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*****I**
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

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United in diversity

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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 the undertaking given by the Council representative by letter of 18 November 2010 to approve Parliament's position, in accordance with Article 294(4) 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 (A7-0347/2010),
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.

POSITION OF THE EUROPEAN PARLIAMENT
AT FIRST READING*

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2003/109/EC to extend its scope to beneficiaries of international
protection
(Text with EEA relevance)]

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union , and in particular Article 79(2)(a) and (b) thereof,

Having regard to the proposal from the European Commission,

Acting in accordance with the ordinary legislative procedure¹,

Whereas:

- (1) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents² does not apply to refugees or to 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 granted³.
- (2) The prospect of obtaining long-term resident 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 Union as stated in the Treaty on the Functioning of the European Union.
- (4) Beneficiaries of international protection should therefore be able to obtain long-term resident status **■** in the Member State which granted them international protection subject to the same conditions as other third-country nationals. **■**
- (5) In view of the right of beneficiaries of international protection to reside in Member

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■** .

¹ Position of the European Parliament of ...

² OJ L 16, 23.1.2004, p. 44.

³ OJ L 304, 30.9.2004, p. 12.

States other than the one which granted them international protection, it is necessary to ensure that those Member States are informed of the protection background of the persons concerned, so that they can comply with their obligations regarding respect for the principle of non-refoulement. █

- (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 *and under the Geneva Convention Relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967 (the Geneva Convention)*.
- (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 resident 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 resident status in that Member State, the person concerned should enjoy the protection against refoulement guaranteed by Directive 2004/83/EC *and Article 33 of the Geneva Convention*. For *this purpose*, where the person concerned *enjoys an international* protection status in another Member State █, it is necessary to provide, *unless refoulement is permitted under the provisions of Directive 2004/83/EC*, that he/she may be expelled only to the Member State which granted the protection status and that that Member State is obliged to readmit him/her. *The same safeguards should apply to a beneficiary of international protection who has taken up residence but has not yet obtained long-term resident status in a second Member State.*
- (10a) *Where the expulsion of a beneficiary of international protection outside the EU territory is permitted under the provisions of Directive 2004/83/EC, Member States shall ensure that all information is obtained from relevant sources including, where appropriate, from the Member State that granted international protection, and is thoroughly assessed with a view to guaranteeing that the decision to expel him/her is in line with Article 4 and Article 19(2) of the Charter of Fundamental Rights of the European Union.*

█

- (12) This Directive respects the fundamental rights **■** and observes the principles recognized *by Article 6 of the Treaty on European Union and* by the Charter of Fundamental Rights of the European Union *and in particular in its Article 7. ■*
- (12a) *In accordance with point 34 of the Interinstitutional agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables, illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.*
- (13) In accordance with Articles 1 and 2 of Protocol N° 21 on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union and without prejudice to Article 4 of that Protocol, *those* Member States are not taking part in the adoption of this Directive and are not bound by it or subject to its application.
- (14) In accordance with Articles 1 and 2 of the Protocol N°22 on the Position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark *is not taking* part in the adoption of *this* Directive **■** and is not bound by *it* or subject to *its* application **■** ,

HAVE 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/EC¹,”
2. 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 form of **■** protection *other than* international *protection* or *have applied for authorisation to reside on that basis* and are awaiting a decision on their

¹ OJ L 304, 30.9.2004, p. 12

status;”

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

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

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

a) *, 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, as amended by the Protocol signed in New York on 31 January 1967, and;**”

b) *the following point is added:*

“(ca) **the European Agreement on Transfer of Responsibility for Refugees of 16 October 1980.**”

3. Article 4 is amended as follows:

a) *the following paragraph is inserted:*

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

b) In paragraph 2, the following subparagraph is added:

“Regarding *persons to whom international protection status has been granted, at least half of* the period between the date on which the application for international protection *was* lodged, **and on the basis of which that status was granted**, and the date on which the residence permit referred to in Article 24 of Directive 2004/83/EC is granted, **or the whole period, if it exceeds 18 months**, shall be taken into account in the calculation of the period referred to in paragraph 1.”

4. In Article 8 the following paragraphs are added:

“4. Where a Member State issues a long-term resident’s EU residence permit to a

third country national to whom it granted international protection, it shall enter in his/her EU 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 EU *residence* permit is issued by a second Member State to a third country national whose long-term EU 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 EU 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 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.

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, not later than three months after the transfer of responsibility.”

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

”3a. Member States may withdraw the long-term resident status in the event of the 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.”

