



## Committee of the Regions

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### OPINION of the Committee of the Regions on THE FUTURE COMMON EUROPEAN ASYLUM SYSTEM II

#### THE COMMITTEE OF THE REGIONS

- In this opinion, the CoR underlines that local and regional authorities will continue to be at the forefront of implementing European legislation on essential elements of the Common European Asylum System (CEAS); however, is concerned that the documents under consideration in this Opinion make inadequate reference to the local and regional dimension. Inclusion of the local and regional dimension is necessary both for the effective implementation of CEAS II and for compliance with the principle of subsidiarity.
- Moreover, the CoR believes that successful harmonisation is a means of alleviating the disproportionate burden faced by certain local and regional authorities caused by their geographic or border location, in combination with differences in national approaches in the asylum field. Therefore, it recommends that where access to housing, welfare, health, education and the labour market are administered by local or regional authorities, there should be recognition by Member States of the necessity of solidarity and burden-sharing at the sub-national level.
- Yet the CoR considers that in order for the policy of European harmonisation to succeed, local and regional authorities may require either additional direct European support, or guarantees that they will benefit proportionately from funds allocated to Member States. It also stresses the need for improvements in communication at local and regional level concerning the difference between forced and unforced migration, and between recipients and seekers of international protection, in order to ensure that communities have informed and positive messages about beneficiaries of international protection.

Rapporteur

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Reference documents:

Communication from the Commission to the European parliament, the council, the European economic and social Committee and the Committee of regions - Policy plan on asylum: An integrated approach to protection across the EU  
COM(2008) 360 final

Proposal for a Directive of the European Parliament and of the Council on laying down minimum standards for the reception of asylum seekers  
COM(2008) 815 final

Proposal for a Regulation of the European Parliament and of the Council on establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person  
COM(2008) 820 final

Proposal for a Regulation of the European parliament and of the Council establishing a European Asylum Support Office  
COM(2009) 66 final

## I. POLICY RECOMMENDATIONS

### THE COMMITTEE OF THE REGIONS

1. underlines in particular that local and regional authorities will continue to be at the forefront of implementing European legislation on essential elements of the Common European Asylum System (CEAS); and reiterates the recommendations made in its first Opinion on the CEAS adopted at the 74th Plenary Session (CdR 177/2007 fin);
2. identifies, in this second Opinion on CEAS, specific further issues in relation to the Policy Plan in general, and the available proposed legislation in particular, while endorsing the original findings;
3. is concerned that the documents under consideration in this Opinion make inadequate reference to the local and regional dimension. Inclusion of the local and regional dimension is necessary both for the effective implementation of CEAS II and for compliance with the principle of subsidiarity;

#### *The Policy Plan on Asylum*

4. welcomes the recognition that, in this policy field, harmonisation must be coupled with an increase in standards, but does so with some reservations. In particular, the Committee notes that there may be consequential costs for local and regional authorities;
5. underlines that, insofar as CEAS concerns asylum seekers and refugees, it should remain rooted in the principles of the 1951 UN Refugee Convention, and that no diminution of its standards should be allowed or implied;
6. welcomes the fact that a key feature of the Policy Plan and the associated legislation is the unification of approaches to asylum and forms of subsidiary protection. This is important because it recognises the limitations of the refugee definition, and that many people seeking international protection may not be refugees in the strict sense (for example, persons fleeing natural disasters). The applicable reception arrangements and procedures, as well as the status granted, should guarantee the equal treatment of these persons;
7. believes that successful harmonisation is a means of alleviating the disproportionate burden faced by certain local and regional authorities caused by their geographic or border location, in combination with differences in national approaches. Where reception conditions and processes, or the application of qualification criteria for international protection, are (or are perceived to be) more strict in one Member State than another, this may contribute to secondary migration within the EU. This makes implementing CEAS more difficult, and may place undue burdens on some Member States and local and regional authorities;

8. stresses that the principal causes of forced migration are circumstances external to the EU, rather than conditions inside it;
9. recommends that where access to housing, welfare, health, education and the labour market are administered by local or regional authorities, there should be recognition by Member States of the necessity of solidarity and burden-sharing at the sub-national level;
10. considers that in order for the policy of European harmonisation to succeed, local and regional authorities may require either additional direct European support, or guarantees that they will benefit proportionately from funds allocated to Member States;
11. recognises that disproportionate burdens resulting from geographic location at the EU's borders and from demographic characteristics that can hinder the effectiveness of harmonisation and therefore agrees that further harmonisation of national standards through CEAS must be coupled with enhanced practical cooperation to fairly distribute asylum responsibilities among Member States and regions;
12. is concerned that the Policy Plan does not address the operation of the EU border agency, FRONTEX, either on harmonisation or practical cooperation. The improved attention paid in the CEAS proposals to human rights generally, and the human rights of vulnerable persons in particular, should be mirrored in the rules governing FRONTEX;
13. stresses the need for improvements in communication at local and regional level concerning the difference between forced and unforced migration, and between recipients and seekers of international protection, in order to ensure that communities have informed and positive messages about beneficiaries of international protection;

