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Committee on Civil Liberties, Justice and Home Affairs

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DRAFT REPORT

on the proposal for a Council directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection
(COM(2007)0298 – C6-0196/2007 – 2007/0112(CNS))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Martine Roure

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics.*** In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

CONTENTS

Page

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION 5

EXPLANATORY STATEMENT.....9

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection
(COM(2007)0298 – C6-0196/2007 – 2007/0112(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the Commission proposal to the Council (COM(2007)0298),

– having regard to Article 63(3) and (4) of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0196/2007),

– having regard to Rule 51 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2008),

1. Approves the Commission proposal as amended;

2. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

3. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;

4. Instructs its President to forward its position to the Council and Commission.

Amendment 1

Proposal for a directive – amending act
Article 1 – paragraph 1
Directive (EC) No 109/2003
Article 2 – point f

Text proposed by the Commission	*Amendment*
1. In Article 2, point ***(f) is replaced by the following***:	1. In Article 2, ***the following*** point (f ***a***) is ***added***:
"(f) 'international protection' means international protection as defined in Article 2(a) of Council Directive 2004/83/EC;"	"(f***a***) 'international protection' means international protection as defined in Article 2(a) of Council Directive 2004/83/EC;"

Or. fr

Amendment 2

Proposal for a directive – amending act
Article 1 – paragraph 3
Directive (EC) No 109/2003
Article 4 – paragraph 2

Text proposed by the Commission	*Amendment*
3. In Article 4(2), the following subparagraph is added:	3. In Article 4(2), the following subparagraph is added:
"Regarding beneficiaries of international protection, the period between the date on which the application for international protection is lodged and the date on which the residence permit referred to in Article 24 of Directive 2004/83/EC is granted shall be taken into account in the calculation of the period referred to in paragraph 1."	"Regarding beneficiaries of international protection, the period between the date on which the ***first*** application for international protection is lodged***, including where this first application is an application for temporary protection where the latter precedes access to international protection,*** and the date on which the residence permit referred to in Article 24 of Directive 2004/83/EC is granted shall be taken into account in the calculation of the period referred to in paragraph 1."

Or. fr

Amendment 3

Proposal for a directive – amending act
Article 1 – paragraph 3 a
Directive (EC) No 109/2003
Article 5 – paragraph 1 – subparagraph 1 a

Text proposed by the Commission	*Amendment*
	3a. In Article 5(1), the following subparagraph shall be added:
	"Beneficiaries of international protection shall not be required to fulfil these material conditions, given their particularly vulnerable situation and the fact that they have limited access to employment in some Member States."

Or. fr

Amendment 4

Proposal for a directive – amending act
Article 1 – paragraph 3 b
Directive (EC) No 109/2003
Article 5 – paragraph 2 – subparagraph 1 a

Text proposed by the Commission	*Amendment*
	3b. In Article 5(2), the following subparagraph shall be added:
	"National integration conditions may be applied to beneficiaries of international protection, by a reasoned decision in accordance with Article 33 of Directive 2004/83/EC, only after individual consideration of their case, bearing in mind their particularly vulnerable situation."

Or. fr

Amendment 5

Proposal for a directive – amending act
Article 1 – paragraph 6
Directive (EC) No 109/2003
Article 12 – paragraph 3 a

Text proposed by the Commission	*Amendment*
6. Article 12 is amended as follows:	6. Article 12 is amended as follows:
a) The following paragraph 3a is inserted:	a) The following paragraph 3a is inserted:
"3a. Where a Member State decides to expel a long-term resident whose long-term resident's EC residence permit contains the remark referred to in Article 8(4), it shall ***consult*** the Member State ***mentioned in the remark***.	"3a. Where a Member State decides to expel a long-term resident whose long-term resident's EC residence permit contains the remark referred to in Article 8(4), it shall ***contact*** the Member State ***that granted international protection in order to confirm the status of long-term resident***.

