



PARLIAMENT OF ROMANIA

CHAMBER OF DEPUTIES

DECISION

adopting the opinion on the

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

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

Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU – COM(2016)467 and

Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council

Under Articles 67 and 148 of the Constitution of Romania (republished), under Law No. 373/2013 on the cooperation between the Parliament and the Government in the field of European affairs and under Articles 160 to 185 of the Rules of procedure of the Chamber of Deputies (republished),

the Chamber of Deputies hereby decides:

Sole article. – Having regard to Opinion No. 4 c-19/1096 adopted by the Committee on European Affairs at the meeting of 27 September 2016, the Chamber of Deputies:

makes the following general observations:

1. Takes note of the objective of the proposals, that is to improve the convergence between the provisions of the Common European Asylum System (CEAS) with a view to increased harmonisation.

2. Considers, however, that such an increased harmonisation, which includes promoting regulations intended to replace directives that are currently in force, should be subject to a careful analysis of the outcome of the implementation of EU rules in force in the Member States and of the expected impact of the European Commission's proposals; it should also take into account as much as possible the differences between the public orders of the Member States.

3. Finds that the above-mentioned proposals for regulations exclude provisions that are currently part of directives in force under CEAS (Article 5 of Directive 2013/32 and Article 3 of Directive 2011/95, respectively) which set out the technique of minimum harmonisation, and favour increased harmonisation instead.

4. Remarks the absence of thorough impact assessments of the proposals and of the manner in which the legal framework currently in force is applied; regrets at the same time the absence of a detailed assessment of the financial and administrative burden that is to be borne by the Member States, since the explanatory statements accompanying the proposals only state that each of them "does not impose any financial or administrative burden on the Union" and "has no impact on the Union budget".

5. Expresses reservations on statements issued by the European Commission in the context of the current proposals, which advocate for increased convergence of the national asylum systems, but were not preceded by a thorough assessment of the current state of play, in the sense that there are significant differences between Member States regarding the recognition rates and the types of protection status, differences which would require turning to regulations and to the technique of exhaustive harmonisation. Otherwise, it remarks that the phenomenon of secondary movements of the applicants for international protection and of the beneficiaries of international protection from one Member State to another does not seem to be caused, as the European Commission claims, mainly by the differences between national legal regimes, but mainly by the economic and social disparities between Member States and the deficiencies caused by the defective application of SECA rules in certain Member States. Refers, in this respect, to the recitals mentioned in its Decision of 22/06/2016 on the Commission's Communication – Towards a reform of the common European asylum system and enhancing legal avenues to Europe – COM(2016)197.

6. From the perspective of fundamental rights protection, it reminds the pre-eminent role of the case law of the Court of Justice of the European Union, which led to the interpretation of a series of European Union directives under CEAS in accordance with the Charter of Fundamental Rights of the European Union and the system of the European Convention of Human Rights.

7. Welcomes the intention to reach a balance between ensuring the protection of vulnerable persons, i.e. applicants for international protection, and countering potential abuses. As previously shown by the Chamber of Deputies, e.g. in its Decision of 21/10/2010 on the EU Action Plan on return – COM(2015)453, countering abuse, which requires, inter alia, a viable policy on return, is an effective way of fighting populist and xenophobic tendencies manifest in some European societies.

8. Supports the proposed provisions relating to special needs applicants. Welcomes the promotion of the child's best interest and reminds its previously expressed opinions regarding the vulnerability level of unaccompanied minors. Supports the intention to include the gender dimension in the proposals, in the sense of ensuring real equality between female and male applicants for international protection in the course of the examination procedures.

9. Takes note of the system of provisions promoted by means of these proposals with a view to deterring the applicants for international protection from secondary movements between Member States, but expresses reservations on the EU's capacity to fully implement such decisions.

10. States that it is necessary to ensure full consistency between the various legislative acts that were adopted recently and are to be adopted in the fields of the right to asylum, subsidiary protection and temporary protection, particularly in order to insure the viability of CEAS and to avoid situations such as in the recent past, which could cause CEAS to collapse.

