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*Committee on Civil Liberties, Justice and Home Affairs*

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**2007/0112(COD)**

30.8.2010

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## **DRAFT REPORT**

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

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Claude Moraes

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

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

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection**

**(COM(2007)0298 – C6-0196/2007 – 2007/0112(COD))**

**(Ordinary legislative procedure: first reading)**

*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 the Commission Communication to Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),
  - having regard to Articles 294(3), 79(2)(a) and (b) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A7-0000/2010),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

**Proposal for a directive – amending act**

**Recital 7**

*Text proposed by the Commission*

(7) The equality of treatment of beneficiaries of international protection in the Member State which granted them international protection should be without prejudice to the rights and benefits guaranteed under Directive 2004/83/EC.

*Amendment*

(7) The equality of treatment of beneficiaries of international protection in the Member State which granted them international protection should be without prejudice to the rights and benefits guaranteed under Directive 2004/83/EC

*and under the 1951 Convention and 1967 Protocol Relating to the Status of Refugees.*

Or. en

## **Amendment 2**

### **Proposal for a directive – amending act Recital 10**

#### *Text proposed by the Commission*

(10) Where a Member State intends to expel, on a ground provided for in Directive 2003/109/EC, a beneficiary of international protection who has acquired long-term residence status in this Member State, the person concerned should enjoy the protection against refoulement guaranteed by Directive 2004/83/EC. For ***the purposes of ensuring the full respect of the principle of non-refoulement*** where the person concerned ***was granted the*** protection status in another Member State and this status has not been withdrawn in the meantime, it is necessary to provide that he/she may be expelled only to the Member State which granted the protection status and that this Member State is obliged to readmit him/her, ***unless such an expulsion is permitted under the provisions of Directive 2004/83/EC regarding the respect of the principle of non-refoulement.***

#### *Amendment*

(10) Where a Member State intends to expel, on a ground provided for in Directive 2003/109/EC, a beneficiary of international protection who has acquired long-term residence status in this Member State, the person concerned should enjoy the protection against refoulement guaranteed by Directive 2004/83/EC ***and Article 33 of the Geneva Convention on Refugees of 28 July 1951.*** For ***this purpose,*** where the person concerned ***enjoys an international*** protection status in another Member State and this status has not been withdrawn in the meantime, it is necessary to provide that he/she may be expelled only to the Member State which granted the protection status and that this Member State is obliged to readmit him/her. ***The same guarantees should apply to a beneficiary of international protection who has taken up residence but has not yet obtained a long-term resident status in a second Member State.***

Or. en

### Amendment 3

#### Proposal for a directive – amending act Recital 11

*Text proposed by the Commission*

*Amendment*

*(11) For the same reason, the possibility provided by Directive 2003/109/EC for the second Member State to remove from the territory of the Union a third country national who has taken up residence but has not yet obtained a long-term resident status in this Member State should not apply where the person concerned was granted a protection status in another Member State, unless such a removal is permitted under the provisions of Directive 2004/83/EC regarding the respect of the principle of non-refoulement.*

*deleted*

Or. en

### Amendment 4

#### Proposal for a directive – amending act Recital 11 a (new)

*Text proposed by the Commission*

*Amendment*

*(11 a) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making, Member States will be encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public.*

Or. en

## Amendment 5

### Proposal for a directive – amending act Recital 14

*Text proposed by the Commission*

(14) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark *did* not take part in the adoption of Directive **2003/109/EC** and is not bound by or subject to *the* application *of this Directive*,

*Amendment*

(14) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark *does* not take part in the adoption of *this* Directive and is not bound by *it* or subject to *its* application,

Or. en

## Amendment 6

### Proposal for a directive – amending act Article 1 – point 2 – point a Directive 2003/109/EC Article 3 – paragraph 2 – point c

*Text proposed by the Commission*

“(c) *have applied for authorisation* to reside in a Member State on the basis of a *subsidiary* form of protection *in accordance with* international *obligations, national legislation or the practice of the Member States* and are awaiting a decision on their status;”

