

Letter

From: Barbara Prammer, President of the Austrian National Council (Parliament)

To: President Barroso

Date: 20 April 2009

The Standing Subcommittee on European Affairs of the Austrian Parliament's National Council, having discussed the following EU proposals on 17 April:

COM (08) 815 final – proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers

(2720/EU XXIV.GP)

SEC (08) 2945 – Commission staff document accompanying the proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers

Impact assessment

(2718/EU XXIV.GP)

COM (08) 820 final – proposal for a Regulation of the European Parliament and of the Council 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 stateless person

(recast version)

(2738/EU XXIV.GP)

SEC (08) 2963/2 – Commission staff document accompanying the proposal for a Regulation of the European Parliament and of the Council 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 stateless person

(recast version)

Impact assessment

(5287EU XXIV.GP)

COM (08) 825 final – proposal for a Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No (../...) 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 stateless person

(2713/EU XXIV.GP)

COM (08) 360 final/2 – Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions – policy plan on asylum – An integrated approach to protection across the EU

(330/EU XXIV.GP)

COM (08) 66 final – proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office

(7285/EU XXIV.GP)

has adopted, by majority vote, the following opinion addressed to the European Commission:

### Opinion addressed to the European Commission

1. The Standing Subcommittee on European Affairs discussed the following EU proposals at its public hearing on 17 April 2009:

(a) COM (08) 360 final/2 – Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions – policy plan on asylum – An integrated approach to protection across the EU

(330/EU XXIV.GP)

(b) COM (08) 815 final – proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers

(2720/EU XXIV.GP)

(c) COM (08) 820 final – proposal for a Regulation of the European Parliament and of the Council 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 stateless person

(recast version)

(2738/EU XXIV.GP)

(d) COM (08) 825 final – proposal for a Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EC) No (.../...) 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 stateless person

(2713/EU XXIV.GP)

(e) COM (08) 66 final – proposal for a Regulation of the European Parliament and of the Council establishing a European Asylum Support Office

(7285/EU XXIV.GP)

2. The Standing Subcommittee on European Affairs has also taken account of the Joint Opinion of the Austrian *Länder* of 30 January 2009 and the Opinion of the *Bundesrat's* EU Committee of 3 February 2009.

3. After thorough discussion and in the light of the written and oral information provided by the Austrian Government and of the European Parliament's position, the Standing Subcommittee on European Affairs has reached the following conclusions.

4. The Standing Subcommittee on European Affairs endorses the decisions and views expressed in point (2).

## **5. General conclusions**

Firstly, the attached assessment of the impact and implications of the proposed measures is neither complete nor entirely informative. This applies in particular to the financial implications for Member States, the potential impact on secondary migration and the justifications for compliance with the principles of subsidiarity and proportionality.

## **6. Principle of subsidiarity**

The proposals concerning access to the labour market, the level of social/welfare benefits required and the extension of the definition of family members do not appear compatible with the principles of subsidiarity and proportionality.

## **7. Asylum strategy**

(a) Austria fully supports the goal of creating a common European asylum system. The quality of national asylum systems must continue to be improved and Member States must continue to harmonise their asylum decisions.

(b) It therefore fully supports the objective of closer practical cooperation between Member States as uniform interpretation and application of existing provisions is essential to ensure genuine harmonisation. A uniform decision-making basis and uniform practice are required to reduce the attraction of secondary migration as far as possible.

(c) Greater solidarity between Member States is welcomed. Consequently Austria also supports the deployment of teams of asylum experts by the European Asylum Support Office. However, there must be a genuine common EU asylum policy before there can be any real burden sharing.

(d) Austria also supports external solidarity. This must be based mainly on the implementation of regional protection programmes, i.e. protection on the ground. Austria does not, however, favour participation in resettlement programmes. Before an EU resettlement strategy can be introduced there must be a genuine common EU asylum policy.

## **8. Reception Directive**

(a) Austria supports extension of the scope of the Directive to beneficiaries of subsidiary protection. This has already been implemented in Austria.

(b) Access to the labour market falls within Member States' national jurisdiction. Harmonised access to the labour market six months after submission of an asylum application is therefore rejected. It will create pull factors.

(c) The definition of family in the Commission's proposal is extremely broad. Austria prefers to retain the nuclear family (parent of a minor, spouse, minor child of an asylum seeker).

(d) The present scope of basic welfare benefits should not be changed. If it were extended it would lead to a huge increase in costs. Differing levels of social welfare between Member States would also encourage secondary migration.

(e) The asylum seeker's cooperation in the process remains a decisive factor. Limitation of the grounds for withdrawal of basic welfare benefits is therefore not welcomed.

(f) The new conditions governing detention pending expulsion are not viewed favourably. They place serious restrictions on such detention.

(g) The extension of the group of persons with a particular need for protection to include the mentally ill is not welcomed as it could lead to abuse.

## **9. Dublin Regulation**

(a) Austria welcomes the basic principle currently enshrined in the Dublin Regulation of determining the Member State responsible for examining an asylum application. The Commission's evaluation report has shown that the current system works in principle but could be made more effective.

