III

(Preparatory acts)

COMMITTEE OF THE REGIONS

121ST PLENARY SESSION, 8-9 FEBRUARY 2017

Opinion of the European Committee of the Regions — Reform of the Common European Asylum System Package II and a Union Resettlement Framework

(2017/C 207/13)

Rapporteur: Vincenzo Bianco (PES/IT), Mayor of Catania

Reference documents: 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

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

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

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

COM(2016) 468 final

I. RECOMMENDATIONS FOR AMENDMENTS

COM(2016) 466 final (Qualification criteria for recognition of protection)

Amendment 1

Article 8(3) — Internal protection

Text proposed by the Commission	CoR amendment
In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, determining authorities shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant in accordance with Article 4. To that end, determining authorities shall ensure that precise and up-to-date information is obtained from all relevant sources, including available Union level country of origin information and the common analysis of country of origin information referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum], as well as information and guidance issued by the United Nations High Commissioner for Refugees.	In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, determining authorities shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant in accordance with Article 4. To that end, determining authorities shall ensure that precise and up-to-date information is obtained from all relevant sources, including available Union level country of origin information and the common analysis of country of origin information referred to in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum], as well as information and guidance issued by the United Nations High Commissioner for Refugees. ***Information and guidance from independent sources and experts may also be examined.***

Reason

Independent information and assessments can help provide elements that are not always available via the official sources.

Amendment 2

Article 15 — Review of refugee status

Text proposed by the Commission	CoR amendment
In order to apply Article 14(1), the determining authority shall review the refugee status in particular:	In order to apply Article 14(1), the determining authority shall review the refugee status in particular:
(a) where Union level country of origin information and common analysis of country of origin information as referred in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum] indicate a significant change in the country of origin which is relevant for the protection needs of the applicant,	(a) where Union level country of origin information and common analysis of country of origin information as referred in Articles 8 and 10 of Regulation (EU) No XXX/XX [Regulation on the European Union Agency for Asylum] indicate a significant change in the country of origin which is relevant for the protection needs of the applicant,
(b) when renewing, for the first time, the residence permit issued to a refugee.	(b) when renewing, for the first time, the residence permit issued to a refugee***, by means of a simplified procedure: should elements emerge during the simplified procedure such as those specified in paragraph (a) which might result in any refusal to renew the permit, the simplified procedure must immediately be converted into the normal procedure and the interested party notified of this; in any case, the possibility remains of judicial appeal against the decision not to renew the permit.***

Reason

The Commission proposal introduces a review of the status granted to refugees; this happens a) as a matter of course, whenever significant changes in the situation in their country of origin are reported by EASO; b) in any case, at regular intervals, whether or not changes have been reported; however, in this second case we consider that the renewal can and should be accomplished through a simplified procedure in order to avoid placing excessive burdens on refugees and causing feelings of excessive instability.

COM(2016) 467 final (Common procedures for recognition of international protection)

Amendment 3

Article 7(4) — Obligations of applicants

Text proposed by the Commission	CoR amendment
The applicant shall inform the determining authority of the Member State in which he or she is required to be present of his or her place of residence or address ***or a*** telephone number where he or she may be reached by the determining authority or other responsible authorities. He or she shall notify that determining authority of any changes. The applicant shall accept any communication at the most recent place of residence or address which he or she indicated accordingly, in particular when he or she lodges an application in accordance with Article 28.	The applicant shall inform the determining authority of the Member State in which he or she is required to be present of his or her place of residence or address ***and*** telephone number where he or she may be reached by the determining authority or other responsible authorities. He or she shall notify that determining authority of any changes. The applicant shall accept any communication at the most recent place of residence or address which he or she indicated accordingly, in particular when he or she lodges an application in accordance with Article 28.

Reason

The applicant should inform the authority of his or her place of residence and address and not only telephone number, so that he or she can be informed in good time of any decisions affecting the procedure.

