

Opinion of the European Economic and Social Committee on the ‘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 — 2016/0225 COD)

(2017/C 125/05)

Rapporteur: **Christian MOOS**

Consultation	Council of the European Union, 7.9.2016 European Parliament, 12.9.2016
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Employment, Social Affairs and Citizenship
Adopted in section	10.1.2017
Adopted at plenary	25.1.2017
Plenary session No	522
Outcome of vote (for/against/abstentions)	177/8/9

1. Conclusions and recommendations

The EESC

1.1 calls for a genuine common asylum policy that respects European values. It welcomes the creation of a Union Resettlement Framework;

1.2 calls on the Union to take more responsibility for people in need of international protection, to make more of an effort to take them in than has hitherto been the case, and to show more solidarity with third countries — as well as with EU Member States such as Greece — with regard to the issue of refugees;

1.3 emphasises its call to construct robust integration systems in the Member States;

1.4 calls for the common criteria for resettlement to focus mainly on people's need for protection, not only on the third country's effective cooperation on asylum. They must also be non-discriminatory;

1.5 considers the ‘first country of asylum’ and ‘safe third country’ concepts to be open to question due to the current unsafe and unstable situation in the third countries and regions concerned. The EESC is of the opinion that the EU-Turkey Statement is of utmost importance in the current situation. It is in the interest of both the EU and Turkey that the human rights situation is monitored in its implementation;

1.6 calls for the resettlement programme to be uncoupled from partnership agreements that aim to encourage third countries to prevent refugees from fleeing, as this carries the risk of infringing international law and fundamental rights. It emphasises that return agreements or other similar cooperation agreements with third countries must not place conditions on measures undertaken neither in partnership with third countries, nor on development aid more generally;

1.7 calls for UNHCR to play a key role in identifying third-country nationals or stateless persons to be resettled and questions special rights enabling third countries to make a selection;

1.8 welcomes the emphasis on the vulnerability of women as well as children and adolescents, but has reservations about the category of ‘persons with socio-economic vulnerability’. The Commission proposal blends together a variety of legal ways to enter the EU, which in general risks lowering the quantity and quality of resettlement;

1.9 questions, according to the 1951 Geneva Convention, the blanket exclusion of people who have irregularly stayed in, entered, or attempted to enter the territory of the Member States during the 5 years prior to resettlement, as well as of people who have been rejected by Member States during the 5 years prior to resettlement, despite the fact that they otherwise fulfil the eligibility criteria;

1.10 underlines that resettlement must not impinge upon the right to asylum. In general, it must be ensured that fundamental rights under the 1951 Geneva Convention, the Charter of Fundamental Rights of the European Union (Charter) and the European Convention on Human Rights (ECHR) are upheld;

1.11 is in favour of ambitious goals when it comes to deciding on the annual number of people to be resettled, and recommends treating the figure to be determined by the high-level committee as a minimum number;

1.12 expects to be involved in the High-Level Resettlement Committee that is to be set up;

1.13 also calls for UNHCR to be permanently involved in the High-Level Resettlement Committee. Broadly speaking, the Commission proposal is not clear as to how, and by means of what procedures, people in need of international protection are to be identified (by UNHCR or by the Member States), nor what role the EU Agency for Asylum will play in these procedures;

1.14 calls for complementary, alternative reception and funding programmes to be examined, along the lines of Canada’s Private Sponsorship of Refugees Program⁽¹⁾. Institutionalising a tripartite approach — one that involves the Member States, UNHCR and private/civil society actors — would be broadly beneficial to an EU Resettlement Framework. However, this must not bring down the quality or quantity of resettlement. Calls on Member States to ensure that civil society is properly informed of resettlement plans and given supports to assist their participation in the process;

1.15 recommends that the EU and its Member States should have a stronger institutional presence in particularly hard-hit countries of origin and transit, and that these countries should be helped by increasing their capacity for local reception and protection.

2. Assessment of the specific provisions of the proposal

2.1 *Union Resettlement Framework*

2.1.1 The EESC welcomes the resettlement of people in need of international protection in the Union. As in its opinion on ‘A European Agenda on Migration’⁽²⁾, the EESC stresses the call for robust integration systems to be established in the Member States to support resettlement, and for access to the labour market, recognition of qualifications and the provision of professional and language training to be facilitated.

2.1.2 The EESC supports the measures set out in the *Action Plan on the integration of third country nationals*⁽³⁾ of 7 June 2016 aimed at the early, effective and successful integration of resettled persons. However, these measures are at odds with subsidiary protection status, as Member States must re-examine a person’s protection status, which might lead to this person’s refugee status not being recognised. This means that a person in need of international protection risks being removed or returned to the third country or country of origin.

