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JUDGMENT OF THE COURT (Second Chamber)

29 June 2023 (*)

(Reference for a preliminary ruling – Immigration policy – Status of third-country nationals who are long-term residents – Directive 2003/109/EC – Second subparagraph of Article 9(4), Article 14(1), second subparagraph of Article 15(4), Article 19(2) and Article 22 – Right of third-country nationals to long-term resident status in a Member State – Grant by the first Member State of a ‘long-term resident’s EU residence permit’ of unlimited duration – Third-country national absent from the territory of the first Member State for a period of more than six years – Consequent loss of entitlement to long-term resident status – Application for renewal of a residence permit issued by the second Member State pursuant to the provisions of Chapter III of Directive 2003/109/EC – Application rejected by the second Member State because of the loss of that entitlement – Conditions)

In Joined Cases C-829/21 and C-129/22,

TWO REQUESTS for a preliminary ruling under Article 267 TFEU from the Hessischer Verwaltungsgerichtshof (Higher Administrative Court, Hesse, Germany) (C-829/21) and from the Verwaltungsgericht Darmstadt (Administrative Court, Darmstadt, Germany) (C-129/22), made by decisions of 17 December 2021 and 21 February 2022, received at the Court on 24 December 2021 and 24 February 2022 respectively, in the proceedings

TE,

RU, represented for legal purposes by TE,

v

Stadt Frankfurt am Main (C-829/21),

and

EF

v

Stadt Offenbach am Main (C-129/22),

THE COURT (Second Chamber),

composed of A. Prechal (Rapporteur), President of the Chamber, M.L. Arastey Sahún, F. Biltgen, N. Wahl and J. Passer, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the European Commission, by A. Katsimerou and H. Leupold, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 March 2023,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of the second subparagraph of Article 9(4), Article 14(1), the second subparagraph of Article 15(4) and Article 19(2) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44), as amended by Directive 2011/51/EU of the European Parliament and of the Council of 11 May 2011 (OJ 2011 L 132, p. 1) ('Directive 2003/109').

2 The requests have been made in proceedings between, in Case C-829/21, TE and RU, represented for legal purposes by TE, both Ghanaian nationals, on the one hand, and Stadt Frankfurt am Main (city of Frankfurt am Main, Germany), on the other, concerning the latter's refusal to renew TE's residence permit and to issue a residence permit to RU; and, in Case C-129/22, EF, a Pakistani national, and Stadt Offenbach am Main (city of Offenbach am Main, Germany) concerning the latter's refusal to renew EF's residence permit, on the ground, in each of those proceedings, that TE and EF had lost their right to the long-term resident status granted by the Italian Republic and certified by a long-term resident's EU residence permit of unlimited duration, owing to their absence from the territory of Italy for a period of more than six years.

Legal context

European Union law

3 Recitals 4, 6, 10, 11, 17, 21 and 22 of Directive 2003/109 state:

'(4) The integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the [European Union] stated in the Treaty.

...

(6) The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. Residence should be both legal and continuous in order to show that the person has put down roots in the country. ...

...

(10) A set of rules governing the procedures for the examination of application for long-term resident status should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as being transparent and fair, in order to offer appropriate legal certainty to those concerned. They should not constitute a means of hindering the exercise of the right of residence.

(11) The acquisition of long-term resident status should be certified by residence permits enabling those concerned to prove their legal status easily and immediately. ...

...

(17) Harmonisation of the terms for acquisition of long-term resident status promotes mutual confidence between Member States. ...

...

(21) The Member State in which a long-term resident intends to exercise his/her right of residence should be able to check that the person concerned meets the conditions for residing in its territory. ...

(22) To avoid rendering the right of residence nugatory, long-term residents should enjoy in the second Member State the same treatment, under the conditions defined by this Directive, they enjoy in the Member State in which they acquired the status. ...'

4 Article 1 of that directive, entitled 'Subject matter', provides:

'This Directive determines:

(a) the terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto; ...

...'

5 Article 2(b) to (d) and (g) of that directive, entitled 'Definitions', is worded as follows:

'For the purposes of this Directive:

...

(b) "long-term resident" means any third-country national who has long-term resident status as provided for under Articles 4 to 7;

(c) "first Member State" means the Member State which for the first time granted long-term resident status to a third-country national;

(d) “second Member State” means any Member State other than the one which for the first time granted long-term resident status to a third-country national and in which that long-term resident exercises the right of residence;

...

(g) “long-term resident’s [EU] residence permit” means a residence permit issued by the Member State concerned upon the acquisition of long-term resident status.’

6 Chapter II of that directive, comprising Articles 4 to 13 thereof, contains a set of rules relating to long-term resident status in a Member State, particularly as regards the conferral and loss of that status.

7 Article 8 of that directive, entitled ‘Long-term resident’s [EU] residence permit’, provides, in paragraphs 1 and 2:

‘1. The status as long-term resident shall be permanent, subject to Article 9.

