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## **WORKING DOCUMENT**

on the legislative own-initiative report on citizenship and residence by investment schemes (2021/2026(INL))

Committee on Civil Liberties, Justice and Home Affairs

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## Residency requirements

Seven directives<sup>1</sup> govern admission to and residence in the Union for third-country nationals. Those directives cover a large part of the migrants arriving to or staying in the Union to work, study or join family members, and together they create the **Union legal migration policy**.

[Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents<sup>2</sup> \(the Long-Term Residents Directive\)](#) sets the conditions under which third-country nationals can obtain the status of long-term residents, which grant them a set of uniform rights, similar to those enjoyed by Union citizens.

The Long-Term Residents Directive establishes that a person who has lived legally in a Member State for an uninterrupted period of five years can obtain the status of long-term resident, provided that person has a stable and regular source of income and health insurance and, when required by the Member State in question, complies with integration measures. Certain specified periods of absence shall not be considered to interrupt the period of five years<sup>3</sup>. Furthermore, that person must also not constitute a threat to public security or public policy.

The objective of the Long-Term Residents Directive is to ensure that third-country nationals who have lived in a Member State for a particular period have a permanent and secure residence status, are granted a set of rights similar to those enjoyed by Union citizens and can easier move within the Union.

The Long-Term Residents Directive states in its Recital (17) that “Harmonisation of the terms for acquisition of long-term resident status promotes mutual confidence between Member States.”. That Directive does not, however, exclude the possibility for Member States to provide for **more favourable conditions** for third-country nationals applying for long-term residence under national law, although such residence permits do not confer residence rights in other Member States (Art. 13).

Member States may therefore introduce **exceptions to the requirements on periods of absence**. In many cases, the requirements of physical presence are much more favourable for investors than for other categories of migrants<sup>4</sup>.

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<sup>1</sup> The Family Reunification Directive (Council Directive 2003/86/EC of 22 September 2003); the Long-Term Residents Directive (Council Directive 2003/109/EC of 25 November 2003); the EU “Blue Card” Directive covering highly skilled workers (Council Directive 2009/50/EC of 25 May 2009); the Seasonal Workers Directive (Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014); the Intra-Corporate Transferees Directive (Directive 2014/66/EU of the European Parliament and of the Council); Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing; the Single Permit Directive (Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011)

<sup>2</sup> OJ L 16, 23.1.2004, p. 44.

<sup>3</sup> Article 4(3), first and second subparagraphs: “Periods of absence from the territory of the Member State concerned shall not interrupt the period referred to in paragraph 1 and shall be taken into account for its calculation where they are shorter than six consecutive months and do not exceed in total 10 months within the period referred to in paragraph 1. In cases of specific or exceptional reasons of a temporary nature and in accordance with their national law, Member States may accept that a longer period of absence than that which is referred to in the first subparagraph shall not interrupt the period referred to in paragraph 1. In such cases Member States shall not take into account the relevant period of absence in the calculation of the period referred to in paragraph 1.”

<sup>4</sup> See overview in J. Džankić, *The Global Market for Investor Citizenship*, Politics of Citizenship and Migration, [https://doi.org/10.1007/978-3-030-17632-7\\_6](https://doi.org/10.1007/978-3-030-17632-7_6), Chapter 6 “*Ius pecuniae* in a Multilevel System: The European Experience”, pp. 200-203.

**Entry and residence for third-country investors are not regulated at Union level and remains governed by national law.**

The regulatory fitness check carried out by the Commission in 2019<sup>5</sup> states that in the field of economic migration, Union rules cover the following main categories of migrants only partially or not at all:

- low/medium-skilled workers;
- the self-employed;
- international service providers;
- **investors**;
- ‘highly mobile’ workers; and
- jobseekers.

Investment can take different forms<sup>6</sup>. The investment schemes are centred on a financial contribution (in whatever form) and do not require the active participation of the permit holder in an identified business. They are primarily designed to attract investment<sup>7</sup>.

Apart from citizenship investment schemes (which until recent days existed in only three Member States), many Member States have measures in place **to facilitate entry and stay in the country** for investors or other categories of persons with special contributions<sup>8</sup>. The amount of contribution varies significantly from EUR 65 000 in Estonia to EUR 10 million in France<sup>9</sup>.

While individuals may be interested in such schemes for a number of legitimate reasons<sup>10</sup>, such schemes are not risk-free from a security, money-laundering, corruption and tax evasion perspective, and they have on occasion been linked to cases of (cross-border) corruption, influence-peddling, money-laundering and possible infiltration of organised crime in the licit economy. Such risks are exacerbated by the cross-border rights associated with citizenship of the Union or residence in a Member State.

According to 2019 Commission’s citizenship report<sup>11</sup> residence investment schemes exist in twenty Member States, and they have a clear impact on other Member States as a valid residence permit grants certain rights to third-country nationals to travel freely, in particular in the Schengen area<sup>12</sup>.

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<sup>5</sup> [https://ec.europa.eu/home-affairs/system/files/2019-03/swd\\_2019-1055-staff-working-part1.pdf](https://ec.europa.eu/home-affairs/system/files/2019-03/swd_2019-1055-staff-working-part1.pdf)

<sup>6</sup> Their features vary greatly in particular as regards the investment to be made, both in nature and in amount. Five types of investment options can be observed: capital investment, investment in immovable property, investment in Government bonds, donation or endowment of an activity contributing to the public good, and one-time contributions to the State budget.