Amendment 4

Article 15(5) — Free legal assistance and representation (in the appeal procedure)

Text proposed by the Commission	CoR amendment
The provision of free legal assistance and representation in the appeal procedure may be excluded where:	The provision of free legal assistance and representation in the appeal procedure may be excluded where:
(a) the applicant has sufficient resources;	(a) the applicant has sufficient resources.
(b) ***the appeal is considered as not having any tangible prospect of success;***	
(c) ***the appeal or review is at a second level of appeal or higher as provided for under national law, including rehearings or reviews of appeal.***	
Where a decision not to grant free legal assistance and representation is taken by an authority which is not a court or tribunal on ground that the appeal is considered as having no tangible prospect of success, the applicant shall have the right to an effective remedy before a court or tribunal against that decision, and for that purpose he or she shall be entitled to request free legal assistance and representation.	***Where the appeal is lodged for purely instrumental reasons or is manifestly unfounded, the judge may decide to withdraw free legal representation and assistance and to reduce or completely withhold the payment owed to the professional by the state (where provided for).***

Reason

We consider that, particularly in the case of the appeal procedure (at both first and second levels and/or at higher levels), refusal of the right to legal assistance must only occur on the basis of a necessarily stringent criterion which leaves as little to chance and as little room for discretion as possible, and that it must of necessity be a judge who takes the decision.

Amendment 5

Article 33(2) — Examination of applications

Text proposed by the Commission	CoR amendment
2. The determining authority shall take decisions on applications for international protection after an appropriate examination as to the admissibility or merits of an application. The determining authority shall examine applications objectively, impartially and on an individual basis. For the purpose of examining the application, it shall take the following into account:	2. The determining authority shall take decisions on applications for international protection after an appropriate examination as to the admissibility or merits of an application. The determining authority shall examine applications objectively, impartially and on an individual basis. For the purpose of examining the application, it shall take the following into account:
(a) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;	(a) the relevant statements and documentation presented by the applicant including information on whether the applicant has been or may be subject to persecution or serious harm;
(b) all relevant, accurate and up-to-date information relating to the situation prevailing in the country of origin of the applicant at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied, as well as any other relevant information obtained from the European Union Agency for Asylum, from the United Nations High Commissioner for Refugees and relevant international human rights organisations, or from other sources;	(b) all relevant, accurate and up-to-date information relating to the situation prevailing in the country of origin of the applicant at the time of taking a decision on the application, including laws and regulations of the country of origin and the manner in which they are applied, as well as any other relevant information obtained from the European Union Agency for Asylum, from the United Nations High Commissioner for Refugees and relevant international human rights organisations, or from other sources;
(c) the common analysis of the country of origin information referred to in Article 10 of Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation);	(c) the common analysis of the country of origin information referred to in Article 10 of Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation);
(d) the individual position and personal circumstances of the applicant, including factors such as background, gender, age, sexual orientation and gender identity so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;	(d) the individual position and personal circumstances of the applicant, including factors such as background, gender, age, sexual orientation and gender identity so as to assess whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm;
(e) whether the activities that the applicant was engaged in since leaving the country of origin were carried out by the applicant for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;	(e) whether the activities that the applicant was engaged in since leaving the country of origin were carried out by the applicant for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities would expose the applicant to persecution or serious harm if returned to that country;

Text proposed by the Commission	CoR amendment
(f) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship.	(f) whether the applicant could reasonably be expected to avail himself or herself of the protection of another country where he or she could assert citizenship;
	(g) statements, if supported by official documents, or documents submitted by the applicant as proof of their preferences, family ties, connections with communities from their country of origin or language or professional skills which would facilitate their integration into one or more Member States of destination.

Reason

The amendment is consistent with the text of the opinion on the review of the Dublin Regulation (…), already adopted by the CIVEX commission, which states that the applicant's preferences and ties should be taken into account in order to determine the Member State responsible.

Amendment 6

Article 34 — Duration of the examination procedure

Text proposed by the Commission	CoR amendment
1. The examination to determine the admissibility of an application in accordance with Article 36(1) shall not take longer than one month from the lodging of an application.	1. The examination to determine the admissibility of an application in accordance with Article 36(1) shall not take longer than one month from the lodging of an application.
The time limit for such examination shall be ten working days where, in accordance with Article 3(3)(a) of Regulation (EU) No XXX/XXX (Dublin Regulation), the Member State of first application applies the concept of first country of asylum or safe third country referred to in Article 36(1)(a) and (b).	
2. The determining authority shall ensure that an examination procedure on the merits is concluded as soon as possible and not later than six months from the lodging of the application, without prejudice to an adequate and complete examination.	2. The determining authority shall ensure that an examination procedure on the merits is concluded as soon as possible and not later than six months from the lodging of the application, without prejudice to an adequate and complete examination.
3. The determining authority may extend that time limit of six months by a period of not more than ***three months***, where:	3. The determining authority may extend that time limit of six months by a period of not more than ***a further six months***, where:
(a) a disproportionate number of third-country nationals or stateless persons simultaneously apply for international protection, making it difficult in practice to conclude the procedure within the six-month time limit;	(a) a disproportionate number of third-country nationals or stateless persons simultaneously apply for international protection, making it difficult in practice to conclude the procedure within the six-month time limit;
(b) complex issues of fact or law are involved.	(b) complex issues of fact or law are involved.

