

Immigration: status of third-country nationals who are long-term residents. Extension to beneficiaries of international protection

2007/0112(COD) - 06/06/2007 - Legislative proposal

PURPOSE: to extend the scope of Directive 2003/109/EC by including “beneficiaries of international protection”.

PROPOSED ACT: Council Directive.

BACKGROUND: Directive 2003/109/EC (see [CNS/2001/0074](#)) provides for the integration of third-country nationals who are long-term residents in the Member States. In 2001, the Commission had proposed that refugees should be able to qualify for long-term resident status after 5 years of legal and continuous residence in a Member States. However, it was finally decided to exclude refugees from the scope of the Directive. Thus, refugees as well as beneficiaries of international protection, are currently not entitled to long-term resident status. 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.

CONTENT: the purpose of this proposal, therefore, is to amend Council Directive 2003/109/EC “concerning the status of third-country national who are long-term residents”, by extending its scope to include “beneficiaries of international protection”. “Beneficiaries of international protection” or beneficiaries of subsidiary protection are defined by Council Directive 2004/83/EC as “third country nationals or stateless persons who have been granted refugee or subsidiary protection status”. By extending the scope of Directive 2003/109/EC, beneficiaries of international protection will be entitled to he same legal certainty and rights as those enjoyed by EU nationals after five years of legal residence.

In summary, the Commission is proposing the following amendments to the Directive:

Long term resident status in a first Member State: Beneficiaries of international protection will 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 country nationals**. In addition, beneficiaries of international protection who obtain long-term resident status should be able to enjoy the rights and benefits attached to this status and should be subject to the same restrictions and limitations of these rights. The initial grant of protection will require 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, and long-term resident status, in a second Member State: to recall, Chapter III of Directive 2003/109/EC sets out the conditions under which long-term residents may exercise their right of residence in another EU Member States. The Commission proposes that these conditions 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: Directive 2003/109/EC only grants, under certain conditions, the right to take up residence in a

second Member States to those who have been granted long-term residency. It does not extend to beneficiaries of international protection. The Commission proposes that this issue remain outside the scope of the amended Directive. As a result, requests for transfer of protection remain governed by the 1951 Geneva Convention and by the European Agreement on transfer of responsibility for refugees concluded in the framework of the Council of Europe.

Respecting the principle of non-refoulement by the second Member State: Since the proposal does not deal with the transfer of responsibility for international protection, the Commission points out that it is important to safeguard respect for the principle of non-refoulement in the second Member States. It is important, therefore, that the authorities of the second Member State are fully aware that a long-term resident applying for residence in the territory of that Member State was granted international protection in another Member States. To this end, the Commission proposes that this information be mentioned on the long-term residence permit.

Readmission of a third country national with long-term resident status:

- for the cases where a long-term resident status has not yet been granted in the second Member State, Article 22 of Directive 2003/109/EC should also be amended so that the removal from the second Member State of long-term residents whose permits contain the remark stating that they are beneficiaries of international protection in another Member State - and who therefore may still have protection needs - is possible only to the first Member State;
- for the case where a long-term resident status was granted in the second Member State, Article 12 should be amended so as to provide that where the authorities of the second Member State consider the adoption of an expulsion measure, they are obliged to consult the authorities of the Member State which granted the protection to the person concerned. If this Member State confirms that the person is still a beneficiary of international protection, expulsion from the second Member State will only be possible to the Member State which originally granted the protection to the person concerned.

However, both cases of readmission should be without prejudice to the provisions of Article 21(2) of Directive 2004/83/EC, regarding the exceptions to the protection from refoulement.

Furthermore, in order to facilitate the necessary information exchange between Member States, Article 25 should be amended accordingly so as to allow the use of the network of national contact points also for that purpose.

On a final point, the United Kingdom, Ireland and Denmark are not bound by Directive 2003/109/EC.