2. Member States shall issue a long-term resident’s [EU] residence permit to long-term residents. The permit shall be valid at least for five years; it shall, upon application if required, be automatically renewable on expiry.’

8 Article 9 of that directive, entitled ‘Withdrawal or loss of status’, provides:

‘1. Long-term residents shall no longer be entitled to maintain long-term resident status in the following cases:

...

(c) in the event of absence from the territory of the [European Union] for a period of 12 consecutive months.

...

4. The long-term resident who has resided in another Member State in accordance with Chapter III shall no longer be entitled to maintain his/her long-term resident status acquired in the first Member State when such a status is granted in another Member State pursuant to Article 23.

In any case after six years of absence from the territory of the Member State that granted long-term resident status the person concerned shall no longer be entitled to maintain his/her long term resident status in the said Member State.

By way of derogation from the second subparagraph the Member State concerned may provide that for specific reasons the long-term resident shall maintain his/her status in the said Member State in case of absences for a period exceeding six years.

5. With regard to the cases referred to in paragraph 1(c) and in paragraph 4, Member States who have granted the status shall provide for a facilitated procedure for the re-acquisition of long-term resident status.

The said procedure shall apply in particular to the cases of persons that have resided in a second Member State on grounds of pursuit of studies.

The conditions and the procedure for the re-acquisition of long-term resident status shall be determined by national law.

6. The expiry of a long-term resident's [EU] residence permit shall in no case entail withdrawal or loss of long-term resident status.

...'

9 Chapter III of Directive 2003/109, entitled 'Residence in the other Member States', comprises Articles 14 to 23.

10 Article 14(1) of Directive 2003/109 provides:

'A long-term resident shall acquire the right to reside in the territory of Member States other than the one which granted him/her the long-term residence status, for a period exceeding three months, provided that the conditions set out in this chapter are met.'

11 As provided by Article 15 of that directive, entitled 'Conditions for residence in a second Member State':

'1. As soon as possible and no later than three months after entering the territory of the second Member State, the long-term resident shall apply to the competent authorities of that Member State for a residence permit.

...

2. Member States may require the persons concerned to provide evidence that they have:

(a) stable and regular resources which are sufficient to maintain themselves and the members of their families, without recourse to the social assistance of the Member State concerned. ...

...

4. The application shall be accompanied by documentary evidence, to be determined by national law, that the persons concerned meets the relevant conditions, as well as by their long-term resident permit and a valid travel document or their certified copies.

The evidence referred to in the first subparagraph may also include documentation with regard to appropriate accommodation.

...'

12 Article 19 of that directive, entitled 'Examination of applications and issue of a residence permit', provides, in paragraph 2:

'If the conditions provided for in Articles 14, 15 and 16 are met, then, subject to the provisions relating to public policy, public security and public health in Articles 17 and 18, the second Member State shall issue the long-term resident with a renewable residence permit. This residence permit

shall, upon application, if required, be renewable on expiry. The second Member State shall inform the first Member State of its decision.'

13 Under Article 20 of that directive, entitled 'Procedural guarantees':

'1. Reasons shall be given for any decision rejecting an application for a residence permit. It shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the possible redress procedures available and the time limit for taking action.

...

2. Where an application for a residence permit is rejected, or the permit is not renewed or is withdrawn, the person concerned shall have the right to mount a legal challenge in the Member State concerned.'

14 Article 22 of Directive 2003/109, entitled 'Withdrawal of residence permit and obligation to readmit', provides, in paragraph 1:

'Until the third-country national has obtained long-term resident status, the second Member State may decide to refuse to renew or to withdraw the resident permit and to oblige the person concerned and his/her family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory in the following cases:

...

(b) where the conditions provided for in Articles 14, 15 and 16 are no longer met;

...'

German law

15 Paragraph 2 of the Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Law on the residence, employment and integration of foreign nationals in the Federal Territory) of 30 July 2004 (BGBl. 2004 I, p. 1950), in the version applicable to the disputes in the main proceedings ('the AufenthG'), entitled 'Definitions', provides, in subparagraph 4:

'For accommodation to be deemed appropriate, no more shall be required than would be sufficient to house a person in need of accommodation in publicly funded social housing. ...'

16 Paragraph 5(1)(1) of the AufenthG provides that, as a rule, the grant of a residence permit presupposes that means of subsistence are secure.

17 In accordance with Paragraph 9a(2)(6) of the AufenthG, a long-term resident's EU residence permit is to be granted only if the foreign national concerned has appropriate accommodation for himself or herself and for family members living in the same household.

18 Paragraph 38a of that law, entitled 'Residence permit for long-term residents in other Member States of the European Union', provides, in paragraph 1:

‘A residence permit shall be issued to a foreign national who has long-term resident status in another Member State of the European Union if he or she wishes to reside in the territory of Germany for a period exceeding 90 days. ...’