⁽¹⁾ <http://www.cic.gc.ca/english/resources/publications/ref-sponsor/>

⁽²⁾ OJ C 71, 24.2.2016, p. 46.

⁽³⁾ COM(2016) 377 final.

2.2 *Regions or third countries from which resettlement is to occur*

2.2.1 The EESC supports the flexibility set out in Articles 7 and 8 in determining common criteria to select the regions or third countries from which resettlement is to take place. However, these should not be too exclusive and should not depend on the quality of a third country or region's effective cooperation in the area of migration and asylum, but rather on people's vulnerability. The EESC rejects any discrimination based on refugee route, country of origin, race, or religion (Article 3 of the 1951 Geneva Convention).

2.2.2 In terms of creating the conditions for using the 'first country of asylum' and 'safe third country' concepts in relation to returning asylum seekers, the EESC argued — as early as its opinion on '*Establishing an EU common list of safe countries of origin*'⁽⁴⁾ — that it was still too early for an inclusive list and that it was necessary to agree on a list of safe countries of origin ultimately based on common criteria, as in Directive 2013/32/EU, and to draw on specific, practical and precise indicators, particularly from sources such as UNHCR, the EASO, Council of Europe, ECHR and other human rights organisations when assessing a country. The EESC points out that these concepts may under no circumstances be applied to countries where human rights and the rule of law are being violated. In addition, a third country can only be considered as 'safe' when it is ensured that the country complies with the principle of non-refoulement and, more broadly, has fully recognised and implemented the 1951 Geneva Convention, the New York Protocol of 31 January 1967 Relating to the Status of Refugees and other relevant treaties.

2.2.3 However, from the EESC's point of view, the European Union is attempting to use these partnerships to shift the issue of refugees and its responsibility for persons seeking protection onto third countries, as well as attempting to use material incentives to get third countries to stop refugees at their external borders. In this connection, the increased rate of readmission of third-country nationals and stateless persons irregularly staying in the territory of the Member States that results from new agreements should also be examined. Efforts to reduce the number of refugees harbour the risk of third countries impeding, turning away or deporting persons arriving at their borders in search of protection, thereby breaching the prohibitions on refoulement in the Charter, the 1951 Geneva Convention and the ECHR. The EESC therefore calls for a strict application of the principles of international law and the creation of effective control mechanisms.

2.3 *Criteria for determining regions or third countries from which resettlement is to occur (Article 4)*

2.3.1 The EESC calls for the resettlement programme to be uncoupled from partnership agreements; thus the phrase in Article 4(a) ('and any onward movement of those persons to the territory of the Member States') should be deleted. The EESC believes that the criteria set out in Article 4(c) and (d) (with the exception of (iii)) jeopardise the right to asylum and protection against refoulement provided for in Articles 18 and 19 of the Charter and, therefore, that they should also be deleted.

2.3.2 In line with UNHCR, the EESC calls for readmission provisions to include a guarantee that the third country or region has fully recognised and implemented the 1951 Geneva Convention, thereby guaranteeing access to a procedure for assessing applications for protection in line with the Convention.

2.3.3 The EESC notes with concern that the return mechanism under the EU-Turkey Statement could turn the hot-spots into detention centres. This would violate the right to freedom and protection against arbitrary detention (Article 5 ECHR and Article 6 of the Charter). The EESC therefore expresses its alarm over the arrests and returns under the EU-Turkey Statement and considers that the current return mechanism must be urgently reviewed in order to ensure proper protection in this and in new partnership agreements.

2.3.4 The EESC strongly supports closer diplomatic relations as well as financial and technical measures in the framework of partnerships with third countries — such as building local capacity for the reception and protection of persons in need of international protection — that help meet the challenges posed by refugees in third countries and regions. Such measures must respect the 1951 Geneva Convention, the ECHR and the Charter. Return agreements or other similar cooperation agreements with third countries must not place conditions on resettlement measures, nor on development aid more generally. Such agreements run counter to the humanitarian goals of these measures.

⁽⁴⁾ OJ C 71, 24.2.2016, p. 82.

2.4 Eligibility criteria (Article 5)

2.4.1 The EESC welcomes the special emphasis that is placed on the vulnerability of women and girls as well as children and adolescents, including unaccompanied minors, and welcomes the inclusion of people with family links as an extension of the classical resettlement categories. The EESC particularly welcomes the concern for family unity which means that consideration is given to siblings, as 'family members'. However, these criteria should only apply in cases when existing family reunification measures, such as the 2003 Family Reunification Directive, do not permit family reunification. The EESC underlines that the principles of equality and non-discrimination must be upheld and should be applied without prejudice to (a), (b), (c) or (d).

