

4 November 2016

## Decision of the Bundesrat

### **Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)**

**COM(2016) 465 final; Bundesrat doc. 11318/16**

At its 950th session, on 4 November 2016, the Bundesrat adopted the following opinion in accordance with Sections 3 and 5 of the Act on Cooperation between the Federation and the Länder in European Union Affairs (EUZBLG):

1. The Bundesrat welcomes the aims of the proposal for a Directive, which are to further harmonise reception conditions in the EU, to reduce incentives for secondary migration and to improve the independence and integration prospects of applicants. Reservations remain regarding individual provisions of the proposal.
2. Article 2(10) introduces for the first time the concept of ‘absconding’. The Commission intends this legally defined concept to cover action by which an applicant, in order to avoid asylum procedures, either leaves the territory where he or she is obliged to be present in accordance with the Dublin Regulation as recast (Bundesrat Document 390/16) or does not remain available to the competent authorities or to the court or tribunal. In the English language version of the proposal for a Directive such behaviour on the part of an applicant is defined as ‘absconding’, which can mean ‘removing himself or herself from the procedure’ or ‘running away’. The Bundesrat considers the choice of the German term ‘Flucht’ (‘flight’/‘escape’) to be inappropriate, as this term is usually understood to mean flight from the country of origin to escape persecution.

3. Article 2(11) of the proposal for a Directive introduces the concept of ‘risk of absconding’. The Commission intends this concept, likewise legally defined, to cover the existence of reasons in an individual case, which are based on objective criteria defined by national law, to believe that an applicant may abscond. This is rendered in German by ‘Fluchtgefahr’. In this instance, too, the Bundesrat considers the choice of another term in the German version of the proposal for a Directive to be indicated in order to emphasise clearly that the situation described in Article 2(11) is intended to refer to the existence of circumstances giving rise to the risk that an applicant will ‘remove himself or herself from the procedure’ or ‘run away’.
4. In connection with the obligation imposed on the Member States by Article 7(2) and (7) of the proposal for a Directive to take a decision in each individual case, the Bundesrat requests clarification of the fact that, for ensuring that the applicant can be reached for the purposes of the procedure and determining the residence and accommodation of an applicant, national legal obligations on the Member States aimed at the effective processing of applications and the equal distribution of applicants within the Member State will also be sufficient.
5. The Bundesrat emphasises the need to amend Article 7(5) of the proposal for a Directive so as to require the applicant always to inform the authorities of his or her place of residence and address (not merely a telephone number) to ensure that, in the judicial proceedings, a summons can be duly served and the court’s decision notified.
6. It welcomes the fact that the Commission’s proposal for a Directive takes account of the best interests and wellbeing of minors as a matter of principle. It points out in this connection that the same principle must also apply in respect of the provisions on the detention of unaccompanied minors (Article 11 of the proposal for a Directive). The Bundesrat considers the detention of unaccompanied minors, which is based on the ‘Reception Directive’, to be permissible only on grounds of national security or a significant threat to public order.
7. The Bundesrat is opposed to the imposition of a strict deadline in Article 23(1) of the proposal for a Directive. It is not possible to conduct a judicial procedure to appoint a representative, with appropriate procedural safeguards (hearing, interpreter, etc.) and necessary investigations - for example, to ascertain whether the applicant is a minor, and also to establish whether the persons having custody are in fact prevented from exercising parental

responsibility, so that the suspension of parental custody can be determined (Section 1674 of the German Civil Code) - within this deadline. This is particularly true if the time starts to run as soon as an application for international protection within the meaning of Article 25(1) of the proposal for a Regulation establishing a common procedure for international protection in the Union (Bundesrat Document 503/16) is made to one of the authorities referred to there or in Article 5(3) or (4) of the same proposal. At that point it is often unclear whether the applicant is a minor and it has not always been possible for the youth welfare department to be brought in and for it to make the necessary assessments. Until it has been established whether the minor can be reunited with relatives and where he or she will stay for the remainder of the procedure, it is not even possible to select a local person to act as a permanent contact. A strict deadline for taking a decision would also conflict with the independence of the courts (Article 47, second sentence of the Charter of Fundamental Rights of the European Union; Article 97(1) of the German Basic Law) and potentially also with parental rights protected under constitutional law.

8. The Bundesrat calls for guarantees that, for a transitional period pending the appointment of a representative by the courts, any appropriate form of representation provided for by the Member State, able to protect the best interests of the child and with the force of law, will also be sufficient for the purposes of this Directive.
9. It is also opposed to the provision in Article 23(1) of the proposal for a Directive, taken over from the previous 'Reception Directive', whereby the person acting as representative may be changed 'only when necessary'. This wording is felt to be too restrictive. For example, it might also be necessary to select another local representative if the minor's place of residence changes.
10. The Bundesrat is sending this position statement directly to the Commission.