*Amendment*

“(c) *are authorised* to reside in a Member State on the basis of a form of protection *other than* international *protection* or *have applied for authorisation to reside on that basis* and are awaiting a decision on their status;”

Or. en

### *Justification*

*This amendment aims at simplifying the wording and avoiding any confusion with subsidiary protection.*



## Amendment 7

### Proposal for a directive – amending act

#### Article 1 – point 2 – point b

Directive 2003/109/EC

Article 3 – paragraph 2 – point d

*Text proposed by the Commission*

“(d) have applied for **recognition as refugees** and whose application has not yet given rise to a final decision;”

*Amendment*

“(d) have applied for **international protection** and whose application has not yet given rise to a final decision;”

Or. en

### *Justification*

*The term 'international protection' covers both refugee status under the Geneva Convention and subsidiary protection status. The Long Term Residents Directive will not apply to those whose asylum case has not been decided upon.*

## Amendment 8

### Proposal for a directive – amending act

#### Article 1 – point 2 a (new)

Directive 2003/109/EC

Article 3 – paragraph 3 – point c

*Text proposed by the Commission*

*Amendment*

**2a. In Article 3(3), point (c) is replaced by the following:**

**“(c) the European Convention on Establishment of 13 December 1955, the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977, and Paragraph 11 of the Schedule to the Geneva Convention on Refugees of 28 July 1951, and;”**

Or. en

### *Justification*

*Whilst an EU system for transfer of protection for refugees does not currently exist, all Member States are bound by Paragraph 11 of the Schedule to the Geneva Convention, which governs the transfer of protection from one state to another.*

### **Amendment 9**

#### **Proposal for a directive – amending act**

#### **Article 1 – point 2 b (new)**

Directive 2003/109/EC

Article 3 – paragraph 3 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***2b. In Article 3(3), the following point is added:***

***"(c a) the European Agreement on Transfer of Responsibility for Refugees of 16 October 1980."***

Or. en

### *Justification*

*Fifteen EU Member States are bound by the Council of Europe's European Agreement on Transfer of Responsibility for Refugees.*

### **Amendment 10**

#### **Proposal for a directive – amending act**

#### **Article 1 – point 2 c (new)**

Directive 2003/109/EC

Article 4 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(2c) In Article 4 the following paragraph is inserted:***

***"1a. Member States shall decide not to grant the long-term resident status on the basis of international protection status in case of revocation, ending or refusal to renew international protection status as prescribed by Articles 14(3) and 19(3) of Directive 2004/83/EC."***

*Justification*

*Long-term resident status should be granted on the basis of an international protection status. Therefore, it should not be granted only in the cases mentioned above. This does not apply in cases of cessation of international protection status, i.e. when the reasons for international protection being granted are no longer present in the country of persecution.*

**Amendment 11****Proposal for a directive – amending act****Article 1 – point 3**

Directive 2003/109/EC

Article 4 – paragraph 2 – subparagraph 2 a

*Text proposed by the Commission*

“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.”

*Amendment*

“Regarding *persons to whom* international protection *has been granted*, the period between the date on which the application for international protection *was* lodged, *and on the basis of which this status was granted*, 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, *as well as any other period of legal residence on other grounds, prior to or following the granting of this residence permit.*”

Or. en

*Justification*

*To ensure a situation of certainty and equality, the full period of the application procedure for international protection should be taken into account, as well as any other period of legal residence.*

**Amendment 12****Proposal for a directive – amending act****Article 1 – point 4**

Directive 2003/109/EC

Article 8 – paragraph 4

*Text proposed by the Commission*

“4. Where a Member State issues a long-term resident’s EC residence permit to a third country national to whom it granted international protection, it shall enter in his/her EC residence permit under the heading “remarks” the following: “**The holder of this permit was granted** international protection in [name of the Member State] on [date]”.

*Amendment*

“4. Where a Member State issues a long-term resident’s EC residence permit to a third country national to whom it granted international protection, it shall enter in his/her EC residence permit under the heading “remarks” the following: “international protection **granted** in [name of the Member State] on [date]”.