19 Paragraph 51(9)(4) of that law provides that the long-term resident’s EU residence permit granted by the German authorities is to expire only if the foreign national resides outside the territory of Germany for a period of six years.

20 Paragraph 52(6) of the AufenthG provides that a residence permit issued pursuant to Paragraph 38a thereof must be revoked if the foreign national loses his or her long-term resident status in another Member State of the European Union.

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-829/21

21 TE, a Ghanaian national, entered Germany on 3 September 2013 from Italy.

22 She holds a long-term resident’s EU residence permit issued in Italy and bearing the words ‘*illimitata*’ (unlimited (duration)) and ‘*Soggiornante di Lungo Periodo – [EU]*’ (long-term [EU] resident).

23 In accordance with Paragraph 38a of the AufenthG, on 5 December 2013, the Ausländerbehörde der Stadt Offenbach (authority responsible for foreign nationals of the city of Offenbach, Germany), which was the competent authority on that date, granted her a residence permit that was valid for one year.

24 On 5 August 2014, TE gave birth to RU. Since RU suffered from a very serious heart defect requiring operations and follow-up examinations, TE was forced to stop working. As a result, TE had to rely on social security benefits to support her family.

25 By decisions of 30 January 2015 of the authority responsible for foreign nationals of the city of Offenbach, the applications of TE and RU, submitted on 12 November 2014 for, respectively, the renewal and the issue of a residence permit, were rejected on the ground that their means of subsistence were not secure, contrary to the requirement in Paragraph 5(1)(1) of the AufenthG. They were asked to leave Germany and were threatened with removal to the Italian Republic, in the case of TE, and to the Republic of Ghana, in the case of RU.

26 The action brought by TE and RU against those decisions was dismissed by the Verwaltungsgericht Frankfurt am Main (Administrative Court, Frankfurt am Main, Germany) by judgment of 20 November 2015.

27 TE and RU then applied for leave to appeal against that judgment to the referring court, the Hessischer Verwaltungsgerichtshof (Higher Administrative Court, Hesse, Germany).

28 By a decision of 11 March 2016, that court granted leave to appeal owing to serious doubts as to the merits of the judgment delivered at first instance in view of the importance of the medical treatment required by RU, a circumstance which, according to that court, was capable of constituting an exception to the general rule laid down in Paragraph 5(1)(1) of the AufenthG.

29 On 1 November 2017, the proceedings before the referring court were stayed.

30 On 7 September 2020, the city of Frankfurt am Main, which had in the meantime become defendant in those proceedings, resumed the proceedings, arguing that it was now no longer possible to issue TE with a residence permit under Paragraph 38a of the AufenthG. She had not resided in Italy for more than six years and therefore no longer had long-term resident status. Nor could a residence permit be issued to TE under Paragraph 9a of the AufenthG, since TE and RU occupied an apartment funded by social services, which did not constitute ‘appropriate accommodation’ within the meaning of that provision.

31 In those circumstances, the Hessischer Verwaltungsgerichtshof (Higher Administrative Court, Hesse) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Is Paragraph 38a(1) of the AufenthG, which, under national law, must be interpreted as meaning that an onward-migrating long-term resident must also have long-term resident status in the first Member State at the time of renewal of his or her residence permit, consistent with the provisions of Article 14 et seq. of Directive [2003/109], which merely provide that a long-term resident has the right to reside in the territory of Member States other than the one which granted him [or] her the long-term residence status, for a period exceeding three months, provided that the other conditions set out in Chapter III of the directive are met?

(2) When deciding on an application for renewal under Paragraph 38a(1) of the AufenthG, is the Ausländerbehörde (authority responsible for foreign nationals) entitled under the provisions of Article 14 et seq. of Directive [2003/109], where the other requirements for a temporary renewal are met and the foreign national has, in particular, stable and regular resources, to establish – in such a way as to deprive that foreign national of his or her rights – that he or she has in the meantime, that is to say, after moving to the second Member State, lost his or her status in the first Member State in accordance with the second subparagraph of Article 9(4) of Directive [2003/109]? Is the relevant point in time for that decision the date of the most recent decision of an authority or court?

(3) If Questions 1 and 2 are answered in the negative:

Does the long-term resident bear the burden of proving that his or her right of residence as a long-term resident in the first Member State has not expired?

If that question is answered in the negative, is a national court or authority entitled to review whether the residence permit granted to the long-term resident for an unlimited period is no longer valid, or would this be contrary to the principle of mutual recognition of administrative decisions under EU law?

(4) Can a lack of evidence of appropriate accommodation be held against a third-country national who has entered Germany from Italy on the basis of a long-term resident’s residence permit granted for an unlimited period and who has stable and regular resources, even though Germany has not made use of the authorisation in the second subparagraph of Article 15(4) of Directive [2003/109], and it was necessary to place that third-country national in social housing only because no child benefit will be paid to her as long as she does not hold a residence permit under Paragraph 38a of the AufenthG?’