	The Member State that granted international protection must respond in writing to the Member State that made the request within a maximum of one month. The decision to expel the long-term resident may not be taken until the response of the Member State that granted international protection has been received.
Unless in the meantime international protection has been withdrawn, the long-term resident ***shall*** be expelled to this Member State, which shall immediately readmit without formalities the long-term resident and his/her family members."	Unless in the meantime international protection has been withdrawn, the long-term resident ***may, in accordance with the principle of non-refoulement, only*** be expelled to this Member State, which shall immediately readmit without formalities the long-term resident and his/her family members."

Or. fr

Amendment 6

Proposal for a directive – amending act
Article 1 – paragraph 8
Directive (EC) No 109/2003
Article 25 – subparagraph 1

Text proposed by the Commission	*Amendment*
8. In Article 25, the first subparagraph is replaced by the following:	8. In Article 25, the first subparagraph is replaced by the following:
"Member States shall appoint contact points who will be responsible for receiving and transmitting the information referred to in Article 12(3a), Article 19(2), Article 22(2) and Article 23(1)."	"Member States shall appoint contact points who will be responsible for receiving and transmitting the information referred to in Article 12(3a), Article 19(2), Article 22(2) and Article 23(1)."
	The Commission shall draw up a list of contact points, update it regularly and forward it to the Member States.

Or. fr

EXPLANATORY STATEMENT

1. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

On the occasion of the 1999 Tampere European Council the Member States stressed the need to guarantee fair treatment for Member State nationals residing legally in the European Union. In particular, any third-country national residing on a long-term basis in a Member State should be granted a set of uniform rights that was as close as possible to those enjoyed by European Union citizens.[1]

Acting on the Tampere conclusions, Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents aimed to create a uniform status for such nationals and to approximate Member States' legislation in order to guarantee such residents equal treatment throughout EU territory, regardless of the Member State they were resident in.[2]

Under the Directive Member States must grant long-term resident status after a period of five years of legal, continuous residence in a Member State.

To obtain long-term resident status , third-country nationals must provide evidence for themselves and their families (if dependent):

– of stable resources which are sufficient to maintain them without recourse to the social assistance system of the Member State concerned;

– of sickness insurance.

The Member States can require third-country nationals to fulfil further integration conditions (such as adequate knowledge of a national language). They can refuse to grant long-term resident status on grounds of public policy or public security.

Having acquired long-term resident status, the person in question enjoys a series of entitlements under the same conditions as nationals of the Member State, including access to employment, education and vocational training, social security, social assistance, freedom of access to the entire territory of the Member State concerned, etc.

Long-term residents may exercise the right to reside in the territory of Member States other than the one which granted them long-term residence status, for a period exceeding three months, provided that certain conditions set out in the proposal, such as the exercise of an economic activity or the pursuit of studies or training, are met.

Member States may nevertheless limit the number of residence permits. At the same time, for reasons of labour market policy, Member States may give preference to Union citizens.

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[1] Point 21 of the Tampere conclusions.

[2] For the purposes of the Directive:
– 'third-country national' means any person who is not a citizen of the Union;
– 'long-term resident' means any third-country national who has long-term resident status as provided for by the Directive.

Anyone with long-term resident status has greater protection against any expulsion decision. Behaviour justifying an expulsion decision must constitute an actual and sufficiently serious threat to public order or public security. Before taking a decision to expel a long-term resident, Member States undertake to give consideration to a number of factors (the person's age, duration of residence, etc.).

1. Extension of the Directive's scope to include beneficiaries of international protection

Directive 2003/109/EC is applicable to any third-country national residing legally on the territory of a Member State.

Despite this, refugees and persons authorised to reside in a Member State on the basis of a temporary or subsidiary form of protection were excluded by the Council from the scope of the Directive at the time of its adoption. The reason given was their precarious situation or the shortness of their stay.

And yet the proposal presented by the Commission in 2001, on which the Directive is based, provided for refugees to be eligible for long-term resident status. The European Parliament also supported this position.

In a joint declaration of 8 May 2003, the Council and Commission, conscious of this lacuna, expressed a desire for the Directive to be extended to include the beneficiaries of international protection.

The aim of this proposal is to implement that declaration by bringing beneficiaries of international protection within the scope of Council Directive 2003/109/EC.

