



**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

ASIM 20

NOTE

from:	Presidency
to:	Strategic Committee on Immigration, Frontiers and Asylum
on:	1 April 2008
No. Cion prop. :	10515/07 ASIM 45
No. prev. doc.:	6896/08 ASIM 12
Subject :	Proposal for a Council Directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection

1. In June 2007, the Commission presented the above-mentioned proposal to the Council.

It is recalled that Council Directive 2003/109/EC determines the status of third-country nationals who are long-term residents (the LTR Directive). At the time of the adoption of this Directive, the Council welcomed the Commission commitment to follow it up with a proposal for the extension of long-term resident (LTR) status to refugees and persons benefiting from subsidiary protection. The new Commission proposal responds to this commitment.

2. The aim of this proposal is to amend the Directive in order to extend the possibility of obtaining LTR status to beneficiaries of international protection as defined in Directive 2004/83/EC¹ (the Qualification Directive), i.e. to third country nationals or stateless persons who have been granted refugee or subsidiary protection within the meaning of the Qualification Directive.

3. The Asylum Working Party has dealt with this proposal for the past months. The main outstanding issues are the following:

Scope of the draft Directive (Arts. 2 and 3)

The draft Directive covers both types of statuses as it was considered that it should include the situation of all beneficiaries of international protection who have resided for 5 years in a host Member State, which is also in line with the Tampere Conclusions and the Hague Programme concerning the fair treatment of third-country nationals and the call to establish a uniform status that is valid across the EU for all beneficiaries of international protection.

While the majority of delegations can support the proposed scope, some delegations oppose extending the provisions of the long-term resident status to beneficiaries of international protection. Other delegations oppose extending the provisions of the long-term resident status to persons enjoying subsidiary protection status. Finally, other delegations would like to extend the scope in order to also cover other forms of protection granted by Member States on Humanitarian Grounds.

Duration of residence (Art. 4(2))

The draft Directive provides for taking into account the duration of the procedure for granting international protection for the calculation of the "five years of legal residence" in a Member State. This solution, which would apply to both categories (refugee status and subsidiary protection status), is backed by some delegations.

Other delegations would prefer to let Member States decide which date should be taken into account for the calculation of the five year period (the date of the application for international protection or the date on which the status was granted).

Finally, other delegations suggested to keep the current draft for refugees only and, in the case of beneficiaries of subsidiary protection status, to refer to the day when the application is positively answered to by the competent authorities.

¹ OJ L 304, 30.9.2004, p. 12.

At its meeting on 17 March 2008, the Asylum Working Party examined a Presidency compromise proposal concerning this issue (see Annex to this note). This compromise proposal should meet all the above-mentioned objections. At the Asylum Working Party meeting, the Commission and those delegations in favour of an equal treatment for both categories expressed concerns on the possible consequences of such a proposal. With such a compromise, it should be more likely to reach the agreement of the delegations, since it would also solve the standing problems related to the scope of the Directive.

4. A modified draft of the above proposal is set out bellow with delegations comments in the footnotes. Changes to 6896/08 ASIM 12 are in bold.

Proposal for a
COUNCIL DIRECTIVE

**amending Directive 2003/109/EC to extend its scope to
beneficiaries of international protection²**

Article 1³

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^{4,5}”

² **CZ/EL/CY/AT/SE** maintained general scrutiny reservations.

MT/HU/NL maintained parliamentary scrutiny reservations.

³ **NL** maintained a reservation on the scope of the proposal.

CZ/AT expressed concerns about extending the provisions of the long-term resident status to beneficiaries of international protection.

⁴ OJ L 304, 30.9.2004, p. 12.

⁵ **EL/CY/SK** expressed concerns about extending the provisions of the long-term resident status to persons enjoying subsidiary protection status.

2.⁶ Article 3(2) is amended as follows:

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

“(c) are authorised 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 or have applied for authorisation to reside on that basis and are awaiting a decision on their status, with the exception of persons who are authorised to reside in a Member State on the basis of **international protection under Article 2 (a) of Directive 2004/83/EC**;

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

“(d) have applied for international protection under Directive 2004/83/EC and whose application has not yet given rise to a final decision;”

The following new paragraph (4) is added:

“4. This Directive shall apply without prejudice to

(a) Paragraph 11 of the Schedule to the Geneva Convention on Refugees of 28 July 1951 and

⁶ SE, supported by ES/NL/FI, proposed the following wording for Article 3 (1) and (2):

- "1. This Directive applies to third-country nationals residing legally in the territory of a Member State.
2. This Directive does not apply to third-country nationals who:
 - (a) reside in order to pursue studies or vocational training;
 - (b) are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;
 - (c) have applied for authorisation to reside in a Member State and are awaiting a final decision on their status;
 - (d) reside solely on temporary grounds as au pair or seasonal worker, or as workers posted by a service provider for the purposes of cross-border provision of services or in cases where their residence permit has been formally limited;
 - (e) enjoy a legal status governed by the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, the Convention of 1969 on Special Missions or the Vienna Convention on the Representation of States in their Relations with International Organisations of a Universal Character of 1975."

Concerning paragraph 1, ES/NL proposed to refer to all third country nationals legally resident in a Member State for 5 years.

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

3. In Article 4⁷(2), the following subparagraphs are added:

“Regarding persons to whom international protection status 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, shall⁸ be taken into account in the calculation of the period referred to in paragraph 1.