Regarding the Proposal for a Regulation establishing a common asylum procedure – COM(2016)467

11. Notes the intention to move, by means of the future regulation, from "common procedures for granting and withdrawing international protection", as set out by Directive 2013/32, to a "common procedure for international protection".

12. Expresses reservations on the intention to streamline, by means of the future common procedure, the time-limits for an individual to accede to the procedure, for the examination of the application by the determining authority, as well as for the examination of first appeals by judicial authorities; considers that it is adequate to maintain the time limits currently set out in Directive 2013/32 and, for the new time limits proposed (for instance, in first appeals), to use a reference to a "reasonable time limit, given that a solution such as the one foreseen could cause CEAS dysfunctions generating serious consequences, not only in the event of a disproportionate number of applications being lodged simultaneously.

13. As for the role that the new EU Agency for asylum is to play in assisting the authorities in the Member States, especially when those states face significant migration pressure, refers to the considerations included in its Decision of 27/09/2016 regarding the Proposal for a Regulation on the European Union Agency for Asylum – COM(2016)271.

14. Regarding the designation of third countries as safe countries of origin, the Chamber of Deputies supports the creation of such a list at EU level as an essential tool contributing to the rapid processing of applications, and the temporary coexistence of this European mechanism with national lists; it refers in this respect to the recitals in its Decision of 21/10/2015 regarding the Proposal for a Regulation establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU – COM(2015)452.

15. Supports the proposal to make the possibility to lodge an application conditional on the applicant's cooperation in providing the information necessary for the

examination of his/her application or his/her fingerprints and facial image [Article 7(3)] and reminds its previously expressed opinions. Supports, at the same time, in accordance with the framework currently in force (Article 14 of Directive 2011/95) and with the new proposals (Article 14 of the Proposal for a Regulation on standards for the qualification as beneficiary of international protection), the introduction of procedural sanctions for the applicants that mislead the authorities on their identity or nationality by presenting false information or documents or by withholding relevant information or documents that could prompt a negative decision.

16. Takes note of the evolution from the free provision of legal and procedural information in first instance proceedings (according to Article 19 of Directive 2011/32) to the planned extension of free legal assistance and representation to all the stages of the proceedings, including in administrative proceedings. Although it is certainly crucial for the applicants to be able to fully exercise their procedural rights, especially for those in financial difficulty, Member States should be offered enough flexibility in order to be able to preserve their procedural autonomy and to avoid placing them under an excessive financial burden, which could block the functioning of CEAS.

17. Remarks the extension of the framework of special safeguards granted to unaccompanied minors, especially by establishing detailed provisions on designating a guardian for each of them.

Takes note of the intention to establish the recognition among Member States of another Member State's decisions on ascertaining the age of unaccompanied minors by means of a medical examination based on methods provided by national law.

18. Requests clarifications on the new provision included in Article 42(1) of the proposal, according to which, following the rejection of a previous application by final decision, the Member State responsible considers that any new application lodged by the same applicant in any Member State is a subsequent application. This provision may encourage applicants to lodge new applications in other Member States, without presenting new elements or data and thus favours procedure abuse.

Regarding the Proposal for a Directive laying down standards for the reception of applicants – COM(2016)465

19. Notes the system of newly introduced provisions intended to limit and sanction secondary movements in Member States, accompanied by related, more restrictive provisions on the obligations imposed on the Member State concerned and on the applicants for international protection; it also expresses reservations about the usefulness and effectiveness of the system, including in terms of the resources that may be involved in relation to the purpose intended. For instance, it is not clear how the system for returning to the original Member State a person moving illegally to another Member State would be effective.

20. Notes the replacement within CEAS, in accordance with the case law of the Court of Justice of the European Union, of the measure of placing applicants for international protection in detention with the measure of placing them into public custody, as well as the strengthening of the procedural safeguards offered to such persons, ensuring at the same time a fair balance with the requirements relating to the protection of national security or public order.

21. Considers that the need to extend the definition of family members for the purposes of this proposal for a directive and of the proposal for a regulation on standards for the qualification as beneficiaries of international protection should be justified more thoroughly by the European Commission from the perspective of the objective mentioned, namely to deter applicants from secondary movements; it considers that there would be a disparity between the rule and the objective pursued by the rule.