*The Reception Directive*

14. supports the combining in this Directive of measures to cover reception standards for both asylum seekers and persons seeking subsidiary protection;
15. points out that in harmonising reception standards, social assistance given to asylum seekers in relation to housing, welfare, health, education and access to the labour market, must certainly be provided at a level no higher than equivalent with the national population;
16. considers that the proposed human rights guarantees, including special measures for vulnerable people, should be applied to all forms of processing, including any form of extra-territorial processing such as that envisaged in paragraph 5.2.3 of the Policy Plan. Further moves in this direction will require careful scrutiny, especially in relation to their lawfulness, effectiveness, and advisability;

*Detention: Articles 8-11*

17. strongly welcomes the recognition in Article 8(1) that persons should not be detained for the sole reason that they are an applicant for international protection, as called for by this Committee in para. 16 of its first Opinion on CEAS. The Committee recognises that there may be good reasons for competent authorities detaining certain applicants, such as those likely to abscond;

*Access to the labour market after 6 months: Article 15*

18. agrees that these proposals could benefit both the asylum seeker and the Member State, although it recognises that this is a controversial proposal for some Member States, especially those with rising unemployment and those under pressure due to their geographical position. The Committee welcomes that Article 15(2) of the recast Reception Directive also makes it clear that, "Member States shall decide the conditions for granting access to the labour market";
19. reiterates its views on integration policy stated in paras. 34-38 of its first Opinion on CEAS, and draws attention to its Opinion of 11 October 2007 on "Applying the global approach to migration to the borders of the EU" (CdR 64/2007 fin); the conclusions of the October 2007 Tenerife conference on "The role of regions and cities in managing migration flows", co-organised by the Committee of the Regions and the Canary Islands Government; the Opinion of 15 June 2006 on "The protection of minorities and anti-discrimination policies in an enlarged Europe" (CdR 53/2006), in which integration policy was discussed; and the Opinion of 12 February 2009 on "Local and regional authorities at the forefront of integration policies" (CdR 212/2008); as well as the conclusions of the October 2008 Athens seminar on "The role of cities and regions in integrating immigrants" organised by the Committee of the Regions and the Local Union of Municipalities and Communities of Attica;
20. reaffirms the recommendation made in para. 4 of its first Opinion on CEAS that European legislation should require Member States to establish a system of networks of regional authorities, in order to integrate refugees in an informed way;

*Rules on material reception conditions and health care: Articles 17-20*

21. has its concerns about the requirement to apply national welfare provisions to asylum seekers and would instead suggest that, in a bid to secure a basic level of provision, consideration be given to Europe-wide uniform minimum standards;
22. recognises that the provisions regarding material conditions are of particular importance to the local and regional authorities that play a significant role in delivering housing, welfare, health, and education. Where Member States have discretion over the implementation of these

standards, they should assure local and regional authorities that they will receive proportionate financial support where they are placed under additional duties;

23. identifies a need for training for local and regional authorities officers asked to undertake the means-testing suggested in these provisions, so as to ensure that contributions to the cost of material reception conditions or healthcare are not taken unnecessarily from the applicants for international protection themselves;

*Provisions for persons with special needs: Articles 21-24*

24. reiterates its deep concern for vulnerable people (paras. 29-33 of its first Opinion on CEAS), and welcomes the steps taken towards addressing this issue. The Committee draws particular attention to the health needs of persons seeking international protection in conditions giving rise to injury, malnutrition and psychological trauma. Since health services are often provided at local or regional level, the burdens on particular regions must be researched, identified and alleviated;

*Treatment of applicants refused international protection*

25. The harmonisation of the treatment of failed asylum seekers could assist in the reduction of secondary migration. However, action must be allowed to encourage those concerned to leave voluntarily. These actions should not affect necessary medical assistance or subsistence support provided to people in this category;
26. stresses that forced destitution and denial of healthcare should never be used to effect immigration and asylum policies related to the removal of refused applicants for international protection;

*Minors*

27. welcomes the fact that the Reception Directive and the other recast CEAS II instruments now provide a clear definition of a minor, namely "a third-country national or stateless person below the age of 18 years". Likewise, it is to be welcomed that each of the instruments creates additional safeguards for minors. However, whilst a person identified as a minor will benefit from these standards, there is insufficient protection for those applicants for international protection whose age is contested by the Member State receiving the applicant, processing and deciding the application, or applying the Dublin criteria;
28. notes that material reception conditions will be the first part of the CEAS experienced by applicants for international protection. It is vital therefore that where the age of an applicant is disputed, they are treated as minors until it is proven that they are not (with due regard to the rights and safety of other applicants for international protection); that they are treated at all times humanely and with dignity; and that legal safeguards to age determination procedures

apply, in particular where there is recourse to medical examination. If the age of the applicant is wrongly assessed at this stage, then the child applicant for international protection may be wrongfully denied the increased levels of protection that the CEAS II legislation would seek to enshrine for minors;

29. Recognises the exceptional pressure placed on some local and regional authorities for the provision of services for unaccompanied or large numbers of minors, and recommends that such authorities should be adequately resourced.

