application of the Directive. In all cases, the Court did not go into the question of whether the Directive was applicable, even in those cases decided after the end of the transition period on 23 January 2006, since the requirements of the Directive (in this case its personal scope, the required stay in Germany, the requirement of stable and regular resources and appropriate accommodation) had in any event not been fulfilled.

The Latvian Supreme Court has made reference to the Directive once, even though the Directive was not legally binding at the time. In a decision of 8 March 2005, the Court ruled that even under (non-binding) EU law, Member States are not obliged to renew the status of a third-country national after a period of six years of absence from the territory.

The Lithuanian Supreme Administrative Court issued a decision involving the Directive on 30 June 2006. In this Decision, the Migration Department challenged the decision of the Vilnius Administrative District Court to reject the request for expulsion from Lithuania of a person planning to destabilise the Lithuanian political situation and to influence the political process. Furthermore, the District Court ordered the Immigration department to issue the person concerned with a permanent residence permit. In its decision, the Supreme Administrative Court ruled that, in order for a person to be refused a permanent residence permit on public security grounds, the person's guilt of committing the crime does not have to be formally established. The Supreme Court referred the case back for reconsideration to Vilnius district Court.

In Spain, a decision by the court of Santander of 27 April 2007 recognises the direct effect of Article 14(2) of the Directive. A Colombian woman holding an EC long-term residence permit in Germany applied for a long-term resident's permit in Spain before the end of the period of five years of residence in Spain. The Court recognised the direct effect of Article 14 of the Directive and also gave the Colombian woman a long-term residence permit because she was a status-holder in another EU country.

Some of the Member States attribute the fact that there are no court decisions yet to the fact that the Directive has not been (completely) implemented (Belgium), to the fact that no decisions have yet been taken on applications for long-term residence status (Austria) or to the fact that the Directive has been recently transposed (in April or May 2007) so that almost no practical implementation has yet occurred (Bulgaria and Finland).

3.5 Statistical Information (Q.29)

For most of the Member States no data are yet available, either on the number of applications for EC long-term resident status or on the number of third-country nationals who have been granted the new status. The absence of data is due to the lack of implementation or the very recent implementation of the Directive in many Member States or the absence of publicly

available statistical data on this issue in other Member States. In Belgium third-country nationals can file an application for EC-status, but the rules implementing the Directive are not yet in force. In Cyprus the Ministry of the Interior did not accept applications before June 2007 because the new documents were not yet available. However, it was reported that a number of third-country nationals have nevertheless sent letters to the Ministry asking to be granted the new status.

We have statistical data on four Member States. In Austria by the end of 2006 this status had been granted to 137,146 third-country nationals. This high number can be explained by the fact that many former titles were automatically transposed to the new EC status. According to the information from the Ministry of the Interior, since the entry into force of the new Austrian immigration legislation on 1 January 2006, 49,253 EC long-term residence status applications were granted. The result of this practice is that 29% of registered non-nationals living in Austria held EC long-term resident status by the end of 2006. Half of those holding the new status were resident in Vienna, 47% were women and one quarter of those with the new status were under 19 years of age.[73]

In the Member States where the status was granted on the basis of individual applications only, the numbers were considerably lower. In Latvia EC long-term resident status had been granted to ten people by 1 January 2007. In Poland the status had been granted to 1,341 people by 25 April 2007, with 37 people having already been granted the status in 2005. In Sweden seven applications for the new status had been filed and one application had been granted by 25 April 2007.

During the first six months of 2006, the web site of the Immigration and Naturalisation Service (IND) of the Netherlands included an announcement stating that Directive 2003/109 did not apply to the Netherlands and that there was no sense in applying for the new status because other Member States had not implemented the Directive either. The Minister for Alien Affairs and Integration, upon introduction of the Bill implementing the Directive in the Dutch Aliens Act, stated that third-country nationals would not benefit from holding the new status, compared to the Dutch permanent residence permit. In spring 2006, a national federation of Turkish immigrants in the Netherlands published a standard letter on its web site to the IND to be used when making an application for EC long-term resident status. In answer to questions from MPs the Minister conceded that, by September 2006, more than 4,500 applications for the new status had been received. Those applications were filed despite discouraging information on the IND web site.

In the Czech Republic official statistics do not differentiate between the permanent residence permit and the EC long-term residence permit. According to information from the Aliens Police 2,058 applications for EC long-term residence permits were lodged in 2006 and 1,976 persons were granted this EC status. However, since 28,587 permanent residence permits were issued in 2006, the first number is probably the number of those who had already been granted permanent residence permits (national status) and had only recently requested the EC long-term residence permit because they could not do so in previous years. According to the Czech Statistical Office 5,165 people were issued with the permanent residence permit between January 2007 and 31 March 2007. According to information from the Aliens Police, 563 people lodged an application for the EC long-term residence permit between January and the end of April 2007 and 609 people were granted this status (the number is higher because there were still some application from the 2006 pending). Again, the numbers given by the Aliens Police are most probably for those who had already been granted permanent residence permits and only recently applied for the EC long-term residence

[73] *Bundesministerium für Inneres, Fremdenstatistik, Jahresstatistik 2006,* p. 3.

permit. Those who are now granted the permanent residence permit are given the EC long-term residence permit almost automatically.

The reports from some Member States only mentioned the number of non-nationals who had been issued with a permanent residence permit under domestic law. In Estonia the total number by the end of April 2007 amounted to 202,844. In Spain as of 31 March 2007 a total of 700,772 people, including nationals of certain EU Member States, held a Spanish permanent residence permit. Those numbers give some indication of the number of third-country nationals who may potentially be entitled to EC long-term resident status.

3.6 Evolution of Internal Law due to the Transposition (Q.30)

We asked the rapporteurs about the main changes to national law or practice as a result of the Directive and whether those changes made the national rules stricter or more liberal from the perspective of long-term resident third-country nationals.

From the answers it is clear that, in almost all 24 Member States bound by the Directive, transposition resulted in a liberalisation of national immigration law for non-citizens covered by the personal scope of the Directive. Only four rapporteurs mention changes that made the national law more restrictive. In Lithuania the residence requirement for national permanent status was extended from four to five years. In Luxembourg the category of family members entitled to this status will be more limited than under the present administrative practice. In the Netherlands both the EC residence permit for long-term residents and the national permanent residence permit will only be granted once the applicant has passed an integration and language test. But the introduction of this new condition had already been announced before adoption of the Directive. The Directive reinforced the legitimising of this new requirement. In Polish immigration law the income and residence requirements became stricter when the Directive was transposed. In Spain there has been no change to the national law because of a lack of any legislation transposing the Directive. In some Member States no permanent residence status existed under national law (Cyprus and Romania). In other Member States long-term residents had no right to this status. Granting of the status was left to the discretion of the immigration authorities (Greece, Portugal and Slovakia). In Hungary the EC long-term resident status was merged with the pre-existing national status, the new status being more liberal. In several Member States, the EC status was added to the pre-existing national status. In Belgium and Poland the rules on the acquisition of the national permanent residence status and the rights attached to that status are more liberal than in the Directive. In the Netherlands the grounds for loss of the national status were made identical to those mentioned in the Directive, making the national rules more liberal.

Examples of the main changes to internal law resulting from the transposition of the Directive are liberalisation of the conditions for acquisition of the status (Poland and Slovakia), reduction of the grounds for refusal or withdrawal of the status (Austria), more precise formulation of these grounds (Slovenia) and better protection against expulsion (Belgium, Finland, Italy and Luxembourg). Several rapporteurs mentioned the granting of more rights and opportunities than under previous national law to third-country nationals with the status, such as equal treatment and access to employment and benefits and extension of the rights of the long-term resident's family members (Malta, Poland and Portugal).

The changes to national law mentioned most frequently was the right of entry and admission of third-country nationals who have obtained the status in another Member State (Bulgaria, France, Germany, Poland, Sweden), the abolition of the visa requirement for those long-term residents (France, Germany and the Netherlands) and exemption from the integration test abroad (the Netherlands). Here, the 'revolutionary' character of Chapter III of the Directive is clearly visible.

The Austrian rapporteur observed that the transposition of the Directive resulted in many changes to the national law, extending old rights or granting new rights to third-country nationals, whilst the political climate in the country tended to induce changes in the national law in the opposite direction, making the national law more restrictive for third-country nationals who do not have the new EC status. This observation may apply to many other Member States too.

3.7 Tendency to copy the Provisions of the Directive? (Q.31)

The question of whether there is a general tendency simply to copy the provisions of the Directive into national legislation, without redrafting or adapting them to national circumstances, is answered in the negative by the majority of Member States: Austria, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, the Netherlands, Poland , Portugal, Slovenia, Slovakia and Sweden. In Germany quite the opposite is true: very extensive and complex transposition has taken place. The rights of Chapter III of the Directive are not transposed into Estonian legislation. National law only contains the reference that the beneficiaries of Chapter III have the rights as stated in that chapter.

The provisions of the Directive are largely copied into the national legislation of Belgium, Bulgaria, Cyprus, Greece, Lithuania, Luxembourg, Malta and Romania. In Cyprus, Greece, Lithuania, Luxembourg, Malta and Romania no particular problems have yet been identified in this respect.

In Belgium, the Council of State repeatedly suggested in its advice on the transposition Bill that the terms of the Directive be copied. At this stage it is unclear whether this will result in specific implementation difficulties. In particular, since transposition of the Directive has not yet been finalised; national law still needs to be supplemented by regulations (e.g. Royal Decree).