(b) Consequently Austria had expected that the amendments in the recast version of the Dublin Regulation would make the Regulation's implementation more effective, would support Member States in implementing the Regulation, would close the loopholes in responsibility and implementation and would create legal certainty.

(c) However, the Commission has proposed amendments which change the Regulation's basic principle and whose objective is to significantly extend asylum seekers' rights, which includes giving them partial freedom to choose which Member State is responsible, rather than focusing on a system that assigns responsibility to the Member States.

(d) The following proposals are of the greatest concern to Austria:

- The Commission's proposal for the temporary suspension of the Dublin transfers is not welcomed by Austria. In Austria's view there should be no watering down of Member States' responsibilities. The system proposed by the Commission would lead to further costly and administratively burdensome delays in the process.
- Member States' sovereignty should not be restricted by the requirement that the asylum seeker's consent should be sought.
- Austria also prefers to retain the existing definition of family (nuclear family consisting of a minor, spouse, minor child of an asylum seeker).
- The inclusion of detention rules in the Regulation or restriction of the current rules on detention pending expulsion would severely hinder the effective implementation of the Dublin Regulation.

(e) If Member States were allowed to suspend application of the provisions of the Dublin Regulation because their asylum systems were overwhelmed owing to inadequate organisational or human rights provisions, it might create incentive effects that would run counter to the objectives of a common asylum policy. Priority must be given to proper transposition of the current standards, if necessary with Community support.

(f) The new Community rules on appeals are not only unnecessary but might also seriously hinder the implementation of the Dublin Regulation.

## **10. EURODAC Regulation**

(a) Austria supports the setting of clear deadlines for the transmission of information to improve the Eurodac Regulation's efficiency. However, some exceptions must be included in the Regulation, e.g. in the event of an asylum seeker's failing to cooperate or the impossibility of obtaining information (if an asylum seeker is admitted to hospital for instance).

(b) Austria agrees to the extension of the Regulation to beneficiaries of subsidiary protection in line with the proposed amendments to the Dublin Regulation.

(c) The creation of a new management structure for EURODAC in conjunction with other IT systems is welcomed.

(d) Austria would like to see binding rules on the storage/consultation of data on illegal third-country nationals apprehended at the border. Austria also considers that compulsory storage of data on illegal residents would be useful. EURODAC should be able to be used as widely as possible.



(e) The proposed amendments to EURODAC cannot be seen in isolation from those to the Dublin II Regulation. They can be accepted only if they are in line with the Dublin Regulation.

## **11. Regulation on the Asylum Support Office**

Austria welcomes the Commission's efforts to promote closer practical cooperation to ensure uniform application of EU asylum rules and to help reduce secondary migration of asylum seekers within the EU. The Standing Subcommittee on EU Affairs considers that unnecessary and costly bureaucratic structures should be avoided. In this context, the need for a new EU Asylum Support Office has not yet been demonstrated or proven by the Commission or thoroughly discussed.

It is the understanding of the Standing Subcommittee on EU Affairs that the Austrian Minister for the Interior will make her agreement conditional on compliance with these conditions in the negotiation of the proposed EU Directive and Regulations.

Annex: Joint opinion of the Austrian *Länder* of 30 January 2009



Three documents that are related according to COM(2008)820, page two.

<b>Name of the Authority:</b>	Landeshauptleutekonferenz (Austrian State Governors' Conference)
<b>Primary contact person:</b>	Contact points in the Provinces
<b>Title of document:</b>	<ul style="list-style-type: none"> <li>• Proposal for a Regulation 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.</li> <li>• Proposal for a Regulation concerning the establishment of "EURODAC" for the comparison of fingerprints.</li> </ul>
<b>Reference:</b> (e.g. COM(2005) 112)	<ul style="list-style-type: none"> <li>• COM(2008)820 final</li> <li>• COM(2008)825 final</li> </ul>

<p><b>1. Legal basis and type of competence:</b></p> <p>(a) Objective(s) of the document.</p> <p>(b) On which Treaty article(s) is the document based? If you consider the legal basis inappropriate, please give reasons.</p> <p>(c) Does the proposed action fall within the European Community's competences? Is such competence exclusive or shared between the Community and the Member States<sup>1</sup>?</p>	<ul style="list-style-type: none"> <li>• Recast of Regulation 342/2003/EC and burden-sharing measures</li> <li>• Recast of Regulation 2725/2000/EC (Eurodac regulation)</li> <li>• Article 63(1)(a) TEC</li> <li>• Article 63(1)(a) TEC</li> <li>• Shared competence (Area of Freedom, Security and Justice) in implementing the "new asylum strategy"</li> </ul>
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<b>2. Subsidiarity principle</b>	
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<sup>1</sup> If the competence is exclusive, the subsidiarity principle does not apply. If this is the case, please go directly to the proportionality section of this questionnaire (point 3).

.../...