*Recast Dublin Regulation*

30. notes that this is of particular importance to regions, since, under the Dublin system, asylum seekers may be transferred to the first Member State they entered, which puts pressure on Member States and regions at the external borders of the EU and major points of entry;
31. endorses the aim of improving the efficiency of the system, but only where it is consistent with the application of harmonised reception and qualification standards and procedures. This ensures that Member States transferring third country nationals to another Member State do not breach their own obligations under international human rights law, including the right to respect for family life, the best interest of the child, and the prohibition upon refoulement, including indirect refoulement, under Article 19 of the European Charter of Fundamental Rights, Article 33 of the 1951 UN Refugee Convention, and Article 3 of the 1984 UN Convention Against Torture. The provisions of the proposed Regulation should only take effect once the revised Reception, Procedures, and Qualification Directives have been fully implemented;
32. welcomes Article 6 on protecting the rights of unaccompanied minors, which partly addresses the concerns raised in paragraphs 29-33 of the Committee's first Opinion on the CEAS. Effective safeguards for other vulnerable people, such as pregnant women and disabled people, should be introduced. The Regulation should also address the existing shortcomings in relation to maintaining the family unit;
33. welcomes the recognition in Article 27 that persons should not be detained for the sole reason that they are an applicant for international protection, echoing as it does the suggestion of this Committee in para. 16 of its first Opinion on the CEAS;
34. endorses the procedures proposed in Article 31 for suspending the provisions contained in this Regulation where a Member State is faced with a particularly urgent situation which places an exceptionally heavy burden on its reception capacities;
35. suggests that a formal means of communication between the regions and the European Commission be established to highlight situations that could give rise to the use of its discretion under Article 31(2) where the conditions in the Member State as a whole do not

satisfy the evidential standard required by Article 31(1). However, and in order to prevent over-use of these provisions, the Commission should carefully monitor the situation and consider whether it is a genuinely urgent situation, or whether non-compliance with the Directive laying down minimum standards for the reception of asylum seekers and with Directive 2005/85/EC should give rise to infringement proceedings under Article 226 of the EC Treaty;

*Recast Procedures Directive*

36. welcomes the recognition that the harmonisation of procedural standards is to be coupled with "better standards" in the processing of applications for international protection. This has the benefit of reducing the length of time taken to reach a decision. Long periods of assessment can have a negative impact upon health and mental wellbeing, which can result in a significant draw upon local and regional resources. Even where decision-making is handled as part of a national (rather than a regional) scheme, delays may result in undue pressure on local and regional authorities where hearings or tribunals are heard;

*Recast Qualification Directive*

37. welcomes the recognition that the harmonisation of qualification standards is to be coupled with "better standards". Given the humanitarian context of any legislation on the issue of refugees, solutions to the problem of inconsistency in the recognition of refugees should take priority over solutions to the problem of secondary migration caused by differing welfare provision and labour market access. The consequences of unjust refusal of international protection are especially grave;
38. welcomes the increased emphasis on subsidiary protection. The Committee welcomes the attention placed in para. 3.3 of the Policy Plan upon improvements in the application of the so-called "internal flight alternative" in particular. This "alternative" should never be used in such a way as to mask refoulement;
39. recognises that improvements in the quality of decision-making on asylum and subsidiary protection, which includes sharing best practice on the interpretation of existing and proposed legislation, will reduce the rate of appeals (which in some Member States is high). They may also contribute to a higher rate of voluntary returns for those whose application for international protection has been rejected. Success in both of these areas will reduce the extent to which regions will be under disproportionate pressure to provide support for persons excluded from national support;
40. reiterates that, under international law, displaced persons have the right to seek international protection, even if they entered the EU illegally; and insists, therefore, that the mode of entry into the EU not be held against applicants for international protection, in particular victims of human trafficking;

41. observes that "credibility" does not form a part of the international or European refugee definition, but that many applications for international protection are, nevertheless, rejected on credibility grounds. Applicants refused international protection may need considerable support from local and regional authorities before they leave the EU, and it is therefore essential that applications are not unduly rejected on credibility grounds;
42. recommends that the recast Qualification Directive more clearly establishes that the provisions on credibility (currently Article 4(5)) are supplemental to the refugee definition: They outline the circumstances in which an individual's unsupported statements may be admissible as evidence, contributing to the standard of proof required for demonstrating facts giving rise to a need for international protection;