In Bulgaria the rapporteur foresees difficulties with implementing the notion of 'long-term resident status'. Bulgarian migration legislation distinguishes a 'continuous resident status' and a 'permanent resident status'. Within the meaning of the Directive, the term 'long-term resident status' only corresponds to 'permanent resident status' under Bulgarian law and does not include 'continuous resident status'. However, in the new Chapter III of the Bulgarian migration legislation, which has implemented Chapter III of the Directive, the legislator has used the term 'long-term resident' without stipulating clearly which of the two possible statuses is granted to the long-term resident of another Member State.

The question is not answered by Spain since no transposition has yet taken place.

3.8 Translation Problems (Q.33)

Does the translation of the text of the Directive in the official language of the Member States pose any problems? This does not appear to be the case in most Member States. Denmark, Hungary, the Netherlands, Spain and Slovenia seem to have suffered from mistranslations.

In Denmark, the title of the Directive is not fully appreciative of the purpose and content of the Directive and also does not seem to be the same as other translations. For the term 'long-term' the Danish term *fastboende* is used, which means 'resident' in terms of 'settled', rather than suggesting a time frame and duration of prior stay.

In Hungary, 'shall' in Articles 8(2) and 19(2) of the Directive have been translated as 'may' and 'removal decisions' have been turned into 'expulsion orders'. However, according to the Hungarian rapporteur, these mistranslations did not create a problem with transposition of the Directive.

In the Netherlands, 'integration measures' in Article 15(3) has been translated as 'integration conditions'. The kind of problems this mistranslation might entail is not specified. In Spain, 'integration conditions' in Article 5(2) has been translated as 'integration measures'. This might lead to the situation that Spain will only ask applicants for the status to fulfil integration measures, not conditions. In Slovenia, 'registered or usual place of residence' in Article 11(2) is translated as 'permanent or usual residence'. According to the Slovenian rapporteur, this mistranslation will not create any problems.

3.9 Other Interesting Elements (Q.34, Q.35)

Only a few Member States mentioned additional interesting information.
According to the Austrian rapporteur, evidently Austria tried to transpose the provisions of the Directive in the most restricted form. The general aim of achieving a very restrictive immigration policy in *Austria*, in connection with the transposition of the different directives concerning third-country nationals, leads to very complicated national legislation.

The same applies to the *Czech Republic*. The many changes resulted in a very complex immigration legislation. In addition, the linking of the long-term resident status to the permanent residence permit, according to Czech law, may cause problems.

In order to maintain the temporary resident permit, which is crucial for obtaining the long-term resident status, a person has to reside in *Estonia* for at least 183 days. This requirement may cause problems for persons who travel a lot or for sailors who tend to stay outside the country for longer periods. The Estonian rapporteur identifies the following vulnerable groups who may not benefit from the Directive: illegally resident stateless persons, prisoners and minor children whose parents are living abroad.

Even before implementation of the Directive, third-country nationals in *Italy* who had lawfully resided on the territory for at least 6 years (or 5 years until 2002) could apply for a long-term residence permit called the *Carta di soggiorno*. According to the Italian transposition legislation, the new rules concerning the EC long-term residence permit apply to the holders of a *carta di soggiorno* as well and any reference to the *carta di soggiorno* in any legal instrument must now be considered a reference to the EC long-term residence permit. Nevertheless, it is still possible that there are provisions not in compliance with the Directive since the *carta di soggiorno* refers to a slightly different situation. The implementation regulation which should be enacted within six months of the entry into force of the transposition legislation should bring these provisions into line with the Directive.
In *Sweden* the number of applications – both for the status of long-term resident in Sweden and for Swedish residence permits from long-term residents of other Member States – is still very low. A major reason for the low number of applications for the status of long-term resident in Sweden is the fact that most third-country nationals can obtain Swedish citizenship after 5 years, which might be seen as a better alternative than the status of long-term resident. This means that the different criteria for naturalisation in the various Member States have a huge impact on the importance of the Directive in those Member States. Secondly, the reason for the high ratio of rejections of applications for residence permits in Sweden from long-term residents of other Member States is that most applicants cannot provide any evidence that they in fact are long-term residents of other Member States.

4. Member States not bound by the Directive

The preambles nos. 25 and 26 explicitly stipulate that three Member States (Denmark, Ireland and the United Kingdom) have not participated in the adoption of this Directive and are not bound by the Directive or subject to its application. Since those three Member States are not obliged to implement the Directive in their national legislation, it makes no sense to answer questions about theoretical implementation. Below, we will give a short overview of the provisions in the national laws of those three Member States concerning the acquisition and loss of permanent residence status where it has been granted to third-country nationals under national law and the rights attached to that status. This will allow for a comparison of this national status with the long-term resident status provided for in the Directive.

4.1 Denmark[74]

Denmark has not taken any measures to adopt norms equivalent to those of Directive 2003/109/EC to date and existing legislation does not contain norms which correspond to those of the Directive. If Denmark were to participate in this area of EU harmonisation or ensure corresponding national norms, it would require fundamental amendments to domestic legislation. At present, the Danish government does not seem to be considering any general legislative reform concerning (corresponding) status for third-country nationals who are long-term residents, or similar schemes.

Danish immigration policy vis-à-vis third-country nationals has been characterised since the so-called 'immigration freeze' at the beginning of the 1970s and until recently, been characterized by increasing restrictiveness. Aliens who do not belong to groups enjoying preferential status based on either human rights considerations (i.e. asylum or family reunification) or regional considerations (i.e. Nordic and EU/EEA or Swiss citizens) will only be permitted entry and stay longer than three months (as a tourist) if they fulfil certain specified, mainly professional or labour-related requirements.

General rules on admission of third-country nationals

As a general rule, it is a requirement that either *studying*[75] in Denmark or *substantial professional or labour-related considerations* justify this permit[76], for example, if no one in Denmark could undertake a specific function. Foreign nationals hired within industries suffering from a shortage of specially qualified professionals have easier access to residence and work permits in accordance with the '*job card scheme*' according to which special rules apply to certain industries currently experiencing a shortage of specially qualified professionals. The industries and professions in need of specially qualified professionals can be found on a so-called *Positive List*. Furthermore, residence and work permits for the

[74] This paragraph is to a large extent copied from the report by Nina Marie Lassen, LLM, Senior Legal Advisor with the Danish Refugee Council. Additional information is obtained from K. Groenendijk, E. Guild and R. Barzilay, The Legal status of third-country nationals who are long-term residents in a Member State of the European Union, Nijmegen 2000 (European Commission), p. 27-32 and K. Groenendijk, The legal integration of potential citizens: Denizens in the EU in the final years before the implementation of the 2003 Directive on long-term resident third country nationals, in: R. Bauböck, E. Ersbøll, K. Groenendijk en H. Waldrauch, Acquisition and Loss of Nationality, Vol. I: Comparative Analysis, Politics and Trends in 15 European Countries, Amsterdam 2006, (Amsterdam University Press) p. 385-410.

[75] Section 9c(1) of the Aliens Act (Consolidation Act No. 1044 of 6 August 2007)cf. section 28-30 of the Executive Order on Aliens' access to Denmark - Aliens Order (Regulation No. 810 of 20 June 2007).

[76] Section 9a of the Aliens Act .

purpose of *self-employment* can be issued under certain circumstances and only if particular Danish business interests exist, related to the establishment of the business in Denmark.[77]
Generally, *applications* for residence and work permits will have to be submitted to a Danish representation abroad, together with a copy of a previously obtained employment contract, an employment offer or similar. Residence and work permits are normally granted for a maximum of one year, with the possibility of extension. However, a permit is never granted for longer than the period specified in the applicant's employment contract.

Acquisition of permanent residence status

A *permanent residence permit* may normally be issued to a student pursuing a post-secondary educational programme, an independent entrepreneur or a paid employee if he or she has resided in Denmark without interruption for the past *7 years and* the following *additional requirements* are met: [78]
- The residence permit has, throughout this period, been issued on the same basis;
- The person in question has not been sentenced to a custodial sentence of at least 2 years' imprisonment or other criminal sanction involving or permitting deprivation of liberty in respect of an offence that would have resulted in a punishment of this duration for committing certain specified criminal offences;
- The person in question has not, within the last three to fifteen years, been sentenced in Denmark to imprisonment or suspended imprisonment (or other criminal sanction involving or permitting deprivation of liberty in respect of an offence that would have resulted in a punishment of this nature) for other (less serious) crimes.[79]
- Unless 'particular reasons make it inappropriate', it is a further condition for the issue of a permanent residence permit that the alien: -(i) have completed an introductory programme offered to him pursuant to the Danish Integration Act or, if this is not the case, have completed another comparable course; - (ii) have completed certain activities laid down pursuant to the Act on Active Employment Measures; - (iii) have passed a test in the Danish language; - (iv) have held ordinary full-time employment for two years and six months and; - (v) have no unpaid debt to public authorities.