<p>Should action be taken at European level, because:</p> <p>(a) such action is necessary insofar as the Member States (either at the central or at regional and local levels) cannot sufficiently achieve the objective of the proposed measure,</p> <p>and</p> <p>(b) such action would have a clear benefit by reason of its scale or effects?</p> <p>Please provide a reasoned answer to the above question while giving consideration to the following:</p> <p>(i) whether the issue being addressed has transnational aspects that cannot be properly regulated by action of Member States and/ or their local and regional authorities;</p> <p>(ii) whether action by Member States alone would conflict with the requirements of the Treaty or would otherwise significantly damage the Member States' interests;</p> <p>(iii) whether existing Community measures or targeted assistance provided hereunder would be sufficient to achieve the intended objectives.</p>	<p>The Community should take action, since the aims of the proposed measures relating to cases under the Dublin procedure cannot be sufficiently achieved by the Member States and can, by reason of their impact and scope, be better achieved at Community level.</p> <p>Since asylum seekers as a rule travel through several Member States to their country of destination, the issue has transnational aspects that cannot be properly regulated by Member States because of their impact and scope. The regulation establishing the Member State responsible for the asylum process, in particular, should create an effective and efficient transfer system. Measures by the Member States alone would not be able to secure these objectives and would therefore conflict with the requirements of the Treaty. The administrative authorities and active stakeholders concerned have long been seeking a more effective framework for matters relating to the Dublin procedure, so changes or a recast would indeed seem to be needed. However, care must be taken to ensure that the redrafted regulation does not result in procedures that are less efficient than the present regulation.</p>
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<p><b>3. Proportionality principle:</b></p> <p>(a) Do the proposed measures go beyond what is necessary to satisfactorily achieve the intended objectives? <b>Please provide a reasoned answer while giving consideration to the following elements:</b></p> <p>(i) whether the proposed form of action is as straightforward as possible (for example directives should be preferred to regulations and framework directives to detailed measures);</p> <p>(ii) whether the proposed action leaves as</p>	<p>The broadening of the definition of family in Article 1 gives cause for concern in that Austria could be unduly affected by additional family reunifications. The need for this extension should therefore be re-examined from the perspective of the proportionality principle.</p> <p>The planned <b>restrictions on detention</b> (Article 27), especially regarding the definition of risk of absconding (Article 1(l)), will make it virtually impossible for immigration authorities to fulfil their role in ensuring the</p>
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<p>much room for national decision as possible;</p> <p>(iii) whether the proposed measures take account of well established national arrangements and special circumstances applying in your Member State or region (e.g. the organisation and functioning of the legal system).</p> <p>(b) If you consider that the proposed measures indeed go further than what is necessary, what would you consider to be a less restrictive, alternative way to achieve the intended objectives?</p>	<p>necessary transfers of asylum seekers under the Dublin procedure. There is thus some justification for the concerns of immigration authorities that bogus asylum applications will be repeatedly submitted to frustrate detention pending expulsion.</p> <p>On the one hand, some measure of solidarity in handling transfers seems to be called for when there are large unanticipated influxes that particularly affect certain Member States. On the other hand, Member States acting in conformity with Community law should not have to take on extra burdens just because some Member States fail to meet their obligations under Community law to maintain a certain level of protection in the asylum sphere.</p> <p>For this reason, the rules in Article 27 on the admissibility of detention and the system of burden-sharing measures enshrined in Article 31 involving a temporary suspension of transfers are deemed excessive under the proportionality principle. This could lead to an undue burden on individual countries, including Austria, that is in excess of what is needed to achieve the goals. Hence, these provisions should be rejected in their current form or at least be renegotiated.</p>
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<p><b><u>4. Financial and/or administrative burden:</u></b></p> <p>(a) Please indicate whether the financial and/or administrative burden falling upon the European Union, national governments, regional and local authorities, economic operators and citizens is commensurate to the objectives of the proposal and whether it has been kept to an absolute minimum.</p> <p>(b) If the relevant data are available to you, please provide an estimation of the financial and/or administrative burden the implementation of the present proposal would entail for your administration and/or in the territory of your local or regional authority.</p>	<p>The financial and/or administrative burden has not been examined because any technical requirements are a matter for the federal level.</p> <p>No reliable data are available.</p>
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<b>Better Regulation and Preparation of the proposal</b>	
<p><b><u>5. Consideration of local and regional factors in the impact assessment and consultation</u></b></p> <p>(a) Has a comprehensive impact assessment been presented, which takes into account local and regional aspects?</p> <p>(b) Have local and regional authorities been adequately consulted prior to the adoption of the proposal? In case you have participated in such a consultation, please specify the practical details of your participation and provide an assessment of your experience.</p>	<p>Not available.</p>
<p><b><u>6. Quality of the arguments provided:</u></b></p> <p>(a) Does the proposal provide clear, adequate and convincing arguments to justify its compliance with the subsidiarity and proportionality principles?</p> <p>(b) Are these arguments based on qualitative as well as quantitative indicators?</p>	<p>The case made in the proposal for conformity with the principles of subsidiarity and proportionality appears logical and clear, with the exception of the observations on extending the family circle (Article 1), on detention (Article 27) and burden-sharing (Article 31).</p>
<p><b><u>Further comments</u></b></p> <p>Please feel free to provide additional feedback on the overall quality of the proposal, i.e. clarity of drafting, simplicity of implementation at the regional and local level, need for a more thorough debate within the course of the legislative process on the financial and/or administrative burden the proposal would entail, suitability of the envisaged action with regard to the intended objectives etc.</p>	



Three documents, which are joined in accordance with page 2 COM(2008)820.