Case C-129/22

32 EF, a Pakistani national, entered Germany on 1 April 2014 from Italy.

33 He holds a long-term resident's EU residence permit issued in Italy and bearing the words 'illimitata' (unlimited (duration)) and 'Soggiornante di Lungo Periodo – [EU]' (long-term [EU] resident).

34 In accordance with Paragraph 38a of the AufenthG, on 10 July 2014, the Ausländerbehörde des Landkreises Offenbach (authority responsible for foreign nationals of the Offenbach district, Germany), which was the competent authority on that date, granted him a residence permit that was valid for one year.

35 That residence permit was then renewed continuously, most recently on 28 May 2019 by the city of Offenbach am Main, which now has competence, until 13 July 2021.

36 EF's application for renewal of the residence permit under Paragraph 38a of the AufenthG, lodged by him on 17 March 2021, was however rejected by a decision of that city on 27 April 2021 on the ground, in essence, that he was no longer entitled to maintain his long-term resident status in Italy, since he had not resided in the territory of Italy for more than six years.

37 On 6 May 2021, EF brought an action against that decision before the Verwaltungsgericht Darmstadt (Administrative Court, Darmstadt, Germany), which is the referring court, seeking, *inter alia*, to require the city of Offenbach am Main to renew his residence permit in accordance with Paragraph 38a of the AufenthG.

38 In those circumstances, the Verwaltungsgericht Darmstadt (Administrative Court, Darmstadt) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Can a third-country national who has been granted long-term resident status under Directive [2003/109] by a first Member State (*in casu*, the Italian Republic) require the second Member State (*in casu*, the Federal Republic of Germany) to renew a residence permit issued to him or her in implementation of Article 14 et seq. of Directive [2003/109] without providing evidence of the continuing existence of long-term resident status?

If the answer is in the negative:

(2) Must long-term resident status be presumed to continue to exist in the second Member State for the sole reason that the third-country national holds a long-term resident's EU residence permit issued by the first Member State for an unlimited period, even though he or she has not resided for six years in the territory of the Member State which granted him or her that status?

If the answer is in the negative:

(3) Is the second Member State empowered, in the context of the renewal of the residence permit, to assess whether long-term resident status has been lost in accordance with the second subparagraph of Article 9(4) of Directive [2003/109] and to refuse renewal where appropriate, or is the first Member State competent to determine the subsequent loss of that status?

If the answer is in the positive:

(4) In that case, does the examination of the ground for loss of status under the second subparagraph of Article 9(4) of Directive [2003/109] need to be transposed into national law in such a way that the constituent facts leading to loss of long-term resident status in the first Member State

are specified, or is it sufficient for national law to provide, without referring specifically to [that] directive, that the second Member State may refuse the residence permit “if the foreign national loses his or her long-term resident status in another Member State of the European Union”?’

39 By decision of the President of the Court of 8 November 2022, Cases C-829/21 and C-129/22 were joined for the purposes of any oral part of the procedure and of the judgment.

Consideration of the questions referred

The first three questions in Cases C-829/21 and C-129/22

40 By their first three questions, which it is appropriate to consider together, the referring courts in Cases C-829/21 and C-129/22 ask, in essence, whether Directive 2003/109 must be interpreted as meaning that a Member State can refuse to renew a residence permit which it granted to a third-country national pursuant to the provisions of Chapter III of that directive, on the ground, referred to in the second subparagraph of Article 9(4) of that directive, that, having been absent for a period of more than six years from the territory of the Member State that granted long-term resident status to that third-country national, he or she is no longer entitled to maintain that status in the latter Member State and, if that is the case, what are the conditions that govern such a refusal decision.

41 In that regard, it follows, in the first place, from Article 14(1) of Directive 2003/109 that entitlement to long-term resident status in the ‘first Member State’, within the meaning of Article 2(c) of that directive, is a precondition that must be met by a third-country national wishing to reside in the territory of the ‘second Member State’, within the meaning of Article 2(d) of that directive, on the basis of a residence permit granted under the provisions of Chapter III thereof. Article 19(2) of that directive confirms the existence of such a condition.

42 Article 22 of Directive 2003/109 bears out the fact that that condition must also be met if the person concerned is to be able to obtain the renewal of such a residence permit in the second Member State given that, in accordance with paragraph 1(b) of Article 22, the second Member State may decide to refuse to renew that permit where the conditions provided for in Articles 14 to 16 of that directive are no longer met.

43 Furthermore, it is apparent from Article 15 of Directive 2003/109 that, unlike the other conditions laid down by that provision, Member States cannot derogate from the condition referred to in paragraph 41 of the present judgment.

44 The mandatory nature of that condition is apparent from the fact that, as the Advocate General also noted in point 41 of his Opinion, the right to reside in the second Member State is derived from the right to long-term resident status in the first Member State.