Reduced residence requirement

The seven-year requirement for the permanent residence permit may be reduced to *five years* of lawful residence if the alien has had permanent ties with the labour market as an employee or self-employed person in Denmark for the 3 years immediately prior to the issue of the permanent residence permit and must be assumed to continue to have such ties; if the alien has not, for the 3 years immediately prior to the issue of the permanent residence permit, received any assistance under the Act on an Active Social Policy or the Integration Act other than assistance in the form of isolated benefits of a small amount not directly related to support, or benefits that are comparable with a wage, salary or pension or replacement of such payment; and if the alien has obtained essential ties with the Danish society.[80] If 'exceptional reasons' make it appropriate, a permanent residence permit may furthermore be issued to an alien who has lived lawfully in Denmark for longer than the past *3 years* and has been issued

[77] Section 9a of the Aliens Act.
[78] Cf. Section 11(3) cf. (7)-(9) of the Aliens Act.
[79] If 'particular reasons make it appropriate' a permanent residence permit may be issued despite violation of this requirement.
[80] Section 11(4) cf. (7)-(9) of the Aliens Act.

with a residence permit throughout this period on the same basis.[81] Finally, if 'essential considerations conclusively' make it appropriate to grant the application, a permanent residence permit may be issued immediately upon application.[82]

Rights attached to the permanent residence status

Third-country nationals holding a permanent residence permit no longer need a *work permit* in order to take up employment.
Family members, even though they fulfil the conditions referred to in Article 4(1) of Directive 2003/86/EC, are not automatically authorised to join or accompany, or to join the third country national who has obtained a residence permit for work or study, since further conditions have to be met.[83]
In Denmark the entitlement to equal treatment with respect to most social benefits, access to education and study grants or voting rights in municipal elections, does depend on the length of lawful residence of the third-country national and not on the type of residence permit granted. Exceptions include, *inter alia*, the right of reunified children below the age of 18 to access education facilities.

Loss of the permanent residence status and expulsion

A permanent residence permit normally lapses or may be revoked for one of the following reasons:

- if it was obtained by fraud.[84]
- if the third country national is expelled from Denmark on basis of a conviction for criminal offences. If the length of legal stay in Denmark is less than five years, expulsion and lapse of residence permit may take place in case of minor offences.[85] If the length of stay is between five and nine years, expulsion and lapse of residence permit may take place where the alien has been sentenced in Denmark to imprisonment or suspended imprisonment (or other criminal sanction involving or allowing deprivation of liberty in respect of an offence that would have resulted in a punishment of this nature) for two years or more.[86] If the length of stay is more than nine years the parallel requirement for expulsion and lapse of residence permit is a sentence *either* to imprisonment or suspended imprisonment for four years or more, *or* for violation of certain specified crimes.[87] In case of recurring criminality or the sentence relating to several offences, a lower sentence is sufficient to justify expulsion and lapse of residence permit.
- if the alien must be deemed a danger to national security; a serious threat to the public order, safety or health; or is deemed to fall within Article 1 F of the Convention relating to the Status of Refugees (28 July 1951).[88]
- the alien has been convicted of - or there are serious reasons for assuming that the alien has committed - an offence abroad that could lead to expulsion if his case had been heard in Denmark;[89]

[81] Section 11(f) cf. (7)-(9) of the Aliens Act.
[82] Section 11(6) cf. (7)-(9) of the Aliens Act.
[83] Section 9c(1) of the Aliens Act.
[84] Section 19(2)1 of the Aliens Act.
[85] Section 32 (1) cf. Section 24 of the Aliens Act.
[86] Section 32 (1) cf. Section 23 of the Aliens Act.
[87] Section 32 (1) cf. Section 22 of the Aliens Act.
[88] Section 19(2) cf. Section 10(1) of the Aliens Act.

- an alert has been entered in the Schengen Information System for the purpose of refusal of entry pursuant to the Schengen Convention because of circumstances which, in Denmark, could lead to expulsion[90]
- if an administrative authority of another Schengen country or of a Member State of the European Union has made a final decision on the return of an alien who is not a national of a Schengen country or a Member State of the European Union because of circumstances which, in Denmark, could lead to expulsion;[91]
- if the third-country national gives up his residence in Denmark or stays abroad for more than twelve consecutive months.[92]

In all of the above mentioned cases of removal or lapse of residence permit a certain regard has to be given to the question of family unity and other personal or concrete circumstances.

EC long-term resident status obtained in another Member State

Within national legislation - laws, regulations, circulars or internal administrative guidelines - no reference is made to third-country nationals, who have acquired long-term resident status in another Member State. There is therefore nothing that would suggest preferential treatment of this group with regard to obtaining a residence permit in Denmark.

4.2 Ireland[93]

No statutory permanent resident status yet

Irish immigration legislation currently contains no provision for the status of long-term resident. Those who have been legally resident in Ireland for over eight years may apply to the Department of Justice, Equality and Law Reform for permission to remain without time constraints. In addition, the Minister of Justice, Equality and Law Reform has created a new status of 'long-term residence', which confers a renewable five-year residence entitlement on those who have been legally resident in the country for over five years on the basis of employment permits. It is proposed that a more generalised long-term residence status be introduced via legislation, again for renewable five-year periods, in the Immigration, Residence and Protection Bill (Bill No. 37 of 2007). It is important to note that the long-term residents' permit envisaged under the Bill is not equivalent to the Community long-term residents' permit provided for in the EC Directive. The status of long-term resident established in the Bill is purely a status under Irish law and the rights attached to it are purely rights under Irish law.[94] Both the actual and proposed 'long-term residence' regimes are addressed below.

Acquisition of the status

[89] Section 19(2) cf. Section 10(2)(i) and (ii) of the Aliens Act.
[90] Section 19(3) of the Aliens Act.
[91] Section 19(3) of the Aliens Act.
[92] Section 17 of the Aliens Act.
[93] This paragraph is to a large extent copied from the report by John Handoll, William Fry Solicitors, Dublin.
[94] It should be noted that any future legislation may differ substantially from what is contained in the Bill: the forthcoming election means that any elected/re-elected Government will have to introduce the Bill afresh (or choose not to introduce a bill or to put forward a significantly different proposal.

No foreign national is lawfully resident in the state unless he or she has a valid current residence permit issued by or on behalf of the Minister. The Department of Justice, Equality and Law Reform issues stamps to persons from outside the EU. These stamps are placed in a person's passport and specify the type of residence the person has obtained. 'Long-term residence' is available to those who have legally worked in the state for five years. In each case, the Minister acts on a discretionary basis, exercising the executive power of the State. No categories of foreign national are currently formally excluded from applying for long-term residence. This remains the case under the Bill.
Under Section 5(1) of the Immigration, Residence and Protection Bill 2007, *'The presence in the State of a foreign national is lawful if, and only if, it is in accordance with permission given or deemed to be given to him or her, in accordance with this Act, to be present in the State.'* This will provide a new statutory basis for determining lawful residence.

Draft Section 34(1)(a) of the Bill stipulates that the Minister for Justice, Equality and Law Reform may issue a long-term resident permit to a foreign national, who has been legally resident in the country for five years and who meets the standard eligibility requirements set out in (2)(a)(i) to (iv). The standard eligibility requirements as defined in the Bill are as follows:

- that the person must be of good character;
- that the person must be fully in compliance with his or her obligations in relation to the payment or remittance of any taxes, interest or penalties required to be paid or remitted by law and the submission of any returns required by law;
- that the person must be able to demonstrate reasonable competence in communicating in the Irish or English language and must have satisfied the Minister that he or she made reasonable efforts to integrate into Irish society; and
- that the person must, during his or her presence in the state, have been supporting himself or herself and any dependants without recourse to publicly funded services.

The bill also specifies that the Minister may issue a long-term residence permit to a foreign national who meets the standard eligibility requirements set out in a relevant statement of immigration policy, where these are more favourable than the standard requirements set out above. This is likely to be the case for skilled workers covered by the new Green Card system, who will be eligible for permanent residence after 2 years of residence. Furthermore, it is proposed that the Minister may issue a 'probationary' long-term residence permit to a person who does not meet the residence requirement of 5 years prior to their application. Where this applies, probationary conditions shall apply for 2 years following the issue of the long-term residence permit, or such shorter period as the Minister may specify.
Currently, no formal income requirements or integration conditions or requirements regarding accommodation are in place. No provision is made concerning the refusal to grant a permit on the grounds of public policy or public security. The Department of Justice has discretion in the matter. The Bill does not specifically stipulate that the Minister may refuse to grant the status on public policy or public security grounds. However, the Minister possesses this power as part of his executive power. The status of long-term resident under the Bill will apply if standard eligibility requirements are satisfied and considerably less scope for Ministerial discretion is available.

Residence as student or asylum seeker

As a matter of administrative practice, time spent in Ireland as a student does not currently count towards the time required to apply for permission to remain without conditions regarding time or long-term residence. Section 34(2)(b)(i) of the 2007 Bill states that

residence for the purposes of engaging in a course of education or study in the country will not count towards determining the length of lawful residence needed for long-term resident status. Time spent in Ireland as an asylum seeker does not count towards the time needed to apply for permission to remain without conditions regarding time or long-term residence. This will continue under the proposed Immigration, Residence and Protection Bill.

Loss of the status

Apart from the deportation provisions contained in the Immigration Act 1999, there is no law or published administrative practice which details the loss of residence status. Permission to remain without conditions regarding time could be withdrawn on public security or public policy grounds. In practice, this rarely happens.

The Bill specifies the grounds for the loss of long-term resident status. The Minister may discontinue a long-term residence permit, other than long-term residence permits issued under section 34(4), only if (a) the permit-holder obtained his or her permit on the basis of information or documentation which was false or misleading; (b) the permit-holder has been out of the state for 12 consecutive months; (c) an exclusion order is made where the permit-holder has been out of the state for 12 consecutive months; or (d) an expulsion decision is taken where the permit-holder constitutes an actual and sufficiently serious threat to public policy or public security and reasonable grounds exist for regarding the permit-holder as a danger to the security of the state.

Currently, no general protection is afforded to long-term residents against deportation. However, Section 3 (6) of the Immigration Act 1999 provides that, in determining whether to issue a deportation order, consideration shall be taken of the 'duration of residence in the state' among other factors. Under the Act, the Minister is bound to consider a number of factors in deciding whether to deport a person: the age of the person, the duration of residence in the state of the person, the family and domestic circumstances of the person, the nature of the person's connection with the state, if any, his employment record and prospects, his character and conduct of the person both within and (where relevant and ascertainable) outside the state (including any criminal convictions), humanitarian considerations, any representations duly made by or on behalf of the person, the common good, and considerations of national security and public policy.

