

Letter from: Secretary General of the Italian Senate

To: Catherine Day

Date: Rome, 2 April 2009

Ref: 90/O.C.

I have pleasure in sending you the text of the resolution approved on 25 March 2009 by the Constitutional Affairs Committee of the Senate of the Italian Republic concerning the draft directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (COM(2008) 815 final).

[Complimentary close]

(Enclosures: 1)

SENATE OF THE REPUBLIC

XVI LEGISLATURE

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RESOLUTION OF THE FIRST PERMANENT COMMITTEE

(Constitutional affairs, affairs of the presidency of the Council and home affairs, general legal system of the State and the public administration)

(Draftsman: LAURO)

Approved in the sitting of 25 March 2009

REGARDING

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL LAYING DOWN MINIMUM STANDARDS FOR THE
RECEPTION OF ASYLUM SEEKERS (COM(2008) 815 FINAL) (COMMUNITY
MEASURE NO 28)**

as provided for in Article 144(1) and (6) of the Rules of the Senate

Communicated to the presidency on 30 March 2009

The First Committee,

having regard to the fact that the proposal, intended to extend the scope of the directive to the subsidiary protection of asylum seekers, meets the requirement to pursue greater uniformity in reception conditions;

considering that it takes up the results of the discussions held with the various parties concerned by the future structure of the common European asylum system;

believing such action to be essential to ensure the cohesion of the current Community *acquis*;

taking into account the opinions expressed by the Foreign Affairs and Emigration Committee and the European Union Policies Committee,

values the proposal, inasmuch as it might be helpful in reducing the phenomenon of secondary movements of asylum seekers between Member States caused by the coexistence of divergent national reception policies;

assesses favourably the intention to improve the reception conditions of asylum seekers in order to guarantee them a dignified standard of living, in accordance with their fundamental rights and national and international provisions;

is in favour of strengthening practical cooperation measures to assess in a uniform manner information in respect of the country of origin and to organise aid to the Member States under particular pressure, recalling that on 18 February 2009 the European Commission submitted draft legislation for the creation of a European Asylum Support Office, which aims to provide practical assistance to the Member States in taking decisions on asylum claims;

notes that the European Commission has extended the scope of the directive to subsidiary protection for all types of asylum procedures and all geographical areas and facilities used for housing asylum seekers.

The Committee therefore expresses a favourable opinion on the proposal, and makes the following observations:

the need is recognised, as announced in the Strategic Plan on Asylum, for the Commission to submit in good time proposals to amend Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ('the Qualification Directive') and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status ('the Procedures Directive'), in order to eliminate substantial differences in interpretation and application of the directives between the Member States;

it is observed that the conditions for admission to subsidiary protection should be further clarified, as announced by the Commission itself, given that the formulation of the current provisions allows substantial differences of interpretation and application of the concept in the Member States;

it is also observed that, in laying down uniform status for asylum and subsidiary protection, concepts which have many rights and obligations in common, the Commission must provide for differentiated treatment, also in view of the fact that, as appears from an analysis of the applications accepted, a steadily increasing number of applicants obtain subsidiary protection or other forms of protection provided for under national provisions rather than the status of refugee within the meaning of the Geneva Convention;

it is stated that it is necessary to ensure consistency with other policies which affect international protection, in particular so far as concerns border controls, the fight against illegal immigration and repatriation policies. In that respect, it is noted that the joint Italian, Greek, Cypriot and Maltese initiative, positively evaluated by the Justice and Home Affairs Council of 26 and 27 February 2009, requested a series of concrete actions including the strengthening of Frontex, better management of joint operations in the Mediterranean region and the adoption of measures to help neighbouring countries to manage migration flows, control borders and combat illegal immigration;

it is hoped, as stated in the European Pact on Immigration and Asylum approved by the European Council of October 2008, that the determination of a common policy on immigration and asylum will take into account at the same time the collective interest of the European Union and the specific nature of each Member State and provide, above all for the Member States whose national asylum systems are subject to specific and disproportionate pressure owing in particular to their geographical or demographic situation, for specific solidarity procedures to make sure that asylum systems are not subject to abuse.