2.4.2 However, the EESC has reservations about expanding the categories to cover 'persons with socio-economic vulnerability' if these people have either a low income, low professional status or a poor level of school education etc. This category does not require protection under the 1951 Geneva Convention, potentially leading to discrimination against those in need of international protection. However, it is imperative that other legal ways to enter the EU and measures are established that cater for persons with socio-economic vulnerability.

2.4.3 Overall, the EESC recommends adopting UNHCR's long-standing recognition criteria, thereby reinforcing its central role in the identification of people in need of international protection.

2.5 Grounds for exclusion (Article 6)

2.5.1 The EESC rejects the blanket exclusion of persons under Article 6(1)(d) and (f), since these points conflict with the fundamental right to asylum. Both must be deleted in order to safeguard the integrity and credibility of the institution of asylum.

2.5.2 It is also necessary to ensure that Article 6(1)(c) is only applied in accordance with the principle of proportionality. In addition, vague terms and phrases such as 'have committed a serious crime' in Article 6(1)(a)(ii) should be avoided in the context of eligibility and exclusion criteria, due to states' differing legal systems and interpretations, or else they should be clearly defined.

2.5.3 There must be clear and reasonable evidence to invoke the optional exclusion ground (Article 6(2)), which enables Member States to refuse resettlement of third-country nationals or stateless persons to whom one of the grounds for exclusion in Article 6(1)(a) or (b) applies 'prima facie'. Otherwise, this should be deleted. A Member State acting on the basis of mere suspicion would be infringing the principle of non-discrimination.

2.6 Resettlement plan and targeted resettlement schemes (Articles 7 and 8)

2.6.1 The EESC welcomes the possibility of finding a flexible response to shifting migration flows and evolving international circumstances. However, in accord with UNHCR and other civil society organisations⁽⁵⁾, it urges — in contrast to Article 7 — that the number of people to be resettled be treated as a minimum, and calls for the UNHCR annual report⁽⁶⁾ to be used as the basis of a forecast of the number of people to be resettled. The EESC believes that a level of at least 25 % of the number of people that UNHCR considers to be in need of resettlement internationally is appropriate for Europe.

2.6.2 The EESC has reservations about the Member States' involvement in implementing the annual resettlement plan. These doubts are justified by the state of implementation of the Council conclusions of 20 July 2015 to date, and also by the infringement proceedings launched by the Commission for failure to implement the Common European Asylum System⁽⁷⁾ and the Commission's reports on progress made in the implementation of the EU-Turkey Statement⁽⁸⁾.

⁽⁵⁾ Joint Comments Paper by Caritas Europe, CCME, ECRE, ICMC Europe, IRC, Red Cross EU Office, 14.11.2016.

⁽⁶⁾ UNHCR Projected Global Resettlement Needs 2016.

⁽⁷⁾ IP/15/6228.

⁽⁸⁾ COM(2016) 349 final.

2.6.3 Article 8 should draw a clearer distinction between the UNHCR resettlement framework on the one hand and resettlement measures and other legal entry routes pertaining to the EU, its Member States or other stakeholders on the other hand. The EESC broadly welcomes a formalised tripartite approach under the EU Resettlement Framework, allowing UNHCR, the EU and its Member States, and private/civil society actors to carry out resettlement.

2.7 *Consent (Article 9)*

2.7.1 While the resettlement procedures under Articles 10 and 11 must be based on the consent of third-country nationals or stateless persons, third-country nationals or stateless persons who have refused resettlement in a particular Member State, e.g. for family, social or cultural reasons, should not be excluded from being resettled in another Member State.

2.8 *Ordinary and expedited procedures (Articles 10 and 11)*

2.8.1 The EESC accords a key role to UNHCR in identifying third-country nationals and stateless persons. UNHCR can be supported by a Union Agency for Asylum, the purpose and remit of which the Commission has not yet set out in detail, or by relevant international bodies. The EESC questions special rights — such as in the case of the EU-Turkey Statement — that enable the third country, rather than UNHCR, to choose among those departing; otherwise, it cannot be guaranteed that the fundamental rights under the 1951 Geneva Convention, the Charter and the ECHR are being upheld.

