



EUROPEAN COMMISSION

*Brussels, 09.03.2017
C(2017) 1561 final*

*Mr Liviu Dragnea
President of the
Camera Deputaților
Palace of the Parliament
Str. Izvor nr. 2-4, sector 5
RO – 050563 BUCHAREST*

Dear President,

The Commission would like to thank the Camera Deputaților for its Opinion on the proposal for a Directive laying down standards for the reception of applicants for international protection (recast) {COM(2016) 465 final}; the proposal for a Regulation 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}; the proposal for a Regulation establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU {COM(2016) 467 final} and the proposal for a Regulation establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council {COM(2016) 468 final}.

Since the adoption of the European Agenda on Migration¹ in May 2015, the Commission has consistently been working to address both immediate and long-term challenges arising from such an unprecedented migratory pressure in full respect of the human rights safeguards enshrined in international agreements. Notwithstanding the significant progresses that have been made in the development of the current European asylum framework, there are still notable differences between the Member States in the procedures used, the reception conditions provided to applicants, the recognition rates and the type of protection granted to beneficiaries of international protection. These divergences contribute to secondary movements and asylum shopping, ultimately leading to an uneven distribution of responsibility between Member States to offer protection to those in need.

¹ COM(2015) 240 final.

In this context, the Commission set out its priorities for a structural reform of the Common European Asylum System in its Communication, adopted in April 2016, 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe'². Based on this Communication, the Commission presented, on 4 May and 13 July 2016, two sets of proposals to reform the Common European Asylum System.

The proposals referred to in the Opinion are part of this broad package of measures aiming at achieving greater convergence in the EU asylum system and preventing secondary movements within the EU. The proposals also intend to ensure orderly and safe pathways to the EU for persons in need of international protection, with the aim of progressively reducing the incentives for irregular arrivals.

In line with these objectives and with the principle of solidarity and fair sharing of responsibility:

- the proposal for a new Asylum Procedure Regulation aims at harmonising the common EU procedure for international protection;*
- the proposal for a revised Reception Conditions Directive aims at ensuring that asylum seekers can benefit from harmonised and dignified reception standards throughout the EU and increase applicants' self-reliance and possible integration prospects;*
- the proposal for a new Qualification Regulation aims at harmonising protection standards in the EU, as well as the rights granted to beneficiaries of international protection;*
- and finally, the proposal for a new Union Resettlement Framework will offer legal avenues for persons in need of international protection to enter the EU safely and receive protection without having to resort to smuggling networks and dangerous journeys to reach Europe.*

Moreover, the Commission wants to highlight the added-value of the chosen legal instrument for both proposals for the new Asylum Procedure Regulation and Qualification Regulation, which allows for a maximum degree of harmonisation as opposed to the current legal framework setting out a minimum level of harmonisation.

Given these considerations, the Commission welcomes that the Camera Deputaţilor agrees on some aspects of the abovementioned proposals aiming at preventing abuse of the asylum system and secondary movements, and supports the provisions on applicants with special procedural needs and special reception needs, in particular unaccompanied minors, as well as elements related to safeguarding gender-related aspects.

The Commission also agrees that it is necessary for the efficiency of the Common European Asylum System that all relevant instruments are fully coherent. Therefore, as regards the more technical comments presented in the Opinion on other aspects of the proposals, it provides further clarifications in the attached annex.

However, in response to the Camera Deputilor's general remark on the absence of thorough impact assessments of the abovementioned proposals, the Commission would like to remind

² COM(2016) 197 final.

that it considered the reform of the Common European Asylum to be of such political imperative that it was necessary to move ahead quickly with these proposals, and therefore the Commission used the exception provided for in its Better Regulation Guidelines. The proposals were nevertheless informed by significant analytical work including evaluations, studies, data mapping as well as targeted consultations with Member States, the European Parliament and civil society.

Finally, the Commission reminds that the proposals referred to in the Opinion are currently in the legislative process involving both the European Parliament and the Council.