The Committee, expressing some reservations of a general nature in respect of Articles 8 and 11, concerning detention, and Articles 15 and 17, concerning employment and health care, already announced by the Italian representative at the working group on asylum seekers, sets out the following proposals:

(a) in Article 8, it is deemed appropriate to include, among the cases of detention provided for, also cases in which the applicant has submitted an application after it has been ascertained that his presence on the national territory is irregular following procedures provided for under the national provisions in force or he has been convicted in Italy of particularly serious offences; in addition, Article 8(3), intended to introduce alternatives to detention, should be amended by a *may* provision;

(b) in Article 9, concerning guarantees for detained asylum seekers, it is recommended that the national system based also on the powers of the Questore (head of the police administration) be maintained;

(c) in the second subparagraph of Article 10(1) it is provided that the separation of asylum seekers and other third country nationals in detention centres is obligatory. It would be appropriate, also in this case, to adopt that measure as a *may* provision, since our system already ensures suitable reception conditions, opportunities to contact representatives of the UNHCR and authorised humanitarian organisations and opportunity to receive visits and to communicate;

(d) in Article 17, it is appropriate to obtain the opinion of the Minister for Labour, Health and Social Policy concerning the equivalence of the total value of material reception conditions to the amount of social assistance granted to nationals requiring such assistance.

(e) in Article 20, concerning the reinstallation of reception conditions in cases in which the applicant who has moved away is traced or voluntarily reports to the competent authority, it is considered that the national provisions on the basis of which the applicant forfeits the reception conditions in cases of unjustified moves are preferable. It is also requested to take out Article 20(5).

Finally, it is hoped that the development of the relevant Community provisions will ensure uniform and cohesive regulation in all of the territory of the European Union over time.

OPINION OF THE THIRD PERMANENT COMMITTEE

(FOREIGN AFFAIRS, EMIGRATION)

(Draftsman: DINI)

12 March 2009

The Third Committee,

having examined the proposal for a directive submitted by the European Commission last December 2008, which is a recast of the previous ('Reception') directive of 2003 laying down minimum standards for the reception of asylum seekers in the Member States;

noting that:

it is part of a series of proposals to ensure the harmonisation of the rules and better standards of protection for the Common European Asylum System;

the introduction of a Common European Asylum System started with the Treaty of Amsterdam of 1999;

the initial objective was to harmonise the legal frameworks of the Member States on the basis of common minimum standards, in strict observance of the Geneva Convention relating to the Status of Refugees of 28 July 1951, ratified by Law No 722 of 24 July 1954;

a common asylum procedure was created and uniform status for those who have obtained asylum was established;

the 'Reception' directive which is now being amended lays down conditions that will suffice to guarantee to asylum seekers 'a dignified standard of living and comparable living conditions in all Member States';

pointing out that:

the proposal under consideration today is intended further to improve the reception conditions of asylum seekers, in order to guarantee them a dignified standard of living, in accordance with the provisions of international law;

it is intended, in addition, further to harmonise national provisions on reception conditions in order to limit the phenomenon of movements of asylum seekers between Member States, caused by the coexistence of favourable and less favourable national reception policies;

the directive concerns all third country nationals and stateless persons who make an application for international protection, including at the border or in the transit zones, of a Member State, as long as they are allowed to remain on the territory as asylum seekers, as well as family members, if they are covered by such application for international protection according to the national law;

in order to guarantee an adequate standard of living for the health and subsistence of asylum seekers, the proposal requires the Member States to refer to the amount of social

assistance granted to their own nationals when they grant financial assistance to asylum seekers.

Stating finally that:

as provided for in the proposal, no one may be held in detention for the sole reason that they are seeking international protection and that ensures compliance with the Charter of fundamental rights of the European Union and with other international instruments to protect human rights;

recourse to detention is to be allowed only in exceptional cases;

the proposal also guarantees that detained asylum seekers are treated in a humane and dignified manner in accordance with their fundamental rights and national and international provisions;

gives its favourable opinion.

