

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

COM(2016) 466 final

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

1. The Bundesrat is opposed to having any strict deadlines in Article 36(1) of the proposal for a Regulation. There is already uncertainty here because, on the one hand, the time limit starts to run as soon as international protection is granted while, on the other hand, reference is made to Article 22(1) of the proposal for a Regulation establishing a common procedure for international protection in the Union (Bundesrat Document 503/16), which states that the time limit of five working days starts as soon as an application is made within the meaning of Article 25 of this proposal. In any case, 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. 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 parental rights that are protected under constitutional law.

2. Article 36(2), second sentence of the proposal for a Regulation provides for regular assessment of the representative's performance by the appropriate authorities. In Germany, the family courts are responsible for monitoring representatives. However, there are no arrangements for performance assessments by the authorities. This also serves to ensure that representatives can act independently and in the interests of the child. The Bundesrat therefore considers it necessary to clarify that the Member States are not obliged to arrange for the courts or the authorities to carry out such performance assessments.
3. The Bundesrat is sending this position statement directly to the Commission.