Hoping that the clarifications provided in this reply address the issues raised by the Camera Deputaților, the Commission looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Dimitris Avramopoulos
Member of the Commission*

ANNEX

The Commission has carefully considered each of the points raised by the Camera Deputaților in its Opinion and is pleased to offer the following clarifications.

Proposal for a Regulation establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU {COM(2016) 467 final}

Point 12: *The proposal sets out time-limits for the overall procedure from the moment an application for international protection is registered until the decision of a court or tribunal at the first appellate stage to ensure the harmonisation of the entire procedure. Currently the time-limit for the procedure varies considerably from one Member State to another and this in itself is a cause for secondary movement between Member States. The proposal aims at ensuring the expediency of the procedure under the accelerated examination procedure and the inadmissibility assessment which currently vary from a few days to a few months in the various Member States. The Commission considers that the time-limits set in the proposal should be without prejudice to an adequate and complete examination of the application and the appeal. It is for this reason that the proposal foresees a measure of flexibility in cases involving complex issues of fact or law.*

Point 16: *The Commission proposes to strengthen the procedural guarantees of the applicants, including by extending the right to request free legal assistance to all stages of the procedure. This would ensure that the rights of the individual applicant are not adversely affected through streamlining the procedure and setting strict time-limits for the procedure. The Commission considers that it is in the interest of the Member States and of the applicants to ensure a correct recognition of international protection needs already at the stage of the administrative procedure by providing good quality information and legal support which leads to more efficient and better quality decision-making.*

Point 18: *The proposal clarifies the procedure for treating subsequent applications while providing the necessary tools to prevent abuse of using the possibility provided by subsequent applications. According to Article 42(1), a subsequent application is one that is brought by the same applicant in any Member State after a previous application has been rejected by means of a final decision. The aim of this provision is to ensure that where an application is rejected by means of a final decision in one Member State, any other Member State would be able to treat any further application from the same applicant as a subsequent application.*

Proposal for a Directive laying down standards for the reception of applicants for international protection (recast) {COM(2016)465 final}

Point 19: *To ensure an orderly management of migration flows, facilitate the determination of the Member State responsible and to prevent secondary movements, it is essential that the applicants remain in the Member State where they are required to be present. The proposal for a recast of the Dublin Regulation therefore provides that, when an applicant is in a Member State other than the one in which he or she is required to be present, he or she shall*

not be entitled to material reception conditions, schooling of minors as well as access to employment.

Point 20: *The possibility of Member States to decide in certain circumstances on the residence of applicants in a specific place has been reinforced and specific procedural guarantees have been added. These rules apply in addition to Member States' possibility to place applicants in detention in accordance with the proposal. It should also be noted that residence restrictions and reporting obligations may also be imposed as alternatives to detention.*

Point 21: *The extended definition of family members reflects the reality of migration today where applicants often stay for long periods of time outside their country of origin before reaching the EU, such as in refugee camps. The proposal corresponds to the extension of the definition of family members included in the Commission's proposal for the recast of the Dublin Regulation. It should also be noted that the scope of the proposal for a Reception Conditions Directive only extends to family members as defined in proposal if they are covered by an application for international protection under national law.*

Point 22: *In order to promote self-sufficiency and integration and to limit employment-related secondary movements, it is important to further harmonise the time limit for access to the labour market in the proposed Directive. The maximum time-limit for access to the labour market should therefore be reduced from no later than nine months to no later than six months from the lodging of the application, where an administrative decision on the application has not been taken. This aligns applicants' access to the labour market with the duration of the examination procedure on the merits. Member States are in general allowed to grant earlier access. Member States are explicitly encouraged to grant access no later than three months from the lodging of the application, where the application is likely to be well-founded. This may be the case in situations where the application is prioritised due to a well-founded claim as referred to in the draft Asylum Procedure Regulation. Early access in these cases would be beneficial to early integration.*

