

UNHCR observations on the Commission proposal for a Council Directive concerning the status of third-country nationals who are long-term residents (COM (2001) 127 final)

1. On 13 March 2001, the European Commission issued a proposal for a Council Directive on the status of third-country nationals who are long-term residents. The adoption of such Directive is one of the measures envisaged by the Conclusions of the Tampere European Council for the purpose of establishing an area of freedom, security and justice in the Union, as mandated by Article 63 of the Amsterdam Treaty.

2. The aims of the proposed Directive are:

- (i) to establish common criteria for the granting and withdrawal of long-term resident status to third-country nationals;
- (ii) to set common standards of treatment of long-term residents; and
- (iii) to establish the conditions in which long-term residents may reside in a Member State other than the one where they enjoy long-term resident status.

3. The most salient feature of the Commission's proposal is the recognition to long-term residents of a right to freedom of movement within the Union, comparable to that enjoyed at present by citizens of the Union. According to the proposal, persons who have acquired long-term resident status in one Member State will have the right to reside in the territory of other Member States, for the purpose of exercising an economic activity in an employed or in a self-employed capacity, or in order to pursue studies or vocational training. The exercise of this right is, however, conditional upon the possession by the person concerned of adequate resources –including sickness insurance arrangements– so as not to become a burden on the second Member State.

4. Although the proposed Directive is not, properly speaking, a refugee instrument, refugees may become beneficiaries of the standards of treatment that it provides for, by meeting the qualifying period of residence. UNHCR has, therefore, an interest in this instrument, and welcomes the fact that the proposal contains special provisions dealing with the situation of refugees. In particular, UNHCR appreciates that, under Article 6 of the proposed Directive, refugees are exempt from meeting the qualifying requirements concerning economic means and insurance coverage, and that Article 5 provides that the time that the refugee has spent in the territory of the Member State as an asylum-seeker or as a beneficiary of temporary protection, shall be taken into account for the purpose of calculating the qualifying period of residence.

5. UNHCR has consistently maintained that, since the needs of persons eligible for subsidiary forms of protection are, in many ways, similar to those of refugees, the standards of treatment applicable to these categories of persons in needs of protection should also be similar. UNHCR is, therefore, concerned about the fact that Article 3 of the proposal excludes beneficiaries of a subsidiary form of protection from the scope of the instrument. UNHCR notes, however, that the draft's Explanatory Memorandum states that the reason for this exclusion is that the concept of subsidiary protection is not yet harmonised at Community level, and adds that the Commission believes that such persons, who are legal residents, must have access to long-term

resident status if they fulfil the criteria. UNHCR further notes that Article 22 of the draft Directive on refugee status and subsidiary protection, provides that, notwithstanding Article 3 (2) (b) of Directive on long term residence, Member States shall grant beneficiaries of subsidiary protection long term-residence status on the same terms as those applicable to refugees under that Directive. UNHCR therefore hopes that the exclusion provided for in Article 3 of the draft Directive on long term-residence will be corrected in due course, and that beneficiaries of subsidiary protection will be also covered by that Directive.

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