*Practical cooperation*

43. stresses the need for networks sharing information and best practice on asylum issues at the local and regional level, and of providing appropriate financial support for networks' activities;
44. welcomes the decision to establish the European Asylum Support Office (EASO), and believes it will actively contribute to the improvement of international standards and a greater consistency of approach;
45. considers that the Committee of the Regions should be included at point 17 of the proposed Regulation under "other Community bodies" (Article 49);
46. stresses the importance of undertaking research and comparative studies in improving the evidence base of both policy and practice, and that local and regional government will play a key role in providing this. Local and regional authorities should be mentioned in connection with "pooling information and best practice" (Article 3) and "gathering and exchanging information" (Article 11);
47. seeks clarity on the proposed regulatory framework and indicators for measuring the effectiveness of policy development and service delivery;
48. recommends that funding programmes that can be accessed by local and regional authorities be developed to improve public awareness of asylum issues in areas where this could improve community information and integration. The Consultative Forum should include local and regional authorities and the Committee of the Regions;
49. further recommends that the EASO should play a key role in building relations with third countries, NGOs and international bodies;

50. strongly underlines the contribution of local and regional authorities to achieving high standards of practical management for asylum seekers and refugees. In addition, the development of training for staff at borders, reception centres and resettlement facilities is crucial to the promotion of international protection programmes;
51. expresses deep concern over the omission of representation from local and regional government on the Management Board, and recommends that administrative arrangements for the EASO be strengthened by the inclusion of representation from the CoR, and that consultation be established on a regular basis;

*Fair sharing of responsibility and solidarity within EU*

52. notes that while solidarity between Member States is recognised as a key element of the proposals, in particular as regards amendments to the Dublin II Regulation, the proposals still leave considerable discretion to Member States on the implementation of the policies. It is important to recognise that, just as there is a need for burden-sharing and solidarity between Members States, there is a need for it within them;
53. reiterates its satisfaction with the practical support offered to Member States by the European Refugee Fund and European Return Fund, as expressed in para. 46 of the Committee's first Report on CEAS. These funds will be particularly important in successfully implementing the Reception and Procedures Directives. The Committee seeks reassurance that local and regional authorities will have direct access to these funds and a role in monitoring the allocation of support through them;
54. tentatively welcomes the possibility of joint processing of specific EU caseloads, subject to a high level of regard for human rights and respect for the principle that each case be considered individually;

*External solidarity*

55. notes the importance of voluntary resettlement and welcomes the proposals for improvements. The Committee seeks confirmation that mechanisms will be in place to consult local and regional authorities on this, given their important role in the successful integration of refugees and other beneficiaries of international protection. The Committee notes that, if managed well, voluntary resettlement will allow regions to benefit from constructive managed migration;

*On the Establishment of a Joint EU Resettlement Programme*

56. welcomes these EC communications, and considers that this initiative will enhance solidarity in resettlement practices as well as improving standards across members states particularly

with reference to the role of local authorities in the reception, resettlement and integration of resettled persons;

57. particularly welcomes the development of the Resettlement Expert Group and stresses the important role Local and Regional Authorities undertake in reception and resettlement processes, and, that their contribution to the identification of needs, annual priorities and exchange of good practice be recognised as stakeholder expertise within this group;
58. requests that sufficient resources from the funding proposed by the European Commission for supporting resettled persons; be provided to local and regional authorities which have to play a key role in the successful implementation of the EU resettlement programme.

## II. RECOMMENDATIONS FOR AMENDMENTS

### Amendment 1

Proposal for a Reception Directive [COM(2008) 815] - Article 2c)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>"Family members" means, in so far as the family already existed in the country of origin, the following members of the applicant's family who are present in the same Member State in relation to the application for international protection:</p> <p>(i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;</p> <p>(ii) the minor children of couples referred to in point (i) or of the applicant, on condition that they are unmarried and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;</p> <p>(iii) the married minor children of couples referred to in point (i) or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under the national law, where it is in their best interests to reside with the applicant;</p> <p>(iv) the father, mother or guardian of the applicant, when the latter is a minor and unmarried, or when he/she is a minor and married but it is in his/her best interests to reside with his/her father, mother or guardian;</p> <p>(v) the minor unmarried siblings of the applicant, when the latter is a minor and unmarried, or when the applicant or his/her siblings are minors and married but it is in the best interests of one or more of them that they reside together;</p>	<p>"Family members" means, in so far as the family already existed in the country of origin, the following members of the applicant's family who are present in the same Member State in relation to the application for international protection:</p> <p>(i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens;</p> <p>(ii) the minor children of couples referred to in point (i) or of the applicant, on condition that they are unmarried <u>and dependent</u>, and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;</p> <p><del>(iii) the married minor children of couples referred to in point (i) or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under the national law, where it is in their best interests to reside with the applicant;</del></p> <p><del>(iv)</del> <u>(iii)</u> the father, mother or guardian of the applicant, when the latter is a minor and unmarried, or when he/she is a minor and married but it is in his/her best interests to reside with his/her father, mother or guardian;</p> <p><del>(v)</del> <u>(iv)</u> the minor unmarried siblings of the applicant, when the latter is a minor and unmarried, or when the applicant or his/her siblings are minors and married but it is in the best interests of one or more of them that they reside together;</p>

**Reason**

The European Commission's proposal in effect widens the definition of the family. This would significantly expand the circle of people who are entitled to assistance. The original circle of beneficiaries should therefore be maintained.