Reason

The varying time limits may undermine the exercising of the right of defence, increasing the burden incumbent on the lawyer of ascertaining and updating the position of the person they are assisting.

Given the possibility of situations of crisis or excessive affluence, notwithstanding extraordinary support from EASO and other Member States, it would be advisable to increase the maximum length of the procedure from nine months to (a total of) a year.

Amendment 7

Article 36(2) — Decision on the admissibility of the application ***and on responsibility***

Text proposed by the Commission	CoR amendment
An application shall not be examined on its merits in the cases where an application is not examined in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation), including when another Member State has granted international protection to the applicant, or where an application is rejected as inadmissible in accordance with paragraph 1.	An application shall not be examined on its merits in the cases where an application is not examined in accordance with Regulation (EU) No XXX/XXX (Dublin Regulation), including when another Member State has granted international protection to the applicant, or where an application is rejected as inadmissible in accordance with paragraph 1***, or where on the basis of Article 7 of Regulation (EU) XXX/XXX (Dublin Regulation), the applicant has expressed a preference for one or more Member States of destination where, according to EASO quarterly data, the threshold provided for by Articles 7 and 35 of this regulation has not been reached***.

Reason

Here, too, the amendment is consistent with the opinion on the proposed revision of the Dublin Regulation already adopted by the CIVEX commission; in the case outlined above, it is the responsibility of the designated Member State to examine the merit of the application on the basis of the preference/ties criterion, not the responsibility of the country of first entry, which is merely required to transfer the person in question to the country responsible.

Amendment 8

Article 39 — Implicit withdrawal of applications

Text proposed by the Commission	CoR amendment
1. The determining authority shall reject an application as abandoned where:	1. The determining authority shall reject an application as abandoned where:
[…]	[…]
2. In the circumstances referred to in paragraph 1, the determining authority shall discontinue the examination of the application and send a written notice to the applicant at the place of residence or address referred to in Article 7(4), informing him or her that the examination of his or her application has been discontinued and that the application will be definitely rejected as abandoned unless the applicant reports to the determining authority within a period of ***one month*** from the date when the written notice is sent.	2. In the circumstances referred to in paragraph 1, the determining authority shall discontinue the examination of the application and send a written notice to the applicant at the place of residence or address referred to in Article 7(4), informing him or her that the examination of his or her application has been discontinued and that the application will be definitely rejected as abandoned unless the applicant reports to the determining authority within a period of ***two months*** from the date when the written notice is sent.
3. Where the applicant reports to the determining authority within that ***one-month*** period and demonstrates that his or her failure was due to circumstances beyond his or her control, the determining authority shall resume the examination of the application.	3. Where the applicant reports to the determining authority within that ***two-month*** period and demonstrates that his or her failure was due to circumstances beyond his or her control, the determining authority shall resume the examination of the application.

Text proposed by the Commission	CoR amendment
4. Where the applicant does not report to the determining authority within this ***one-month*** period and does not demonstrate that his or her failure was due to circumstances beyond his or her control, the determining authority shall consider that the application has been implicitly withdrawn.	4. Where the applicant does not report to the determining authority within this ***two-month*** period and does not demonstrate that his or her failure was due to circumstances beyond his or her control, the determining authority shall consider that the application has been implicitly withdrawn.

Reason

Given the communication difficulties which may be encountered by the applicant, a time limit providing a greater guarantee must be introduced.