This would appear to be quite similar to the substance of the requirements set forth in the second sentence of Article 6(1) of the Directive. The 2007 Bill contains similar criteria which the Minister should consider when determining whether to revoke or refuse to renew a long-term residence permit and in relation to issuing an expulsion order. The Bill states that the Minister may discontinue a long-term residence permit if an expulsion order is issued where the permit-holder: (a) constitutes an actual and serious threat to public security or public policy (*ordre public*) or (b) where the permit-holder, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of the state. Whilst (a) is clearly consistent with the approach taken under the ECHR and EU Treaties, (b) is more problematic.

No provisions are made in the legislation at present stating that the reasons for a decision to withdraw or refuse the status must be given. Failure to give reasons may, however, form the basis for an application for judicial review. Under the 2007 Bill, it is intended that a statement of the reasons for the proposal to revoke or refuse to renew should be included in any proposal to discontinue a long-term permit.

An applicant who is unhappy with the Minister for Justice's decision can make an application for leave to apply for judicial review in the High Court. The Courts may not always allow the

hearing to proceed – since the remedy is a discretionary one – and, in this respect, access to a court is not fully guaranteed.

Rights attached to the status

In the current legislation in Ireland no explicit provision is made granting long-term residents equal treatment with respect to access to employment, education, vocational training, recognition of diplomas, social security, social assistance, tax benefits or access to goods and services. However, in practice such equal treatment is applied. While no specific legislative measure requires such equality of treatment, most measures conferring rights and obligations refer to residents rather than citizens. Citizens of Ireland as such only have greater rights and obligations in a small number of cases where Irish nationality is required, for example, voting in presidential elections and referenda and the right to apply for an Irish passport.

The 2007 Bill envisages that long-term residents will be entitled to look for and take up employment and to engage in economic activity, to have access to education and training in Ireland, to medical care and services and to social welfare benefits in the same way and to the same extent in all respects as an Irish citizen.

There is no legislative guarantee of family reunification for long-term residents. While the Minister for Justice, Equality and Law Reform has complete discretion in this regard, generally speaking the Minister looks favourably on applications for family reunification from persons with long-term residence status.

EC long-term resident status obtained in another Member State

Ireland does not treat long-term residents of other Member States in the manner required in Chapter III of the Directive. Ireland does not recognise long-term residents from other Member States as a separate category. Any long-term residents of another Member State who wish to reside or work in Ireland must comply with the necessary visa and employment permit requirements as prescribed on the basis of their nationality.

4.3 The United Kingdom[95]

The United Kingdom is not bound by Directive 2003/ 109, nor has it indicated its willingness to comply with the Directive's content. The general reason the UK has given for non-participation is its refusal to be bound by EC measures which would constrain it as regards the admission of third-country nationals.[96] That argument mainly concerns the provision for long-term residents' freedom of movement within the EU in Part III of the Directive. Non-participation also leaves the UK free to set its own policy as regards the treatment of long-term residents.

The status of indefinite leave

In the absence of specific implementing measures, we are concerned with United Kingdom law and policy concerning 'indefinite leave'. Within the UK system, this is usually granted after entry and is therefore termed 'indefinite leave to remain'. In a few circumstances, it can be granted before entry and is then termed 'indefinite leave to enter'. We will consider the

[95] This paragraph is to a large extent compiled and copied from the report written by Bernard Ryan, Reader in Law, University of Kent.

[96] See Home Office Minister Bob Ainsworth, House of Commons European Standing Committee B, 1 July 2002, columns 4-5.

acquisition of indefinite leave, its withdrawal and the specific entitlements of those with indefinite leave.

Acquisition of the status

The Immigration Rules define a series of separate categories for which indefinite leave to remain is provided, such as work permit-holders (paras. 134-13), representatives of overseas newspapers, news agencies and broadcasting organisations (paras. 142-143), sole representatives of overseas firms (paras. 150-151), domestic workers in private households (paras. 159G-159H), ministers of religion, missionaries and members of religious orders (paras. 176-177), persons with UK ancestry coming for employment purposes (paras. 192-193 concerning Commonwealth citizens with UK-born grandparents), persons established in business (paras. 209-210), innovators (paras. 210G-210H), investors (paras. 230-231), writers, composers and artists (paras. 238-239), retired persons of independent means (paras. 269-270) and at least ten other categories including close family members of those just mentioned.

In addition, policy instructions to immigration officials provide for the granting of indefinite leave to remain to refugees, persons entitled to humanitarian protection (this is 'subsidiary protection' in the sense of EU Directive 2004/83) and persons entitled to discretionary leave, in order to comply with ECHR obligations other than regarding asylum.[97]

No provision is made for students or for persons with temporary protection status to obtain indefinite leave to remain. Asylum applicants are not eligible for indefinite leave to remain. Diplomats and their families and household members are not subject to immigration control. One consequence is that they cannot be granted indefinite leave.

Persons admitted for work, self-employment, retirement or investment-related purposes are eligible to apply for the status after five years of continuous residence in the UK. The residence requirement is reduced for spouses and children and some other categories. Former service personnel are eligible for indefinite leave without a prior period of residence.

Granting of the status depends on meeting requirements regarding income, accommodation and integration. Those requirements may vary for each category of persons. The status may be refused on public order grounds.

Those who seek to settle in the UK must comply with an *income requirement* of some form. The exceptions are those seeking to settle as former members of the armed forces or their family members, or those in the refugee, humanitarian protection and discretionary leave categories. Where an income requirement is applied, it is fixed in the relevant Immigration Rules for the category. At the settlement stage, the Immigration Rules require compliance with the initial income requirement throughout the relevant period (see, for example, para. 134 in relation to work permits).

In addition to a resources requirement, the Immigration Rules provide, in family settlement cases, that there should be *adequate accommodation* for the family, which is 'without recourse to public funds' and which the family members among them 'own or occupy exclusively'. One issue here concerns the number of persons in a dwelling. The immigration instructions provide that accommodation should not be 'overcrowded' for the purposes of the Housing Act 1985.

An *integration requirement* was introduced with effect from 2 April 2007 for all settlement applications not involving persons under 18 or over 65. An exception applies to persons seeking indefinite leave in the former armed forces category, including their family members.

[97] Asylum Policy Instructions, section 35, October 2006, Asylum Policy Instructions, section 22, October 2006 and Asylum Policy Instructions, section 15, undated.

Formally, the integration requirement is attached to the rules governing each category of settlement. The formulation used is that the applicant must have 'sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom' (see, for example, para. 134 in relation to work permit-holders). These conditions had previously been applied to naturalisation applications only. In practice, there are two ways to comply with these conditions. Persons with sufficient English language ability can take a 'Life in the UK' test, based on an official handbook. The alternative is to take and pass Level 3 of an 'English for Speakers of Other Languages' (ESOL) course, which includes a component based on the official handbook.

Very little published information exists about the exercise of the power to refuse entry or indefinite leave to remain on *public policy grounds*. The focus of published information and analysis is rather on the possibility of deportation, which potentially covers all persons with leave to remain in the UK (i.e. both limited leave or indefinite leave). The current policy on deportation is to expel all foreign nationals who commit serious crimes. No legal possibility exists for refusing to consider an application, or to refuse to grant leave, for general economic reasons.

Procedural guarantees and remedies

The UK system has no legal obligations with respect to decision times. Instead, decision times are dealt with by management performance standards. Failure to meet the time limit does not have consequences for the individual applicant. In cases of extreme delay, it is theoretically possible to obtain an order by way of judicial review proceedings to require a decision to be taken.

A statutory requirement states that negative immigration decisions are to be communicated by hand, fax or recorded delivery to the individual or his representative, or to his last known address. Negative immigration decisions *which are appealable* must be communicated in writing, giving reasons.[98]

Right of appeal to the Asylum and Immigration Tribunal is available against the refusal of indefinite leave to remain, in cases of curtailment of leave or the deportation of persons with indefinite leave.[99] However, a person refused indefinite leave to remain has no right of appeal if he has some other leave, including cases where his limited leave is extended.

No right of appeal is provided for a person who is refused leave to enter or entry clearance because of a personal decision by the Secretary of State that this person's presence in the UK is 'not conducive to the public good'. A person who is the subject of a negative decision may be denied an ordinary right of appeal if the Secretary of State certifies that the decision was taken wholly or partly in the interests of national security or of the UK's relationship with another country. In practice, this is of particular relevance in deportation cases.

Rights attached to the status

Persons with indefinite leave to remain enjoy equal treatment alongside nationals regarding access to employment, education and vocational training, recognition of diplomas, social security, social assistance and social protection, tax benefits and access to goods and services. Spouses, civil partners and those cohabiting with persons who are settled in the UK (paras. 287-289, 295G-295I), children of persons who are or will be settled in the UK (paras. 298-300).

[98] Immigration (Notices) Regulations 2003 (SI 2003 No. 658), Regulations 4, 5 and 7.
[99] Section 82 of the Nationality, Immigration and Asylum Act 2002.

The main respect in which the UK system is more favourable is in permitting family members to acquire indefinite leave either before arrival or after a two-year probationary period.