5. In Article 11 the following paragraph 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 paragraphs are inserted:

“3a. Where a Member State decides to expel a long-term resident whose long-term resident’s EU 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 concerned 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.**

3b. If the long-term resident is still a beneficiary of international protection in the consulted Member State, he/she shall be expelled to that Member State, which shall, without prejudice to applicable Union or national legislative provisions and without prejudice to the principle of family unity, immediately readmit without formalities the beneficiary of international protection and his/her family members.

3c. By way of derogation from paragraph 3b, the Member State which took the expulsion decision shall retain the right to remove the long-term resident to a country other than the Member State which granted international protection when the long term resident fulfils the conditions specified in Article 21(2) of Directive 2004/83/EC, in accordance with its international obligations.”

b) The following paragraph 6 is added:

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

(6a) The following article is inserted:

“Article 19a

1. Where the long-term resident's EU 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 EU 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 EU residence permit to modify it in order to enter 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 EU residence permit shall issue the modified permit no later than three months after receiving the request from the second Member State.”

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

“3a. Unless in the meantime the international protection has been withdrawn or the person falls within one of the categories specified in Article 21(2) of Directive 2004/83/EC, paragraph 3 shall not apply to third-country nationals whose long-term

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

This paragraph is without prejudice to Article **21(1)** 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 **Articles 8, 12, 19, 19(a), 22 and 23.**”

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...⁷. They shall forthwith communicate to the Commission the text of those provisions.

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 Treaties*.

Done at ...,

For the European Parliament

For the Council

The President

The President

EXPLANATORY STATEMENT

1. HISTORICAL BACKGROUND OF THE PROPOSAL

In 2001, the Commission presented a proposal for a Directive² 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

¹ *OJ: Please insert the date: 24 months after the publication of this Directive in the Official Journal.*
² COM(2001) 127 .

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 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.
- Notes that in view of the fact that some Member States host a disproportionate number of beneficiaries of international protection, the eligibility of such beneficiaries to long-term resident status in accordance with this Directive may have the effect of exacerbating the pressure to which those Member States are subjected, due in particular to their geographical or demographic situation. While other measures are therefore required to address this undesired consequence, your rapporteur stresses that the provisions of this Directive should be applied in such a way as to facilitate the exercise of the right of beneficiaries of international protection who enjoy long-term resident status in a Member State facing such disproportionate pressures, to reside in a Member State other than the one which granted them international protection.
- 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.
- Highlights that we should strive to uphold family unity, bearing in mind however that the rapporteur also recognises that in some cases it might not be in the best interest of the family members to be readmitted together with the family member who has been granted long-term residence status. Therefore the expulsion of family members should not be automatic, but contingent upon the choice of the family members and in accordance with existing Union legislation.
- Notes that this proposal intends to give a long-term resident status to beneficiaries of international protection who have been residing legally on the territory of the EU for more than 5 years. This gives them an opportunity to integrate, which means being able to communicate in one of the official languages of their Member State of residence and to increase their awareness of their rights and obligations as well as the core values of the Member State of residence. To this end, language training should be provided by the MS to the long term residents. Member states should also be encouraged to develop training programmes about the fundamental laws and core values of the MS of residence and the principles of democracy, human rights and equality, as well as individual rights and obligations in that MS.

PROCEDURE

| | | | | |
|---|---|------------------|-------------------|------------|
| Title | Extension of the scope of Directive 2003/109/EC to beneficiaries of international protection | | | |
| References | COM(2007)0298 – C6-0196/2007 – 2007/0112(COD) | | | |
| Date submitted to Parliament | 7.6.2007 | | | |
| Committee responsible Date announced in plenary | LIBE | | | |
| Committee(s) asked for opinion(s) Date announced in plenary | AFET | DEVE | EMPL | |
| Not delivering opinions Date of decision | AFET 14.4.2010 | DEVE 4.5.2010 | EMPL 19.5.2010 | |
| Rapporteur(s) Date appointed | Claude Moraes 4.3.2010 | | | |
| Discussed in committee | 27.4.2010 | 28.9.2010 | 11.10.2010 | 26.10.2010 |
| | 15.11.2010 | 29.11.2010 | | |
| Date adopted | 29.11.2010 | | | |
| Result of final vote | +: -: 0: | 27 0 0 | | |
| Members present for the final vote | Jan Philipp Albrecht, Simon Busuttil, Cornelia Ernst, Kinga Gál, Kinga Göncz, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Juan Fernando López Aguilar, Louis Michel, Claude Moraes, Jan Mulder, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Wim van de Camp, Axel Voss, Renate Weber | | | |
| Substitute(s) present for the final vote | Ioan Enciu, Franziska Keller, Jean Lambert, Kyriacos Triantaphyllides, Cecilia Wikström | | | |
| Substitute(s) under Rule 187(2) present for the final vote | Elisabeth Morin-Chartier | | | |