**Amendment 2**

Proposal for a Reception Directive [COM(2008) 815] - Article 6 – New paragraph 1

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
	1. <u>Member States shall safeguard the legal rights of the individual, so that it can be guaranteed that also undocumented asylum seekers shall be treated humanely and with legal certainty in all respects. The consequences of using of a false or assumed identity, or the submission of forged, counterfeit or invalid documents, shall be determined by the applicable law on qualification for International Protection.</u>

**Reason**

So long as identity cannot be established with any great certainty, it is important that each asylum seeker be treated in a way which is legally certain. It is important that the article begin with this fundamental standpoint, which is based on human dignity and the principle that all men are of equal worth.

**Amendment 3**

Proposal for a Reception Directive [COM(2008) 815] - Article 15 (4)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<del>For reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals.</del>	For reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals.

**Reason**

Regarding the European Commission's proposal to grant unrestricted access to the labour market, it must without question be possible for Member State to give priority to nationals and EU/EEA citizens. Article 15(4) of the current version of the Directive should therefore be maintained.

**Amendment 4**

Proposal for a Reception Directive [COM(2008) 815] - Article 20 – New paragraphs 6, 7 and 8

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
	<p><u>6. Member States shall not withdraw or reduce material reception conditions from refused applicants for international protection until plans for their removal or voluntary return are in place.</u></p> <p><u>7. Forced destitution, or the threat of it, shall never be used in order to coerce refused applicants to return to their state of origin.</u></p> <p><u>8. Refusal of primary healthcare, or the threat of such, shall never be used in order to coerce refused applicants to return to their state of origin.</u></p>

**Reason**

These provisions are necessary to ensure compliance with European human rights standards, in particular Article 3 ECHR. Withdrawal and reduction of material reception conditions encourages refused applicants to break contacts with the host Member State; this may impede eventual removal and encourage illegal working. The financial implication of maintaining material reception conditions for refused applicants provides an incentive for Member States to improve their removal procedures and to improve their voluntary return schemes (destitution and the denial of healthcare cannot be seen as encouraging returns that are genuinely voluntary; they are illegitimate forms of forced return). However the increased tax revenues from allowing applicants for international protection to access the labour market no later than six months after arrival in the EU will contribute to the cost of this amendment.

The provision of primary healthcare to refused applicants is also necessary to protect public health. Moreover, where refused applicants are denied primary healthcare, they may typically present their symptoms at hospitals when their condition has become acute. This puts severe pressure on healthcare budgets, which are administered regionally in many Member States.

**Amendment 5**

Proposal for a Reception Directive [COM(2008) 815] - Article 20(1)

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
Member States may reduce material reception conditions where an asylum seeker:	Member States may reduce <u>or withdraw</u> material reception conditions where an asylum seeker:

<p>(a) abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or</p> <p>(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</p> <p>(c) has already lodged an application in the same Member State.</p>	<p>(a) abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or</p> <p>(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</p> <p>(c) has already lodged an application in the same Member State.</p>
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**Reason**

The Commission proposal severely limits the possibilities at Member States' disposal for withdrawing material reception conditions. This would take away an effective incentive for asylum seekers to cooperate actively in the asylum process. The existing provision should therefore be maintained.

**Amendment 6**

Proposal for a Reception Directive [COM(2008) 815] - Article 21 - paragraph 2

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>2. Member States shall establish procedures in national legislation with a view to identifying, as soon as an application for international protection is lodged, whether the applicant has special needs and indicating the nature of such needs. Member States shall ensure support for persons with special needs throughout the asylum procedure and shall provide for appropriate monitoring of their situation.</p>	<p>2. (a) Member States shall establish procedures in national legislation with a view to identifying, as soon as an application for international protection is lodged, whether the applicant has special needs and indicating the nature of such needs. Member States shall ensure support for persons with special needs throughout the asylum procedure and shall provide for appropriate monitoring of their situation.</p> <p>(b) <u>Where the age of an applicant for international protection is contested Member States shall treat the applicant as a child until it is proven that they are not (with due regard to the rights and safety of other applicants for international protection)</u></p> <p>(c) <u>Member States shall ensure adequate legal safeguards apply to age determination procedures, in particular where there is recourse to medical examination.</u></p>

	<u>(d) Any examination of unaccompanied minors must be carried out without prejudice to [Art 17 Directive 2005/85/EC].</u>
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**Reason**

This is in order to ensure that children are not wrongfully denied the enhanced protection for minors enshrined in the CEAS II proposals. It is important that age identification has adequate safeguards at this stage, since the provisions of the Reception Directive also "directly apply" to the recast Council Regulation 343/2003/EC (the Dublin Regulation) (Preamble, clause 9). These provisions should also cross refer to the detailed provisions on unaccompanied minors in the current Article 17 of Directive 2005/85/EC (the Procedures Directive) or its replacement.