Loss of the status

Sets out the grounds on which leave to enter or remain, including indefinite leave, may be curtailed, 'include the making of false representations or the failure to disclose any material fact for the purpose of obtaining leave to enter or a previous variation of leave' and 'the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his character, conduct or associations or the fact that he represents a threat to national security.'[100] Separately, the indefinite leave may be 'cancelled' at a port or while an individual is outside the UK on similar grounds.[101] A further possible ground for cancellation is that 'there has been such a change in the circumstances of that person's case since the leave was given, that it should be cancelled', allowing for the cancellation of indefinite leave in the event of long-term absence. In particular, this ground should be read together with the 'returning residents' provision in para. 18 of the Rules, under which a person with indefinite leave may be refused entry to the UK if he has been absent for more than two years and is not entering with the intention of (resuming) settlement. Absence from the UK does not cause indefinite leave to be lost automatically. Instead, it is necessary for an immigration officer to decide specifically to cancel the leave, using the power referred to previously.
A threat to public policy is grounds for leave to be curtailed. In practice, such a person would also be subject to a deportation order. However, there may be cases where a person cannot be expelled for legal reasons – principally, the guarantee against torture or inhuman or degrading treatment or punishment in Article 3 ECHR. It is also possible that someone may not be returned to his or her state of nationality for practical reasons. Such a person's indefinite leave may not be revoked unless it was obtained by deception.[102]

Protection from expulsion

A person is *liable* to deportation in three circumstances: (a) if he is over 17, convicted of 'an offence … punishable with imprisonment' and deportation is recommended by the court, (b) if the Home Secretary 'deems his deportation to be conducive to the public good', or (c) if he belongs to the family of a person who 'is or has been ordered to be deported'.[103] The Home Secretary has discretion to decide whether to proceed with deportation in any given case.[104]

Political controversy in 2006 concerning the failure to consider many non-national prisoners for deportation at the end of their sentence has led to a tightening of the law on the subject. It had previously provided that, in deciding whether to proceed with a deportation, the Secretary of State was to *balance* the public interest against 'any compassionate circumstances of the case.' As a result of an amendment in July 2006, paragraph 264 now contains instead a presumption of deportation in all cases not covered by the ECHR or the Geneva Convention. The change also saw the deletion both of the specific duty to consider all relevant factors and of the list of those factors. A further reform under consideration in Parliament at the time of writing would create a form of automatic deportation for some persons with criminal convictions if they are sentenced to a period of imprisonment of at least

[100] Paragraph 323 of the Immigration Rules.
[101] Paragraph 321A of the Immigration Rules.
[102] Section 76 of the Nationality, Immigration and Asylum Act 2002.
[103] Section 3 of the Immigration Act 1971.
[104] Section 5 of the 1971 Act. Discretion is exercised in accordance with paras. 362-368 of the Immigration Rules.

12 months, or if they are sentenced to any period of imprisonment for an offence designated as 'serious' by the Secretary of State.[105]

Under the Immigration Rules in force until July 2006, the factors which the Secretary of State had a duty to take into account before deciding to deport included the individual's age, his length of residence in the UK, the 'strength of connections with the United Kingdom', and his 'domestic circumstances'. These factors broadly corresponded to the list in Article 12(3) of the Directive. One effect of the changes made to para. 364 of the Immigration Rules in July 2006 is that these factors are not *usually* taken into account, unless they constitute a claim that Article 8 ECHR would be breached by a deportation. In addition, the 'automatic' deportation contemplated by the UK Borders Bill would have the effect of allowing certain persons convicted of criminal offences to have *no* possibility of raising factors of this kind unless they constituted an Article 8 ECHR claim.

EC long-term resident status obtained in another Member State

An individual's legal position is not altered by being a long-term resident of another Member State. Were he or she to seek to move to the UK for more than six months, this person would need entry clearance, which would have to be applied for in the country where he or she is 'living' (see para. 28 of the Immigration Rules).
The UK does not show any particular favour regarding admission for economic activity to long-term residents of other Member States.

Prospects for UK adherence to the Directive

As things stand in 2007, the UK seems even less likely to agree to the Directive than it was in 2001-2003. It has not subsequently altered its opposition to EU instruments which grant rights of admission to the UK to third-country nationals who are not family members of EEA/Swiss nationals. Moreover, given the trend in UK policy referred to in the previous answer, even Chapter II of the Directive is now unlikely to be acceptable to the UK. Its policy is already inconsistent with the Chapter and, in any event, the UK is likely to favour retaining its freedom of action in relation to long-term residents.

There has been some support within parliament for UK participation in the Directive. For example, in November 2001 – soon after the Directive had been proposed by the Commission – the House of Lords Select Committee on the European Union delivered a report on the Directive which was generally sympathetic to it, but without specifically calling for UK participation. In November 2005, the same Select Committee advocated participation in the Directive.[106]

The lack of clarity as to the possibility for long-term residents to engage in *employment* in other Member States (see Article 14 of the Directive) may, in the case of the UK, be thought to cloud the debate regarding its participation. Paradoxically, the UK, according to our rapporteur, might be more responsive to a system which is clearly reciprocal as regards intra-EU migration for economic purposes by long-term residents, rather than a system in which Member States retain discretion.

4.4 Comparison

[105] Clause 31 of the UK Borders Bill 2007, passed by the House of Commons on 9 May 2007.
[106] 2001-02 *House of Lords Papers* 33 and in 2005 as part of a report on *Economic Migration to the EU* (2005-06 *House of Lords Papers* 58, para. 105).

Apparently, Directive 2003/109/EC had little or no influence on Danish immigration legislation. On the other hand, the Immigration, Residence and Protection Bill proposed in Ireland in 2007 contains a series of provisions that are strikingly similar to the provisions in the Directive. The reduction of the residence requirement from eight to five years, the exclusion of residence as student or asylum seeker, the income, integration and public order conditions, the 12-month absence rule, the procedural guarantees and the explicit provisions on equal treatment result in a national Irish long-term resident status that, to a large extent, is similar to the status of the EC long-term resident in the first Member State. Of course, the Irish status does not imply residence rights in other Member States, nor does the EC long-term resident status imply a right to reside in Ireland.

Certain elements of the Directive may have influenced recent developments in national law in the UK. The qualifying period for persons in economic categories to acquire indefinite leave was increased from four to five years with effect from April 2006 and integration tests were applied to indefinite leave applicants for the first time in April 2007. Developments in the UK also illustrate one of the strengths of the Directive, which is that it provides a baseline below which Member States bound by the Directive may not fall. The recently introduced presumption in favour of deportation and the forthcoming introduction of a form of automatic deportation under the UK Borders Bill are inconsistent with Article 12 of the Directive. Another example is provided by Article 4 of the Directive that allows periods spent in different categories (as a worker, family member or self-employed person) to be aggregated in order to acquire EC long-term resident status after five years. In the UK system, such aggregation is not generally permissible.

Bibliography

S. Boelaert-Suominen (2005), 'Non-EU nationals and Council Directive 2003/109/EC on the status of third-country nationals who are long-term residents: Five paces forward and possibly three paces back', Common Market Law Review (2005) 42, p. 1011–1052.

M.K. Bulterman and P.J. Slot (2005), 'Harmonisatie van wetgeving betreffende migrerende EU-burgers en derdelanders: op weg naar een uniform toetsingskader?', SEW 2005, nr. 9, p. 346–362.

S. Carrera (2005), 'Integration' as a Process of Inclusion for Migrants? The Case of Long-Term Residents in the EU', CEPS Working Document no. 219, March 2005. (www.ceps.be)

D. Curtin (1997), 'Draft Regulation on Freedom of Movement for Workers within the European Community for Third-Country Nationals with Long Term Residence in One Member State', in: Free Movement for non-EC-Workers within the European Community, Utrecht: Nederlands Centrum Buitenlanders 1997, p. 29–64.

K. Groenendijk (2001), 'Security of Residence and Access to Free Movement for Settled Third- Country Nationals under Community law', in: E. Guild and C. Harlow (Eds.), Implementing Amsterdam, Immigration and Asylum rights in EC Law, Oxford/Portland: Hart Publishing 2001, p. 225–240.

K. Groenendijk (2001), 'Verblijfszekerheid en vrij verkeer voor gevestigde burgers van derde landen in het Gemeenschapsrecht', in: E. Brouwer en K. Groenendijk (red.), Derdelan- ders in de Europese Unie, Europees migratierecht vanuit Nederlands perspectief, Utrecht: Forum 2001, p. 67–84.

C.A. Groenendijk (2001), 'Raad van Europa en versterking rechtspositie van lang gevestigde vreemdelingen', Migrantenrecht 2001, p. 11–17.