Or. en

**Amendment 13**

**Proposal for a directive – amending act**

**Article 1 – point 4**

Directive 2003/109/EC

Article 8 – paragraph 5 – subparagraph 2

*Text proposed by the Commission*

Before the second Member State enters the remark referred to in paragraph 4, it **may** consult the Member State mentioned in the remark as to whether the long term resident **still benefits** from international protection. Where the international protection has been withdrawn by a final decision, the second Member State shall not enter the remark referred to in paragraph 4.”

*Amendment*

Before the second Member State enters the remark referred to in paragraph 4, it **shall** consult the Member State mentioned in the remark as to whether the long term resident **no longer qualifies** from international protection. **The Member State mentioned in the remark shall reply to the above mentioned consultation no later than one month after receiving the request from the second Member State.** Where the international protection has been withdrawn by a final decision, the second Member State shall not enter the remark referred to in paragraph 4.

Or. en

*Justification*

*This is a key provision to safeguard against refoulement. In order to function effectively there should be a time limit of one month for the reply.*

## Amendment 14

### Proposal for a directive – amending act

#### Article 1 – point 4

Directive 2003/109/EC

Article 8 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

***5a. Where, in accordance with the relevant international instruments or national legislation, the international protection of the long-term resident was transferred to the second member state after the permit referred to in paragraph 5 was issued, the second member state shall modify accordingly the remark referred to in paragraph 4, no later than three months after the transfer of responsibility.”***

Or. en

#### *Justification*

*In the case of international protection of a long-term resident being transferred to another Member State, the long-term residence permit must be modified in order to ensure it contains accurate information about the protection status of the person, and in order to safeguard against refoulement.*

## Amendment 15

### Proposal for a directive – amending act

#### Article 1 – point 4 a (new)

Directive 2003/109/EC

Article 9 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***(4a) In Article 9 the following paragraph is inserted:***

***”3a. Member States may withdraw the long-term residence status in case of revocation, ending or refusal to renew international protection status as prescribed by Articles 14(3) and 19(3) of Directive 2004/83/EC if the long-term***

*resident status was obtained on the basis of international protection status.”*

Or. en

*Justification*

*Long-term resident status should be granted on the basis of an international protection status. Therefore, it may be withdrawn only in the cases mentioned above. This does not apply in cases of cessation of international protection status, i.e. when the reasons for international protection being granted are no longer present in the country of persecution*

**Amendment 16**

**Proposal for a directive – amending act**

**Article 1 – point 6 – point a**

Directive 2003/109/EC

Article 12 – paragraph 3 a

*Text proposed by the Commission*

“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.

***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.”***

*Amendment*

“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 **request** the Member State mentioned in the remark **to confirm whether the person is still a beneficiary of** international protection **in that** Member State. **The Member State mentioned in the remark shall reply not later than one month after receiving the request for information.”**

Or. en

*Justification*

*Before expelling a long-term resident who was granted international protection in another Member State, the Member State that granted protection must be consulted in order to confirm whether the person is still a beneficiary of international protection. This is a key*

*safeguard against refoulement.*

## **Amendment 17**

### **Proposal for a directive – amending act**

#### **Article 1 – point 6 – point a**

Directive 2003/109/EC

Article 12 – paragraph 3 b (new)

*Text proposed by the Commission*

*Amendment*

***“3b. If the long-term resident is still a beneficiary of international protection in the consulted Member State, he/she shall be expelled to this Member State, which shall immediately readmit him/her and his/her family members without formalities.”***

Or. en

#### *Justification*

*In order to safeguard against refoulement, the beneficiary of international protection should only be expelled to the Member State that granted them international protection. This Member State possesses the necessary information regarding the asylum claim in order to consider an expulsion. Family unity must also be maintained, in accordance with Article 7 of the Charter on Fundamental Rights.*

## **Amendment 18**

### **Proposal for a directive – amending act**

#### **Article 1 – point 6 a (new)**

Directive 2003/109/EC

Article 19 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) The following article is inserted:***

