

COMMISSION OF THE EUROPEAN COMMUNITIES

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2007/0112 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) Context of the proposal

- Grounds for and objectives of the proposal

Refugees and beneficiaries of subsidiary protection (hereinafter also "beneficiaries of international protection") are currently not entitled to long-term resident status under Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. The Council and the Commission, acknowledging this gap, called in the Joint Statement of 8 May 2003 for the extension of Council Directive 2003/109/EC to cover beneficiaries of international protection. This proposal is to give effect to that statement by including beneficiaries of international protection within the scope of Council Directive 2003/109/EC.

- General context

In the Commission's proposal of 2001 for Council Directive 2003/109/EC[1], refugees could qualify for long-term resident status after five years of legal and continuous residence in a Member State.

However, in the course of the negotiations, it was decided to exclude refugees from the scope of the Directive, and 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, taking into account the study on transfer of protection status.

- Existing provisions in the area of the proposal

Long-term resident status, and the rights and benefits attached to that status, are defined in Council Directive 2003/109/EC which will apply also to beneficiaries of international protection following the adoption of this proposal. According to Council Directive 2004/83/EC of 29 April 2004, beneficiaries of international protection are third country nationals or stateless persons who have been granted refugee or subsidiary protection status within the meaning of this Directive.

- Consistency with other policies

This proposal is fully in line with the Tampere European Council Conclusions of 1999 and the Hague programme of 2004 concerning the fair treatment of third-country nationals.

2) Consultation of interested parties and impact assessment

- Consultation of interested parties

[1] COM(2001) 127 .

In 2004 the Commission services informally discussed the broad outline of this proposal with the Member States in the Committee on Immigration and Asylum (CIA) as well as in two informal expert meetings.

UNHCR, the European Council on Refugees and Exiles (ECRE) as well as the Churches' Commission for Migrants in Europe (CCME) were also informally consulted in 2004.

A "study on transfer of protection status in the EU, against the background of the Common European Asylum System and the goal of a uniform status valid throughout the Union for those granted asylum" was carried out by the Danish Refugee Council, the Migration Policy Institute and the Institute for Migration and Ethnic Studies' on behalf of the Commission. The report of the study consists of three parts, describing the existing legal framework, the practice of eleven Member States and one non-Member State and future scenarios for a community mechanism for transfer of protection. The researchers consulted eleven Member States, the UNHCR and the Council of Europe (on the European Agreement on transfer of responsibility). The final report, which was discussed with Member States' experts, met with broad consensus.

The parties consulted welcomed the extension of the Directive to refugees. However, some Member States expressed doubts as to the inclusion of beneficiaries of subsidiary protection. The Commission decided nevertheless to include that group in this proposal because it considers that the situations of all third-country nationals who have resided for five years in the host Member State should be covered (in addition the *Joint Statement* of May 2003 referred to both categories).

Most parties consulted agreed with the analysis in the study that the transfer of protection may occur even before long-term resident status is acquired, which implies that transfer of protection would merit a separate proposal. Most parties consulted also agreed that a community mechanism on transfer of protection implies mutual recognition of asylum decisions which in turn requires a sufficient level of harmonisation of Member States' asylum procedures. The Commission consequently decided not to include a community mechanism for transfer of protection in this proposal.

3) Legal elements of the proposal

AMENDING COUNCIL DIRECTIVE 2003/109/EC

The main aim of the proposal is to offer beneficiaries of international protection legal certainty about their residence in a Member State and rights which are comparable to those of EU nationals after 5 years of legal residence, thus closing a gap left open by Directive 2004/83/EC. This is done by deleting the exceptions to the scope of Directive 2003/109/EC concerning beneficiaries of international protection, while taking into account, where necessary, their specific position as compared to other third-country nationals.

LONG-TERM RESIDENT STATUS IN A FIRST MEMBER STATE

Beneficiaries of international protection should be able to acquire long-term resident status in the Member State which has granted them protection subject to the same conditions as other third-county nationals. Furthermore, beneficiaries of international protection who obtain long-term resident status should enjoy fully the rights and benefits attached to this status and should also be subject to the restrictions and limitations of these rights and benefits prescribed by Directive 2003/109/EC. However, as long as a long-term resident remains a beneficiary of international protection under Directive 2004/83/EC, his/her rights flowing from Directive 2004/83/EC cannot be impeded by limitations set out in Directive 2003/109/EC. The question of whether the beneficiaries of international protection who are granted long-term resident status may still need international protection or whether they are still entitled to international protection status under Directive 2004/83/EC is outside the scope of the present Directive.

Nonetheless, the initial grant of protection also requires ensuring respect for the principle of non-refoulement in the event of withdrawal or loss of the long-term resident status in the first Member State.

