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NOTE

From: Presidency

To: Strategic Committee on Immigration, Frontiers and Asylum

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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

- Period of Validity of Residence Permits issued to Refugees and Beneficiaries of Subsidiary Protection

Background

The proposal for a Regulation submitted by the Commission on 13 June 2016¹ set out that residence permits issued to beneficiaries of refugee status and beneficiaries of subsidiary protection status were to be governed by the following validity rules:

- a) For beneficiaries of refugee status, the residence permit shall have a period of validity of three years and be renewable thereafter for periods of three years;
- b) For beneficiaries of subsidiary protection status, the residence permit shall have a period of validity of one year and be renewable thereafter for periods of two years.

¹ Doc. 11316/16.

However, this proposal was opposed by a number of Member States that currently issue residence permits having the same validity period to either category of beneficiaries of international protection, or that provide for a more favourable arrangement in respect of beneficiaries of refugee status (e.g. validity period of 5 or 10 years).

In order to ensure further harmonisation, limit secondary movements, and reduce financial costs and administrative burdens, in the first compromise text issued by the Presidency, the validity period of residence permits was harmonised to three years for all beneficiaries of international protection. While such a change was welcomed by a number of Member States, it was opposed by others.

The Presidency subsequently distributed a questionnaire to Asylum Working Party delegations, with a view to identifying a way forward in relation to this issue. Following this mapping exercise, the Presidency proposed the following compromise:

- a) residence permits issued to refugees were to have a validity period of between three and five years; and,
- b) residence permits issued to beneficiaries of subsidiary protection were to have a validity period of between one and three years.

Although a number of Member States expressed support for this compromise proposal, others had difficulties with this arrangement. Some Member States consider that the harmonisation should entail the same duration of the validity permit for refugees and beneficiaries of subsidiary protection. On the other hand, others even consider that the best way to limit secondary movements would be to have the same validity period in all Member States (full harmonisation). An alternative way forward is therefore still required.

Two Options for a Way Forward

Option 1

The objective of the original Commission proposal was twofold, i.e. the harmonisation of the content of the protection granted, in particular an approximation of the benefits of refugees and beneficiaries of subsidiary protection, as well as the harmonisation of procedures across Member States. In view of the fact that the Regulation is intended to harmonise procedures in the Member States, a compromise solution favouring harmonisation - as opposed to the setting of a minimum standard - is deemed preferable. However, any such solution has to take into account existing realities within the Member States. It also has to take into account the realities faced by refugees and persons eligible for subsidiary protection.

It should be evident that situations giving rise to refugee status, or even to subsidiary protection status, are rarely such as to call for the withdrawal of status after a short period of time. Situations of conflict tend to be long drawn out and even once conflict has ceased, the situation in the country or territory in question would not necessarily allow for the immediate repatriation of beneficiaries of international protection. In the light of these considerations, a short term of validity for a residence permit would simply result in the imposition of unnecessary administrative burdens on Member State authorities, coupled with extra administrative costs.

In the light of these considerations, coupled with the feedback received from the Member States so far, it is hereby being proposed that:

- a) residence permits issued to refugees would have a period of validity of between 5 and 10 years; and,
- b) residence permits issued to beneficiaries of subsidiary protection would have a period of validity of between 1 and 5 years.

Considering the added benefits of having a harmonised validity period (including a reduction in administrative costs and the number of appeals lodged), wherever possible, a Member State should opt for a 5 year term of validity for both categories. However, a Member State that already provides for a longer term of validity for beneficiaries of refugee status would be able to retain such a term of validity. This principle would be laid down in a recital.

Option 2

The second option would entail the retention of the minimum standard principle, whereby Member States would be required to issue residence permits with a minimum period of validity of 3 years for refugees and 1 year for beneficiaries of subsidiary protection.

Such an arrangement would effectively mean the retention of the status quo insofar as this specific issue is concerned, i.e. Member States would not need to change their current legislation, but this would not contribute to the aimed harmonisation either.

Member States are invited to indicate their preferred option.