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PRESIDENCY NOTE

to : Strategic Committee on Immigration, Frontiers and Asylum

on : 28-29 January 2003

No. prev. doc. : 5224/03 ASILE 2

No. Cion prop. : 13620/01 ASILE 52 - COM(2001) 510 final

Subject : Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection

I. INTRODUCTION

1. The above-mentioned proposal was presented by the Commission on 31 October 2001.

At its meeting on 28 November 2002, the Council reached agreement, subject to reservations from one delegation, on these provisions which concern the rules on the recognition of a third country national as a refugee or as a person eligible for subsidiary protection (Articles 1 to 17 and 19).

The other Articles (18 and 20 to 39), which refer to the content of refugee and subsidiary protection status, are now the main subject of discussion under the current Presidency.

2. It is recalled that following the Seville European Council, an agreement concerning this proposal should be reached by the Council before June 2003.

3. Following the JHA Council meeting on 28 November 2002, the Asylum Working Party met on two occasions in order to discuss the provisions referring to the content of refugee and subsidiary protections status. These meetings took place on 12 December 2002 and 9 and 10 January 2003. The outcome of these proceedings can be found in 5224/03 ASILE 2.

Taking into account the results of the Asylum Working Party discussions, the Presidency considers that the Strategic Committee should discuss outstanding issues concerning rules for maintaining family unity (Article 21A) and access to employment (Article 24).

II. MAINTAINING FAMILY UNITY (Article 21A)

The purpose of Article 21A is to enable family members who do not individually qualify for refugee or subsidiary protection status to stay with the qualifying beneficiary of the status in the Member State which granted it.

The Presidency is of the view that the political agreement reached on the rules relating to the qualification for refugee and subsidiary protection status is a result of very delicate and careful negotiations. These rules, whilst fully respecting international obligations, provide for a high level of requirements. It is furthermore the view of the Presidency that those who fulfil these requirements should be offered a high level of protection. It is also the view of the Presidency that Member States should not be obliged to give refugee or subsidiary protection status to those individuals who do not qualify for such status by themselves, only on the basis of their close family ties with the qualifying beneficiary. However, taking into account the minimum standards character of this Directive, those Member States wishing to do so, should be allowed to give refugee or subsidiary protection status to the family members

In this context, it is fundamental to ensure that family unity is maintained, and that the family member of the qualifying beneficiary, as defined in Article 2(j), is granted the rights as set out in Chapter VII of the draft Directive. The Articles in that Chapter specify, where appropriate, a differentiated level for refugees and persons eligible for subsidiary protection. In the proposed approach, family members would be granted the same level of rights that the qualifying beneficiary is entitled to.

Following these considerations, the Presidency suggests the following wording for Article 21A¹:

Article 21A

Maintaining family unity

1. Member States shall ensure that family members of the same nationality as the beneficiary of refugee or subsidiary protection status and who do not individually qualify for such status, are entitled to **the benefits referred to in this Chapter**.
2. The rule laid down in paragraph 1 is not applicable where the family member is excluded from refugee or subsidiary protection status pursuant to Chapters III and IV.
3. Member States may decide that paragraph 1 also applies to other close relatives who lived together as part of the family at the time of leaving the country of origin, and who were wholly or mainly dependent on the beneficiary of refugee or subsidiary protection status at that time.

¹ Changes to 5224/03 ASILE 2 are in bold.

III. ACCESS TO EMPLOYMENT (Article 24)

Previous discussions within the Council's framework on similar provisions, regarding other legislative acts in the asylum field, have proved that access to employment is a sensitive political issue which requires careful consideration.

Discussions in the Asylum Working Party have shown that access to employment for refugees is uncontested. However, divergences between delegations persist concerning such access for beneficiaries of subsidiary protection status. The concept of a Community subsidiary protection regime has only been defined during this legislative process. In a number of Member States, a national subsidiary protection regime already exists, whereas in others, the concept, as such, has not been (fully) developed. Therefore, these Member States are not familiar with the legal status, nor the envisaged size of the group of persons concerned, nor to what extent the setting up of subsidiary protection regime at EU level would affect the situation within their labour market.

These Member States would therefore like to maintain discretion for regulating access to employment for beneficiaries of subsidiary protection status. Other delegations, however, would like to ensure that the Directive provides for similar conditions for both refugee and subsidiary protection status. The same two approaches apply in relation to vocational training and other employment-related activities.

Taking the above into consideration, the Presidency considers that a balanced approach, trying to marry both views, consists of the following : to set out clearly, as the basic rule, that beneficiaries of subsidiary protection status are to be allowed immediate access to employment. However, Member States would also be allowed to provide for exceptions concerning such access. The exceptions would, nevertheless, be limited to reasons of labour market policies. This approach should accommodate those Member States who do not want to make a distinction between refugees and subsidiary protection beneficiaries and who want to be allowed to grant access from day one after subsidiary protection has been granted, for instance for reasons of facilitating integration into society. On the other hand, it should also accommodate the concerns of those Member States who, for labour market reasons, require the necessary flexibility.

Following these considerations, the Presidency proposes the following provision¹:

Article 24

Access to employment

1. Member States shall authorise beneficiaries of refugee status to engage in employed or self-employed activities under equivalent conditions as nationals, immediately after the refugee status has been granted.
2. Member States shall ensure that activities such as employment-related education opportunities for adults, vocational training and practical workplace experience are offered to beneficiaries of refugee status, under equivalent conditions as nationals.
3. Member States shall [...] authorise beneficiaries of subsidiary protection status to engage in employed or self-employed activities under equivalent conditions as nationals immediately after the subsidiary protection status has been granted.
4. **Member States may provide for an exception to the rule set out in paragraph 3 for reasons of labour market policies.**
5. Member States shall ensure that beneficiaries of subsidiary protection status [...] have access to activities such as employment-related education opportunities for adults, vocational training and practical workplace experience, under **conditions to be decided by the Member States.**
6. The general law in force in the Member States applicable to remuneration, access to social security systems relating to employed or self-employed activities and other conditions of employment shall apply.

¹ Changes to 5224/03 ASILE 2 are in bold.