



18.11.2024

## NOTICE TO MEMBERS

**Subject: Petition No 0453/2024 by Y. B. G. (Taiwanese) on alleged incorrect transposition of the long-term resident Directive in Italy and France**

### 1. Summary of petition

The petitioner - a non-EU citizen living in Romania - explains that he has received an EU long-term resident permit in Romania and would like to move and work in another Member State. He recalls that, under Directive 2003/109/EC on long-term resident, Member States may provide that when an EU long-term resident moves to work from another Member State, he or she has restricted access to employed activities other than that for which he or she obtained a residence permit, under the conditions set by national legislation, for a period not exceeding 12 months. The petitioner claims that Italy and France have not transposed correctly Directive 2003/109/EC, as they restrict the equal treatment to access to employment of EU long-term residents from another EU Member State for more than 12 months. The petitioner states that this causes a major obstacle to EU long-term residents to exercise their right of intra-EU mobility.

### 2. Admissibility

Declared admissible on 28 June 2024. Information requested from Commission under Rule 233(5) (former Rule 227(5)).

### 3. Commission reply, received on 18 November 2024

#### Petition

The petitioner - a non-EU citizen living in Romania - explains that he has received an EU long-term residence permit in Romania and would like to move and work to another Member State, possibly Italy or France, to advance his career opportunities. He recalls that, under Council Directive 2003/109/EC on the status of third-country nationals who are long-term

residents<sup>1</sup> (hereinafter: the ‘Long-Term Residents Directive’), Member States may provide that, when an EU long-term resident moves to work to another Member State, he or she may have restricted access to employed activities other than that for which he or she obtained a residence permit, under the conditions set by national legislation, for a period not exceeding 12 months.

The petitioner claims that Italy and France have not transposed correctly the Long-Term Residents Directive, as they restrict the equal treatment to access to employment of EU long-term residents from another EU Member State for more than 12 months, and possibly indefinitely. This would constitute a violation of Article 21(2) of the Directive. The petitioner states that this causes a significant obstacle to the enjoyment and the exercise of their right to intra-EU mobility and asks the Commission to urge the two Member States to amend their legislation and launch infringement proceedings against them if they fail to comply.

#### The Commission’s observations

EU long-term residence permits are regulated at EU level by the Long-Term Residents Directive. The Directive provides that EU long-term residents in a Member State have the right to move and reside to a second Member State. However, this is not an absolute right, but it is subject to a number of conditions.

Article 15(1) of the Directive establishes that as soon as possible, and no later than three months, after entering the territory of the second Member State, the EU long-term resident shall apply to the competent authorities of that Member State for a residence permit. In cases where the EU long-term resident wishes to exercise an economic activity in an employed capacity, the second Member State may require the person concerned to provide evidence that they have an employment contract, a statement by the employer that they are hired or a proposal for an employment contract, under the provisions established by national legislation (Article 15(4)(a)(i)). Furthermore, Article 14(3) of the Directive allows Member States to examine the situation of their labour market and apply their national procedures regarding the requirements for filling in a vacancy or exercising a self-employed activity; and give preference to EU citizens. This means, in practice, that Member States may decide to grant a residence permit to an EU long-term resident from another Member States only when there are no available EU citizens for an employment.

As soon as the residence permit in the second Member State is granted, the EU long-term residents shall in that Member State enjoy equal treatment in a number of areas, including access to employment, as referred to in Article 11 of the Long-Term Residents Directive. However, Article 21(2) of the Directive, second subparagraph, provides that Member States may restrict, for a period not exceeding 12 months, the access to certain employed activities if they are different from those for which the residence permit has been granted.

Member States are required to notify to the Commission national provisions transposing EU legislation. The latest notification received from Italy concerning the transposition of the Long-Term Residents Directive dates back to 2007, while the latest notification from France concerning that Directive dates back to 2022. From the information available to the Commission, and following contacts with the relevant authorities, Italy does not provide for a restriction relating to access to other employed activities, but it requires third-country nationals to communicate any change relating to their employment situation<sup>2</sup>. France is

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1 OJ L 16, 23.01.2004, p. 44-53.

2 For Italy: Articles 5, 5-bis, 6, 9-bis and 22 of the Single Act on Immigration (legislative decree n. 268/1998): [DECRETO LEGISLATIVO 25 luglio 1998, n. 286 - Normattiva](#), and Articles 35-36 of the Implementing

applying the option contained in Article 21(2)<sup>3</sup>, but the restriction relating to access to other employed activities is provided for a maximum period of twelve months, in compliance with the terms laid down in Article 21(2) of the Long-Term Residents Directive.

### Conclusion

Following the analysis of the relevant Italian and French legislations, the Commission is unable to identify a breach by Italy and France of Article 21(2) of the Long-Term Residents Directive.

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Regulation of the Single Act on Immigration (Decree of the President of the Republic N. 394/1999): [DECRETO DEL PRESIDENTE DELLA REPUBBLICA 31 agosto 1999, n. 394 - Normattiva](#).

<sup>3</sup> For France: Article R. 432-4, paragraph 8, CESEDA: Article R. 432-4 CESEDA.