

Opinion of the European Economic and Social Committee 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 *final*)

and on the

‘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*)

and on the

‘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 *final*)

(2017/C 075/16)

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Section responsible	Employment, Social Affairs and Citizenship
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Adopted at plenary	14.12.2016
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Outcome of vote (for/against/abstentions)	211/2/5

1. Conclusions and recommendations

1.1 *General conclusions and recommendations*

1.1.1 The EESC considers it necessary to carry out a fair, effective and efficient reform of the Common European Asylum System (CEAS) and to establish a genuinely common procedure that is reliable, flexible and efficient and improves the fair and legal means of accessing the European Union based on the principle of respecting persecuted people's human rights.

1.1.2 It is also necessary to keep in mind that Article 2 TEU explicitly states that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values should be common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

1.1.3 Moreover, Article 78 TFEU determines that the EU will develop a Common Asylum Policy: to that end, a genuine common and obligatory system for all Member States should be proposed in order to harmonise national legislation or — failing this — to introduce, at the very least, a common system for the mutual recognition of asylum decisions between all the EU Member States. This would make a genuine Common European Asylum System possible: otherwise, it will not be possible to avoid so-called 'secondary movements' whereby people seeking international protection look for the countries offering the best conditions within the EU.

1.1.4 It is important to underline that the total population of the EU-28 is about 510 million people and that the EC proposals of Autumn 2015 to relocate approximately 160 000 people seeking international protection would amount to about 0,03 % of the total EU population: other non-EU states have taken in millions of people seeking international protection.

1.1.5 In any case, the EESC welcomes the improvements made to the system, such as the clarification of rights and obligations regarding access to the procedure, the replacement of the concept of vulnerability with the concept of special needs, as well as clear criteria for assessing it, the introduction of greater guarantees for minors, and the broadening of the concept of family.

1.1.6 The EESC is concerned about the limitation of fundamental rights, such as the restriction of free movement, the limitation of the right of minors to education, the application of a procedure to unaccompanied minors at the border, the possible lack of a case-by-case approach when analysing the safe country concepts, the limitation of guarantees for subsequent applications and accelerated procedures, the automatic review of protection statuses, and the punitive approach of the restrictions on reception conditions.

1.1.7 The EESC recommends the standardisation of protection statuses, elimination of the differences between refugee status and subsidiary protection status as regards the period of the residence permit, its renewal, and the limitation placed on social assistance for beneficiaries of subsidiary protection.

1.2 Recommendations on the proposal for the Qualification Regulation

1.2.1 The EESC recommends including the UNHCR criteria for assessing internal flight alternative, in other words, analysis of suitability and analysis of reasonableness, expressly excluding the application of Article 8 in the case of persecution by the state.

1.2.2 The burden of proof should be shared between the applicant and the determining authority, as stipulated by CJEU case-law, maintaining the determining authority's obligation to 'cooperate actively with the applicant'.

1.2.3 The EESC recommends introducing a proportionality assessment when assessing the grounds for exclusion from refugee status and the restrictive nature of applying these clauses, removing Article 12(6) of the Qualification Regulation in order to avoid the automatic application of excluding causes that do not take the particular background of the applicants into account.

1.2.4 A case-by-case analysis in procedures for reviewing international protection statuses should be guaranteed, taking the specific circumstances into account and granting any procedural guarantees in these procedures that cannot be applied automatically.

1.2.5 With regard to the review of refugee status, every new procedure will add an extra layer of administrative burden and discretion. Given the high number of refugees in one country, administrative services can easily become overburdened and might make hasty and possibly arbitrary decisions. It is thus necessary for the relevant authorities to be properly staffed and trained in order to carry out checks and to review refugee status.

1.2.6 It is necessary to distinguish between the cessation, exclusion, withdrawal, non-renewal and end of protection statuses, avoiding repetition and confusion regarding the factual circumstances giving rise to each case and including restrictive criteria for their application.

1.2.7 The restriction on the freedom of movement of persons granted international protection within the Member State should be eliminated, on the grounds that it is contrary to Article 26 of the Geneva Convention.

1.2.8 Article 44 of the Qualification Regulation amending the Directive on long-term residents to restart the 5-year period of residence if the person is found illegally outside the Member State that recognised him or her should be eliminated, on the grounds that this is contrary to the aim of the European Agenda on Migration of May 2015.

1.3 Recommendations on the proposal for the Common Procedure Regulation

1.3.1 The EESC recalls that setting rules in the form of regulations must not lead to a reduction in protection standards due to the introduction of restrictive eligibility criteria and the limitation of rights and procedural guarantees.