**Amendment 7**

Recast Dublin Regulation [COM(2008) 820 final] - Article 31

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
<p>1. When a Member State is faced with a particularly urgent situation which places an exceptionally heavy burden on its reception capacities, asylum system or infrastructure, and when the transfer of applicants for international protection in accordance with this Regulation to that Member State could add to that burden, that Member State may request that such transfers be suspended.</p> <p>The request shall be addressed to the Commission. It shall indicate the grounds on which it is based and shall in particular include:</p> <p>(a) a detailed description of the particularly urgent situation which places an exceptionally heavy burden on the requesting Member State's reception capacities, asylum system or infrastructure, including relevant statistics and supporting evidence;</p> <p>(b) a substantiated forecast of the likely evolution of this situation in the short-term;</p> <p>(c) a substantiated explanation of the further</p>	<p>1. When a Member State is faced with a particularly urgent situation which places an exceptionally heavy burden on its reception capacities, asylum system or infrastructure, and when the transfer of applicants for international protection in accordance with this Regulation to that Member State could add to that burden, that Member State may request that such transfers be suspended.</p> <p>The request shall be addressed to the Commission. It shall indicate the grounds on which it is based and shall in particular include:</p> <p>(a) a detailed description of the particularly urgent situation which places an exceptionally heavy burden on the requesting Member State's reception capacities, asylum system or infrastructure, including relevant statistics and supporting evidence;</p> <p>(b) a substantiated forecast of the likely evolution of this situation in the short-term;</p> <p>(c) a substantiated explanation of the further</p>