Amendment 9

Article 43 — Exception from the right to remain in subsequent applications

Text proposed by the Commission	CoR amendment
Without prejudice to the principle of non-refoulement, Member States may provide an exception from the right to remain on their territory and derogate from Article 54(1), where:	Without prejudice to the principle of non-refoulement, Member States may provide an exception from the right to remain on their territory and derogate from Article 54(1), where:
(a) a subsequent application has been rejected by the determining authority as inadmissible or manifestly unfounded;	(a) a subsequent application has been rejected by the determining authority as inadmissible or manifestly unfounded;
(b) a second or further subsequent application is made in any Member State following a final decision rejecting a previous subsequent application as inadmissible, unfounded or manifestly unfounded.	(b) a second or further subsequent application is made in any Member State following a final decision rejecting a previous subsequent application as inadmissible, unfounded or manifestly unfounded; ***the provisions of subparagraph (b) do not apply where the previous application was lodged before the entry into force of this regulation and, in the case in point, the applicant did not receive legal assistance;***

Reason

Given that the information, representation and assistance obligations are only introduced at all levels with this package of Commission proposals, we consider that Member States have to grant the right to remain in their country when the applicant did not receive legal assistance during their first application.

Amendment 10

Article 45(3) — The concept of safe third country

Text proposed by the Commission	CoR amendment
The determining authority shall consider a third country to be a safe third country for a particular applicant, after an individual examination of the application, only where it is satisfied of the safety of the third country for a particular applicant in accordance with the criteria established in paragraph 1 and it has established that:	The determining authority shall consider a third country to be a safe third country for a particular applicant, after an individual examination of the application, only where it is satisfied of the safety of the third country for a particular applicant in accordance with the criteria established in paragraph 1 and it has established that:
a) there is a connection between the applicant and the third country in question on the basis of which it would be reasonable for that person to go to that country, including because ***the applicant has transited through that third country which is geographically close to the country of origin of the applicant***;	a) there is a connection between the applicant and the third country in question on the basis of which it would be reasonable for that person to go to that country, including because ***the applicant has stayed there for a considerable period of time or has ties or relationships with family members or compatriots there***;

Text proposed by the Commission	CoR amendment
b) the applicant has not submitted serious grounds for considering the country not to be a safe third country in his or her particular circumstances.	b) the applicant has not submitted serious grounds for considering the country not to be a safe third country in his or her particular circumstances.

Reason

Mere transit through a third country on the way to the EU (or a stay there purely for the time necessary to prepare for departure) cannot be considered sufficient grounds for returning the applicant to the country in question.

Amendment 11

Article 53(6) — The right to an effective remedy

Text proposed by the Commission	CoR amendment
Applicants shall lodge appeals against any decision referred to in paragraph 1:	Applicants shall lodge appeals against any decision referred to in paragraph 1:
a) within ***one week*** in the case of a decision rejecting a subsequent application as inadmissible or manifestly unfounded;	a) within ***a fortnight*** in the case of a decision rejecting a subsequent application as inadmissible or manifestly unfounded;
b) within ***two weeks*** in the case of a decision rejecting an application as inadmissible or in the case of a decision rejecting an application as explicitly withdrawn or as abandoned, or in the case of a decision rejecting an application as unfounded or manifestly unfounded in relation to refugee or subsidiary protection status following an accelerated examination procedure or border procedure or while the applicant is held in detention;	b) within ***a fortnight*** in the case of a decision rejecting an application as inadmissible or in the case of a decision rejecting an application as explicitly withdrawn or as abandoned, or in the case of a decision rejecting an application as unfounded or manifestly unfounded in relation to refugee or subsidiary protection status following an accelerated examination procedure or border procedure or while the applicant is held in detention;
c) within one month in the case of a decision rejecting an application as unfounded in relation to the refugee or subsidiary protection status if the examination is not accelerated or in the case of a decision withdrawing international protection.	c) within one month in the case of a decision rejecting an application as unfounded in relation to the refugee or subsidiary protection status if the examination is not accelerated or in the case of a decision withdrawing international protection.
For the purposes of point (b), Member States may provide for an ex officio review of decisions taken pursuant to a border procedure.	For the purposes of point (b), Member States may provide for an ex officio review of decisions taken pursuant to a border procedure.
The time limits provided for in this paragraph shall start to run from the date when the decision of the determining authority is notified to the applicant or from the moment the legal adviser or counsellor is appointed if the applicant has introduced a request for free legal assistance and representation.	The time limits provided for in this paragraph shall start to run from the date when the decision of the determining authority is notified to the applicant or from the moment the legal adviser or counsellor is appointed if the applicant has introduced a request for free legal assistance and representation.