C.A. Groenendijk and J.C. de Heer (2006), 'Commentaar – Langdurig ingezeten derdelanders hebben recht op nieuwe permanente EG-verblijfstitel en op voorwaardelijk vrij verkeer in de EU', Migrantenrecht 2006, p.35-36.
C.A. Groenendijk and J.C. de Heer (2006), 'Niet in behandeling nemen aanvragen door de minister is onrechtmatig en de IND jokt', Migrantenrecht 2006, p.35-36.
C.A. Groenendijk and J.C. de Heer (2006), 'Onjuiste omzetting van de richtlijn langdurig ingezetenen door middel van een tijdelijke circulaire', Migrantenrecht 2006, p.324-326.
C.A. Groenendijk (2007), 'The Long-Term Residents Directive, Denizenship and Integration', in: H. Toner, E. Guild and A. Baldaccini, 'Whose freedom, security and justice? EU Immigration and Asylum Law and Policy, Hart Publishing: Oxford, 2007, p.429 – 450.
K. Hailbronner (2004), 'Langfristig aufenthaltsberechtigte Drittstaatsangehörige', Zeitschrift für
Ausländerrecht und Ausländerpolitik, vol. 24, afl. 5–6, p. 163–168.
L. Halleskov (2005), 'The Long-Term Residents Directive: A Fulfilment of the Tampere Objec- tive of Near-Equality?', European Journal of Migration and Law, vol. 7 (2005), no. 2, p. 181–202.
J. Handoll (2005), 'The long-term residents directive', in: Immigration and asylum law of the EU: current debates/Actualité du droit Européen de l'immigration et de l'asile, J-Y Carlier and P. De Bruycker (red.), Bruxelles: Bruylant 2005, p. 144–160.
J.C. de Heer (2007), 'De status van langdurig ingezeten derdelander (1). Achtergrond en inhoud van richtlijn 2003/109/EG', Migrantenrecht 2007, p.272-280.
J.C. de Heer (2007), 'De status van langdurig ingezeten derdelander (2). De implementatie van richtlijn 2003/109/EG', Migrantenrecht 2007, p.281-288.
M. Illamola Dausa (2005), 'Egalité et intégration', in: F. Julien-Laferrière a.o. (eds), The Euro- pean Immigration and Asylum Policy: Critical Assessment Five Years After the Amsterdam Treaty, Brussels: Bruylant 2005, p. 175–202.
S. Peers (2004), 'Implementing equality? The Directive on long-term resident third-country nationals', European law review, vol. 29 (2004), afl. 4, p. 437–460.
S. Peers and N. Rogers (eds.) (2006), 'EU Immigration and Asylum Law', Martinus Nijhoff Publishers: Leiden – Boston, 2006, Chapter 20: Long-term Residents, p.615-660.
Y. Schibel (2004), Monitoring and influencing the transposition of EU immigration law, the
A. Skordas (2006/2007), 'Immigration and the market: the long-term residents directive', Columbia Journal of European Law vol.13 (winter 2006/2007), no.1, p.201-229.

Annexes

Annex I: Documentary Evidence in the First Member State (Q.9.A)

Member State	**Valid travel document**	**Birth certificate**	**Photograph**	**Certificates (if relevant)**	**Accommodation**	**Sickness insurance**	**Resources**	**Other documents**
Austria	X	or certificate with the same function	EU standard passport photograph (3,5 x 4,5 cm to 4,0 x 5,0 cm)	Marriage certificate Divorce certificate Adoption certificate Certificate concerning family membership Death certificate	X	X	X	
Belgium **The law provides in the possibility to specify the application procedure by regulation (Royal decree- still to be drafted)**	Only in case the identity is not determined					X	X	
Bulgaria	X		Two		X		X	Detailed CV Relevant tax payment document Document issued by the competent authority for administrative control of foreigners containing the legal grounds for residence for the last five years

								The competent authority may require tcn to provide other relevant documents depending on the ground on which the person concerned has resided in the country for the last five years
Cyprus	Valid for at least two years				X	X	Evidence for income from other sources than the employment Bank Statement	Valid residence permit Contract of employment for a fixed period of time of at least 18 months Documents for academic qualifications and professional experience Tax declarations for the previous 5 years evidencing compliance with income tax regulations Evidence for contributions to the social security Welfare system (pension system) for at least five

								years VAT declaration that the application complied with VAT regulations (five years) Title of ownership of premises of tenancy agreement which describes the premises (also utility bills) Criminal record
Czech Republic **The LTR-status will be granted only to a holder of the permanent residence permit. The application for the LTR-status is submitted either together with the application for the permanent residence permit of after the issue of the permanent residence permit. A person asking for the LTR-status must therefore also submit the documents necessary for the request of the permanent residence permit or certify that he/she already holds a permanent**	**To get the permanent residence permit**		**To get the permanent residence permit**	**To get the permanent resident permit a document certifying the knowledge of the Czech language**	**To get the permanent residence permit**		X **Also to get the permanent residence permit**	Not endanger public security of the CR or of other MS or did not seriously violate public policy **To get the permanent residence permit a person must submit:** **A document certifying the reason of stay excerpt from the criminal records of CR, his/her country of origin and all the states where the tcn stayed for more than 6 months in last 3 years (not apply to a child under 15)**

residence permit (and it means that he/she already submitted these documents before)								**(-a parent approval in cases of an application of a minor)**
Estonia	X		X	Estonian language exam certificate except the person is excluded and does not need to take the exam	X	X	Permanent and legal income during the past 6 months	Proof of payment of the state fee
Finland	X						X	
France					X	X	X	Evidence of five years legal and continuous residence Purpose of residence: especially if the tcn reside for the purpose of professional activity
Germany **All aspects favourable for the application as far as those aspects are not obvious or known to the authorities**	X				X			
Greece	X			Certificate of sufficient knowledge of the Greek language and of the main elements of the Greek history	X	X	Copy of the revenue statement of last two years	
Hungary	Upon request			Birth certificate, in case of living in	X	X	X	A clear criminal record not older

				marriage, the marriage certificate, in case the marriage has been dissolved, the final decision about the dissolution of marriage, further in case of a minor applicant, a certified document according to the personal law of the minor that there is no legal obstacle of his/her settlement				than 6 months issued by the country where the applicant had permanent or habitual residence prior to entry into Hungary
Italy **Transposition legislative Decree provides that the enactment regulation indicated the documentation should be amended in the next months, presently it still applies**	X		X				Copy of tax return or certification issued by the employer and attesting that the annual income is not below the annual social allocation amount	Certificate issued by the Court and showing personal criminal record and pending criminal proceedings
Latvia			X	Certificate for the proficiency of state language's knowledge	OCMA examines the existence of the place of residence		Reference on the last twelve-month incomes. The staff of the OCMA in cooperation with the State Revenue Service examines whether appropriate tax obligation have been made for the indicated work payment.	Documentary evidence of residence for (the last) five years Evidence proving that the criteria of public security and policy have been met as determined by the competent national authorities. This information is gathered by the OCMA itself.
Lithuania	X				According to Order not according to the	According to amended Aliens	No specification in Order, in practice a	Visa or valid temporary

All copies of documents shall be certified, documents issued abroad shall be translated to Lithuanian and certified by an translator and shall be legalised or approved by "Apostille" **Coordination problem between Order and amended Law**					amended law	Law	declaration of income would be required	residence permit; in this respect documents that confirms that the foreigner has resided (with his family) for the past five years. No entry in the list of foreigners who are prohibited from entry, no threat to national security, public order or health of the population (verified by the authorities)
Luxembourg	X			Healt exam certificate	X		X	
Malta	X				X	X	X	
Netherlands **Documents necessary to prove he or she meets the conditions for granting a residence permit.**	X							
Poland	X		Four		X	X	X	Documents confirming the data provided in the application as well as justifying right to apply e.g. visa or valid temporary residence permit (i.e. confirming the legal, continuous five years residence)

								Prove of state charge
Portugal	X			Demonstrating fluency in the basic Portuguese.	X	X	X	Legally and continuously residence within national territory for five years immediately prior to the submission of the application
Romania	X				X	X	X	Certificate of criminal record, issued by the Romanian authorities
Slovakia	X		X	Police department may request for a document confirming completion of a Slovak language course	Police department may request for a document (not older than 30 days) confirming secured accommodation	Document not older than 90 days	Financial coverage of his stay (documents not older than 90 days)	
Slovenia **Applicant must attach other evidence and documents proving fulfilment of the conditions.** **Upon request the applicant must contact the body in person**	X					X	X	Certificate person concerned was not convicted for a crime in the country of origin
Spain **Documents that the administration considers to be relevant for the procedure and**	X							Accreditation of previous legal residence for five years Administration will look for the

resolution of the demand.								criminal record
Sweden **According to general principles of national law the authorities shall investigate the matter concerned with the necessary means.**								

Annex II: Documentary Evidence in the Second Member State (Q.17.D)

Member State	Valid travel document	Long-term residence Permit	Birth certificate	Photograph(s)	Certificate(s)	Accommodation	Sickness insurance	Resources	Other
Austria **No special rules for ltr of another MS. So the same requirements as for the status apply**	X		or certificate with the same function	X	Marriage certificate Divorce certificate Adoption certificate Certificate concerning family membership Death certificate	X	X	X	
Belgium	If the application is made in Belgium the foreigner has to provide an identity document.	X						X	
Bulgaria **No internal rule exists allowing persons to present certified copies instead of original documents**	X	No explicit requirement				X		X	Tax payment document Evidence for insurances and social security in compliance with the national legislation
Cyprus	X	X				X	X	X	Contract of employment for a fixed period of time of at least 18 months Academic or professional

									certificates Title of ownership or tenancy of a house (with a description of the house) and utility bills Criminal record
Czech Republic	X	X		**X**		**X**	X (with some exceptions see Q.17.B)	X	Document certifying the purpose of stay (e.g. employment permit) Extract from a Czech judicial record (does not apply to children younger than 15 years) Ltr may be asked to present a judicial record from a home country and a confirmation that he does not suffer a grave illness (this confirmation will be presented only upon request of the authorities, the authorities may ask for it only in case that they have reasonable suspicion that the person suffer a grave illness)
Estonia **Estonia does not check or recognise ltr of**	X					X			

another MS; Unclear what documentary evidence is required									
Finland **General rules apply**	X							X	
France						X			Document proving legal entrance Medical certificate Municipal registry of births, marriages and deaths Visa (if required)
Germany **All aspects favourable for the application as far as those aspects are not obvious or known to the authorities**	X	X							
Greece	X	Translated in Greek language					X		Medical certificate Other documents required by Law 3386/2005
Hungary	Tcn must show a valid travel document upon application	Tcn must show his permit upon the time of submission	birth certificate, in case of living in marriage, the marriage certificate, in case the marriage has been			X	X	X	A clear criminal record not older than 6 months issued by the country where the applicant had permanent or habitual residence prior to entry into Hungary

			dissolved, the final decision about the dissolution of marriage, further in case of a minor applicant, a certified document according to the personal law of the minor that there is no legal obstacle of his/her settlement						Evidence of social assurance
Italy **The same documentation as that is applicable in relation to any other third-country national is required**	X								
Latvia	X	X		X	Certificate for the proficiency of state language's knowledge only in cases where the person concerned wants to acquire permanent residence in Latvia	X		X	Health certificate
Lithuania	X					X	X	X	
Luxembourg	X	Authorities can require					X	X	Extract from the criminal record Visa
Malta		X				X			