45 It follows that if, when processing an application for renewal of a residence permit pursuant to the provisions of Chapter III of Directive 2003/109, the second Member State finds that the third-country national concerned is no longer entitled to maintain long-term resident status in the first Member State on the ground, in particular, as provided for in the second subparagraph of Article 9(4) of Directive 2003/109, that he or she has been absent from the territory of the first Member State for more than six years, that finding precludes that renewal.

46 In the second place, as recital 21 of Directive 2003/109 confirms, in the system established by that directive, it is for the second Member State, in which the third-country national wishes to reside on the basis of the right to long-term resident status enjoyed in the first Member State, to check

whether that third-country national meets the conditions for being granted a residence permit or having it renewed, including the requirement, laid down in Article 14(1) of that directive, that he or she should actually have that right in the first Member State.

47 Thus, in carrying out such checks, the second Member State may have to examine whether the third-country national concerned has not lost the right to that status for, inter alia, the reason set out in the second subparagraph of Article 9(4) of Directive 2003/109.

48 While such checks may, in some circumstances, result in the second Member State finding that entitlement to long-term resident status has been lost and, therefore, in accordance with Article 22(1)(b) of Directive 2003/109, refusing to renew the residence permit of the third-country national concerned pursuant to the provisions of Chapter III of that directive, only the first Member State can withdraw that status and the long-term resident's EU residence permit or, where appropriate, apply the facilitated procedure for the re-acquisition of that status, a procedure which must be established by the Member States in accordance with Article 9(5) of that directive.

49 In the third place, as regards the relevant date for the second Member State's assessment as to whether the condition laid down in Article 14(1) of Directive 2003/109 for the renewal of a residence permit pursuant to the provisions of Chapter III of that directive has been met, there are, on the face of it, three dates that might qualify.

50 Thus, as the Advocate General moreover stated, in essence, in point 46 of his Opinion, the relevant date could be either the date on which the application for renewal of the residence permit was lodged; or a later date preceding that of the administrative decision on that application; or an even later date falling between the date of initiation of judicial proceedings against the administrative decision rejecting that application and the date of the judicial decision, for example, as the referring court suggests in Case C-829/21, the date of the last hearing.

51 However, the only relevant date for assessment of the condition laid down in Article 14(1) of Directive 2003/109 is the date on which the third-country national concerned lodged his or her application for renewal of the residence permit pursuant to the provisions of Chapter III of that directive.

52 Indeed, to accept that Member States could, for the purposes of such an assessment, use a later date, one that falls within the course of an administrative or judicial procedure, would be contrary to the principles of equal treatment and legal certainty, since the success of such an application for renewal of a residence permit might depend on circumstances attributable not to the applicant but mainly to the national administration or courts, such as the greater or lesser speed with which the application is processed or a decision is taken on an action against a decision rejecting such an application (see, by analogy, judgment of 16 July 2020, *État belge (Family reunification – Minor child)*, C-133/19, C-136/19 and C-137/19, EU:C:2020:577, paragraph 42).

53 In that context, it must be noted that, as is also clear from recital 10 of Directive 2003/109, in connection with the rules governing the procedure for the examination of the application for long-term resident status, the EU legislature intended to guarantee appropriate legal certainty for the third-country nationals concerned.

54 However, as the Advocate General indicated, in essence, in points 55 and 56 of his Opinion, if the second Member State considers that the loss of entitlement to long-term resident status in the first Member State because, for example, of the expiry of the six-year period referred to in the second subparagraph of Article 9(4) of Directive 2003/109 occurred during the administrative

procedure or judicial proceedings concerning that renewal application, there is nothing to prevent it from adopting on that basis a new decision refusing that renewal or withdrawing that residence permit pursuant to Article 22 of that directive.

55 In the fourth place, as regards the burden of proving that the condition referred to in paragraph 41 of the present judgment has been checked for the purposes of granting or renewing a residence permit pursuant to the provisions of Chapter III of Directive 2003/109, in so far as the third-country national concerned is entitled to long-term resident status in the first Member State, that burden lies, as a matter of principle, with that third-country national.

56 However, it follows from the first subparagraph of Article 15(4) of Directive 2003/109, read in the light of recital 11 thereof, that, for the purpose of establishing that that condition is met, it is sufficient, in principle, for the third-country national to submit to the second Member State his or her long-term resident's EU residence permit issued by the first Member State, in accordance with Article 8(2) of that directive, since such a permit, if still valid, enables that third-country national easily and immediately to prove his or her right to long-term resident status and the continuing nature of that right. Accordingly, a valid permit gives rise to a presumption that that third-country national remains entitled to that status.