RESIDENCE IN AND LONG-TERM RESIDENT STATUS IN A SECOND MEMBER STATE

Chapter III of Council Directive 2003/109/EC sets out the conditions under which long-term residents may exercise their right of residence in another Member State. These conditions should apply in full to beneficiaries of international protection who have been granted long-term residence.

Beneficiaries of international protection applying under Article 23 of Directive 2003/109/EC for long-term resident status in a different Member State from that which granted them international protection should also be obliged to comply with all relevant conditions required by Directive 2003/109/EC .

NO COMMUNITY MECHANISM ON TRANSFER OF RESPONSIBILITY FOR PROTECTION UNDER THE AMENDED DIRECTIVE 2003/109/EC

This Directive only grants, under certain conditions, the right to take up residence in a second Member State to long-term residents, not to beneficiaries of international protection as such (Directive 2004/83/EC does not grant such a right either). Although taking up residence in a second Member State may result in some cases in the transfer of responsibility for protection at a certain moment in time, the issue is outside the scope of this Directive.

Although reliable statistics are not available, the study on transfer of protection mentioned above illustrates that requests for transfer of protection are rarely made. In practice, the differences in interpretation by Member States of the existing legal provisions on transfer of protection do not cause insurmountable problems. The study

4) Legal basis

This proposal amends Directive 2003/109/EC and uses the same legal base as that act, namely Articles 63(3)(a) and 63(4) of the EC Treaty. This legal base is appropriate given that long-term resident status for beneficiaries of international protection is a tool for their integration as third-country nationals in the host Member State and is therefore a matter of immigration policy.

The United Kingdom and Ireland are not bound by Directive 2003/109/EC following the Protocol on the position of the United Kingdom and Ireland annexed to the Treaties. Likewise, Denmark is not bound by virtue of the Protocol on the position of Denmark, annexed to the Treaties.

5) Subsidiarity principle

Beneficiaries of international protection fall outside the scope of Directive 2003/109/EC, which means that Member States decide at national level whether, and if so, on what conditions beneficiaries of international protection can be granted a more permanent status and what the scope of such a status would be. Currently they can obtain this status in some Member States, but not in all. Moreover, the scope of their status differs between the Member States. The Council and the Commission have agreed, however, that beneficiaries of international protection should be entitled to the long-term resident status referred to in Directive 2003/109/EC in all the Member States on comparable conditions. This requires the adoption of common rules at Community level.

Therefore amending Directive 2003/109/EC is the best method of ensuring equal treatment for all third-country nationals who have legally resided in a Member State for a certain period.

6) Proportionality principle

The form of Community action must be the simplest that will enable the objective of the proposal to be attained and effectively implemented. In this spirit, the legal instrument chosen is a Directive amending an existing Directive. It will lay down general principles but leave it to the Member States to which it is addressed to choose the most appropriate form and methods for giving effect to these principles in their national legal system and general context. The proposed Directive merely determines the conditions for the acquisition of long-term resident status by third-country nationals who are also beneficiaries of international protection. Member States, if they wish, may determine more favourable conditions for the acquisition of a permanent status applying solely in the national context.

7) Detailed explanation of the proposal

Amendment of Article 2

Given the necessary link between Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and Directive 2003/109/EC, where it comes to the definition of the group of third-country nationals who should also be able to obtain long-term resident status, it is appropriate to add to Article 2 of Directive 2003/109/EC a reference to the key definition of 'international protection' in Directive 2004/83/EC.

Amendment of Article 3

It is proposed to delete the provisions that exclude beneficiaries of international protection from the scope of Directive 2003/109/EC.

Amendment of Article 4

It is proposed to amend Article 4 of Directive 2003/109/EC in order to take the duration of the asylum procedure into account for the calculation of 'five years of legal residence' in a Member State. This ensures fair treatment in case a third-country national is granted international protection status as a consequence of review or appeal against a previous negative decision taken on his/her application for asylum.

Amendment of Article 8

Articles 8 to 11 of Directive 2003/109/EC shall apply in full to beneficiaries of international protection who lodge an application for long-term resident status in a Member State.

However, it is necessary to address Member States' concerns regarding the respect of the principle of non-refoulement where the residence of a long-term resident could be ended on the basis of Directive 2003/109/EC. These concerns relate to the fact that the 'protection background' of the residence of the third-country national could possibly be overlooked where the national authorities competent for granting and withdrawing an international protection status are different from those competent for granting and withdrawing a long-term resident status. The issue is also important in the situation where a beneficiary of international protection who was granted long-term resident status moves to another Member State and after 5 years of residence acquires long-term resident status in that Member State.

To ensure therefore that the competent authorities are aware of this "protection background", the proposed amendment of Article 8 obliges Member States to include in the long-term EC residence permit granted to beneficiaries of international protection a specific remark regarding the fact that the third-country national has been granted a protection status.