***“Article 19a***

***1. Where the long-term resident's EC residence permit contains the remark referred to in Article 8(4), and where the international protection of the long-term resident was transferred, in accordance with the relevant international***

*instruments or national legislation, to the second Member State before the permit referred to in Article 8(5) was issued, the second Member State shall ask the Member State which issued the long-term resident's EC residence permit to modify accordingly the remark referred to in Article 8(4).*

*2. Where the long-term resident is granted international protection in the second Member State before the permit referred to in Article 8(5) was issued, the second Member State shall ask the Member State which issued the long-term resident's EC residence permit to modify it in order to introduce the remark referred to in Article 8(4).*

*3. Following the request referred to in paragraphs 1 and 2, the Member State which issued the long-term resident's EC residence permit will issue the modified permit no later than three months after receiving the request from the second Member State.”*

Or. en

#### *Justification*

*This amendment is necessary given that under certain national arrangements a transfer of protection can take place. If this occurs, the original long-term residence permit must be modified to ensure that a chain of protection is maintained, for example if the beneficiary of international protection whose protection has been transferred moves to a third Member State.*

#### **Amendment 19**

##### **Proposal for a directive – amending act**

##### **Article 1 – point 7**

Directive 2003/109/EC

Article 22 – paragraph 3 a

*Text proposed by the Commission*

“3a. **Paragraph** 3 shall not apply to third-country nationals whose long-term EC

*Amendment*

“3a. **Unless in the meantime the international protection has been**



residence permit issued by the first Member State contains the remark referred to in Article 8(4).

*withdrawn, paragraph* 3 shall not apply to third-country nationals whose long-term EC residence permit issued by the first Member State contains the remark referred to in Article 8(4).

Or. en

*Justification*

*Expulsion of a beneficiary of international protection must be to the Member State that granted them protection. However, those who no longer enjoy international protection status should be treated in the same way as other third-country nationals and therefore the paragraph referred to above should apply to them.*

**Amendment 20**

**Proposal for a directive – amending act**

**Article 4**

Directive 2003/109/EC

*Text proposed by the Commission*

This Directive is addressed to the Member States.

*Amendment*

This Directive is addressed to the Member States *in accordance with the Treaty establishing the European Community*.

Or. en

## EXPLANATORY STATEMENT

### 1. HISTORICAL BACKGROUND OF THE PROPOSAL

In 2001, the Commission presented a proposal for a Directive<sup>1</sup> concerning the status of third-country nationals who are long-term residents. In this proposal, it was originally foreseen that refugees could qualify for long-term resident status after five years of legal and continuous residence in a Member State. In the course of the negotiations, it was nevertheless decided by the Member States to exclude refugees from the scope of the Directive. Subsequently, in the *Joint Statement from the Council and the Commission*, made at the JHA Council of 8 May 2003, it was agreed that the Commission would table a proposal for a Directive on the extension of long-term resident status to refugees and persons under subsidiary protection.

This proposal was tabled by the Commission in June 2007 using the same legal base as the act it was supposed to amend, i.e. Articles 63(3)(a) and 63(4) of the EC Treaty. The main objective of the proposal was to give beneficiaries of international protection who have been legally residing in a Member State for a period of 5 years legal certainty about their right of residence in a Member State, as well as a set of rights comparable to those of EU nationals.

This proposal was examined by the EP under the consultation procedure and led to the adoption of the report of Martine ROURE (PSE, FR) in April 2008. The principle amendments adopted by the EP were:

- the calculation of the five years of residence preceding application for long-term residence status;
- the material conditions (stable resources and sickness insurances) required to get the long-term residence status, from which the EP wanted beneficiaries to be exempted, due to their vulnerability;
- the national integration conditions, which should be applied to beneficiaries of international protection only on a case by case basis;
- the principle of non-refoulement, which was to be reinforced through stricter provisions.