<sup>7</sup> Under Article 63 TFEU, the principle of free movement of capital applies between Member States and between Member States and third countries. Article 65 permits the free movement of capital to be restricted, in particular for reasons linked to public policy, public security or taxation.

<sup>8</sup> An overview is provided by the 2019 study for the Commission, [https://ec.europa.eu/info/sites/default/files/deliverable\\_d\\_final\\_30.10.18.pdf](https://ec.europa.eu/info/sites/default/files/deliverable_d_final_30.10.18.pdf), which informed the 2019 Commission report.

<sup>9</sup> See in J. Džankić, *The Global Market for Investor Citizenship*, Politics of Citizenship and Migration.

<sup>10</sup> A wish to start a new business in the jurisdiction, greater mobility thanks to visa-free travel, better education and job opportunities for children, or the right to live in a country with political stability (see <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/>)

<sup>11</sup> [https://ec.europa.eu/info/sites/default/files/com\\_2019\\_12\\_final\\_report.pdf](https://ec.europa.eu/info/sites/default/files/com_2019_12_final_report.pdf)

<sup>12</sup> Residence rights are confined to a single Member State, although this status entitles its holder to travel freely across other countries in the Schengen area for no more than 90 days in a 180 days period (see in J. J. Džankić, *The Global Market for Investor Citizenship*, Politics of Citizenship and Migration).

Also, the Commission's report found that in several Member States the residence requirement under those schemes does not require **continuous physical presence**. In a number of Member States physical residence is not expressly required (or rather than a requirement for continuous physical presence for extended periods of time, the investors are required to evidence that they have visited the Member State during the validity of their residence permit). Some explicitly require the presence of investors for very limited periods of time, e.g. seven days in a year (Portugal) and one day in a year (Ireland), or even only presence when the application is filed (Bulgaria, Greece and Malta). On the contrary, in Lithuania the absence of investment in local business or suspicion of no effective residence is a ground for not granting the residence permit<sup>13</sup>.

This situation makes the actual **monitoring** of the residence conditions challenging and may have impact on the acquisition of long-term residence status under the Long-Term Residents Directive. There could be situations where, in the absence of an **effective monitoring of continuity of residence**, investors considered to be residing in a Member State on the basis of a national permit for five years could acquire that status and the rights pertaining thereto, in particular mobility rights, without fulfilling the actual condition of continuity of residence for five years. This would not be compliant with the Long-Term Residents Directive.

According to its analysis on residence and citizenship investment schemes<sup>14</sup>, OECD considers as potentially high-risk schemes that give access to a low personal income tax rate on offshore financial assets and do not require an individual to spend a significant amount of time in the location offering the scheme.

Additionally, holding a national investor residence permit allows for family reunification rights under the Family Reunification Directive, provided applicants meet the conditions. In this context, it is worth mentioning that in most Member States family members of investors are not subject to enhanced due diligence, something that could entail security risks.

#### **Steps to be taken regarding strengthening the residency requirements:**

- All relevant checks, particularly security checks, need to be carried out before the issuance of a residence permit.
- All relevant Union and international security databases need to be consulted, mandatory searches must be performed, and information on residence permit applications which were refused by a Member State on security grounds must be stored in an accessible form.
- Regular exchange of information and coordination among Member States must be ensured, and the use of existing tools (e.g. in the Union framework for administrative cooperation) must be further promoted.
- Ex post checks to verify that the conditions under which residence rights were granted still exist during the entire validity of the permit must be ensured.
- Citizenship and residency rights, in case new evidence of corruption or criminality is

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<sup>13</sup> op. cit.

<sup>14</sup> OECD. 2018. *Residence/Citizenship by Investment Schemes*. <http://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/residence-citizenship-by-investment/>.

uncovered, must be revoked.

- Lack of transparency and governance of the schemes must be seriously re-assessed with firm regulatory oversight and transparency of the schemes being highly necessary (applicable procedures, operation of the schemes, including numbers and origins of the applicants and those obtaining residence rights, criteria for assessment of the applications, security checks performed, ex-post monitoring, and funds collected). Desegregated statistics must also be ensured.
- Adequate risk management must be put in place and risk assessment performed.
- Ways must be explored on how to further strengthen the Union anti-money laundering framework.
- Revision of the Long-Term Residents Directive<sup>15</sup> creates the opportunity to strengthen requirements on residency and its monitoring.
- Infringement procedures must be undertaken against Member States offering citizenship and residency schemes if they are deemed to undermine the principle of sincere cooperation and jeopardise Union values and objectives.

In performing this task, the Commission and Member States should primarily use the tools and avenues already available. However, especially in the area of money laundering and transparency and governance of the above mentioned schemes and while revising the Long-Term Residents Directive, further legislative actions should be properly assessed and explored in order to mitigate and curtail the risks connected with those schemes while respecting the competences of the Member States.

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<sup>15</sup> Such revision is included on the Commission's Work Programme for 2021.