Netherlands	X							X	
Poland **It have be indicated that all documentary evidence shall be translated into Polish by sworn translators; certified copies are sufficient, however the authorities shall have access to the originals of documents**	X	X		X		X	X	X	Documents confirming the data provided in the application as well as justifying the right to apply for the residence permit
Portugal	X	X				X			
Romania	X	X				Accommodation without conditions on the “appropriate” character		X	
Slovakia	X	X		X		X	X	Financial coverage of his stay (documents not older than 90 days)	A foreign mission or police department may request a foreigner to submit a document not older than 30 days confirming that he/she does not suffer from a contagious disease whose spread is punitive and a document confirming that the foreigner will not constitute a burden

									to the social security system of the Slovak Republic (statutory declaration).
Slovenia **Applicant must attach other evidence and documents proving fulfilment of the conditions.** **Upon request the applicant must contact the body in person**	X	Probably					X	X	Evidence which prove the legal ground and a purpose of the residence Certificate that the person was not convicted for a crime in the country of origin
Spain **There is no specific procedure or conditions for a long-term resident from another EU member state.**	X							Or work permit	Visa if necessary Criminal record
Sweden	X	X							

Annex III: Documentary Evidence related to the Purpose of Stay in the Second Member State (Q.17.D)

Member State	Employed capacity	Self-employment	Study or vocational training (Education)	Other purposes
Austria	Na	Pursuing self-employed occupation the tcn has to render proof about this activity and a description of aims of his business (businessplan).	Na	Na
Belgium **NB. Specific rules apply to ltr from another MS who wish to reside in Belgium in the capacity of a employee sent on secondment by a provider of services which is established in another ms**	Provide the evidence that they are entitled to work in Belgium or are exempted from such an authorisation. He/she disposes of a (offer for an) employment contract or documents required to perform a self employed activity LTR has also to provide a medical certificate and evidence that he has stable, regular and sufficient recourses for himself and his family members		Has to fulfil some general requirements (document of the educational institute, medical certificate, certificate of good behaviour,) Also evidence of sufficient resources	Medical certificate and evidence that the ltr has a sickness insurance and stable, regular and sufficient resources that are sufficient to cover the costs for him/herself and the family members
Bulgaria **The competent authority may require tcn to provide other relevant documents depending on the ground on which the person concerned has resided in the country for the last five years**	A work permit, the employer shall submit before the relevant national body the employment contract as well	Evidence for appropriate funds for the exercise of an economic activity or a permit for the exercise of a freelance activity on the territory of Bulgaria issued by the competent Bulgarian authorities	A certificate for enrolment in an education establishment	Na
Cyprus	Na	Na	Students must also provide registration with an educational institution in which case it seems that they do not require the employment contract	Na
Czech Republic **No differentiation related to the purpose**	Na	Na	Na	Na
Estonia	Na	Na	Na	Na

Finland	Employment contract, attachments from the employer (written information on principal terms of work), an assurance that the terms comply with the provisions in force and the relevant collective agreement, upon request by an employment office a statement confirming that the employer has met an will meet his or her obligations as an employer	General requirements	Certificate on the acceptance to a Finnish school/institution/university certificate on money deposit of minimum of 6000 euros/year	Decided on case-by-case basis	
France Five different categories: - visitor - student - Science - artistic and cultural profession - authorised to exercise un professional activity	Visitor - documents proving legal entrance - visa - medical certificate - three photographs - Sufficient resources - commitment not to exercise professional activity	Science - diploma master degree - contract with organisation	Student - Means of existence - Certificate of registration - Visa - Medical certificate	Artistic and cultural profession Contract for more than three months with an organisation. Contract by director	Professional exercise Evidence determined by the Code du travail
Germany **No differentiation related to the purpose** **All aspects favourable for the application as far as those aspects are not obvious or known to the authorities. Must produce the required evidence about his/her personal situation and all other appropriate documents and permits to prove his/her case**	Na	Na	Na	Na	
Greece	Copy of employment contract	Copy of the personal bank account in which there is a deposit of at least € 60.000	Certificate of enrolment or certificate of acceptance for enrolment in an accredited establishment	Na	
Hungary	- Document which proves employment relationship;		- Letter of acceptance of the	- Any document certifying the	

	- Official document on performing casual job activities; - Business plan regarding economic activity; - Individual entrepreneur certificate; - Cropper certificate; - Any contract gainful activity concluded as an individual; or Any other genuine proof.		educational institute; - Document which certifies student status; - Any other genuine proof	purpose of his/her stay. For family reunification: the document which proves the existence of the family relationship
Italy	Stay contract for employment has been executed with the employer. Such stay contract shall include a warranty of the employer in relation to availability of an adequate accommodation and the employer's engagement to pay travel expenses to the country of provenance	- Appropriate funds which are needed to exercise an economic activity in such capacity - All legal requirements to carry out such activity (attested by relevant documents/statements etc) - A statement issued by the competent authority no later then three months before and attesting that there are no reasons preventing from the issuance of the permit or authorization which is required to carry out the relevant activity - In any event adequate accommodation and yearly income arising from legal sources higher than the set by the law to be exempted by the healthy contribution	- A certificate attesting the enrolment in an accredited establishment in order to pursue studies or vocational training - A sickness insurance, if the concerned person is not entitled to public health assistance in Italy - Documents showing an yearly income not below half of the social allocation - Documents proving that he/she possess the amount necessary for the travel to the country of origin after completing the study period - In relation to University courses, a statement issued by the local Italian diplomatic representation attesting that the diploma is suitable title to enrol in University (it may be supposed that this requirement will continue to apply only in the event that the concerned person has obtained a secondary school diploma in a non EU country The competent authority will also assess that the studies or training that the person intends to carry out in Italy are compliant with his/her education background in the country of provenance	Must be able to prove that they possess not occasional living means, for an amount exceeding the double of the minimum amount required by the law in order to be exempted from participating to the healthy system and a sickness insurance

Latvia	Na	"several other documents to that effect, in accordance with Section V of the Regulations on Residence Permits"	"several other documents to that effect, in accordance with Section V of the Regulations on Residence Permits"	"several other documents to that effect, in accordance with Section V of the Regulations on Residence Permits" Family reunification "several other documents to that effect, in accordance with Section V of the Regulations on Residence Permits"
Lithuania	Work permit and mediatory writing letter of the employer.	The long term resident of another member states, who applies for a temporary residence permit in Lithuania because he/she has registered an enterprise, agency or organisation in the Republic of Lithuania as the owner or co-owner who owns at least 10% of the statutory capital or voting rights and his stay in the Republic of Lithuania is necessary seeking to attain the aims of the enterprise, agency, organisation and carrying out other activities, shall submit *the certificate of registration of an enterprise, agency or organisation, establishment agreement and other documents confirming that a foreigner is the owner or co-owner who owns at least 10% of the statutory capital or voting rights, also documents confirming that his stay is the Republic of Lithuania is necessary seeking to attain the aims of the enterprise, agency, organisation and carrying out other activities* (italic by the author of this Report).	If the long-term resident has been enrolled as a student at an educational institution – mediatory writing and confirmation of admittance to studies from that institution, If the long-term resident has been invited to take part in an internship programme – certificate of registration and mediatory letter of the legal person, which invites/admits him/her for internship), If the long-term resident has been invited to undergo in-service training – certificate of registration and mediatory letter of the legal person, which invites/admits him/her, also other documents confirming that the foreigner has been invited to undergo in-service training, If the long-term resident has been enrolled in the list of participants in vocational training programme - certificate of registration and mediatory letter of the legal person, which invites/admits him/her, also	Na

		The long term resident of another member states, who applies for a temporary residence permit in Lithuania because he/she is the head or the authorised representative of the enterprise, agency or organisation registered in the Republic of Lithuania, if the principal goal of his entry is work at the enterprise, agency or organisation , shall submit t*he certificate of registration of an enterprise, agency or organisation in Lithuania, its statute and/or other documents confirming that a foreigner is the head or the authorised representative of the enterprise, agency or organisation, also documents confirming that the principal goal of his entry is work at the enterprise, agency or organisation* The long term resident of another member states, who applies for a temporary residence permit in Lithuania because he/she intends to engage in lawful activities in the Republic of Lithuania for which no work permit or permit to engage in certain activities is required, shall submit the certificate of registration and mediatory letter of an enterprise, agency or organisation, which invites (accept) him/her or other documents evidencing his/her lawful activities in Lithuania**.**	confirmation of admittance to vocational training programme, If the long term resident upon completion of a higher education programme, will take up academic activities according to further studies programme or in-service training programme, when obtaining resources for maintaining himself/herself in the Republic of Lithuania is not his/her principal aim - certificate of registration and mediatory letter of the educational institution, confirmation of admittance to the relevant programme, also documents confirming that obtaining resources for maintaining himself/herself in the Republic of Lithuania is not his/her principal aim.	