The proposal was also examined in the Council, where the debate focused on the scope of the Directive. A majority of delegations supported the inclusion of both refugees and beneficiaries of subsidiary protection in the scope of the Directive. Nevertheless, some delegations argued in favour of a broader scope of the Directive, to include other forms of protection granted by Member States, while some others were in favour of limiting the scope to refugees only. As unanimity was required, no agreement could be reached before the entry into force of the Lisbon Treaty. For this reason the proposal is now coming back to the European Parliament as part of the so-called 'omnibus'. Under the new provisions of the Lisbon treaty, it will be dealt with under the co-decision procedure.

### 2. CONTENT OF THE PROPOSAL

The amendments put forward by the Commission aim at extending the scope of the Directive to beneficiaries of international protection who have been residing legally on the territory of a

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<sup>1</sup> COM(2001) 127 .

Member State for a period of 5 years. **Article 4** of the Directive is amended in order to take whole the duration of the asylum procedure into account for the calculation this 5 years period.

In order to avoid the risk of refoulement, an amendment is introduced to **Article 8** which obliges the Member States to include in the long-term residence permit granted to beneficiaries of international protection a specific remark regarding the fact that the person has been granted protection status. If the beneficiary of international protection who has been granted long term residents status moves to another Member State and after five years of residence acquires long-term resident status, then the above mentioned remark should be reproduced in the second long-term residence permit.

The question of whether beneficiaries of international protection who are granted long-term residence status maintain their international protection status under Directive 2004/83/EC is outside the scope of the Directive. Where they maintain their international protection status, they remain nevertheless entitled to the rights and benefits attached to it. **Article 11** is therefore amended in order to clarify that the possibilities for restrictions to the principle of equality are applicable only to the extent that they are compatible with the provisions of Directive 2004/83/EC.

The amendments to **Articles 12 and 22** aim at ensuring that the principle of non-refoulement, guaranteed by the Geneva Convention, is respected in all situations which may arise in the exercise of the rights conferred by Directive 2003/109/EC. This means concretely that before proceeding with the removal of a beneficiary of international protection from the territory of the Union, Member States will first have to assess whether Directive 2004/83/EC still applies to this person and whether the removal would be in compliance with the principle of non-refoulement. In certain circumstances this may involve consulting the Member State which granted international protection, if different to the Member State which granted long term residence status (Article 12), or the Member State in which the person resides (Article 22).

### **3. POSITION OF THE RAPPORTEUR**

This is a proposal which would bring direct benefit to all the beneficiaries of international protection who have been residing legally on the territory of the EU for more than 5 years, but currently have no entitlement to long-term resident status. It will bring an end to their differential treatment vis-à-vis other third country nationals, and will give them greater certainty about their situation in the EU. Notably, it would enable beneficiaries of international protection who become long-term residents to take up residence in a Member State other than the one in which they were recognised.

For these reasons this proposal should be welcomed, and therefore your rapporteur is in favour of a constructive approach, taking on board most of the Commission's proposed amendments, as well as many of the technical changes agreed upon by the Council during the negotiations of this instrument. This draft report reflects the wish to take into account some of the concerns of Member States, with the aim of reaching a first-reading agreement, as well as a commitment to protecting the interests of beneficiaries of international protection before and after acquiring long-term residence status.

To this end, this report:

- Supports the application of the proposal to both Geneva Convention refugees and beneficiaries of subsidiary protection.
- Upholds the Commission's proposal that the full duration of the procedure should be taken into account in the calculation of the 5 years period of legal residence.
- Clarifies that any other period of legal residence, including a period of temporary protection before the granting of international protection, should be taken into account in the 5 years calculation.
- Upholds the proposed safeguards against refoulement, by including a remark in the long-term residence permit and obliging Member States to consult the Member State that granted protection in case of possible expulsion.
- Supports references to Schedule 11 of the Geneva Convention and the European Agreement on the Transfer of Responsibility.
- Further strengthens the safeguards against refoulement - expulsion should only be permitted to the Member State which granted international protection.
- Strengthens safeguards in the case of transfer of protection to another Member State under national arrangements - the long-term residence permit needs to be modified accordingly.
- Adds specific references to the Geneva Convention in order to guarantee additional safeguards.