<p>burden that the transfer of applicants for international protection in accordance with this Regulation could add to the requesting Member State's reception capacities, asylum system or infrastructure, including relevant statistics and other supporting evidence.</p> <p>2. When the Commission considers that the circumstances prevailing in a Member State may lead to a level of protection for applicants for international protection which is not in conformity with Community legislation, in particular with Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers and with Directive 2005/85/EC, it may decide in conformity with the procedure laid down in paragraph 4, that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.</p> <p>3. When a Member State is concerned that the circumstances prevailing in another Member State may lead to a level of protection for applicants for international protection which is not in conformity with Community legislation, in particular with Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers and with Directive 2005/85/EC, it may request that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.</p> <p>The request shall be addressed to the Commission. It shall indicate the grounds on which it is based and shall in particular include detailed information on the situation in the concerned Member State pointing to a possible lack of conformity with Community legislation, in particular Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers and Directive 2005/85/EC.</p> <p>4. Following the receipt of a request pursuant to</p>	<p>burden that the transfer of applicants for international protection in accordance with this Regulation could add to the requesting Member State's reception capacities, asylum system or infrastructure, including relevant statistics and other supporting evidence.</p> <p>2. When the Commission considers that the circumstances prevailing in a Member State may lead to a level of protection for applicants for international protection which is not in conformity with Community legislation, in particular with Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers and with Directive 2005/85/EC, it may decide in conformity with the procedure laid down in paragraph 4, that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.</p> <p>3. When a Member State is concerned that the circumstances prevailing in another Member State may lead to a level of protection for applicants for international protection which is not in conformity with Community legislation, in particular with Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers and with Directive 2005/85/EC, it may request that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended.</p> <p>The request shall be addressed to the Commission. It shall indicate the grounds on which it is based and shall in particular include detailed information on the situation in the concerned Member State pointing to a possible lack of conformity with Community legislation, in particular Directive [.../.../EC] laying down minimum standards for the reception of asylum seekers and Directive 2005/85/EC.</p> <p>4. <u>When a local or regional authority is</u></p>
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<p>paragraphs 1 or 3, or upon its own initiative pursuant to paragraph 2, the Commission may decide that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended. Such decision shall be taken as soon as possible and at the latest one month following the receipt of a request. The decision to suspend transfers shall state the reasons on which it is based and shall in particular include:</p> <p>(a) an examination of all the relevant circumstances prevailing in the Member State towards which transfers could be suspended;</p> <p>(b) an examination of the potential impact of the suspension of transfers on the other Member States;</p> <p>(c) the proposed date on which the suspension of transfers shall take effect;</p> <p>(d) any particular conditions attached to such suspension.</p> <p>5. The Commission shall notify the Council and the Member States of the decision to suspend all transfers of applicants in accordance with this Regulation to the Member State concerned. Any Member State may refer the decision of the Commission to the Council within one month from the receipt of the notification. The Council, acting by qualified majority, may take a different decision in one month from the date of the referral by a Member State.</p> <p>6. Following the decision of the Commission to suspend transfers to a Member State, the other Member States in which the applicants whose transfers have been suspended are present, shall be responsible for examining the applications for international protection of those persons.</p>	<p><u>concerned that it faces a particularly urgent situation which places a disproportionate burden on its reception capacities, asylum system or infrastructure, compared to its Member State as a whole, and the threshold for the engagement of paragraph 1 is not met, it may make a formal request to the Commission to exercise its discretion under paragraph 2.</u></p> <p>45. Following the receipt of a request pursuant to paragraphs 1 or 3, or upon its own initiative pursuant to paragraph 2 <u>alone or in conjunction with paragraph 4</u>, the Commission may decide that all transfers of applicants in accordance with this Regulation to the Member State concerned be suspended. Such decision shall be taken as soon as possible and at the latest one month following the receipt of a request. The decision to suspend transfers shall state the reasons on which it is based and shall in particular include:</p> <p>(a) an examination of all the relevant circumstances prevailing in the Member State towards which transfers could be suspended;</p> <p>(b) an examination of the potential impact of the suspension of transfers on the other Member States;</p> <p>(c) the proposed date on which the suspension of transfers shall take effect;</p> <p>(d) any particular conditions attached to such suspension.</p> <p>56. The Commission shall notify the Council and the Member States of the decision to suspend all transfers of applicants in accordance with this Regulation to the Member State concerned. Any Member State may refer the decision of the Commission to the Council within one month from the receipt of the notification. The Council, acting by qualified majority, may take a different</p>
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<p>The decision to suspend transfers to a Member State shall take due account of the need to ensure the protection of minors and of family unity.</p> <p>7. A decision to suspend transfers to a Member State pursuant to paragraph 1 shall justify the granting of assistance for the emergency measures laid down in Article 5 of Decision No 573/2007/EC of the European Parliament and of the Council<sup>35</sup>, following a request for assistance from that Member State.</p> <p>8. Transfers may be suspended for a period which cannot exceed six months. Where the grounds for the measures still persist after six months, the Commission may decide, upon a request from the Member State concerned referred to paragraph 1 or upon its own initiative, to extend their application for a further six months period. Paragraph 5 applies.</p> <p>9. Nothing in this Article shall be interpreted as allowing Member States to derogate from their general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations arising out of the Community legislation on asylum, in particular this Regulation, Directive [...]/.../EC] laying down minimum standards for the reception of asylum seekers, and Directive 2005/85/EC.</p>	<p>decision in one month from the date of the referral by a Member State.</p> <p><del>6</del>7. Following the decision of the Commission to suspend transfers to a Member State, the other Member States in which the applicants whose transfers have been suspended are present, shall be responsible for examining the applications for international protection of those persons.</p> <p>The decision to suspend transfers to a Member State shall take due account of the need to ensure the protection of minors and of family unity.</p> <p><del>7</del>8. A decision to suspend transfers to a Member State pursuant to paragraph 1 shall justify the granting of assistance for the emergency measures laid down in Article 5 of Decision No 573/2007/EC of the European Parliament and of the Council<sup>35</sup>, following a request for assistance from that Member State.</p> <p><del>8</del>9. Transfers may be suspended for a period which cannot exceed six months. Where the grounds for the measures still persist after six months, the Commission may decide, upon a request from the Member State concerned referred to paragraph 1 or upon its own initiative, to extend their application for a further six months period. Paragraph 5 applies.</p> <p><del>9</del>10. Nothing in this Article shall be interpreted as allowing Member States to derogate from their general obligation to take all appropriate measures, whether general or particular, to ensure fulfilment of their obligations arising out of the Community legislation on asylum, in particular this Regulation, Directive [...]/.../EC] laying down minimum standards for the reception of asylum seekers, and Directive 2005/85/EC.</p>
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### Reason

This proposed amendment addresses the situation where certain regions may face a disproportionate burden in comparison to their Member State as a whole and where the Member State cannot, therefore, avail itself of Art 31(1) because the situation across its territory is not of sufficient gravity. Unlike existing Art 31(1), this is not a direct request for the suspension of transfers, but a request for the Commission to exercise its discretion under Art 31(2). The amendment therefore recognises the importance of local and regional authorities, without attempting to place them on an equal footing to Member States.

