



Council of the
European Union

Brussels, 18 January 2019
(OR. en)

5456/19

LIMITE

ASILE 5
CODEC 128

**Interinstitutional File:
2016/0223(COD)**

NOTE

From:	Presidency
To:	Permanent Representatives Committee
Subject:	Proposal for a Regulation of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (First reading) - State of play and guidance for further work

1. On 13 July 2016, in the framework of the reform of the Common European Asylum System (CEAS), the Commission submitted a proposal for a Regulation on standards for the qualification on third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted (Qualification Regulation)¹. The aim of the proposal is to harmonise the criteria for granting international protection, on the one hand, and the rights and benefits granted to beneficiaries of international protection, on the other.

¹ 11316/16

2. The detailed examination of the proposal by Member States started at the Asylum Working Party meeting on 28 October 2016. On 19 July 2017, COREPER agreed upon a mandate for negotiations with the European Parliament². Subsequently, the mandate was extended twice: once on 29 November 2017³ when agreement was found on the definition of family members and once on 28 February 2018⁴ when COREPER agreed on the content of Annex II, which contains the information that needs to be given to beneficiaries of international protection under Article 24.
3. Negotiations with the European Parliament started in September 2017 and, under the Estonian and Bulgarian Presidencies, 8 trilogues took place. In preparation of these, numerous meetings of JHA Counsellors as well as technical meetings between the co-legislators were convened.
4. The text of the provisional agreement⁵ with the European Parliament was presented to COREPER on 19 June 2018 for approval but did not obtain sufficient approval from Member States. Certain Member States expressed concerns regarding the substance of the text that had been negotiated with the European Parliament.
5. In this context, on 5 and 6 July 2018, the Austrian Presidency convened bilateral meetings with these Member States with the view of identifying those provisions that would still need to be modified in order for the text of the provisional agreement to gain the necessary support.

² 10475/17

³ 14731/17

⁴ 6303/18

⁵ 10010/18 + ADD 1

6. Following these bilateral meetings, the Austrian Presidency identified a limited number of provisions that require further changes. These changes are set out in the Annex to this note. In view of the European Parliament position, in addition to the modified Articles, the Presidency also suggests a new recital and a modification to be introduced in Annex II to the proposed Regulation. The changes cover the following aspects:

7. - *Exclusion grounds for beneficiaries of subsidiary protection:*

In order to cater for the concerns expressed by a number of Member States, the Presidency suggests the deletion of the text added in Article 18(1)(b) and reverting back to the text of the *acquis*/original Commission proposal/Council mandate.

8. - *Residence permits:*

The changes proposed in Article 26 (1a), (1b) and (2) aim at clarifying that only the first residence permit has to be issued free of charge or for a fee not exceeding the fee required of a national of the Member State concerned for the issuing of identity card. For the subsequent residence permits, Member States would enjoy discretion as to the amount of such fees. Finally, this set of suggested changes aim at clarifying that the validity of residence permits is to be set out in national law, taking into account the limits set by the Qualification Regulation, and that the residence permits for beneficiaries of subsidiary protection can be renewed for longer than 2 years ("at least"). This will clarify that Member States which grant the same duration for the two statuses will have the possibility to do so also upon renewal.

The changes proposed in Article 26 (2a) and (2b) aim at allowing Member States to revoke or not renew the residence permit, without withdrawing the status, where compelling reasons of national security or public order related to the person concerned so require.

9. - *Freedom of movement within the Member State:*

In Article 28(1), the Presidency suggests to delete the reference to the right of a beneficiary of international protection to choose the place of residence in order to cater for the concerns raised by the deletion of Article 28(2), which stated explicitly that Member States could impose residence conditions under certain circumstances. The new text would thus reflect the current *acquis*.

10. These limited changes received wide support at the meeting of JHA Counsellors on 16 July 2018 and were also presented to the European Parliament both at technical and political level. At the meetings on 17 July and 26 September 2018, the Parliament informed the Presidency that, in principle, in view of the provisional agreement reached in the June trilogue meeting, it stands by the agreement reached therein and does not intend to continue the negotiations for the time being.
11. Following the discussion in Coreper on 21 November 2018 it was concluded that further work at technical level could enhance the support for the document. Following bilateral contacts, the Presidency has come to conclusion that the above list of the changes should not be modified further.
12. Changes compared to the previous version of the text, as set-out in 10010/18 ADD 1, are indicated as follows:
 - deleted text is marked in ~~striketrough~~;
 - new text is marked in **bold and underline**.
13. Given the European Parliament's reluctance to reopen negotiations following the provisional agreement, changes thereto should be kept to an absolute minimum.

