

12338/94

RESTREINT

ASIM 244

NOTE

from : the incoming French Presidency

to : Migration Working Party (Admission)

Subject: Proposal for a joint action on the status of third-country nationals residing legally in the Union for a long period

Delegations will find attached a proposal from the incoming French Presidency on the joint action mentioned above. The proposal will be presented at the next meeting of the Migration Working Party (Admission) on 11 January 1995.

DRAFT COUNCIL ACT ADOPTING A JOINT ACTION ON THE STATUS OF THIRD-COUNTRY NATIONALS RESIDING LEGALLY IN THE UNION FOR A LONG PERIOD

Proposal for act No of the Council of the European Union of for the adoption of a joint action on the status of third-country nationals residing legally in the Union for a long period.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3(2)(b) thereof,

Having regard to the proposal by France of ;

Whereas, under Article K.1 of the Treaty on European Union, the policy on the movement and residence of third-country nationals in the Member States of the European Union is a matter of common interest and thus falls within the fields of Member States' cooperation covered by Title VI of the Treaty on European Union; whereas the determination of the status of third-country nationals settled on a long-term basis in the territory of the Member States is an essential part of that policy under the provisions referred to in Article K.1(3)(a) of the Treaty;

Whereas a successful integration policy is an objective for the Member States in that it seeks to ensure social order in the various Member States; whereas it must be accompanied by control over immigration.

Whereas integration requires that greater security and stability be afforded to foreign nationals settled on a long-term and legitimate basis, both in their daily lives and in their work and their relations with the public authorities,

Whereas, in order to promote integration and especially social cohesion, it is desirable that young foreign nationals who have spent their entire school career in a Member State should enjoy the same scope and the same future prospects as nationals of the Member States,

Whereas, in this context, it is necessary to avoid foreign-national status being more attractive in some Member States than in others to ensure that migration flows are not dictated by such differences,

Whereas integration means that long-term residents must come to feel part of the construction of Europe, for although they participate in it in their daily lives as a result of the common policies, they do not enjoy freedom of establishment for a stay of more than three months,

Whereas their integration means that a step forward must be taken by allowing them to benefit from some of the arrangements enjoyed by Member States' nationals,

HAS ADOPTED THE FOLLOWING PROVISIONS:

Article 1

The Member States intend to act in a more coordinated fashion to promote the integration of foreign nationals residing in a Member State on a long-term and legitimate basis.

As a means to this end, they will seek to harmonize the status of the foreign nationals concerned.

Accordingly, they hereby adopt the guidelines listed below, which the Council invites them to use as a basis.

Article 2

This joint action does not cover:

- nationals of the European Union and the members of their families;
- nationals of the EFTA countries party to the Agreement on the European Economic Area and the members of their families;
- nationals of third countries whose status is governed by agreements concluded by the European Union and its Member States with third countries, as regards the more favourable provisions of such agreements;
- persons residing legally in a Member State as refugees within the meaning of the Geneva Convention.

This joint action is without prejudice to the international agreements concluded by the Member States, each for its own part, regarding the conditions of movement and residence for nationals of certain third countries.

CHAPTER I: PRINCIPLES GOVERNING THE GRANTING OF THE STATUS OF RESIDENT SETTLED ON A LONG-TERM BASIS

Article 3

1. Member States shall recognize as settled on a long-term basis in a Member State of the European Union any national of a third country holding a residence permit valid for at least 10 years issued to him by a Member State for one of the two reasons enumerated in paragraph 2.

2. A Member State may grant a 10-year permit where the third-country national proves that he has resided continuously in that Member States for a period of at least three years in accordance with the laws and regulations in force therein.

Member States shall grant or refuse the residence permit taking into account the level and the stability of the means of existence demonstrable by the foreign national, including the conditions of his occupation and, where appropriate, the evidence he is able to adduce in support of his intention to settle on a long-term basis in that Member State of the European Union.

3. Member States shall grant a 10-year residence permit to a third-country national who fulfils the conditions laid down by the laws and regulations in force in the Member State in which he resides in order to qualify as of right for a residence permit valid for at least 10 years, subject to public order and, if the Member State's legislation so provides, to his having lawfully entered and resided in the Member State when making his application for a residence permit.

The persons concerned are those having particular links with the Member State, as illustrated in the Annex to this joint action.

For the purposes of this joint action, a long-term residence permit shall mean a residence permit of at least 10 years issued to third-country nationals who are settled on a long-term basis.

4. Third-country nationals shall be entitled as of right to the renewal of their long-term residence permits, unless they have left the territory of the Member State in which they were settled for a period of more than three consecutive years. They may apply for an extension of that period either before their departure from the Member State or during their stay abroad.

CHAPTER II: ENTITLEMENTS OF PERSONS SETTLED ON A LONG-TERM BASIS
IN THE MEMBER STATES WHICH ISSUED THEIR
LONG-TERM RESIDENCE PERMITS

Article 4

A third-country national enjoying the status of a foreign national settled on a long-term basis shall in principle have access to the whole of the territory of the Member State which issued his long-term residence permit.