2.8.2 According to the proposal, resettlement should be the preferred avenue to international protection in the territory of the Member States and should not lead to another asylum procedure. Such restrictions may impinge upon the right to asylum of a person in need of protection. There must be a guaranteed option of applying for asylum in a different way in the territory of the Member States, otherwise this could run counter to the right and obligation of those seeking protection to apply for asylum in the first host country in the EU.

2.8.3 The EESC warns that a conflict arises between the integration of resettled persons in a Member State and the granting of subsidiary protection status under the expedited procedure (Article 11). An individual's refugee status must be re-examined in the Member State in which he or she is to be resettled and may therefore potentially be rejected. Subsidiary protection status should not be granted because the expedited procedure arises due to urgent situations, e.g. an urgent need for medical care. The conditions for fully granting refugee status should be verified under both procedures⁽⁹⁾.

2.9 *High-Level Committee (Article 13)*

2.9.1 The EESC recommends that, beyond just consultation, the Commission's annual resettlement plan should be drawn up in conjunction with the high-level committee, and its implementation should be mandatory. This committee should be jointly chaired by the Commission and the Parliament, working in close cooperation with civil society. As the voice of civil society, the EESC should also be represented as a member of the high-level committee, or at the very least as a permanent participant with observer or advisory status.

2.9.2 The EESC calls for a Union Agency for Asylum, UNHCR and the IOM to be permanent members of the high-level committee.

2.10 *Exercise of the delegation*

The EESC supports giving the Parliament and the Council the right to veto and revoke Commission delegated acts, adopted pursuant to Article 10(9).

2.11 *Association with Iceland, Liechtenstein, Norway, and Switzerland*

The EESC strongly supports the participation of associated states in implementing resettlement plans and in the high-level committee. The EESC recommends inviting the United Kingdom, Ireland and Denmark to participate.

⁽⁹⁾ OJ C 34, 2.2.2017, p. 144; SOC/547 on Common European Asylum System Reform Package II, Brussels, 14 December 2016, and the 1951 Geneva Convention (see page ... of this Official Journal).

3. Specific recommendations

3.1 *Involvement of the Member States in implementing the annual resettlement plans*

3.1.1 The EESC again calls on the EU Member States and the international community to take more responsibility for people in need of international protection, to show more solidarity with third countries and regions where people have been displaced, and to redouble their efforts to resettle and voluntarily admit people on humanitarian grounds.

3.1.2 The Committee calls on the EU and the Member States to fulfil the relocation and resettlement commitments previously made in the Council Decisions of July and September 2015, to pay more attention to the limited capacity of a Member State such as Greece to take in people, and to step up their efforts to establish a solidarity-based Union Resettlement Framework and a Common European Asylum System. In the light of the 65,3 million people seeking international protection worldwide (UNHCR figures), the EESC recommends demonstrating greater commitment and resettling far more than 20 000 persons in need of protection per year.

3.1.3 The EESC recommends that Member States should immediately expand their institutional presence in countries of origin and transit and should enable embassies and consulates, or as yet unbuilt migration centres, to rapidly confirm vulnerability on the basis of UNHCR referrals and to allow resettlement in the Member States. This would represent an additional contribution to building up the infrastructure necessary for the EU's resettlement plans.

3.2 *Cooperation*

3.2.1 The EESC recommends formally entering into a close partnership with UNHCR, due to its internationally acknowledged expertise. Additionally, similar partnerships can be formed with the IOM and other certified civil society organisations such as the Churches' Commission for Migrants in Europe (CCME) or the European Council on Refugees and Exiles (ECRE). The Committee wishes to encourage the Member States to include citizens and civil society organisations at early stages at the local level to gain the support of the local community, thus increasing the prospect of successful integration of resettled refugees.

3.2.2 Alternative admission and funding schemes should also be considered — e.g. those involving individuals, non-governmental organisations, civil society organisations, including social organisations, or other interested parties — so as to create legal ways into the EU. While these schemes can usefully complement the European resettlement plan, they must under no circumstances replace it. In this regard, the EESC would like to single out Canada's Private Sponsorship of Refugees Program for praise. Civil society, social partners and local authorities play an important role and foster cohesion after a person is resettled; they should therefore be involved at as early a stage as possible in planning and decision-making processes under the Resettlement Framework.

3.2.3 Member States should regularly evaluate private admission schemes to ensure that the fundamental rights set out in the Charter, the ECHR, and the 1951 Geneva Convention are being upheld and that these schemes are not pursuing other aims. Persons to be resettled under private admission schemes must meet the conditions for refugee status. They receive the same legal status in the host country as refugees who have entered under government schemes.

Brussels, 25 January 2017.

The President
of the European Economic and Social Committee
Georges DASSIS