Point 23: *The material reception conditions should cover essential needs of applicants. The minimum list of material reception conditions in the current Directive does not cover the most basic elements. A broadening of the harmonised definition to include essential non-food items is therefore considered necessary. This includes personal hygiene products such as toothbrush, toothpaste, toilet paper, shampoo etc. and sanitary items such as diapers etc. as well as other items such as bed linen washing powder etc. Such items should not be considered covered by the daily allowance (pocket money) as the purpose of the daily allowance is different, i.e., to allow applicants to 1) reach a minimum level of physical subsistence beyond basic necessities, 2) minimum participation in socio-cultural life and 3) enjoy a certain degree of autonomy. Many Member States already include essential non-food items in their definition of material reception conditions.*

Proposal for a Regulation 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}

Point 24: Although as compared to the current Directive, the proposal does not contain the definition used in the Geneva Convention, it still maintains a clear reference to the Geneva Convention in Recital 2. This change represents a legislative technique and is not intended to affect the substance of the proposal. It is important to note that primary law (Article 78(1) of the Treaty on the Functioning of the European Union (TFEU)) explicitly provides for the obligation for the EU asylum policy to be in accordance with the Geneva Convention.

Point 25: Article 8 of the proposal introduces the obligation to assess the internal protection alternative within a country of origin and makes further precisions as to the ways and means of assessing it, but the main criteria for the availability of such protection remain unchanged.

Point 26: The proposed Article 10(3) codifies existing case law (see C-199/12).

Point 29: According to Articles 15 and 21 of the proposal, the status review is triggered: (1) when there is a significant change in the country of origin information and guidance provided by the European Union Agency for Asylum (Articles 15(a) and 21(a)) and (2) upon the renewal of residence permits i.e. first time renewal for refugees and first and second time renewal for beneficiaries of international protection (Articles 15(b) and 21(b)).

Point 30: The exclusion ground of Article 17(3) of Directive 2011/95 is maintained in Article 18(1)(e) of the proposal.

Point 32: As to Article 24 of the proposal, it should be noted that most of the employment and social related rights are provided through a form of equal treatment by the proposal and the article puts the emphasis on the consequences of unauthorized secondary movement.

Point 35: Due to the change of the legislative instrument many provisions including the one on the rights of the beneficiaries are reformulated in order to enable its direct applicability. However the present *acquis* already provides for access to the labour market upon the granting of the status.

Proposal for a Regulation establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council {COM(2016) 468 final}

Point 40: Member States play a key role in determining their participation in the implementation of the Union resettlement framework. Thus the proposal foresees that the maximum total number of persons to be resettled to the EU every year within the Union resettlement framework, the details about the participation of the Member States and their contributions shall be set by the Council in an annual Union resettlement plan. When adopting the annual Union resettlement plan, the Council should take into account the discussions within a High-Level Resettlement Committee, where all Member States are represented to indicate what contribution they are willing to make to the annual Union resettlement plan.

Point 43: There is no subjective right to be resettled or to be resettled to a particular Member State. It is up to each Member State to identify the third-country nationals or stateless persons whom they decide to resettle. Only persons who have given their consent to be resettled and who have not subsequently withdrawn their consent may be considered for resettlement.

Point 45: As targeted Union resettlement schemes can be established whenever necessary within the period covered by the annual Union resettlement plan, they provide the European Union with the necessary flexibility to achieve the objectives of the Union resettlement framework set out in Article 3 of the proposed Regulation, while ensuring uniform conditions for the implementation of the annual Union resettlement plan. They shall be consistent with the annual Union resettlement plan.

Point 46: The use of the expedited procedure must be provided for by the Commission implementing act adopting a targeted Union resettlement scheme to allow limiting the assessment of the eligibility criteria in derogation from the ordinary procedure. This said, also when using the ordinary procedure, Member States shall take a decision as soon as possible.

Point 47: The storage period of five years is considered necessary to allow Member States to exclude from resettlement third-country nationals or stateless persons who have already been resettled by one Member State or whom a Member State during the last five years prior to resettlement refused to resettle as provided for by Article 6(1)(e) and (f) of the proposed Regulation.