Reason

We consider that, including in the light of the case law of the Court of Justice, minimum time limits must be introduced which are consistent rather than differ.

COM(2016) 465 final (reception conditions)

Amendment 12

Article 7(5) Residence and freedom of movement

Text proposed by the Commission	CoR amendment
Member States shall require applicants to inform the competent authorities of their current place of residence or address ***or a*** telephone number where they may be reached and notify any change of telephone number or address to such authorities as soon as possible	Member States shall require applicants to inform the competent authorities of their current place of residence or address ***and*** telephone number where they may be reached and notify any change of telephone number or address to such authorities as soon as possible.

Reason

The applicant should inform the authority of his or her place of residence and address and not only telephone number, so that he or she can be informed in good time of any decisions affecting the procedure.

Amendment 13

Article 19 — Replacement, reduction or withdrawal of material reception conditions

Text proposed by the Commission	CoR amendment
1. With regard to applicants who are required to be present on their territory in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation], Member States may, in the situations described in paragraph 2:	1. With regard to applicants who are required to be present on their territory in accordance with Regulation (EU) No XXX/XXX [Dublin Regulation], Member States may, in the situations described in paragraph 2:
(a) replace accommodation, food, clothing and other essential non-food items provided in the form of financial allowances and vouchers, with material reception conditions provided in kind; or	(a) replace accommodation, food, clothing and other essential non-food items provided in the form of financial allowances and vouchers, with material reception conditions provided in kind; or
(b) reduce ***or, in exceptional and duly justified cases, withdraw*** the daily allowances.	(b) reduce the daily allowances.
2. Paragraph 1 applies where an applicant:	2. Paragraph 1 applies where an applicant:
(a) abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or absconds; or	(a) abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or absconds ***for a reasonable period laid down in national law;*** or
(b) does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law; or	(b) does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law; or
(c) has lodged a subsequent application as defined in Article [4(2)(i)] of Regulation (EU) No XXX/XXX [Procedures Regulation]; or	(c) has lodged a subsequent application as defined in Article [4(2)(i)] of Regulation (EU) No XXX/XXX [Procedures Regulation]; or
(d) has concealed financial resources, and has therefore unduly benefited from material reception conditions; or	(d) has concealed financial resources, and has therefore unduly benefited from material reception conditions; or
(e) has seriously breached the rules of the accommodation centre or behaved in a seriously violent way; or	(e) has seriously breached the rules of the accommodation centre or behaved in a seriously violent way; or

Text proposed by the Commission	CoR amendment
(f) fails to attend compulsory integration measures; or	(f) fails to attend compulsory integration measures; or
(g) has not complied with the obligation set out in Article [4(1)] of Regulation (EU) No XXX/XXX [Dublin Regulation] and has travelled to another Member State without adequate justification and made an application there; or	(g) has not complied with the obligation set out in Article [4(1)] of Regulation (EU) No XXX/XXX [Dublin Regulation] and has travelled to another Member State without adequate justification and made an application there; or
(h) has been sent back after having absconded to another Member State.	(h) has been sent back after having absconded to another Member State.
In relation to points (a) and (b), when the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstallation of the grant of some or all of the material reception conditions replaced, withdrawn or reduced.	In relation to points (a) and (b), when the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstallation of the grant of some or all of the material reception conditions replaced, withdrawn or reduced.
3. Decisions for replacement, reduction or withdrawal of material reception conditions shall be taken objectively and impartially on the merits of the individual case and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to applicants with special reception needs, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article 18 and shall ensure a dignified standard of living for all applicants.	3. Decisions for replacement, reduction or withdrawal of material reception conditions shall be taken objectively and impartially on the merits of the individual case and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to applicants with special reception needs, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to health care in accordance with Article 18 and shall ensure a dignified standard of living for all applicants.
4. Member States shall ensure that material reception conditions are not replaced, withdrawn or reduced before a decision is taken in accordance with paragraph 3.	4. Member States shall ensure that material reception conditions are not replaced, withdrawn or reduced before a decision is taken in accordance with paragraph 3.