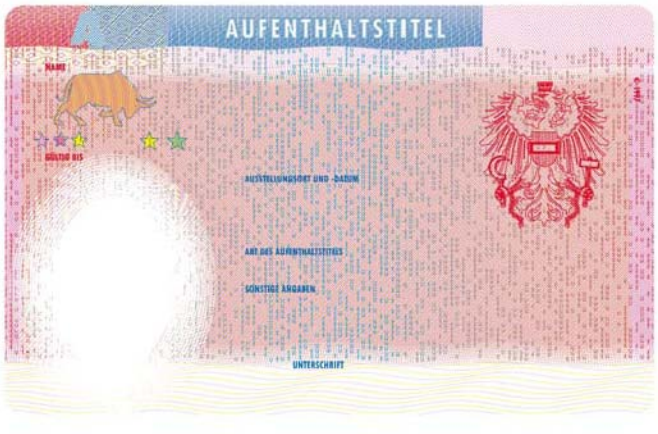
Luxembourg **No differentiation related to the purpose**	Na	Na	Na	Na
Malta	Economic activity: Furnish the employment licence which has been issued for the purpose	Na	Documentary evidence of enrolment in an accredited establishment in order to pursue studies or vocational training	Documentary evidence which shall be determined by the Director related to the purpose of his residence
Netherlands **"Documents related to the purpose of stay"**				
Poland All documentary evidence shall be translated into Polish by sworn translators, certified copys are sufficient, however the authorities shall have access to the originals of documents	Document confirming the possession of ltr-permit as well as documents confirming the employment or the conduct of economic activity	Na	A certificate of admission to studies issued by a relevant institution.	Na
Portugal	Possession of a legal employment contract and a inscription in the Social Security	Appropriate funds	Presentation of a matriculation in a superior educational establishment officially acknowledged or of an enrolment in a company which supplies vocational training officially acknowledged	Na
Romania **No special requirements related to the purpose**	Na	Na	Na	Na
Slovakia Nine different categories - Undertaking business - Work - Studies - Lecturing activities - Artistic activities - Sport activities - special activities in research or	Undertaking business A document confirming authorisation for undertaking business	Work A work permit	Studies A confirmation issued by the respective State administration authority, school or other educational institution on the foreigner's admission for studies Lecturing activities	Artistic activities A confirmation issued by a State administration authority or arts agency Sport activities Confirmation issued by a sports organisation or the respective State administration authority

development - short-term attachment within studies outside the territory of the Slovak Republic - family reunification Documents not older than 90 days			A confirmation issued by a school or other educational institution on execution of lecturing activities	Special activities in research or development: an agreement on engagement at a research institute or scientific institute Short-term attachment within studies outside the territory of the Slovak Republic confirmation of short-term attachment Family reunification a document issued by the Birth and Marriages Registry
Slovenia	Employment- or work purposes Work permit and other permits required pursuant to the act governing employment and work of aliens	Na	Documentary proof of the acceptance into the study, education, specialisation or advanced professional training course issued by the educational institution which accepted the alien as a student or confirmation from the state body which is responsible for the implementation of international or bilateral agreements or which is the grant-awarding body, or confirmation issued by the state-authorised organisation responsible for the implementation of a specific course	Other specified purposes: Research purposes: an agreement on visiting with the research organization from the Republic of Slovenia and with a work permit Family reunification: evidence of sufficient funds to support those immediate family members who into to reside in the country
Spain **No specific procedure or conditions for a ltr only general requirements**	Na	Na	Na	Na
Sweden	Certificate of employment	Documents to prove that he/she is self-employed in Sweden for e.g. an excerpt from the	Documents showing that he or she is registered at a recognized education facility, that he or	Providing or receiving services: Documents proving that he or she will provide or receive

		company registry, tenancy contract for the company office, marketing plan, invoices, VAT-accountancy etc.	she has got enough means to provide for him or herself (a written assurance is enough) and that he or she has got a fully covering health insurance	services Other purposes: Evidence that the person concerned will be comprised by the general health insurance in Sweden or that he has got a fully covering health insurance. Furthermore he will have to provide evidence concerning the income requirement

Annex IV: Copies of EC Long-Term Residence Permits

Austria



Estonia

Pikaajalise elaniku elamisluba isikutunnistusel, esikülg (alates 1.06.2006)

Pikaajalise elaniku elamisluba isikutunnistusel, tagakülg (alates 1.06.2006)

Finland


OLESKELULUPA
UPPEHÅLLSTILLSTÅND
FINOOOOOOOO
TESTIHENKILÖT, RISTO VINOHIPSU
PYSYVÄ /PERMANENT
ESPOON PL 05-05-2006
P-EY UVI 351083
PASSI: AC500600
PITKÄÄN OLESKELLEEN KOLMANNEN MAAN KANSALAISEN EY-OLESKELULUPA
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VALID WITHOUT
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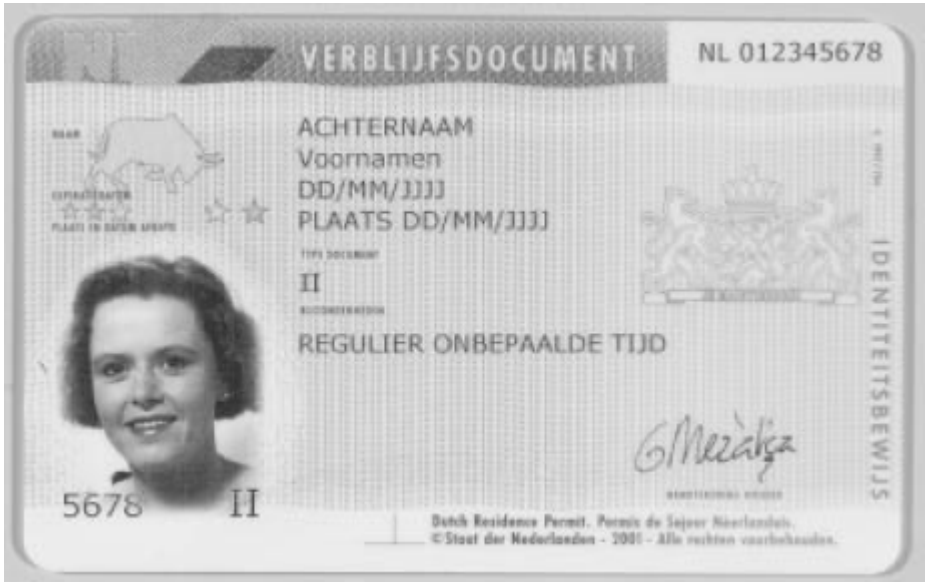
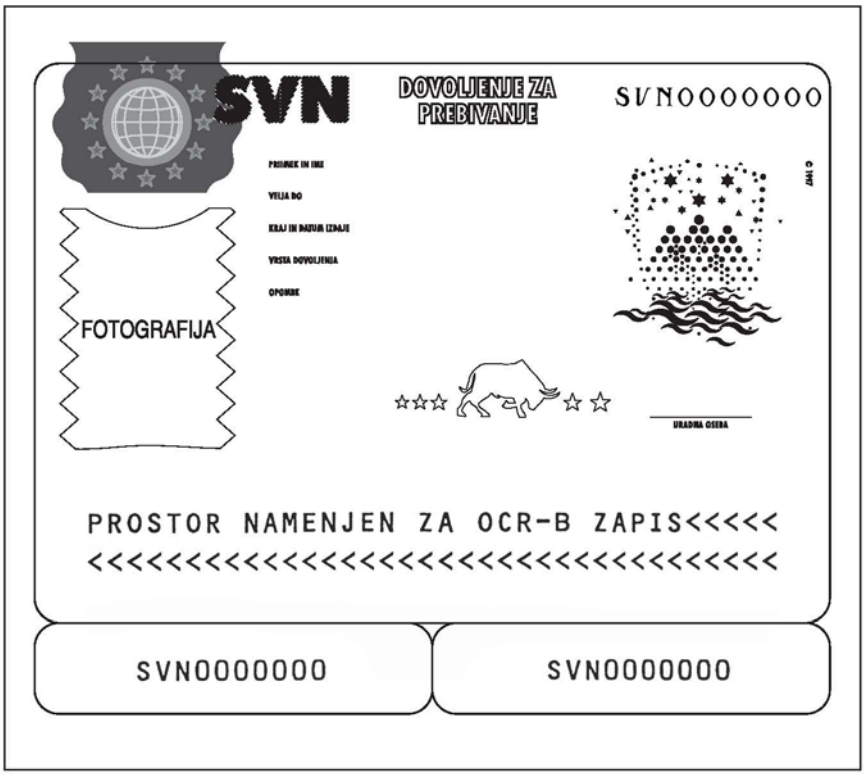
Netherlands



Slovenia

Priloga št. 3



Opis barv dovoljenja za prebivanje:

Podton z leve proti desni: Roza barva prehaja v modro ter se vrača v roza na desni.
Osnova z leve proti desni: Roza prehaja v modro in se vrača nazaj v roza na desni.

Spain


PERMISO DE RESIDENCIA
E06538480
21-04-10
GIRONA
RESIDENCIA Y TRABAJO
PERMISO DE RESIDENCIA
E03495562
RESIDENCIA
21-07-03


PERMANENTE
AUTORIZA A TRABAJAR
PERMANENTE
NO AUTORIZA A TRABAJAR
REAGRUPANTE

Sweden


UPPEHÅLLSTILLSTÅND
Sventzon, Svea
28-06-12
Norrköping, 28-06-07
Eg-uppehållstillstånd
50019882
Varaktigt bosatt inom EG/Long-term resident - EC


SPECIMEN
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