57 In that context, the Court has previously ruled that it is apparent from Article 2(b), read in conjunction with Article 14(1) of Directive 2003/109, that a long-term resident's EU residence permit, in principle, grants its holder the right to reside in the territory of Member States – other than the one which granted him or her long-term residence status – for a period exceeding three months (judgment of 17 July 2014, *Tahir*, C-469/13, EU:C:2014:2094, paragraph 42).

58 Furthermore, Article 9(6) of Directive 2003/109 provides, conversely, that the expiry of a long-term resident's EU residence permit is in no case to entail withdrawal or loss of long-term resident status, which attests to the declaratory nature of such a residence permit.

59 In the present case, it is common ground that TE and EF each has, in the first Member State, Italy, a long-term resident's EU residence permit that is of unlimited duration and thus valid, so that it must be presumed, in their favour, that they still have the right to long-term resident status in that Member State.

60 Such a presumption is, in so far as the second Member State is obliged to apply it when processing an application for a residence permit or for its renewal, in keeping with the spirit of mutual confidence between Member States which, as stated in recital 17 of Directive 2003/109, is promoted by the harmonisation of the terms for acquisition of long-term resident status that is the aim of that directive.

61 In the fifth place, it should be made clear that that presumption is not, however, irrebuttable.

62 In view of the declaratory nature of the long-term resident's EU residence permit already noted in paragraph 58 of the present judgment, even if the third-country national concerned is able to submit such a permit that is still valid to the second Member State, that Member State may find it necessary, particularly when processing an application for renewal of a residence permit granted pursuant to the provisions of Chapter III of Directive 2003/109, to examine whether the continuing nature of the right to long-term resident status is not to be called into question on one of the grounds for loss of that long-term resident status referred to in Article 9 of that directive.

63 Any such challenge is, however, subject to a finding by the second Member State that there is sufficiently specific and consistent evidence that one of those grounds may apply in the case before it.

64 As regards, in particular, the ground referred to in the second subparagraph of Article 9(4) of Directive 2003/109, the fact that, on the date on which the particular individual's application is lodged, more than six years have elapsed since he or she arrived in the territory of that Member State or since his or her first residence permit was obtained in that Member State pursuant to the provisions of Chapter III of that directive is indicative of such a loss and could justify the second Member State checking that entitlement to that status has been maintained.

65 In the sixth place, where such evidence exists, the second Member State is required to carry out two types of further checks with regard specifically to the ground relating to loss of the right to long-term resident status provided for in the second subparagraph of Article 9(4) of Directive 2003/109.

66 First, in order to determine whether that provision is applicable, the second Member State must take account of the fact that any physical presence of the person concerned in the territory of the first Member State during the six-year period, even if it does not exceed, during that period, a total duration of only a few days, is sufficient to prevent the loss of that person's right to long-term resident status (see, by analogy, with regard to Article 9(1)(c) of Directive 2003/109, judgment of 20 January 2022, *Landeshauptmann von Wien (Loss of long-term resident status)*, C-432/20, EU:C:2022:39, paragraph 47).

67 That interpretation of the second subparagraph of Article 9(4) of Directive 2003/109 is based, in particular, on the need, highlighted above in paragraph 53 of the present judgment, to guarantee the third-country nationals concerned appropriate legal certainty in connection with the rules governing the procedure for the examination of the application for long-term resident status (see, to that effect, judgment of 20 January 2022, *Landeshauptmann von Wien (Loss of long-term resident status)*, C-432/20, EU:C:2022:39, paragraphs 38 to 40).

68 Consequently, the presence, even for a very short time, of the third-country national concerned in the territory of the first Member State during the six-year period referred to in that provision has the effect of interrupting the limitation period laid down by that provision and a new six-year period starting to run, each time, from the date on which that third-country national ceases to be present in the territory of the first Member State.

69 It therefore falls to the second Member State, in the context of its examination of an application for renewal of a residence permit pursuant to the provisions of Chapter III of Directive 2003/109, itself to examine whether there is information from which it might be inferred that the six-year period referred to in the second subparagraph of Article 9(4) of that directive had expired when the application of the third-country national concerned was lodged and, if so, to inform him or her of this and of the fact that that period may have been interrupted and that a new six-year period may have started if he or she has, in the meantime, once again been in the territory of the first Member State.

70 In that context, if the third-country national concerned claims that there has been such an interruption, the second Member State must invite him or her to provide evidence to demonstrate that he or she was present in the territory of the first Member State during that six-year period, even if only for a few days.

71 Secondly, if it is apparent from the checks carried out by the second Member State that the third-country national concerned was absent from the territory of the first Member for more than six years, the second Member State must also check, in accordance with the third subparagraph of Article 9(4) of Directive 2003/109, whether the first Member State has, in its legislation, made use of the option referred to therein to provide, by way of derogation from the second subparagraph of Article 9(4) of that directive, that, ‘for specific reasons’, the long-term resident is to maintain his or her status in that Member State ‘in case of absences for a period exceeding six years’ and, if that is the case, whether in this instance such a specific reason is established.