<b>Name of the authority:</b>	Landeshauptleutekonferenz [Conference of the Presidents of the Provinces]
<b>Contact:</b>	Verbindungsstelle der Bundesländer [Liaison Office of the Federal Provinces]
<b>Document Title:</b>	Proposal for a directive laying down minimum standards for the reception of asylum seekers in Member States
<b>Reference:</b> (e.g. COM(2005) 112)	COM(2008) 815 final

<p><b>1. Legal basis &amp; Type of Jurisdiction:</b></p> <p>a) Aim(s) of the document.</p> <p>b) On which Treaty article(s) is the document based? Please give reasons for any objections to the legal basis.</p> <p>c) Does the proposal fall within the competence of the Union? Does it fall within the exclusive competence of the Union or within the shared competence of the Union and the Member States<sup>1</sup>?</p>	<p>Recast of the existing Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers in Member States with the following aims:</p> <ul style="list-style-type: none"> <li>to eliminate the deficiencies in the existing directive</li> <li>to create comparable living conditions for asylum seekers in the Member States</li> <li>to enable a dignified standard of living for asylum seekers in the Member States</li> <li>to limit the secondary movements of asylum seekers amongst Member States and</li> <li>to prevent abuse of the reception system.</li> </ul> <p>The document is based on <b>Article 63(1)(b) EC</b>. The Council determines the minimum standards for the reception of asylum seekers in Member States in accordance with that article.</p> <p>Pursuant to Article 63(1)(b) EC, the proposal falls within the <b>competence of the Union</b> (obligation on the Council to determine the minimum standards). There is</p>
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<sup>1</sup> If it falls within the exclusive competence of the Union, the principle of subsidiarity does not apply. In that case, please go to point 3 of this form (Principle of proportionality).

	<p><b>shared competence</b> between the Union and the Member States, whereby the <b>principles laid down in Article 5 EC (subsidiarity and proportionality) are to be taken into consideration.</b></p> <p>Accordingly, the Union should take action only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community (<b>principle of subsidiarity</b> – second paragraph of Article 5 EC).</p> <p>Moreover, any action by the Community should not go beyond what is necessary to achieve the objectives (<b>principle of proportionality</b> – third paragraph of Article 5 EC).</p>
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<p><b>2. Principle of subsidiarity</b></p> <p>Should the Community take action because</p> <p>(a) that is necessary as the Member States (either at national or at regional and local level) cannot sufficiently achieve the objective of the proposed measure,</p> <p>and</p> <p>(b) because that has clear advantages in relation to scale and reaction?</p> <p>Please give reasons for your answer to this question, taking into account the following considerations:</p> <p>i) Does the subject area concerned have cross-border aspects which cannot be governed adequately by measures adopted by the Member States and/or by local and regional authorities?</p>	<p>In order to ensure uniform, Union-wide reception practice <u>in fundamental issues</u>, on the one hand, success is more likely if the <b>Community</b>, in the subject area in question – as provided for in Article 63(1)(b) EC – determines the <b>minimum standards</b> for the reception of asylum seekers in the Member States. On the other hand, however, despite cross-border movement of asylum seekers caused by the <b>particularities</b> of the individual Member States (special labour market and social law aspects), it is <b>absolutely necessary</b> that, in the light of Article 5 EC, the <b>Member States themselves govern</b> those <b>measures</b> which go beyond the minimum standards <b>in so far</b> as that is possible and reasonable in line with the objectives of the measure and in particular if thereby the objectives pursued can be better achieved than by Community rules. In that regard, particular attention should also duly be paid to the fact that the <b>financial burdens and administrative costs of governments and local authorities</b> should be kept as low as possible (principle of subsidiarity).</p> <p>The arguments in the following points show that Austria is of the opinion that the submitted <b>proposal does not</b></p>
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<p>ii) Would measures adopted exclusively by the Member States infringe provisions of the EC Treaty or otherwise seriously prejudice the interests of the Member States?</p> <p>iii) Would existing Community measures or targeted support provided within the framework of those measures be enough to achieve the objectives laid down?</p>	<p><b>take account of or takes insufficient account of those requirements in particular in the fields of</b></p> <ul style="list-style-type: none"><li>• detention (Articles 8-11),</li><li>• access to the labour market (Article 15),</li><li>• level of material reception conditions (Article 17(5) and</li><li>• reduction or denial of benefits (Article 20).</li></ul> <p>Since, under Article 63(1)(b) EC, the Council is to determine the minimum standards in the area of law in question, legislation and measures adopted exclusively by the Member States or regional authorities would be contrary to Community law.</p> <p><b>Directive 2003/9/EC, already in force, is to be explicitly regarded as sufficient</b> to be able to guarantee the objectives principally set out in the proposal:</p> <ul style="list-style-type: none"><li>• to create comparable living conditions for asylum seekers in the Member States,</li><li>• to enable a dignified standard of living for asylum seekers in the Member States and</li><li>• to limit the secondary movements of asylum seekers amongst Member States.</li></ul> <p>In this connection, the Community should first of all seek <b>compliance</b> by certain Member States <b>with the content of the existing directive for now, before taking the next step of adopting a new directive</b> which places a unilateral and disproportionate burden on individual Member States. The arguments set out in point 6 will clearly show that some of the changes planned in the <b>proposal</b> for achieving the objectives <b>are to be evaluated as more negative than positive.</b></p> <p><u>In any event, it can be assumed following the arguments set out in this point that the principle of subsidiarity and thus the competence of the Member States have been infringed by the Union.</u> More detailed and in-depth reasons for this are given in point 6 of this assessment table, where the quality of the arguments on the principles of subsidiarity and proportionality put forward in the proposal is evaluated.</p>
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**3. Principle of proportionality:**