Reason

We consider that an absence should only be declared to be abscondment when it lasts for a substantial period, to avoid sporadic or necessary absences incurring excessive penalties. With regard to allowances, we propose merely the possibility of reducing them, in that withdrawing them completely could lead to situations of social instability.

Amendment 14

Article 23 — Unaccompanied minors

Text proposed by the Commission	CoR amendment
Unaccompanied minors	Unaccompanied minors
Member States shall ***as soon as possible and*** no later than five working days from the moment when an unaccompanied minor makes an application for international protection take measures to ensure that a ***guardian*** represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive.	Member States shall no later than five working days from the moment when an unaccompanied minor makes an application for international protection***, or as soon as possible,*** take measures to ensure that a ***representative or sponsor*** represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive.

Text proposed by the Commission	CoR amendment
	The Member States shall guarantee that, for a transitional period until a representative or sponsor is appointed, any suitable form of representation provided for in a Member State that the law allows and that is capable of ensuring the child's welfare with regard to urgent matters that could cause irreparable harm to the child, shall also be sufficient for the purposes of this directive.

Reason

At times when large numbers of unaccompanied minors are being taken in, it might be necessary to avoid setting binding time scales for appointing a sponsor. The concept of 'guardian' and the term itself could be misleading and incompatible with the law in many Member States: we ask for 'sponsor' to be used instead.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

General comments

1. stresses the need for a comprehensive, overall approach which fosters sustainable policies on asylum and integration of asylum seekers and which involves the EU as a whole, in the framework of a system of genuine solidarity, including among Member States;

2. moreover, stresses the huge particular interest of regional and local authorities, as necessary partners of the Member States and the European Union in managing and receiving asylum seekers, in fair, transparent regulation of the topic with due respect for social integration conditions and the fundamental rights of the individual; stresses, furthermore, that local authorities, which are guarantors of the rights of the citizens in general, will be able to perform this task better if they have Community legal provisions to refer to and the proper means to ensure the safety of the citizens and the fundamental rights of asylum applicants;

3. stresses, as it did in the opinion on the first package of proposals, the need for sustainable solutions that tackle the issue in a structural way, letting go of the illusion that it is a question of dealing with individual emergencies; therefore, while appreciating the Commission's effort to provide solutions to an urgent situation generating political pressure, believes that a more in-depth reflection is necessary which goes to the roots of the issue, taking into account international obligations, migrants' rights and the needs of the different levels of government, throughout the EU, without overburdening the border countries or countries most exposed or prized by asylum seekers for the sake of form or principle;

4. welcomes the convergence and standardisation of conditions for assistance granted to applicants, including with a view to discouraging secondary movements within the European Union; considers, however, that an approach based solely on ensuring equal material conditions and on penalties related to unauthorised secondary movements is insufficient;

5. considers that, in order to further integration and uproot the causes of secondary movements, it is important and necessary to take into account the effective connections, work-related skills and preferences of applicants regarding one or more Member States, as has already been emphasised in the opinion on the first package of Commission proposals, and, to this end, stresses the importance of collecting the relevant data, with applicants' help, to facilitate their social and professional integration;

6. while it is pleased to see that the procedures for examining applications for international protection have been speeded up, stresses that this must not result in reduced fundamental rights and that the summary procedures provided for in the package of proposals must be able to be used with extreme caution and be subject to careful verification that the conditions for their use have been met;

7. is extremely concerned at the legislative solution adopted for the Union Resettlement Framework — COM(2016) 468 final — (adoption of a reference framework with a Council act and implementation with a Commission decision), which excludes the European Parliament and is rare in this sector, unlike in the foreign policy and security sector;

8. welcomes the Commission proposals aiming to facilitate access to the labour market and occupational and other training for beneficiaries of international protection. Also urges the Commission and Member States to adopt effective and flexible mechanisms to allow for the recognition of degrees and diplomas and professional qualifications which would facilitate access to the labour market for those seeking international protection;

9. welcomes the greater role to be played by EASO in supporting the Member States;

10. welcomes the explicit provision of the general right to legal assistance, stressing the potential positive effect of this in terms of reducing timeframes and the number of judicial appeals;

11. recommends that implementation of the measures on reception conditions be supported with greater access to and provision of EU funds, facilitating access for the regions and local authorities, which must be given the right conditions for the proper reception of asylum-seekers and new arrivals;

12. welcomes the fact that the Commission's proposals take account of the interests and well-being of unaccompanied minors and, inter alia, make provision for the rapid appointment of a representative or sponsor. At times when large numbers of unaccompanied minors are being taken in, it might, however, be necessary to avoid setting rigid time scales for making this appointment which in many Member States involves a court procedure. A procedure of this kind entails appropriate procedural guarantees, such as the appointment of an interpreter, and certain investigative requirements, which cannot be carried out within the timeframe proposed by the Commission.