72 With regard to both types of checks, the second Member State will have to approach the first Member State for assistance, since those checks require access to information which only the first Member State is likely to have.

73 In that regard, it should be borne in mind that, in relations between Member States, account must be taken of the principle of sincere cooperation laid down in Article 4(3) TEU, which places an obligation on the Member States generally and, therefore, in particular, in situations governed by Directive 2003/109, to assist each other in carrying out obligations which arise from the Treaties in full mutual respect.

74 Lastly, it is only after such checks have been carried out and in the light of an assessment of all the relevant information that, in some circumstances, the second Member State may, solely for the purposes of the procedure for examining the application for renewal of a residence permit pursuant to the provisions of Chapter III of Directive 2003/109, draw the conclusion that, when that application was lodged, in accordance with the second subparagraph of Article 9(4) of that directive, the third-country national concerned was no longer entitled to long-term resident status in the first Member State, and may, for that reason, refuse to renew that residence permit, in accordance with Article 22(1)(b) of that directive.

75 In the light of all the foregoing considerations, the answer to the first three questions in Cases C-829/21 and C-129/22 is that Directive 2003/109, and in particular Article 22(1)(b) thereof, must be interpreted as meaning that a Member State can refuse to renew a residence permit which it granted to a third-country national pursuant to the provisions of Chapter III of that directive, on the ground, referred to in the second subparagraph of Article 9(4) of that directive, that, having been absent for a period of more than six years from the territory of the Member State that granted him or her long-term resident status, and the latter Member State not having made use of the option provided for in the third subparagraph of Article 9(4) of that directive, that third-country national is no longer entitled to maintain that status in the latter Member State, provided that the six-year period ended at the latest on the date on which the application for renewal of that permit was lodged and the third-country national had previously been invited to produce proof of his or her presence (if any) in that territory during that period.

The fourth question in Case-129/22

76 By its fourth question, the referring court in Case C-129/22 asks, in essence, whether the second subparagraph of Article 9(4) and Article 22(1)(b) of Directive 2003/109 must be interpreted as meaning that those provisions are duly transposed into national law by a second Member State which implements them by means of two separate provisions where the first provision sets out the ground leading to loss of the right to long-term resident status referred to in the second subparagraph of Article 9(4) of that directive, and the second provides, without referring specifically to one of the grounds for loss of that right referred to in Article 9 of the directive, that a residence permit under the provisions of Chapter III of that directive must be revoked if the third-

country national concerned is no longer entitled to maintain his or her long-term resident status in the Member State that issued it.

77 In that regard, it is apparent from the case-law of the Court that the transposition into national law of provisions of EU law such as the second subparagraph of Article 9(4) and Article 22(1)(b) of Directive 2003/109 requires that they be implemented by provisions with the specificity, precision and clarity necessary to satisfy the requirements of legal certainty (see, by analogy, judgments of 24 April 2012, *Kamberaj*, C-571/10, EU:C:2012:233, paragraph 87, and of 3 September 2020, *Subdelegación del Gobierno en Barcelona (Long-term residents)*, C-503/19 and C-592/19, EU:C:2020:629, paragraphs 36 and 37).

78 With regard, in particular, to Article 22(1)(b) of Directive 2003/109, it also follows from that case-law that, should that prove not to be the case, the Member State concerned would not be able to rely on that provision to reject an application by a third-country national for renewal of a residence permit pursuant to the provisions of Chapter III of Directive 2003/109.

79 Article 22(1)(b) is transposed in accordance with the requirements of specificity, precision and clarity referred to in paragraph 77 of the present judgment by a national provision such as Paragraph 52(6) of the *AufenthG* which provides that a residence permit under the provisions of Chapter III of that directive must be revoked if the third-country national concerned is no longer entitled to maintain long-term resident status in another Member State, even if that national provision does not refer expressly to the grounds for loss of entitlement to that status provided for by Article 9 of Directive 2003/109.

80 First, it is clear from such a national provision that such a residence permit is to be revoked by the second Member State if the person concerned has lost the right to long-term resident status in the Member State which granted him or her that right.

81 Secondly, the circumstance included in that national provision that enables the second Member State to justify such a revocation, namely the fact that the third-country national concerned is no longer entitled to maintain his or her long-term resident status in the first Member State, may be understood as a reference to the different grounds for loss of the right to that status provided for in Article 9 of Directive 2003/109, since the Member State that granted that right can only withdraw it on one of those grounds.

82 Furthermore, the second subparagraph of Article 9(4) of Directive 2003/109 is transposed in accordance with the requirements of specificity, precision and clarity referred to by the case-law recalled in paragraph 77 of the present judgment by a provision of a Member State's national law such as Paragraph 51(9)(4) of the *AufenthG* which provides that a third-country national entitled to long-term resident status in that Member State is no longer to be entitled to maintain that status if he or she is absent from the territory of that Member State for a period of six years.