- a) Do the proposed measures go beyond what is necessary to achieve the objectives set out? Please give reasons for your answer, taking into account the following considerations:
- i) Is the proposed type of action as simple as possible (for example is a directive to be preferred over a regulation and a framework directive over a detailed measure)?
  - ii) Does the proposal give the Member States as much discretion as possible?
  - iii) Does the proposal take into account established national legislation and specific provisions in your Member States or your regions (for example the structure and functioning of the legal system)?
- b) If you think that the proposal actually goes beyond what is necessary, what other ways of achieving the objectives do you consider less restrictive?

The **chosen type of action (directive) does** appear to be **proportionate** in light of the importance of the measure. However, the proposed **measures** of the proposal go far **beyond what is necessary** to achieve the objectives set out for the following named reasons.

Attention is drawn to the fact that, in determining the level of conditions, **asylum seekers are placed on an equal footing with the nationals of the Member States** by the proposal's plan to extend conditions up to the level of the social assistance granted in the Member States (Article 17(5)). As a result of the disproportionate restrictions on the possibilities available to authorities to refuse, withdraw or reduce conditions, which the proposal provides for, in terms of the limits on conditions asylum seekers are **essentially in an even better position than nationals** of the Member States (Articles 17, 20 and 25).

The **restriction on the possibilities available to authorities** to withdraw or refuse conditions means that authorities have at this point already and will have in the future to an even greater extent almost **no suitable or adequate means of preventing abuse** of the reception system, although that is defined as an important objective in the directive.

The **enormous additional financial cost** which Austria believes is **to be expected** as a result of the improvement of conditions planned by the proposal is set out in detail in point 4. The enormous **additional financial cost** calculated in point 4, which is the result of the implementation of the planned changes, is entirely **disproportionate** to the **objectives** set out and pursued in the proposal.

The effects and **consequences** of the considerably easier access to the **labour market** are unforeseeable and should be investigated more closely.

In that connection, the abovementioned **regional requirements** (social and labour market law aspects)

	<p>are not <b>taken into consideration</b> in the proposal.</p> <p>The planned <b>disproportionate restrictions in the field of detentions</b> (Articles 8-11) almost entirely take away from aliens authorities the possibility of adequately safeguarding their procedures when dealing with asylum seekers.</p> <p>The proposal does not deal with the important point of whether the planned measures and changes in particular will withstand the <b>socio-political response of the people</b> in the Member States.</p> <p>The <b>entitlement to legal representation</b> provided for in Article 25(2) brings about a situation where asylum seekers are unjustifiably in a better position than nationals of the Member States in relation to social conditions and thus in any case infringes the principle of proportionality. The related costs are inestimable.</p> <p>All in all, in the abovementioned areas <b>the Member States have lost almost all of their own scope for decision-making</b> in order to be able to react adequately and appropriately to regional needs.</p> <p><b>That consequence does not comply either with the simply restricted power granted to the Council under Article 63(1)(b) EC to adopt “mere <u>minimum standards</u>” or with the obligation on the Union laid down in the third paragraph of Article 5 EC to observe the principle of proportionality.</b></p> <p><u>In order to improve consideration and monitoring of regional interests, the abovementioned parts of the planned changes to the directive should be governed by national measures of the Member States.</u></p>
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**4. Financial and/or Administrative Costs:**

a) Please state whether the financial or administrative costs incumbent on the European Union, national governments, local and regional authorities, economic players and citizens are proportionate to the objectives of the proposal and whether they are kept as low as possible.

b) If you have the relevant information, please state the estimated financial and administrative costs that would be incurred in your administration or in the area of your local or regional authority by the implementation of the proposal.