14. Guidance for further work is without prejudice to the CEAS package approach. The Presidency requests the support of the Member States to continue negotiating with the European Parliament and will revert to COREPER with the results before any new provisional agreement might be concluded.
 15. Against this background, and with a view to possible upcoming discussions with the European Parliament, COREPER is invited to confirm **whether it can support the changes set out in the Annex to this note, merely in order to continue discussions with the European Parliament.**
-

Proposal for a

Regulation of the European Parliament and of the Council

on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted and amending Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (First reading)

...

New proposed recital (49a) on the basis of EP Amendment 45:

(49a) In light of the fact that integration is a two-way process, respect for the values upon which the Union is founded and respect for the fundamental rights of the beneficiaries of international protection should be an integral part of the integration process. Integration should promote inclusion, rather than isolation, and the participation of all actors involved is crucial for its success. Member States, acting at national, regional and local level, should offer beneficiaries of international protection support and opportunities to integrate and build a life in their new society.

Annex II:

Information on rights and obligations related to residence and stay

(a) Right to a residence permit for beneficiaries of international protection (Article 26)

- How and where to apply for a residence permit and information on the competent authority or a relevant contact point
- **If applicable, where the residence permit is not issued within 15 days after international protection has been granted, how and where the effective access to the rights mentioned in Art. 22 (3a) are granted.**

Article 18

Exclusion

1. A third-country national or a stateless person shall be excluded from being eligible for subsidiary protection where there are serious reasons for considering that:
 - (a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

- (b) he or she has committed a serious crime ~~prior to his or her arrival on the territory of the Member State or has been convicted for a serious crime after arrival;~~
- (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;
- (d) he or she constitutes a danger to the community or to [...] national security [...];
- (e) [...]

2. [...]Paragraph 1 shall apply to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

2a. **A third-country national or a stateless person may be excluded from being eligible for subsidiary protection if he or she, prior to his or her admission to the Member State concerned, has committed one or more crimes outside the scope of points (a), (b) and (c) of paragraph 1 which would be punishable by imprisonment if they had been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from those crimes.**

- 2b. Once the determining authority has established, based on an assessment of the seriousness of the acts committed by the person concerned and of that person's individual responsibility, taking into account all the circumstances surrounding those crimes or acts and the situation of that person, that one or more of the relevant exclusion grounds laid down in paragraphs (1) and (2) are applicable, the determining authority shall exclude the applicant from subsidiary protection status without performing a proportionality assessment linked to the fear of serious harm.
- 2c. As part of the assessment referred to in paragraph (2b), when carrying out an examination under paragraphs (1) and (2) in relation to a minor, the determining authority shall take into account, inter alia, his or her capacity to be considered responsible under criminal law had he or she committed the crime on the territory of the Member State examining the application in accordance with national law on the age of criminal responsibility, or, where applicable, a conviction for a serious crime after his or her arrival.

Section II

Rights and obligations related to residence and stay

Article 26

Residence permits

1. [...] Beneficiaries of international protection shall have the right to a residence permit for as long as they hold the refugee or the subsidiary protection status.
- 1a. ~~A~~ The residence permit shall be issued as soon as possible after international protection has been granted, and at the latest 90 days from the notification of the decision using the uniform format as laid down in Regulation (EC) no 1030/2002.

~~1b.~~ **A The residence permit shall be issued free of charge or for a fee not exceeding the fee required of nationals of the Member State concerned for the issuing of identity cards.**

2. [...] **A The residence permit shall have an initial validity period of at least 3 years for refugees and at least 1 year for subsidiary protection beneficiaries, as provided by national law.**

Residence permits shall be renewed on expiry for at least 3 years for refugees and at least 2 years for beneficiaries of subsidiary protection.

Renewal shall be organised in such a way as to ensure continuity of the period of permitted residence, with no interruption between the period covered by the lapsing and the renewed permit, provided that the beneficiary of international protection acts in accordance with relevant national law setting out the administrative formalities for renewal.

2a. **A residence permit ~~may only~~ shall be revoked or not renewed where the competent authorities withdraw the refugee status in accordance with Article 14 or the subsidiary protection in accordance with Article 20.**

2b. Without prejudice to paragraph 1, Member States may revoke or not renew the residence permit where compelling reasons of national security or public order related to the person concerned so require.

3. [...]

Article 28

Freedom of movement within the Member State

1. Beneficiaries of international protection shall enjoy freedom of movement within the territory of the Member State that granted international protection, ~~including the right to choose their place of residence in that territory~~, under the same conditions and restrictions as those provided for other third-country nationals legally resident in their territories who are [...] **generally in the same circumstances**
 2. [...]
-