83 Accordingly, on the basis of that provision of national law transposing Article 22(1)(b) of Directive 2003/109, the second Member State can refuse to grant the third-country national a residence permit pursuant to the provisions of Chapter III of that directive or can refuse to renew such a permit if that Member State finds that that third-country national is no longer entitled to maintain his or her long-term resident status in the first Member State on the ground referred to in the second subparagraph of Article 9(4) of that directive.

84 In the light of the foregoing considerations, the answer to the fourth question in Case C-129/22 is that the second subparagraph of Article 9(4) and Article 22(1)(b) of Directive 2003/109

must be interpreted as meaning that those provisions are duly transposed into national law by a second Member State which implements them by means of two separate provisions where the first provision sets out the ground leading to loss of the right to long-term resident status referred to in the second subparagraph of Article 9(4) of that directive, and the second provides, without referring specifically to one of the grounds for loss of that right referred to in Article 9 of the directive, that a residence permit under the provisions of Chapter III of that directive must be revoked if the third-country national concerned is no longer entitled to maintain his or her long-term resident status in the Member State that issued it.

The fourth question in Case-829/21

85 By its fourth question, the referring court in Case C-829/21 asks, in essence, whether the second subparagraph of Article 15(4) of Directive 2003/109 must be interpreted as meaning that the Member State in which the third-country national has applied for the grant of a residence permit pursuant to the provisions of Chapter III of that directive or for the renewal of such a permit can reject that application on the ground that the third-country national did not include with the application documentary evidence establishing that he or she has appropriate accommodation, when that Member State has not implemented that provision.

86 In that regard, as is apparent from the case-law of the Court referred to in paragraphs 77 and 78 above, it is for the referring court, which alone has jurisdiction to interpret national law in accordance with the procedure laid down in Article 267 TFEU, to ascertain whether its domestic law contains a provision that implements the second subparagraph of Article 15(4) of Directive 2003/109 with the specificity, precision and clarity necessary to satisfy the requirements of legal certainty. Should that prove not to be the case, the second Member State would not be able to rely on that provision to reject an application by a third-country national for the grant of a residence permit pursuant to the provisions of Chapter III of that directive or for its renewal.

87 As it is, in the present case, according to the actual wording of the fourth question, the referring court in Case C-829/21 considers that ‘Germany has not made use of the authorisation in the second subparagraph of Article 15(4) of Directive 2003/109’.

88 In the light of the above, the answer to the fourth question in Case C-829/21 is that the second subparagraph of Article 15(4) of Directive 2003/109 must be interpreted as meaning that the Member State in which the third-country national has applied for the grant of a residence permit pursuant to the provisions of Chapter III of that directive or for the renewal of such a permit cannot reject that application on the ground that the third-country national did not include with the application documentary evidence establishing that he or she has appropriate accommodation, if that Member State has not implemented that provision.

Costs

89 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, as amended by Directive 2011/51/EU of the

European Parliament and of the Council of 11 May 2011, and in particular Article 22(1)(b) thereof,

must be interpreted as meaning that a Member State can refuse to renew a residence permit which it granted to a third-country national pursuant to the provisions of Chapter III of that directive, as amended, on the ground, referred to in the second subparagraph of Article 9(4) of that directive, as amended, that, having been absent for a period of more than six years from the territory of the Member State that granted him or her long-term resident status, and the latter Member State not having made use of the option provided for in the third subparagraph of Article 9(4) of that directive, as amended, that third-country national is no longer entitled to maintain that status in the latter Member State, provided that the six-year period ended at the latest on the date on which the application for renewal of that permit was lodged and the third-country national had previously been invited to produce proof of his or her presence (if any) in that territory during that period.

2. The second subparagraph of Article 9(4) and Article 22(1)(b) of Directive 2003/109, as amended by Directive 2011/51,

must be interpreted as meaning that those provisions are duly transposed into national law by a second Member State which implements them by means of two separate provisions where the first provision sets out the ground leading to loss of the right to long-term resident status referred to in the second subparagraph of Article 9(4) of that directive, as amended, and the second provides, without referring specifically to one of the grounds for loss of that right referred to in Article 9 of the directive, as amended, that a residence permit under the provisions of Chapter III of that directive, as amended, must be revoked if the third-country national concerned is no longer entitled to maintain his or her long-term resident status in the Member State that issued it.

3. The second subparagraph of Article 15(4) of Directive 2003/109, as amended by Directive 2011/51,

must be interpreted as meaning that the Member State in which the third-country national has applied for the grant of a residence permit pursuant to the provisions of Chapter III of that directive, as amended, or for the renewal of such a permit cannot reject that application on the ground that the third-country national did not include with the application documentary evidence establishing that he or she has appropriate accommodation, if that Member State has not implemented that provision.

[Signatures]

* Language of the case: German.