The **financial and administrative costs are not examined in the proposal**. It is claimed without examination that the assessment of the relationship between costs and use has shown that the proposals are necessary to achieve the objectives and hence action on the part of the EU does not go beyond what is necessary to solve the problems. The following cost descriptions will show, in conjunction with the arguments in points 3 and 6, that the **relationship between the costs and use** of the proposal should be assessed as being **disproportionate** at the expense of central or regional authorities.

**Nationwide financial costs to be expected:**

- **Approximately EUR 84 million on the basis of the planned increase in the material conditions at the level of social assistance in Austria** (Article 17(5)). There are currently approximately 24 000 asylum seekers nationwide in primary healthcare, of whom it is calculated approximately 14 000 will have a private residence. On the basis of the planned alignment with social assistance, each person would receive approximately EUR 500 per month more than they currently do in primary healthcare, which results in the abovementioned additional costs.
- The additional financial costs for the **improvement of the entitlements** of persons with special needs planned in the proposal **should not be estimated** (Articles 18(2), 19(2) and 21(1) and (2)).
- The additional financial costs arising from the reduced possibility to **reduce and refuse** conditions in the case of clear abuse of the reception system **should not be estimated** (Article 20).
- The cost assessment did not yet include whether the abovementioned social assistance provision laid down in Article 17(5) also comprises **entitlements to care and for the disabled**.
- As a result of the extremely vague drafting, it is not possible to clarify whether unequal treatment of asylum seekers and nationals as referred to in the last sentence of Article 17(5) is actually admissible.

It should therefore be assumed that asylum seekers are to be treated like nationals and if the asylum seeker needs help the same costs are therefore incurred.

**In total, the additional financial costs arising from the proposal nationwide could thus comprehensibly be EUR 80 – 100 million.**

**If the Federal Government is not prepared jointly to finance those costs in the context of a necessary adaptation of the primary care agreement, Article 15a B-VG [Federal Constitution], those costs would have to be borne entirely by the Provinces in the context of social assistance.**

**Nationwide administrative costs to be expected:**

- The increased administrative costs on the basis of the planned improvements in the field of procedural guarantees should not be estimated (Article 9 and Article 21(2)).

<b>Better Law-Making &amp; Drafting of the Proposal</b>	
<p><b><u>5. Consideration of local and regional aspects in the impact assessment and consultation</u></b></p> <p>a) Was a comprehensive impact assessment submitted which considers local and regional aspects?</p> <p>b) Were local and regional authorities adequately consulted before adoption of the proposal? If you took part in such a consultation, please state in detail what your involvement was and how you evaluate this experience.</p>	<p>It is not possible to ascertain comprehensible <b>impact assessments</b> dealing with <b>local or regional aspects</b> (for example social and labour market law aspects) either from documents produced before the present proposal or from the proposal itself. There are no useful figures either on the level of social assistance benefits in the individual Member States or on how many asylum seekers are being looked after in the individual Member States. With regard to the type of argument used in the proposal, those figures would however be <b>important qualitative and quantitative indicators</b> for the assessment of the local and regional aspects (see the arguments in point 6).</p> <p>Under VST-5892/2 [Federal Provinces' Liaison Office] of 6 October and 8 October 2008 (LAD1-ER-1502/268) a joint statement of the Provinces on the asylum strategy COM(2008)360 was submitted which <b>was not taken into consideration</b> despite comments entitled "Consultation of Interested Parties" (subheading in the Commission documents).</p>
<p><b><u>6. Quality of the arguments advanced:</u></b></p> <p>a) Does the proposal contain clear, appropriate and convincing arguments on which compliance with the principles of subsidiarity and proportionality is based?</p> <p>b) Do those arguments relate to both qualitative and quantitative indicators?</p>	<p>The <b>arguments advanced in the proposal</b> on which compliance with the principles of subsidiarity and proportionality should be based are largely <b>neither clear nor appropriate, nor are they convincing</b>, as may be seen below.</p> <p>Under the proposal, in the future the Member States will have to <b>base</b> the granting of financial support to asylum seekers <b>on the level of social assistance granted to their own nationals</b> and thus apply their current social assistance standards to asylum seekers. It is difficult to see the extent to which that planned obligation will limit the <b>secondary movements</b> of asylum seekers between the Member States – as stated in the proposal. Rather, in view of the <b>striking social differences between the Member States</b> in the field of social assistance, it is to be assumed that asylum seeker</p>

numbers will increase and they will move en masse to those Member States **which, like Austria, offer high social standards**. The same is true for the planned easier access to the labour market. Here too, **those countries** which offer high and fair minimum wages and/or unemployment benefits and low unemployment rates **will be the most attractive** to asylum seekers. The unequal treatment of asylum seekers by the Member States thus results not from possible deficiencies in the existing directive, but from the existing social and labour market law differences between the Member States. **Thus, contrary to what the proposal states, the measures planned in the proposal actually increase rather than limit secondary movement in the direction of certain Member States**. It is not possible to estimate the effects on Austria of possible unwanted immigration. Consequently, on the basis of the above comments, insufficient account has been taken in the planned changes of regional needs.