22. Expresses reservations about the argument regarding the further harmonisation of the conditions for applicants' access to the labour market of the relevant Member State and considers that the intention to reduce the deadline for access to the labour market to three months from the date the application is lodged is unrealistic. Supports, moreover, the idea that Member States should keep their prerogatives of establishing in their national law the conditions for granting access to the labour market, as provided for in Article 15(2) of Directive 2013/33.

23. Expresses reservations as to the intention 'to further clarify' the nature of material reception conditions, given the significant discrepancies in social and economic conditions that still persist in the European Union, and considers that these conditions should be established by each Member State, according to its own resources.

Regarding the Proposal for a Regulation on standards for the qualification as beneficiaries of international protection – COM(2016)466

24. Considers that it is necessary to maintain in the future EU legislative act, as in Article 1 of Directive 2011/95, the definition provided in the Geneva Convention, given the fundamental international significance of the Convention in the field of refugee status, as well as the obligation of the European Union and of the Member States to comply with it.

25. Notes that the new regulatory system regarding protection in the country of origin, which is significantly more harmonised than in Directive 2011/95, will mention explicitly that the burden of proof regarding the protection existing in that country lies with the determining authority in that Member State, and also the fact that the applicant does not have the obligation to prove that, before applying for international protection, he/she has exhausted all possibilities to obtain protection in his/her country of origin, as well as suggestive criteria for the assessment by the determining authority of the general situation prevailing in the country of origin and of the applicant's personal situation.

26. Expresses reservations as to the inclusion in the criteria for assessing the reasons for persecution (Article 10(3)) of the provision that, in assessing whether the applicant's fear of persecution is well-founded, the determining authority cannot reasonably expect an applicant to behave discreetly or abstain from certain practices, where such behaviour or practices are inherent to his or her identity, in order to avoid the risk of persecution in his or her country of origin, since this could enhance migration pressures.

27. Welcomes the explicit mention in Article 12(5) of the fact that acts, including terrorist acts, committed with a purportedly political objective are classified as serious non-political crimes.

28. Appreciates as adequate the setting of a deadline starting from the adoption of the decision revoking, ending or refusing to renew the refugee status or the subsidiary protection entitlement status, before which the third country national or the

stateless person may apply for the right to long-stay residence in the Member State from different reasons.

29. Requests clarifications regarding the justification of potential situations in which it would be mandatory to review periodically the situation of the beneficiaries of international protection, according to the provisions in Articles 15 and 21.

30. As to the reasons for exclusion from granting subsidiary protection, it considers that Member States should maintain their current prerogative, according to Article 17(3) of Directive 2011/95, allowing them to exclude from subsidiary protection a third country national or a stateless person who, before entering that Member State, committed one or more crimes, other than the ones that currently preclude him/her from receiving subsidiary protection, and who left his/her country of origin only in order to avoid the sanctions resulting from those crimes.

31. Welcomes the clarification that benefits relating to labour market access and to social security are only granted when a resident permit has been issued [Article 22(3)].

32. Remarks the existence of an inherent tension between the potential future prerogative of the European Commission to adopt implementing acts establishing the form and content of information regarding the rights and obligations of international protection beneficiaries, and the diversity of economic and social conditions in Member States, reflected also in the present proposal for a regulation.

33. Takes note of the new provisions introduced in Articles 28(2) and 34(1), stipulating, on the one hand, that an international protection beneficiary enjoying certain social security or social assistance benefits can be made subject to long-stay residence conditions only if they are necessary to facilitate his/her integration in the Member State providing those benefits and, on the other hand, that it will be possible to make access to certain social assistance benefits provided for by national law conditional on that person's actual participation in integration actions.

34. Approves the introduction in Article 29 of new provisions meant to establish explicitly a restriction regarding the long-stay residence right in Member States other than the one that granted protection to the respective beneficiaries.

Remarks the penalty applied to an international protection beneficiary identified in a Member State other than the one that granted him/her that protection with no right of residence or with long stay right, namely the recalculation from 0 of the 5 year period for acquiring the resident status in the host state, under Directive 2003/109.