### Amendment 8

EASO Regulation [COM(2009) 66] Article 11 – paragraph 1

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
1. The Office shall organise, coordinate and promote the exchange of information between national asylum authorities and between the Commission and national asylum authorities concerning the implementation of all relevant instruments of the Community asylum <i>acquis</i> . To this end, it may create factual, legal and case-law databases on national, European and international asylum instruments.	1. The Office shall organise, coordinate and promote the exchange of information between national asylum authorities and between the Commission and national asylum authorities concerning the implementation, <u>including at local and regional level</u> , of all relevant instruments of the Community asylum <i>acquis</i> . To this end, it may create factual, legal and case-law databases on national, European and international asylum instruments.

### Reason

The implementation of much asylum policy is at the regional level, and so in relation to gathering and exchanging information it is important that the regions are consulted directly.

### Amendment 9

EASO Regulation [COM(2009) 66] Article 25 – paragraph 3

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
3. The Management Board may invite any person whose opinion may be of interest to attend its meetings as an observer.	3. The Management Board may invite any person whose opinion may be of interest to attend its meetings as an observer. <u>A representative of the Committee of the Regions shall be invited when local and regional interests are at stake.</u>

**Reason**

This amendment recognises the importance and experience of local and regional authorities in relation to asylum policy.

**Amendment 10**

EASO Regulation [COM(2009) 66] Article 30 – paragraph 9

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
9. The Executive Committee may invite any person whose opinion may be of interest to attend its meetings as an observer.	9. The Executive Committee may invite any person whose opinion may be of interest to attend its meetings as an observer. <u>A representative of the Committee of the Regions shall be invited when local and regional interests are at stake.</u>

**Reason**

This amendment runs in parallel to the proposed amendment to Art 25(3) to ensure that the expertise and experience of the regions is fully recognised and utilised.

**Amendment 11**

EASO Regulation [COM(2009) 66] Article 32 – paragraph 1

<i>Text proposed by the Commission</i>	<i>CoR amendment</i>
1. The Office shall cooperate closely with NGOs and civil society institutions operating in the field of asylum policy at national, European or international level and shall set up a Consultative Forum for this purpose.	1. The Office shall cooperate closely with NGOs and civil society institutions operating in the field of asylum policy at <u>regional</u> , national, European or international level and shall set up a Consultative Forum for this purpose.

**Reason**

This amendment also recognises the importance and experience of regional governments in relation to asylum policy.

Brussels, 7 October 2009

The President  
of the Committee of the Regions

Luc Van den Brande

The Secretary-General  
of the Committee of the Regions

Gerhard Stahl

### III. PROCEDURE

<b>Title</b>	<p>§ Communication from the Commission to the European parliament, the council, the European economic and social Committee and the Committee of regions - Policy plan on asylum: An integrated approach to protection across the EU</p> <p>§ Proposal for a Directive of the European Parliament and of the Council on laying down minimum standards for the reception of asylum seekers</p> <p>§ Proposal for a Regulation of the European Parliament and of the Council on establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person</p> <p>§ Proposal for a Regulation of the European parliament and of the Council establishing a European Asylum Support Office</p>
<b>Reference(s)</b>	COM(2008) 360 final / COM(2008) 815 final / COM(2008) 820 final / COM(2009) 66 final
<b>Legal basis</b>	Optional referral, Article 265 al.1
<b>Procedural basis</b>	-
<b>Date of Commission letters / Date of Council referral</b>	26.02.2008 and 20.03.2009 / 01.04.2009
<b>Date of President's decision</b>	07.07.2008
<b>Commission responsible</b>	Commission for Constitutional Affairs, European Governance and the Area of Freedom, Security and Justice (CONST)
<b>Rapporteur</b>	Ms Doreen Huddart (UK/ALDE), Member of Newcastle-upon-Tyne City Council
<b>Analysis</b>	DI 1/2009
<b>Discussed in commission</b>	06.05.2009
<b>Date adopted by commission</b>	26.06.2009
<b>Result of the vote in commission</b>	Adopted by a majority
<b>Date adopted in plenary</b>	adoption on 7 October 2009

<b>Previous Committee opinions</b>	Opinion on the future Common European Asylum System CdR 177/2007 fin <sup>1</sup> - COM(2007) 301 final - COM(2007) 298 final Opinion on the Proposal for a Council Decision establishing the European Refugee Fund for the period 2005-2010 CdR 80/2004 fin <sup>2</sup> - COM(2004) 102 final Opinion on the Communication from the Commission to the Council and the European Parliament Towards more accessible, equitable and managed asylum systems CdR 249/2003 fin <sup>3</sup> - COM(2003) 315 final Opinion on Immigration policy and Asylum policy CdR 93/2002 fin <sup>4</sup> - COM(2001) 672 final; COM(2001) 567 final; COM(2001) 387 final; COM(2001) 510 final; COM(2001) 743 final; COM(2001) 710 final
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1 OJ C 172, 5.7.2008, p. 24.

2 OJ C 318, 22.12.2004, p. 30.

3 OJ C 23, 27.1.2004, p. 30.

4 OJ C 278, 14.11.2002, p. 44.