A third-country national and the members of his family residing legitimately in the territory of a Member State shall enjoy equal treatment with nationals of the Member State concerned with regard to labour law, social protection and social assistance.

However, as regards certain non-contributory advantages related to national solidarity, it shall be possible to require, pursuant to the Member State's national legislation, that the third-country national satisfy a condition of length or permanency of residence in the Member State concerned.

Article 5

1. The Member State shall grant to the third-country national to whom it has issued a long-term residence permit protection against any expulsion measure, unless he has been sentenced to imprisonment for a period at least equal to that stipulated by national law, except in the case of imperative need on grounds of national security or public safety, or where the courts have issued an exclusion order in respect of the person concerned because of crimes or offences which he has committed.
2. In principle, if the third-country national is the subject of an expulsion measure or a judicial exclusion order or if he is living in a state of polygamy or does not observe the rules on family reunification, the Member States may withdraw his long-term residence permit.

Article 6

On the basis of Article 3, Member States shall issue residence permits authorizing residence and the pursuit of an occupation.

A third-country national holding such a long-term residence permit will be allowed to pursue the occupation of his choice, as an employed or self-employed person, anywhere in the territory of the Member State, subject to the rules applicable to regulated occupations.

Member States shall avoid issuing work permits without issuing residence permits and shall endeavour to simplify procedures for nationals who fulfil the conditions set out in Article 3.

CHAPTER III: ENTITLEMENTS OF PERSONS SETTLED ON A LONG-TERM BASIS IN THE OTHER MEMBER STATES

Article 7

SEE COR 1

1. The Member States undertake to facilitate settlement for foreign nationals who, having resided on a long-term basis in a Member State on a long-term permit for at least five years, wish to settle in another Member State.

Accordingly, a foreign national who has held a residence permit for at least five years shall no longer be regarded as a first-time immigrant when he settles in another Member State.

2. He shall be exempted from the long-stay visa requirement when applying for a residence permit there; the holding of a long-term residence permit for at least five years in a Member State shall be regarded as equivalent to a long-stay visa in the other Member States.

Article 8

[A Member State shall be free to give a foreign national who has held for at least five years a long-term residence permit issued by another Member State the same access to the labour market as its own nationals or nationals of a Member State of the European Economic Area who have settled there or nationals of a third-country participating in the labour market of that State.]

CHAPTER 4: CONSULTATION ON THE PROGRESS OF HARMONIZATION

Article 9

Member States shall carry out within the Council a regular review – once a year, for example – of progress made in harmonizing the status of third-country nationals residing legally in the Union for a long period.

ANNEX
to Article 3(3)

Examples of the cases referred to in Article 3(3):

- a foreign national who has been married to a national of the Member States for at least one year;
- the foreign children of a national of the Member State if they are less than 21 years of age and are dependent on their parents, and also any relatives in the ascending line of such a national and his spouse who are dependent on him;
- foreign nationals who are parents of children having the nationality of the Member State, who are still resident there and who exercise parental authority;
- foreign nationals, other than students, who have resided legitimately in that Member State for at least 10 years on a continuous basis;
- foreign nationals who receive an allowance in respect of an industrial accident or an occupational disease which is paid by a body of the Member State and whose degree of disablement is determined by the Member State;
- foreign nationals who have served in a combatant unit of the Member State's army;
- the spouse and – if they are minors or have reached the age of majority within the past year – the children of a foreign national holding a long-term residence permit who are authorized to stay in a Member State on the basis of family reunification;
- foreign nationals who have obtained refugee status, their spouses, any of their children who are minors or have reached the age of majority within the past year;
- stateless persons, their spouses and any of their children who are minors or have reached the age of majority within the past year, where they prove that they have resided continuously in the Member State pursuant to the law in force therein.

JHA SG
WP4 002

EUROPEAN UNION
THE COUNCIL

Brussels, 6 January 1995 (12.01)

(COR 1)

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COR 1
RESTRENT

ASIM 244

NOTE

from: French Presidency

to : Migration Working Party (Admission)

Subject: Proposal for a joint action on the status of third-country nationals residing legally in the Union for a long period

Delegations will find below a new version of Articles 7 and 8 of the draft act.

Article 7

1. The Member States undertake to facilitate settlement for foreign nationals who, having resided on a long-term basis in a Member State on a long-term permit for at least five years, wish to settle in another Member State.

Accordingly, a foreign national who has held a residence permit for at least five years shall no longer be regarded as a first-time immigrant when he settles in another Member State.

2. Young foreign nationals who completed all their compulsory schooling in the Member State concerned before obtaining their long-stay permit shall not be required to have held a long-stay permit for at least five years in order to benefit from the provisions of this Article.

3. Foreign nationals as referred to in paragraphs 1 and 2 shall be exempted from the long-stay visa requirement when applying for a residence permit there; the holding of a long-term residence permit issued at least five years previously – this duration requirement being waived in the case of the young foreign nationals referred to in paragraph 2 – shall be regarded as equivalent to a long-stay visa in the other Member States.

Article 8

Foreign nationals as referred to in Article 7 may accept offers of employment actually made in accordance with the rules laid down by each Member State. Such rules shall allow them priority over third-country nationals who are not resident in a Member State of the European Union.