1.3.2 The EESC recommends eliminating the automatic application of the concepts of safe third country, first country of asylum and safe country of origin, and of time limit reductions, and recommends guaranteeing the automatic suspensive effect of appeals.

1.3.3 The guarantees of case-by-case assessment, based on the criteria of proportionality, necessity and exceptional circumstances, in cases of restriction of freedom or detention should be increased.

1.3.4 The guarantees in the context of administrative detention, setting clear detention time limits and restricting it to exceptional cases, should also be increased.

1.3.5 Eliminate the exclusion of the right to free legal assistance in the case of applications considered unfounded or subsequent applications containing no fresh evidence or arguments, on the grounds that this violates the right to an effective remedy as provided for under Article 13 of the ECHR.

1.3.6 Lay down the same procedural guarantees for accelerated procedures, border posts and subsequent applications as for the regular procedure.

1.3.7 Before starting the actual application the applicants should be offered a period to rest and recover.

1.4 Recommendations on the proposal for the Standards of Reception Directive

1.4.1 It is necessary to adopt a positive incentives approach in order to prevent secondary movements, rather than a punitive approach of excluding, reducing, withdrawing or replacing reception conditions, etc. This is particularly disproportionate in the case of applicants not requesting international protection in the first country of irregular entry or legal residence.

1.4.2 The same legal tool should be used to regulate reception conditions, procedures and eligibility criteria so as to avoid disparities in the direct application of interrelated provisions.

1.4.3 Undefined legal concepts such as 'dignified standard of living' or 'risk of absconding' should be restricted or eliminated given the serious consequences they entail and the discretion of Member States in setting the defining criteria.

1.4.4 Other family members such as siblings and other relatives should be included, in line with the Dublin Regulation proposal.

1.4.5 Labour market access should not be excluded for applicants from safe countries of origin as this would constitute discrimination on the basis of nationality.

1.4.6 It is necessary to eliminate conditions on the right of access to employment, social security and social assistance.

1.4.7 It is also necessary to ensure the absolute right of minors to education, in the same terms as the right to health.

2. Comments on the Qualification Regulation

2.1 The EESC supports further harmonisation of the standards for asylum procedures, recognition and protection at EU level. There are significant differences between the Member States as regards the procedures used, the recognition rates, the content of protection provided and the reception conditions for applicants and beneficiaries of international protection.

2.2 For various reasons the Member States have developed specific institutional asylum practices. This encourages secondary movements and compromises the equal treatment of the applicants on the territory of the Union. The differences between the Member States could have a significant impact on the protection of fundamental rights, including protecting human dignity, respect for private and family life, freedom of expression and information, right to education, freedom to choose an occupation and the right to access the labour market, freedom to conduct a business, right to asylum, non-discrimination, rights of the child, social security, and social assistance and health care, as defined in the Charter of Fundamental Rights of the European Union.

2.3 The EESC welcomes the development of the system to retrieve, organise and disseminate information regarding the situation in the countries of origin and transit under the auspices of the European Union Agency for Asylum. It represents the basis for a real harmonisation of decisions on granting international protection. It is, however, unclear to what extent the national authorities will take the information provided into consideration and indeed how to ensure that they do so. In order to avoid severely divergent decisions, the system should provide a simple and clear indication of countries considered to be unsafe.

2.4 With regard to Article 7 on actors of protection it is important to correctly evaluate the capacities of private actors and international organisations to provide protection. Due to scarce resources and legal uncertainty it is very difficult for both to ensure robust and long term protection, especially in situations of civil war or intense governmental repression.

2.5 The possible internal protection that an applicant can receive is a relevant factor in determining the granting of protection. The relevant authorities have to take into consideration the whole range of risks that internal displacement can pose to individual security. Safe territories can quickly become unsafe, for a variety of reasons — military defeat, foreign assistance and intervention, sabotage and terrorist attacks. Even though Article 8 is clear in defining what 'safe' means — including safe travel and availability of protection — it is up to the European national authorities to interpret the available data and facts.

2.6 The definition of acts of persecution in Article 9 is comprehensive, following Article 1(A) of the Convention Relating to the Status of Refugees (the Geneva Convention). This article, together with Article 10 regarding the reasons for persecution and Article 6 on actors of persecution or serious harm, should be interpreted so as to take account of acts of persecution committed by both state authorities and non-state actors. The practice of political repression and internal warfare shows that violent acts are carried out by various paramilitary and vigilante groups under the higher protection of state authorities who usually deny any involvement.