OPINION OF THE FOURTEENTH PERMANENT COMMITTEE

(EUROPEAN UNION POLICIES)

(Draftsman: PITTONI)

24 March 2009

The Committee, having examined the Community measure,

having regard to the fact that the proposal for a directive is a recasting of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States and that in the evaluation report of 26 November 2007 the Commission found numerous problems owing largely to the discretion afforded to the Member States in those matters;

having regard to the fact, as announced in the 'Policy Plan on Asylum – An Integrated Approach to Protection across the EU' presented by the European Commission on 17 June 2008, that the proposal is part of a comprehensive package which aims to ensure a higher degree of harmonisation of the Common European Asylum System and is adopted at the same time as the recast of the Dublin and Eurodac regulations, while thereafter the Commission alone will propose amendments to the Qualification Directive and Procedures Directive;

noting that higher standards of treatment are laid down concerning the reception conditions of asylum seekers, in order to guarantee them a dignified standard of living, in accordance with the provisions of international law;

considering that the scope of the proposal extends to all third country nationals and stateless persons who make an application for international protection, including at the border or in the transit zones, of a Member State, as long as they are allowed to remain on the territory as asylum seekers, as well as family members, if they are covered by such application for international protection according to national law and that that proposal will apply to all facilities and geographic areas which host asylum seekers;

gives its favourable opinion and adds the following observations:

(a) so far as concerns observance of the principle of subsidiarity, it recognises that the proposal for a directive takes place in accordance with Article 63(1)(b) of the Treaty establishing the European Community, under which the Council is to adopt measures on asylum in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties in the area of minimum standards on the reception of asylum seekers in Member States, in line with the provisions of the previous Directive 2003/9/EC. The new proposal, therefore, inasmuch as it aims at greater harmonisation in those matters, does not appear to be contrary to the principle of subsidiarity;

(b) so far as concerns observance of the principle of proportionality, the proposal intends to lay down minimum standards relating to the reception of asylum seekers in Member States. It is observed, however, that although the equal treatment of asylum seekers is ensured, the directive ought to allow the Member States to provide, at national level, for material reception conditions which differentiate in relation to specific and, at times, fortuitous, reception capacity;

(c) so far as concerns the substance of the proposal, it values the proposal of the European Commission aiming at further harmonisation of national provisions on reception conditions, inasmuch as it might be helpful in reducing the phenomenon of secondary movements of asylum seekers between Member States caused by the coexistence of divergent national reception policies;

is in favour of strengthening practical cooperation measures to assess in a uniform manner information in respect of the country of origin and to organise aid to the Member States under particular pressure, recalling that on 18 February 2009 the Commission submitted draft legislation for the creation of a European Asylum Support Office, which aims to provide practical assistance to the Member States in taking decisions on asylum claims;

notes in addition that the Commission has extended the scope of the directive to subsidiary protection for all types of asylum procedures (including Dublin) and all geographical areas and facilities used for housing asylum seekers (also in cases of detention);

recognises in that regard the need, as announced in the Strategic Plan on Asylum, for the Commission to submit in good time proposals to amend Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ('the Qualification Directive') and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status ('the Procedures Directive'), which ought to have preceded in time the submission of the proposal under consideration;

observes that the conditions for admission to subsidiary protection should be further clarified, as announced by the Commission itself, given that the formulation of the current provisions allows substantial differences of interpretation and application of the concept in the Member States;

observes that, in laying down uniform status for asylum and subsidiary protection, concepts which have many rights and obligations in common, the Commission must provide for differentiated treatment, also in view of the fact that, as appears from an analysis of the applications accepted, a steadily increasing number of applicants obtain subsidiary protection or other forms of protection provided for under national provisions rather than the status of refugee within the meaning of the Geneva Convention;

states that it is necessary to ensure consistency with other policies which affect international protection, in particular so far as concerns border controls, the fight against illegal immigration and repatriation policies. In that respect, it is noted that the joint Italian, Greek, Cypriot and Maltese initiative, positively evaluated by the Justice and Home Affairs Council of 26 and 27 February 2009, requested a series of concrete actions including the strengthening of Frontex, better management of joint operations in the Mediterranean region and the adoption of measures to help neighbouring countries to manage migration flows, control borders and combat illegal immigration;

hopes finally, as stated in the European Pact on Immigration and Asylum approved by the European Council of October 2008, that the determination of a common policy on immigration and asylum takes into account at the same time the collective interest of the European Union and the specific nature of each Member State and provides, above all for the Member States whose national asylum systems are subject to specific and

disproportionate pressure owing in particular to their geographical or demographic situation, for specific solidarity procedures to make sure that asylum systems are not subject to abuse.