The proposal for a directive does not refer to the relevant social and wage-related differences between the Member States or to the resultant disadvantages for certain States. **In that connection, there are also no comprehensible qualitative and quantitative indicators** in the form of comparative data on the individual Member States.

As abuse of the reception system is to be efficiently prevented at the same time as the planned restrictions on the **possibilities available to authorities** (Article 20), it cannot be inferred from the proposal whether that objective has been defined as important in the draft. Consequently, the authorities have no suitable means at their disposal to combat abuse.

**The proposal has not adequately addressed** the abovementioned high **costs** to be expected **for those Member States** which offer high levels of social assistance. The claim made in the proposal without more detailed explanation that easier access to the labour market would make asylum seekers less of a burden on the public purse **does not correspond with**

	<p><b>the experiences of authorities.</b> Current practice shows that because of language and training shortcomings even recognised refugees (those with a right to asylum) have enormous problems integrating in the labour market. That may be observed to an even greater degree in the case of asylum seekers. At the same time, in the unskilled low-wage labour market, <b>undesirable wage dumping</b> cannot be ruled out. The term “integration” used in the proposal in that connection <b>contradicts the Union’s own approach</b> and its development guidelines. The term “integration” is used first in relation to recognised refugees and in the second instance to those entitled to protection, but not at all in relation to asylum seekers.</p> <p><b>In the light of the above considerations, the arguments used in the proposal to justify and explain the measures and objectives are largely irresolute, incomprehensible and even self-contradictory. Thus, the measures go far beyond what is necessary to achieve the objectives of the Treaty. The costs and disadvantages to be expected as a result of the proposal by governments and regional authorities are therefore entirely disproportionate to the objectives and purposes pursued. Lastly, the proposal is to be regarded as excessive and does not correspond to the obligations of the Community to comply with the principles of subsidiarity and proportionality (Protocol No 30 TEU/EC).</b></p> <p><u>In order to improve consideration and monitoring of regional interests, the abovementioned parts of the planned changes to the directive should be governed by national measures of the Member States.</u></p>
<p><b><u>Other remarks</u></b></p> <p>Further remarks on the quality of the proposal generally are welcome, for example in relation to the clarity of the wording, implementation at regional and local level, the need for more in-depth debate on the financial and administrative costs associated with the proposal during the legislative process, the appropriateness of the envisaged measures with</p>	<p>The following remarks are made in relation to certain parts of the content of the proposal as regards quality and the need for more in-depth debate:</p> <ul style="list-style-type: none"><li>• The provisions on the <b>admissibility of detention</b> in Articles 8-11 go far beyond the current practice on detention pending deportation to ensuring</li></ul>

regard to the objectives laid down, etc.

expulsion. On further interpretation of the provisions, as also stipulated by the case-law of the European Court of Justice in the case of provisions requiring interpretation, taking a person into detention pending deportation and hence safeguarding aliens' police procedures will no longer be possible. Thus the concerns of the aliens' authorities that increasingly malicious asylum applications are being made to prevent detention pending deportation are not unfounded. Owing to the vague and restrictive wording, the present planned articles on the admissibility of detention give no clear indication of how aliens' police procedures are to be safeguarded in the event of clear abuses of asylum.

- **Access to the labour market** is made considerably easier in Article 15. Labour market law and socio-political considerations, in particular in relation to the advantages and disadvantages, have already been discussed in the above points. If on expiry of a 6-month procedure there is almost unrestricted access to the labour market, that will very probably entail unwanted migration into individual Member States. Moreover, the directive remains culpable in relation to how that ease of access to the labour market is to be dealt with in the event of clear asylum abuse (for example in the case of unauthorised multiple applications, etc.). It is also highly unlikely to be possible even in the future to conclude the asylum procedure routinely within 6 months.
- The **financial consequences** of the introduction of the material condition of asylum seekers to the national social assistance guidelines **for Austria** have been explained in detail under "Financial costs". Owing to the social differences between the Member States, to which the Community did not refer in the proposal, the equal treatment of asylum seekers amongst the Member States will also not be achieved by this measure. Thus the measure will also fail to prevent secondary migration between the Member States, but rather allow it to increase towards those Member States which, like Austria, have high social standards. **The measure**