13. acknowledges that the proposals comply with the subsidiarity principle, exhaustively tackling cross-border issues such as solidarity between Member States, the development of a more integrated asylum system and better exchange of information between Member States — objectives which could not be pursued by the Member States individually; recognises that the proposed measures establish uniform rules applicable to the entire European Union, and also comply with the proportionality principle; would like to see continued monitoring throughout the decision making-process to verify compliance with these principles;

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14. recommends that the definition of 'guardian' (Article 4(2)(f)) highlight independence from the administration of the person or organisation as a third party appointed to assist and represent an unaccompanied minor in the procedures provided for by the regulation;

15. recommends that the minor always be assisted by a lawyer in interviews with the administrative authority dealing with their application (Article 22);

16. recommends, moreover (also with regard to Article 22) that the minor's representative be a person or body independent of the administration and appointed on a legal basis or by a legal authority to act solely in the interest of the minor;

17. recommends, with reference to subsequent applications (Article 42), stipulating that the preliminary examination assessing the admissibility of the application must ascertain whether the applicant effectively received information and legal assistance during the previous application, and that the lack of information or legal assistance is considered justification for lodging the subsequent application;

18. recommends that the provision in Article 22(4) of the draft Regulation that the person acting as guardian shall be changed only when the responsible authorities consider that he or she has not adequately performed his or her tasks as a guardian be revised. The appointment of a different local representative might, for example, be appropriate in the event of a change in the minor's place of residence.

19. recommends, with regard to the concept of first country of asylum, that the phrase 'has enjoyed protection' be interpreted in the sense that this protection was formally recognised and not merely provided in practice;

20. with reference to the first level of appeal (Article 55), stresses and recommends that the time limits provided for should not be seen as set in stone and that (as explicitly stated in the article) they do not preclude an adequate and complete examination of an appeal;

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21. is categorically opposed to the introduction of the regular review and the procedure for withdrawing international protection: these may not only potentially increase the burden for administrations (including local and regional administrations) in implementing practices and carrying out tasks related to the integration of refugees, but also cause insecurity for applicants. In this respect, condemns the political, xenophobic and populist speeches that lead to violence and the criminalisation of all asylum seekers, thereby creating unnecessary social tensions, and calls on political authorities and actors to behave responsibly;

22. is extremely concerned at the introduction of a maximum time limit for international protection and with regard to the legitimacy of this constraint, and calls on the co-legislators to reflect further on this point;

23. recommends considering the possibility, in the event of withdrawal of international protection, of allowing a longer period of time than that provided for in the Commission proposal (e.g. six months) to obtain a residence permit on other grounds (e.g. seeking work), given that the proposal specifies a relatively short time limit (three months);

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24. recommends reconsidering the provision laid down in Article 17a of the Commission proposal to the effect that applicants do not have the right to any of the material assistance conditions set out in the regulation in Member States other than the Member State responsible, and stipulating that, should an applicant justify their absence on grounds of necessity or *force majeure*, these conditions, possibly with the reductions provided for in Article 19, can be provided to them for a limited period;

25. recommends that the provision in Article 23(1) of the draft Directive that the person acting as guardian shall be changed 'only when necessary' be revised. The appointment of a different local representative might, for example, be appropriate in the event of a change in the minor's place of residence.

26. recommends reconsidering the provision laid down in Article 17a of the Commission proposal to the effect that Member States must ensure a dignified standard of living for all applicants and committing the European Union and the Member States to support — including financially — the local authorities that help to guarantee this;

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27. recommends reconsidering the decision to exclude from resettlement applicants who have entered the European Union irregularly during the last five years; in view of the pervasive illegal circumstances causing them to leave neighbouring countries, this decision seems to penalise applicants, who are often victims of this situation, excessively.

Brussels, 8 February 2017.

The President
of the European Committee of the Regions

Markku MARKKULA