

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2011/51/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 May 2011

amending Council 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 procedure ⁽¹⁾,

Whereas:

(1) Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents ⁽²⁾ does not apply to beneficiaries of international protection as defined in 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 ⁽³⁾.

(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.

⁽¹⁾ Position of the European Parliament of 14 December 2010 (not yet published in the Official Journal) and decision of the Council of 11 April 2011.

⁽²⁾ OJ L 16, 23.1.2004, p. 44.

⁽³⁾ OJ L 304, 30.9.2004, p. 12.

(3) Long-term resident status for beneficiaries of international protection is also important in promoting economic and social cohesion, which is 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 States other than the one which granted them international protection, it is necessary to ensure that those other Member States are informed of the protection background of the persons concerned to enable them to comply with their obligations regarding the principle of non-refoulement.

(6) Beneficiaries of international protection who are long-term residents should, under certain conditions, enjoy equality of treatment with citizens of the Member State of residence in a wide range of economic and social matters so that long-term resident status constitutes a genuine instrument for the integration of long-term residents into 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 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 who have 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, that person should enjoy the protection against refoulement guaranteed under Directive 2004/83/EC and under Article 33 of the Geneva Convention. For that purpose, where the person enjoys international protection in a Member State other than the one in which that person is currently residing as a long-term resident, it is necessary to provide, unless refoulement is permitted under Directive 2004/83/EC, that that person may be expelled only to the Member State which granted international protection and that that Member State is obliged to readmit that person. 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.
- (11) Where the expulsion of a beneficiary of international protection outside the territory of the Union is permitted under Directive 2004/83/EC, Member States should be obliged to ensure that all information is obtained from relevant sources, including, where appropriate, from the Member State that granted international protection, and that it is thoroughly assessed with a view to guaranteeing that the decision to expel that beneficiary is in accordance 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 recognised by Article 6 of the Treaty on European Union and by the Charter of Fundamental Rights of the European Union, and in particular in Article 7 thereof.
- (13) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽¹⁾, 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.

- (14) In accordance with Articles 1 and 2 of the Protocol (No 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.
- (15) In accordance with Articles 1 and 2 of the Protocol (No 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/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 (*);

(*) OJ L 304, 30.9.2004, p. 12.;

- (2) Article 3 is amended as follows:

(a) in paragraph 2, points (c) and (d) are 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 status;

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

(1) OJ C 321, 31.12.2003, p. 1.

(b) in paragraph 3, 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, the European Convention on the Legal Status of Migrant Workers of 24 November 1977, paragraph 11 of the Schedule to the Convention Relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967, and 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 not grant long-term resident status on the basis of international protection in the event of the revocation of, ending of or refusal to renew international protection as laid down in 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 has been granted, at least half of the period between the date of the lodging of the application for international protection on the basis of which that international protection was granted and the date of the grant of the residence permit referred to in Article 24 of Directive 2004/83/EC, or the whole of that 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 the following remark in that long-term resident’s EU residence permit, under the heading “Remarks”: “International protection granted by [name of the Member State] on [date]”.

5. Where a long-term resident’s EU residence permit is issued by a second Member State to a third-country national who already has a long-term resident’s EU residence permit issued by another Member State which contains the remark referred to in paragraph 4, the second Member State shall enter the same remark in the long-term resident’s EU residence permit.

Before the second Member State enters the remark referred to in paragraph 4, it shall request the Member State

mentioned in that remark to provide information as to whether the long-term resident is still a beneficiary of international protection. The Member State mentioned in the remark shall reply no later than 1 month after receiving the request for information. Where international protection has been withdrawn by a final decision, the second Member State shall not enter that remark.

6. Where, in accordance with the relevant international instruments or national law, responsibility for the international protection of the long-term resident was transferred to the second Member State after the long-term resident’s EU residence permit referred to in paragraph 5 was issued, the second Member State shall amend accordingly the remark referred to in paragraph 4 no later than 3 months after the transfer.’;

(5) in Article 9, the following paragraph is inserted:

‘3a. Member States may withdraw the long-term resident status in the event of the revocation of, ending of or refusal to renew international protection as laid down in 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.’;

(6) 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 shall be without prejudice to Directive 2004/83/EC.’;

(7) 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 that 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 no later than 1 month after receiving the request for information.

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

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

(b) the following paragraph is added:

‘6. This Article shall be without prejudice to Article 21(1) of Directive 2004/83/EC.’;

(8) the following Article is inserted:

‘Article 19a

Amendments of long-term resident’s EU residence permits

1. Where a long-term resident’s EU residence permit contains the remark referred to in Article 8(4), and where, in accordance with the relevant international instruments or national law, responsibility for the international protection of the long-term resident is transferred to a second Member State before that Member State issues the long-term resident’s EU residence permit referred to in Article 8(5), the second Member State shall ask the Member State which has issued the long-term resident’s EU residence permit to amend that remark accordingly.

2. Where a long-term resident is granted international protection in the second Member State before that Member State issued the long-term resident’s EU residence permit referred to in Article 8(5), that Member State shall ask the Member State which has issued the long-term resident’s EU residence permit to amend 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 has issued the long-term resident’s EU residence permit shall issue the amended long-term resident’s EU residence permit no later than 3 months after receiving the request from the second Member State.’;

(9) 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 of this Article shall not apply to

third-country nationals whose long-term resident’s EU residence permit issued by the first Member State contains the remark referred to in Article 8(4) of this Directive.

This paragraph shall be without prejudice to Article 21(1) of Directive 2004/83/EC.’;

(10) in Article 25, the first paragraph is replaced by the following:

‘Member States shall appoint contact points who will be responsible for receiving and transmitting the information and documentation referred to in Articles 8, 12, 19, 19a, 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 20 May 2013. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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 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 Strasbourg, 11 May 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
GYŐRI E.