By way of derogation from the previous subparagraph, for the persons who on the date of lodging of the said application did not fall in the scope of the Directive as defined by Article 3, and whose international protection status was granted on the basis of facts arising after the application was lodged, the period between the date on which the application was lodged and the date on which the facts arose may be excluded from the calculation of the period referred to in paragraph 1.”⁹

⁷ **DE**, supported by **AT**, proposed to add a subparagraph to Art.4(1) and a new paragraph 1a: "Member States may provide for third-country nationals with subsidiary protection status in accordance with Article 2(f) of Directive 2004/83/EC that in line with the requirements of the first sentence, long-term residence status may only be granted after a minimum of five years." Art4(1a): "Member States may provide that permanent residence EC is granted only if the requirements for the withdrawal, refusal, termination or refusal of extending the protection status in accordance with Art. 2(f) are not met;". **SK** supported the addition of such a new paragraph 1a.

⁸ **DE** favoured the deletion of this paragraph. As a compromise, **DE** could accept replacing "shall" with "may". **CZ/LT/SK** wished to replace "shall" with "may".

⁹ **LT** maintained a reservation on this provision.

EL/ES maintained scrutiny reservations.

CZ/SK considered that the date to be taken into account for the calculation of the period should refer to the day when the application is positively answered by the competent authorities.

FR, supported by **AT**, suggested to keep the current draft for refugees only and, in the case of beneficiaries of subsidiary protection status, refer to the day when the application is positively answered by the competent authorities.

4. In Article 8 the following paragraphs 4, 5 and 6 are added:¹⁰

- “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].
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 shall consult the Member State mentioned in the remark as to whether the long term resident **no longer qualifies for** international protection. The Member State mentioned in the remark shall reply to the **above-mentioned consultation** no later than three months¹¹ 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.

¹⁰ **DE** considered that these three paragraphs are not needed and therefore dispensable, since according to Art. 28 of the Geneva Convention, a refugee receives a passport indicating his status. Additionally, Art. 32(2) of the said convention states that a refugee is obliged to submit evidence to clear himself. In case of expulsion, it is therefore an obligation for the refugee to claim protection due to his refugee status.

¹¹ **HU** would like to replace "three months" by "two months".

6. 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."

5.¹² 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."

¹² **DE** proposed to add the following new paragraph 3a to Article 9: "Member States may provide that the legal status of a long-term resident may be revoked, if the third-country national has lost the protection status in accordance with Article 2(f)."

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. The Member State mentioned in the remark shall reply to this request not later than two months¹³ after its reception. Unless in the meantime international protection has been withdrawn or the person falls in one of the categories described by Article 21(2) of Directive 2004/83/EC, the long-term resident shall be expelled to this Member State, which shall immediately readmit without formalities the long-term resident and, provided that the family was already constituted in this Member State, his/her family members.¹⁴”

Where the family was constituted in another Member State, the Member State mentioned in the remark shall admit the family members of the long-term resident according to the applicable Community or national legislation provisions.”

¹³ **FR/HU** would like to replace "two months" by "one month".

SE would like to replace "two months" by "three months".

¹⁴ **DE** proposes the following wording for this paragraph: "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 or the responsibility has been transferred, the long-term resident can also be expelled to the responsible Member State for the beneficiary for international protection, which shall immediately readmit without formalities the long-term resident and, provided that the family was already constituted in this Member State, his family members."

b) The following paragraph 6 is added:

“6. This Article is without prejudice to Article 21(1) of Directive 2004/83/EC.”

7. A new Article 19a is added:¹⁵

- "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 months¹⁶ after receiving the request from the second Member State.^{17"}

¹⁵ **DE** considered that this provision is not needed.

¹⁶ **SE** opposed the inclusion of a specific time-limit.

¹⁷ **BE/NL** maintained scrutiny reservations on this paragraph.

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

“3a. Unless in the meantime the international protection has been withdrawn or the person falls in one of the categories described by Article 21(2) of the Directive 2004/83/EC, 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).¹⁸ This paragraph is without prejudice to Article 21 of Directive 2004/83/EC.”¹⁹

9. 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 Articles 8, 12, 19, 19a, 22 and 23.”

¹⁸ **DE** considered that this provision (Art. 22(3a), first sub-paragraph) is not needed.

¹⁹ **Cion** suggested that a new formulation is needed in order to align Arts. 12 and 22.

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.²⁰ They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.²¹

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 in accordance with the Treaty establishing the European Community.

Done at

For the Council

The President

²⁰ CZ stressed the importance of the transposition period vis-à-vis the transitional period concerning the free movement of workers who are nationals of certain Member States.

²¹ ES/MT proposed the deletion of "and a correlation table between those provisions and this Directive".

In Article 4 (2), the following subparagraphs are added:

“Regarding persons to whom refugee status has been granted, the period between the date on which the application 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.

Regarding persons to whom the subsidiary form of protection under Directive 2004/83/EC has been granted, the period referred to in paragraph 1 may be calculated from the date on which the protection was granted.

By way of derogation from the previous subparagraph, for the persons who on the date of lodging of the said application did not fall in the scope of the Directive as defined by Article 3, and whose international protection status was granted on the basis of facts arising after the application was lodged, the period between the date on which the application was lodged and the date on which the facts arose may be excluded from the calculation of the period referred to in paragraph 1.”