35. Requests clarifications regarding the extension of the right of access to the labour market, referred to in Article 30 of the proposal, for international protection beneficiaries. Expresses doubts concerning the effects in practice of providing for equal treatment of the international protection beneficiaries and to that Member State's nationals in terms of access to the evaluation, validation and accreditation of studies and of previous work experience [Article 32(3)], given that international protection applicants may not have documents and titles certifying such studies and experience; on this issue, the Chamber of Deputies reiterates in fact its previously expressed opinions.

36. Welcomes the new provision in Article 37(2) allowing Member States to disperse beneficiaries of international protection on their national territory, guaranteeing equal opportunities regarding access to accommodation, given that such a rule, if followed consistently, could reduce the risk of social exclusion.

37. Remarks that the measures for the integration of international protection beneficiaries into the society of the host Member State (Article 38) are defined for illustrative purposes, namely language courses, civic orientation and integration programs and vocational training, which take into account their specific needs, and believes that it is useful to introduce an explicit provision regarding the Member States' prerogatives of imposing the obligation to participate in such integration actions.

Regarding the Proposal for a Regulation establishing a Union Resettlement Framework – COM(2016)468

38. Takes note of the objective of the proposal, namely establishing a Union relocation framework, with common procedures for the admission of third country nationals or stateless persons in need of international protection from a selected third country, to which or in which they were displaced, on the territory of the Member States, in order to grant them international protection.

39. Regrets the lack of an impact assessment of the initiatives adopted at European level which could have accompanied this legislative initiative, given also that the present proposal for a regulation will be the first legally binding Union legislative act including procedural rules in this field.

40. Believes that the Union resettlement framework should maintain its voluntary nature and reiterates its opposition to the corrective distribution mechanism provided for in the Proposal for a Regulation on the reform of the Dublin Regulation - COM(2016)270, in the sense that a direct connection is created between the resettlement system and the system of corrective distribution of international protection applicants.

41. Welcomes the explicit listing of relevant elements for establishing the regions or third countries from which resettlement is to be made, whose criteria express a position consistent with the synergy currently pursued between UE external action and its internal policy, as mentioned by the Chamber of Deputies in its Decision of 21/10/2015 regarding the Joint Communication – Addressing the Refugee Crisis in Europe: The Role of EU External Action - JOIN(2015)40.

42. Appreciates the consistency of the eligibility criteria for third country nationals or stateless persons, since they take into account legitimate concerns held by the Member States regarding the protection of national security or public order; security checks should be carried out for the same purpose.

43. Takes note of the fact that resettlement has been made conditional on the consent of the third country nationals or stateless persons subject to resettlement and welcomes the explicit mention that they can choose the Member State to which they will be resettled. Appreciates the relevance of the elements that can give precedence to the resettlement of a certain person to a certain Member State, namely family relations, social or cultural connections to that state or the existence of special protection needs or vulnerabilities.

44. Given the pronounced political dimension of the assessments to be made, considers that it is adequate to grant to the Council the competence to adopt the Union yearly resettlement plan, since Member States are in the best position to establish the concrete participation conditions and their contribution to this mechanism, the maximum number of persons to be relocated, as well as the global geographic priorities.

45. Requests clarifications on the relation between the act to be adopted by the Council and the implementing acts that will be adopted by the Commission for establishing so called Union specific resettlement mechanisms, given the relatively low utility of the latter in practice, since the Council act can define all the issues considered relevant for the initiation and development of the resettlement to the Union of those third country nationals and stateless persons in need of international protection.

46. Also requests clarifications on the conditions for activating an accelerated procedure, with regard to the possibility of managing urgent situations within the common scheme of the plan established by the Council.

47. Given the diversity of national schemes, expresses reservations on the establishment of a uniform 5-year period from the resettlement date for preserving the personal data of the persons subject to a Union resettlement mechanism.

This decision was adopted by the Chamber of Deputies at its sitting of 4 October 2016, in compliance with the provisions of Article 76(2) of the Constitution of Romania, republished.

**THE PRESIDENT
OF THE CHAMBER OF DEPUTIES
Florin IORDACHE**

Illegible signature

Bucharest, 4 October 2016
No. 99