The same information should be entered by the second Member State granting long-term resident status to a third country national whose long-term EC residence permit issued by the first Member State contains the above mentioned remark. However, the second Member State shall not reproduce this information on the permit if, after having consulted the Member State which according to the remark granted international protection, it finds out that international protection has been withdrawn.

Amendment of Article 11

The question whether the beneficiaries of international protection who are granted long-term resident status may still need international protection or whether they maintain their international protection status under Directive 2004/83/EC is outside the scope of

Amendment of Article 25

In order to facilitate the necessary information exchange between Member States as required by Article 12(3a), Article 25 should be amended accordingly so as to allow the use of the network of national contact points also for that purpose.

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COUNCIL DIRECTIVE

amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3) and (4) thereof,

Having regard to the proposal from the Commission[2],

Having regard to the opinion of the European Parliament[3],

Having regard to the opinion of the European Economic and Social Committee[4],

Having regard to the opinion of the Committee of the Regions[5],

Whereas:

(1) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents[6] does not apply to refugees and beneficiaries of subsidiary protection covered by Council Directive 2004/83/ EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted[7].

(2) The prospect of obtaining long-term residence status in a Member State after a certain time is an important element for the full integration of beneficiaries of international protection in the Member State of residence.

(3) Long-term resident status for beneficiaries of international protection is also important in promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty.

(4) Beneficiaries of international protection should therefore be able to obtain long-term residence status after five years of continuous and legal residence in the Member State which granted them international protection subject to the same conditions as other

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2 OJ C

3 OJ C

4 OJ C

5 OJ C

6 OJ L 16, 23.1.2004, p. 44.

7 OJ L 304, 30.9.2004, p. 12.

third-country nationals. The duration of the procedure for the examination of their application for international protection should be taken into account for the purposes of calculating this five-year period of continuous and legal residence.

(5) In view of the right of beneficiaries of international protection to reside in other Member States than the one which granted them international protection, it is necessary to ensure that these Member States are informed of the protection background of the persons concerned, so that they can comply with their obligations regarding the respect of the principle of non-refoulement. For this purpose the long-term resident's EC residence permit granted to beneficiaries of international protection should contain a remark providing information about the fact that international protection was granted by a Member State to its holder. Provided that international protection has not been withdrawn, this remark should be reproduced in the long-term resident's EC residence permit issued by the second Member State.

(6) Beneficiaries of international protection who are long-term residents should enjoy equality of treatment with citizens of the Member State of residence in a wide range of economic and social matters, under certain conditions, so that long-term resident status constitutes a genuine instrument for the integration of long-term residents in the society in which they live.

(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.

(8) The conditions set out in Directive 2003/109/EC concerning the right of a long-term resident to reside in another Member State and obtain long-term residence status there should apply in the same way to all third-country nationals having obtained long-term resident status.

(9) Transfer of responsibility for protection of beneficiaries of international protection is outside the scope of this Directive.

(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.

(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.

(12) This Directive respects the fundamental rights and freedoms and observes the principles recognized in particular by the Charter of Fundamental Rights of the European Union. In accordance with the prohibition of discrimination contained in the Charter, Member States should implement this Directive without discrimination between the beneficiaries of this Directive on grounds such as sex, race, color, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinion, membership of an ethnic minority, property, birth, disability, age or sexual orientation.

(13) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application.

(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,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2003/109/EC is amended as follows:

1. In Article 2, point (f) is replaced by the following:

"(f) 'international protection' means international protection as defined in Article 2(a) of Council Directive 2004/83/EC[8];"

2. Article 3(2) is amended as follows:

a) Point (c) is replaced by the following:

"(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;"

b) Point (d) is replaced by the following:

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

[8] OJ L 304, 30.9.2004, p. 12

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."

4. In Article 8 the following paragraphs 4 and 5 are added:

"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]".

5. Where the long-term resident's EC residence permit is issued by a second Member State to a third country national whose long-term EC residence permit contains the remark referred to in paragraph 4, the second Member State shall enter the same remark in the long term resident's EC permit.

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."

5. In Article 11 the following paragraph 4a is inserted:

"4a. As far as the Member State which granted international protection is concerned, paragraphs 3 and 4 are without prejudice to the provisions of Directive 2004/83/EC."

6. Article 12 is amended as follows:

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.

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."

b) The following paragraph 6 is added:

"6. This Article is without prejudice to Article 21 of Directive 2004/83/EC."

7. In Article 22, the following paragraph 3a is inserted:

"3a. 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).

This paragraph is without prejudice to Article 21 of Directive 2004/83/EC."

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)."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the […] day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President