2.7 The EESC has long been an advocate of harmonising the content of protection granted to refugees and those who have subsidiary protection ⁽¹⁾. The content of protection has been another key driver for secondary movements within the Union. But crucially, the Committee advocated that the harmonisation should aim for the highest level of protection and not the lowest. The Commission proposal presents a number of positive steps in this direction.

2.8 Clarification regarding information provision, residence permits and travel documents is necessary. It is notable that access to the labour market has been clarified and the level of protection has been raised, for example in the field of working conditions, freedom of affiliation and access to employment-related education opportunities, in which the beneficiaries of international protection have the same rights as the Member State nationals. This is also the case with regard to recognition of qualifications, social security, social assistance and health care.

⁽¹⁾ Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted' COM(2009) 551 final/2 — 2009/0164 (COD) (OJ C 18, 19.1.2011, p. 80).

2.9 Access to integration measures — language courses, civic orientation and integration programmes and vocational training — are key elements of successful integration. Measures facilitating integration are very much welcomed and should be encouraged.

2.10 At the same time, turning participation in integration measures into a precondition to access other services like social assistance (see Article 34) could be problematic and should be formulated with care. Integration measures have to be very accessible and useful in order to facilitate participation. Beneficiaries of international protection could be excluded from integration measures and from services for which participation in integration measures is required e.g. language learning, education, and employment.

3. Comments on the proposal for the Common Procedure Regulation

3.1 The EESC welcomes the proposal and its intended objective to establish a truly common procedure for international protection which is efficient, fair and balanced. The choice of instrument — a regulation directly applicable in all Member States — is necessary in order to achieve a higher degree of harmonisation and greater uniformity in the outcome of asylum procedures across all Member States. The EESC considers the regulation to be a step in the right direction, limiting secondary movements between Member States and thus facilitating the exercise of the solidarity principle.

3.2 The procedures have to be clear and ensure predictability. Maintaining the 6-month time limit for an applicant to access the procedure and for concluding the examination of applications at administrative and judicial level is reasonable.

3.3 With regard to exceptions, the definition of unfounded and inadmissible claims must be clarified.

3.4 The EESC fully supports the provision of assistance by the European Union Agency for Asylum to Member States that receive a disproportionate number of simultaneous applications.

3.5 The EESC welcomes the establishment of procedural guarantees safeguarding the rights of the applicants. This is an area where the Committee's position has always been clear. All applicants reaching a Member State are in a state of vulnerability, almost all of them having travelled long distances and having experienced hardship and danger. There are linguistic, cultural and psychological barriers to be overcome in order to adapt and cooperate with the authorities. Even though the new proposed procedures are clearer, it is the Member States' authorities that will have to implement them. If the authorities have difficulties working with the new procedures, forms of assistance and support need to be identified.

3.6 Regarding the intention to harmonise the rules on safe countries, the EESC generally supports the progressive move towards full harmonisation by replacing national safe country lists with European lists or designations at Union level within 5 years of entry into force of the regulation ⁽²⁾.

3.7 In terms of the appeal procedure, the EC proposal establishes the right to an effective remedy, with explicit time limits and with automatic suspensive effect, except in cases of refusals in accelerated procedures, non-admission by first country of asylum and subsequent application, refusals due to explicit or implicit withdrawal, and decisions on an earlier action.

3.8 The period for which protection is granted has a direct impact on the prospects of integration. The period should be long enough to provide incentives for beneficiaries of international protection, authorities and employers.

⁽²⁾ The position of the EESC on the subject was formulated in the Opinion of the European Economic and Social Committee on the proposal for a Regulation of the European Parliament and of the Council 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 final) (OJ C 71, 24.2.2016, p. 82).

4. Comments on the Standards of Reception Directive

4.1 The EESC has been an active promoter of the harmonisation of the reception conditions for applicants for international protection, not only to decrease their secondary movements but primarily to increase their chances of successful integration and full protection of fundamental rights.

4.2 The EESC welcomes the requirement that Member States must have contingency plans ready to ensure the adequate reception of applicants in cases when they are confronted with a disproportionate number of applicants.

4.3 The EESC fully supports the objective set by the Commission to increase applicants' self-reliance and possible integration prospects. This objective is in line with the position of the Committee which advocated quicker access to the labour market and also access to services and programmes to facilitate integration (e.g. with regard to language). Therefore the reduction of the time limit for access to the labour market from no later than 9 months to no later than 6 months from the lodging of the application is a step in the right direction.

Brussels, 14 December 2016.

The President
of the European Economic and Social Committee
Georges DASSIS