	<p><b>will, however, mean that the already high current costs borne by Austria in the area of provision for asylum seekers could rise by over one-third.</b> The vague wording of the final sentence of Article 17(5) (differences shall be duly justified) will change nothing in this assessment because, according to the wording of the explanatory memorandum to the proposal, such differences are undesirable and should at best exist only in exceptional cases.</p> <ul style="list-style-type: none"><li>• The <b>design and system of the planned restrictive rules</b> on the granting, reduction, refusal and withdrawal of conditions (Articles 17-20) <b>lack any useful relationship to practice.</b> As the proposal (Article 17 in conjunction with Article 20) does not explain other than where there are no special needs (Article 17(3)) under what circumstances material conditions may not be granted from the outset, it is to be assumed that there are in fact no further grounds for such conditions. Subsistence and the treatment of illnesses must now in future be maintained in all cases (Article 20(4)). <b>In connection with the restrictions on the grounds for the reduction and withdrawal of conditions planned in Article 20, an effective means of preventing abuse is essentially ruled out for the authorities.</b> On the one hand, abuse of the reception system is made considerably easier (by multiple asylum applications, absolutely unjustified asylum applications, asylum applications to evade deportation, etc), and on the other the authorities have no suitable means of preventing abuses.</li><li>• In spite of easier access to the labour market, the proposal does not recognise the obligation to use the Member State's own workforce, as is natural in the context of granting social welfare payments nationally. <b>Thus an alien has a free choice between taking up employment and claiming social welfare payments, which is essentially a better position than that of the Member State's own nationals.</b></li><li>• In Article 20, the <b>refund requirement is deleted.</b> Thus an alien cannot be required to refund</li></ul>
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	<p>payments, even if sufficient means were or are available at the time of provision or of refund.</p> <ul style="list-style-type: none"><li>• The <b>extension of mental health and medical claims</b> in Article 19 is regarded as positive, though these measures will give rise to perceptibly higher costs.</li><li>• The extension of <b>claims by those with special needs</b> in Article 21 is to be regarded as positive. The measures will, however, give rise to perceptibly higher costs. In particular, it is unclear how it will be possible to implement the identification requirement in Article 21(2) in administrative terms.</li><li>• The <b>extension of claims for unaccompanied minor family members</b> is to be welcomed. It would, however, be sensible to have rules on determining age, which is important and necessary in practice, in cases of clearly false dates of birth.</li><li>• The <b>proposed claim to legal representation</b> in Article 25(2) unjustifiably places asylum seekers in a better position than nationals of the Member States and thus infringes the principle of proportionality.</li></ul>
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Proposal for a Directive  
laying down minimum standards for the reception of asylum seekers  
COM (2008) 815 final  
(so-called "Reception Directive") – common position of the provinces

It should be stressed at the outset that, if the Reception Directive were implemented almost no asylum seekers could be detained any more pending expulsion. Article 76(2) of the Immigration Authorities Act (*Fremdenpolizeigesetz*), BGBl. I No. 100/2005, as amended by BGBl. I No. 4/2008 (detention pending expulsion of asylum seekers), would no longer be possible. Moreover, under the Reception Directive, detention pending expulsion will, in future, have to be ordered by a court. Administrative authorities would be able to order detention pending expulsion only in urgent cases. The decision would have to be confirmed by a court within seventy-two hours. A legal situation of this kind would be a serious obstacle to the rapid, accurate and efficient imposition of detention pending expulsion. In cases where the detention is not upheld, expulsion would be made more difficult or even impossible.

Implementation of the Reception Directive will grant the asylum seeker immediate access to the labour market and (until he finds work) financial support at least equivalent to the amount of social assistance. Even before the asylum authorities take their decision, integration will be promoted by access to training schemes and to the labour market. That must be firmly rejected. In cases where the detention is not upheld, expulsion will also be made more difficult or even impossible (c.f. current Arigona case). Before a positive decision in the asylum procedure, asylum seekers (applicants) should not be integrated at all.

The applicant/asylum seeker can even choose whether to take part in the labour market or claim social assistance. As things stand, Austrian nationals would be placed at a disadvantage.

Finally, the draft Reception Directive provides for sanctions against asylum seekers only for serious breaches of the rules of the accommodation centres as well as gross acts of violence, but not in the case of lesser offences, even where there is repeat offending. Sanctions for repeat offending must be possible. However, a reduction or withdrawal of the reception conditions should also be possible where the asylum seeker has endangered public safety or public order.

The provinces and the Bund would incur substantial costs under the Reception Directive because:

- 1) basic welfare services are to be raised to at least the equivalent of social assistance;
- 2) detention pending expulsion may be imposed only by the courts;
- 3) Asylum seekers may not be held in prison accommodation – ONLY in specialised detention facilities;
- 4) immediate access to the labour market could lead to the threat of wage dumping, in particular in the low-skilled occupations (e.g. general labourers, painters and bricklayers);
- 5) the phenomenon of illegal working will increase since, under the Reception Directive, the asylum seeker receives financial support equivalent to social assistance and can still increase his income at the same time through undeclared work. According to the experience of the district administration for Wiener Neustadt, at the moment about 50% of undeclared workers who are checked are asylum seekers (although these asylum seekers currently receive support through basic welfare services);
- 6) the effects noted under point 5 will seriously damage the social economy;
- 7) Austria in particular would become even more of a favoured destination for asylum seekers because it has a higher standard of living than other EU Member States (e.g. new Member States, Greece, Spain, Portugal). It will continue to be affected the most by asylum seekers since the main people-smuggling routes from the East pass close by Austria in particular;
- 8) an increase in the number of asylum seekers will also increase the financial pressure on the sickness insurance institutions.

We would point out that the European Commission's impact assessment essentially repeats the arguments set out in Commission documents. However, no attempt is even made to provide a costed assessment.

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