2. The rapporteur's position

The rapporteur supports this proposal to broaden the scope of the directive on the status of long-term residents to include beneficiaries of international protection. She considers it regrettable, nonetheless, that the Council preferred this option to that of providing for a Community mechanism on the transfer of responsibility for protection.

The Directive grants the right, under certain conditions, to establish themselves in a second Member State only to long-term residents, and not to beneficiaries of international protection per se. Although establishment in a second Member State can in certain cases lead, sooner or later, to a transfer of responsibility for protection, this issue does not fall within the scope of the present directive. The implication of this is that applications for transfer of responsibility for protection continue to be governed by the 1951 Geneva Convention and, in some cases, by the European agreement on the transfer of responsibility for refugees concluded in the framework of the Council of Europe.

A Community mechanism on transfer of protection presupposes mutual recognition of asylum

decisions and a sufficient measure of harmonisation of asylum procedures in Member States. This condition is not currently met.

The rapporteur therefore takes the view that extending the scope of Directive 2003/109/EC is an interim measure pending a fresh proposal providing for mutual recognition and transfer of responsibility as regards international protection. This would allow the special situation of refugees to be taken into account and make it possible to grant them rights of free movement and establishment within the EU as soon as their status was recognised.
§
The rapporteur shares the Commission's view that it is crucial that this Directive should apply to both refugees and beneficiaries of subsidiary protection. Subsidiary protection is increasingly being granted to people in need of international protection, and it would be unacceptable to exclude such a large number of people from the rights conferred by Directive 2003/109/EC. Furthermore, the conclusions of the Tampere Summit and the Green Paper on the future Common European Asylum System provide for the creation of a common asylum procedure and the introduction of a uniform status applicable throughout EU territory. This is based on the wish to make the Union into a single area of protection for refugees. It would therefore be inconsistent with these objectives to build into this instrument a distinction between the rights of refugees and the rights of beneficiaries of subsidiary protection. Finally, the main criterion for acquiring long-term residence status is the duration of residence on the territory of a Member State, and not the status of the person concerned.

The rapporteur is also insistent that the time spent processing the application should be taken into account in calculating the five years of residence preceding application for long-term residence status. The legal status of beneficiaries of international protection becomes operative with their first application. Recognition of that status testifies to the prior period of legal residence. Also, the process of considering an application can be a long one, depending on the Member State involved, and a beneficiary of international protection starts the process of integration in the host country as soon as the procedure begins. The rapporteur would add that in a number of cases people make an initial application for temporary protection before becoming eligible to make an application for international protection. When the temporary protection leads on to international protection, it should also be factored into the duration of the procedure.

The rapporteur would like beneficiaries of international protection to be exempted from the material conditions (stable resources and sickness insurance) for the granting of long-term resident status, in recognition of the vulnerability of their situation. It would be particularly inconsistent to impose a minimum resource condition on them given that Article 11 of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States allows Member States to place restrictions on asylum seekers' access to the employment market for a period of up to 12 months after the date of lodging their application for protection.

Your rapporteur would like the national integration criteria that can be applied by the Member States to be framed in more precise terms to take account of the particular situation of beneficiaries of international protection. Linguistic or cultural knowledge criteria cannot be applied to refugees in the same way as to other people, given the special status of the former. These criteria must, furthermore, be consistent with the integration criteria provided for in

Directive 2004/83/EC.

Given that there is no transfer of responsibility for international protection to the second Member State, it is vital to ensure that the principle of non-refoulement is observed by that State. This point is all the more important when a beneficiary of international protection is granted long-term resident status in a second Member State after five years of residence there.

The Commission proposes that Article 8 of the Directive should provide for this information to be entered in the long-term residence permit issued by the first Member State. However, in the event of expulsion, it provides only for simple consultation of the Member State that granted international protection. This mechanism must be reinforced in order to safeguard the principle of non-refoulement. Your rapporteur therefore proposes that the authorities in the second Member States be required to wait for the written response of the first Member State, so as to guarantee that the person is not sent back to a country where he or she would be in danger. If that Member State confirms that the person concerned is still enjoying international protection, expulsion from the second Member State will be possible only to the Member State that originally granted them such protection.